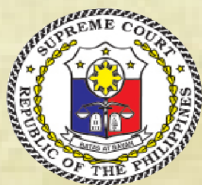

PHILIPPINE REPORTS

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REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

DECEMBER 4, 2009 TO DECEMBER 8, 2009

SUPREME COURT
MANILA
2014

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 7054. December 4, 2009]

CONRADO QUE, *complainant, vs.* **ATTY. ANASTACIO REVILLA, JR.,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY OF LAWYER TO OBSERVE RULES AND PROCEDURES, AND NOT MISUSE THEM TO DEFEAT THE ENDS OF JUSTICE; VIOLATED WHEN RESPONDENT LAWYER ABUSED COURT PROCEDURES AND PROCESSES TO SHIELD A CLIENT FROM EXECUTION OF FINAL JUDGMENT. —** The undisputed facts fully support the conclusion that the respondent is guilty of serious misconduct for abusing court procedures and processes to shield his clients from the execution of the final judgments of the MeTC and RTC in the unlawful detainer case against these clients: x x x Under the circumstances, the respondent's repeated attempts go beyond the legitimate means allowed by professional ethical rules in defending the interests of his client. These are already uncalled for measures to avoid the enforcement of final judgments of the MeTC and RTC. In these attempts, the respondent violated Rule 10.03, Canon 10 of the Code of Professional Responsibility which makes it obligatory for a lawyer to "observe the rules of procedure and . . . *not [to] misuse them to defeat the ends of justice*." By his actions, the respondent used procedural rules to thwart

and obstruct the speedy and efficient administration of justice, resulting in prejudice to the winning parties in that case.

2. **ID.; ID.; VIOLATIONS CONSTITUTING ABUSE OF COURT PROCESSES; COMMITTED WITH THE FILING OF MULTIPLE ACTIONS AND VIOLATING RULE AGAINST FORUM SHOPPING. —** The respondent likewise violated Rule 12.02 and Rule 12.04, Canon 12 of the Code of Professional Responsibility, as well as the rule against forum shopping, both of which are directed against the filing of multiple actions to attain the same objective. Both violations constitute abuse of court processes; they tend to degrade the administration of justice; wreak havoc on orderly judicial procedure; and add to the congestion of the heavily burdened dockets of the courts. While the filing of a petition for *certiorari* to question the lower courts' jurisdiction may be a procedurally legitimate (but substantively erroneous) move, the respondent's subsequent petitions involving the same property and the same parties not only demonstrate his attempts to secure favorable ruling using different fora, but his obvious objective as well of preventing the execution of the MeTC and RTC decisions in the unlawful detainer case against his clients. This intent is most obvious with respect to the petitions for annulment of judgment and declaratory relief, both geared towards preventing the execution of the unlawful detainer decision, long after this decision had become final.

3. **ID.; ID.; DUTY OF LAWYER TO OBSERVE CANDOR AND FAIRNESS IN HIS DEALINGS WITH THE COURT; VIOLATED WHEN LAWYER COMMITTED WILLFUL, INTENTIONAL AND DELIBERATE FALSEHOOD IN THE PLEADINGS HE FILED. —** The records also reveal that the respondent committed willful, intentional and deliberate falsehood in the pleadings he filed with the lower courts. x x x For these acts, we find the respondent liable under Rule 10.01 of Canon 10 the Code of Professional Responsibility for violating the lawyer's duty to observe candor and fairness in his dealings with the court. This provision states: CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT. Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court, nor shall he mislead or allow the Court to be mislead by an artifice. Likewise, the respondent violated his duty as an attorney

and his oath as a lawyer "*never to mislead the judge or any judicial officer by an artifice or false statement of fact or law*." The respondent failed to remember that his duty as an officer of the court makes him an indispensable participant in the administration of justice, and that he is expected to act candidly, fairly and truthfully in his work. His duty as a lawyer obligates him not to conceal the truth from the court, or to mislead the court in any manner, no matter how demanding his duties to his clients may be. In case of conflict, his duties to his client yield to his duty to deal candidly with the court.

4. **ID.; ID.; DUTY OF LAWYER TO REPRESENT CLIENT WITH ZEAL WITHIN THE BOUNDS OF LAW; LAWYER OBLIGATED TO EMPLOY ONLY SUCH MEANS AS CONSISTENT WITH TRUTH AND HONOR. —** In defending his clients' interest, the respondent also failed to observe Rule 19.01, Canon 19 of the Code of Professional Responsibility, which reads: CANON 19 — A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF LAW. Rule 19.01 — A lawyer shall employ only fair and honest means to attain the lawful objectives of his clients x x x This Canon obligates a lawyer, in defending his client, to employ only such means as are consistent with truth and honor. He should not prosecute patently frivolous and meritless appeals or institute clearly groundless actions. The recital of what the respondent did to prevent the execution of the judgment against his clients shows that he actually committed what the above rule expressly prohibits.

5. **ID.; ID.; DUTY OF LAWYER TO CONDUCT HIMSELF WITH COURTESY, FAIRNESS, AND CANDOR TOWARD HIS PROFESSIONAL COLLEAGUES; VIOLATED WHEN RESPONDENT LAWYER IMPUTED WRONGDOING TO ANOTHER LAWYER WITHOUT BASIS. —** To support the charge of extrinsic fraud in his petition for annulment of judgment, the respondent attacked (as quoted above) the name and reputation of the late Atty. Catolico and accused him of deliberate neglect, corrupt motives and connivance with the counsel for the adverse party. We find it significant that the respondent failed to demonstrate how he came upon his accusation against Atty. Catolico. The respondent, by his own admission, only participated in the cases previously assigned to Atty. Catolico after the latter died.

At the same time, the respondent's petition for annulment of judgment also represented that no second motion for reconsideration or appeal was filed to contest the MeTC and RTC decisions in the unlawful detainer case for the reason that the respondent believed the said decisions were *null* and *void ab initio*. Under these circumstances, we believe that the respondent has been less than fair in his professional relationship with Atty. Catolico and is thus liable for violating Canon 8 of the Code of Professional Responsibility, which obligates a lawyer to "*conduct himself with courtesy, fairness, and candor toward his professional colleagues*." He was unfair because he imputed wrongdoing to Atty. Catolico without showing any factual basis therefor; he effectively maligned Atty. Catolico, who is now dead and unable to defend himself.

6. **ID.; ID.; PROFESSIONAL MISCONDUCT; COMMITTED WHEN LAWYER REPRESENTED PARTIES WITHOUT PROPER AUTHORIZATION IN VIOLATION OF SECTIONS 21 AND 27, RULE 138 OF THE RULES OF COURT. —** We support Investigating Commissioner Cunanan's finding that the respondent twice represented parties without proper authorization: first, in the petition for annulment of judgment; and second, in the second petition for annulment of title. x x x In both instances, the respondent violated Sections 21 and 27, Rule 138 of the Rules of Court when he undertook the unauthorized appearances. The settled rule is that a lawyer may not represent a litigant without authority from the latter or from the latter's representative or, in the absence thereof, without leave of court. The willful unauthorized appearance by a lawyer for a party in a given case constitutes contumacious conduct and also warrants disciplinary measures against the erring lawyer for professional misconduct.

7. **ID.; ID.; ID.; DEFENSE OF GOOD FAITH NEGATED BY THE MISREPRESENTATIONS AND DUBIOUS RECOURSES MADE WHILE DEFENDING A CLIENT IN CASE AT BAR. —**We find that the respondent acted in bad faith in defending the interests of his clients. We draw this conclusion from the misrepresentations and the dubious recourses he made, all obviously geared towards forestalling the execution of the final judgments of the MeTC and RTC. That he took advantage of his legal knowledge and experience and misread the Rules immeasurably strengthen the presence

of bad faith. We find neither sincerity nor honest belief on the part of the respondent in pleading the soundness and merit of the cases that he filed in court to prevent the execution of the MeTC and RTC decisions, considering his own conduct of presenting conflicting theories in his petitions. The succession of cases he filed shows a desperation that negates the sincere and honest belief he claims; these are simply scattershot means to achieve his objective of avoiding the execution of the unlawful detainer judgment against his clients.

8. **ID.; ID.; ID.; LAWYER'S DISCRETION TO DETERMINE LEGAL STRATEGY CAN NEVER BE AT THE EXPENSE OF TRUTH AND JUSTICE. —** On the respondent's allegations regarding his discretion to determine legal strategy, it is not amiss to note that this was the same defense he raised in the first disbarment case. As we explained in *Plus Builders,* the exercise of a lawyer's discretion in acting for his client can never be at the expense of truth and justice.

9. **ID.; ID. ; ID.; DISBARMENT PROCEEDINGS; NATURE; PURPOSE; UNDERLYING MOTIVES OF COMPLAINANT, UNIMPORTANT. —** The *sui generis* nature of a disbarment case renders the underlying motives of the complainants unimportant and with very little relevance. The purpose of a disbarment proceeding is mainly to determine the fitness of a lawyer to continue acting as an officer of the court and a participant in the dispensation of justice — an issue where the complainant's personal motives have little relevance. For this reason, disbarment proceedings may be initiated by the Court *motu proprio* upon information of an alleged wrongdoing.

10. **ID.; ID.; ID.; DISBARMENT; PROPER IN CASE AT BAR. —** Based on the foregoing, we conclude that the respondent committed various acts of professional misconduct and thereby failed to live up to the exacting ethical standards imposed on members of the Bar. x x x Given the respondent's multiple violations, his past record as previously discussed, and the nature of these violations which shows the readiness to disregard court rules and to gloss over concerns for the orderly administration of justice, we believe and so hold that the appropriate action of this Court is to disbar the respondent to keep him away from the law profession and from any significant role in the administration of justice which he has disgraced. He is a continuing risk, too, to the public that the legal profession

serves. Not even his ardor and overzealousness in defending the interests of his client can save him. Such traits at the expense of everything else, particularly the integrity of the profession and the orderly administration of justice, this Court cannot accept nor tolerate. Additionally, disbarment is merited because this is not the respondent's first ethical infraction of the same nature. We penalized him in *Plus Builders, Inc. and Edgardo Garcia versus Atty. Anastacio E. Revilla* for his willful and intentional falsehood before the court; for misuse of court procedures and processes to delay the execution of a judgment; and for collaborating with non-lawyers in the illegal practice of law. We showed leniency then by reducing his penalty to suspension for six (6) months. We cannot similarly treat the respondent this time; it is clear that he did not learn any lesson from his past experience and since then has exhibited traits of incorrigibility. It is time to put a *finis* to the respondent's professional legal career for the sake of the public, the profession and the interest of justice.

APPEARANCES OF COUNSEL

Cesar P. Uy and Mary Joy D. Libiran for complainant.

D E C I S I O N

***PER CURIAM*:**

In a complaint for disbarment,[1] Conrado Que (*complainant*) accused Atty. Anastacio Revilla, Jr. (*respondent*) before the Integrated Bar of the Philippines Committee on Bar Discipline (*IBP Committee on Bar Discipline* or *CBD*) of committing the following violations of the provisions of the Code of Professional Responsibility and Rule 138 of the Rules of Court:

(1) The respondent's abuse of court remedies and processes by filing a petition for *certiorari* before the Court of Appeals (*CA*), two petitions for annulment of title before the Regional Trial Court (*RTC*), a petition for annulment of judgment before the RTC and lastly, a petition for declaratory relief

[1] *Rollo*, pp. 2-18.

before the RTC (collectively, *subject cases*) to assail and overturn the final judgments of the Metropolitan Trial Court[2] (*MeTC*) and RTC[3] in the unlawful detainer case rendered against the respondent's clients. The respondent in this regard, repeatedly raised the issue of lack of jurisdiction by the MeTC and RTC knowing fully-well that these courts have jurisdiction over the unlawful detainer case. The respondent also repeatedly attacked the complainant's and his siblings' titles over the property subject of the unlawful detainer case;

(2) The respondent's commission of forum-shopping by filing the subject cases in order to impede, obstruct, and frustrate the efficient administration of justice for his own personal gain and to defeat the right of the complainant and his siblings to execute the MeTC and RTC judgments in the unlawful detainer case;

(3) The respondent's lack of candor and respect towards his adversary and the courts by resorting to falsehood and deception to misguide, obstruct and impede the due administration of justice. The respondent asserted falsehood in the motion for reconsideration of the dismissal of the petition for annulment of judgment by fabricating an imaginary order issued by the presiding judge in open court which allegedly denied the motion to dismiss filed by the respondents in the said case. The complainant alleged that the respondent did this to cover up his lack of preparation; the respondent also deceived his clients (who were all squatters) in supporting the above falsehood.[4]

(4) The respondent's willful and revolting falsehood that unjustly maligned and defamed the good name and reputation of the late Atty. Alfredo Catolico (*Atty. Catolico*), the previous counsel of the respondent's clients.

(5) The respondent's deliberate, fraudulent and unauthorized appearances in court in the petition for annulment of judgment for 15 litigants, three of whom are already deceased;

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[2] Civil Case No. 38-20262.

[3] Appealed Case No. 99-38199.

[4] See *rollo,* p.14, on the observation of the presiding judge which denied the lack of truthfulness of the above assertions of the respondent.

(6) The respondent's willful and fraudulent appearance in the second petition for annulment of title as counsel for the Republic of the Philippines without being authorized to do so.

Additionally, the complaint accused the respondent of representing fifty-two (52) litigants in Civil Case No. Q-03-48762 when no such authority was ever given to him.

The CBD required the respondent to answer the complaint.

In his Answer,[5] the respondent declared that he is a member of the Kalayaan Development Cooperative (*KDC*) that handles *pro bono* cases for the underprivileged, the less fortunate, the homeless and those in the marginalized sector in Metro Manila. He agreed to take over the cases formerly handled by other KDC members. One of these cases was the unlawful detainer case handled by the late Atty. Catolico where the complainant and his siblings were the plaintiffs and the respondent's present clients were the defendants.

With respect to paragraph 1 of the disbarment complaint, the respondent professed his sincerity, honesty and good faith in filing the petitions complained of; he filed these petitions to protect the interests of his clients in their property. The respondent asserted that these petitions were all based on valid grounds — the **lack of jurisdiction** of the MeTC and the RTC over the underlying unlawful detainer case, the **extrinsic fraud committed by the late Atty. Catolico**, and the **extrinsic fraud committed by the complainant** and his family against his clients; he discovered that the allegedly detained property did not really belong to the complainant and his family but is a forest land. The respondent also asserted that his resort to a petition for annulment of judgment and a petition for declaratory relief to contest the final judgments of the MeTC and RTC were all parts of his legal strategy to protect the interests of his clients.

On the allegations of falsehood in the motion for reconsideration of the order of dismissal of the petition for annulment of judgment (covered by paragraph 3 of the disbarment complaint), the

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[5] *Id.* at 24-32.

respondent maintained that his allegations were based on his observations and the notes he had taken during the proceedings on what the presiding judge dictated in open court.

The respondent denied that he had made any unauthorized appearance in court (with respect to paragraphs 5 and 6 of the disbarment complaint). He claimed that the 52 litigants in Civil Case No. Q-03-48762 were impleaded by inadvertence; he immediately rectified his error by dropping them from the case. On the petition for annulment of judgment, the respondent claimed that a majority (31 out of 49) of the litigants who signed the certification constituted sufficient compliance with the rules on forum-shopping. The respondent likewise denied having represented the Republic of the Philippines in the second petition for annulment of title. The respondent pointed out that there was no allegation whatsoever that he was the sole representative of both the complainants (his clients) and the Republic of the Philippines. The respondent pointed out that the petition embodied a request to the Office of the Solicitor General to represent his clients in the case.[6]

The respondent submitted that he did not commit any illegal, unlawful, unjust, wrongful or immoral acts towards the complainant and his siblings. He stressed that he acted in good faith in his dealings with them and his conduct was consistent with his sworn duty as a lawyer to uphold justice and the law and to defend the interests of his clients. The respondent additionally claimed that the disbarment case was filed because the complainant's counsel, Atty. Cesar P. Uy (*Atty. Uy*), had an axe to grind against him.

Lastly, the respondent posited in his pleadings[7] before the IBP that the present complaint violated the rule on forum shopping considering that the subject cases were also the ones on which a complaint was filed against him in CBD Case No. 03-1099 filed by Atty. Uy before the IBP Committee on Bar Discipline. The respondent also posited that the present complaint was filed

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[6] *Id.* at 31.

[7] Supplemental Position Paper; *id.* at 131-134.

to harass, ridicule and defame his good name and reputation and, indirectly, to harass his clients who are marginalized members of the KDC.

The Findings of the Investigating Commissioner

Except for the last charge of unauthorized appearance on behalf of 52 litigants in Civil Case No. Q-03-48762, Investigating Commissioner Renato G. Cunanan[8] (*Investigating Commissioner Cunanan*) found all the charges against the respondent meritorious. In his Report and Recommendation, he stated:

> While an attorney admittedly has the solemn duty to defend and protect the cause and rights of his client with all the fervor and energy within his command, yet, it is equally true that it is the primary duty of the lawyer to defend the dignity, authority and majesty of the law and the courts which enforce it. A lawyer is not at liberty to maintain and defend the cause of his clients thru means, inconsistent with truth and honor. He may not and must not encourage multiplicity of suits or brazenly engage in forum-shopping.[9]

On the first charge on abuse of court processes, Investigating Commissioner Cunanan noted the unnecessary use by the respondent of legal remedies to forestall the execution of the final decisions of the MTC and the RTC in the unlawful detainer case against his clients.[10]

On the second charge, the Investigating Commissioner ruled that the act of the respondent in filing two petitions for annulment of title, a petition for annulment of judgment and later on a petition for declaratory relief were all done to prevent the execution of the final judgment in the unlawful detainer case and constituted prohibited forum-shopping.[11]

On the third and fourth charges, Investigating Commissioner Cunanan found ample evidence showing that the respondent

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[8] *Id.* at 148-156.

[9] *Id.* at 156.

[10] *Id.* at 150-151.

[11] *Id.* at 151.

was dishonest in dealing with the court as shown in his petition for annulment of judgment; he resorted to falsities and attributed acts to Atty. Catolico and to the presiding judge, all of which were untrue.[12]

On the fifth and sixth charges, the Investigating Commissioner disregarded the respondent's explanation that he had no intention to represent without authority 15 of the litigants (three of whom were already deceased) in the petition for annulment of judgment (Civil Case No. Q-01-45556). To the Investigating Commissioner, the respondent merely glossed over the representation issue by claiming that the authority given by a majority of the litigants complied with the certification of non-forum shopping requirement. The Investigating Commissioner likewise brushed aside the respondent's argument regarding his misrepresentation in the second complaint for annulment of title since he knew very well that only the Solicitor General can institute an action for reversion on behalf of the Republic of the Philippines. Despite this knowledge, the respondent solely signed the amended complaint for and on behalf of his clients and of the Republic.

The Board of Governors of the IBP Committee on Bar Discipline, through its Resolution No. XVII-2005-164 on CBD Case No. 03-1100, adopted and approved the Report and Recommendation of Investigating Commissioner Cunanan and recommended that the respondent be suspended from the practice of law for two (2) years.[13] On reconsideration, the Board of Governors reduced the respondent's suspension from the practice of law to one (1) year.[14]

The Issue

The case poses to us the core issues of whether the respondent can be held liable for the imputed unethical infractions and professional misconduct, and the penalty these transgressions should carry.

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[12] *Id.* at 152-153.

[13] *Id.* at 147.

[14] Resolution No. XVII-2008-657 dated December 11, 2008; Folder III of the *rollo*.

The Court's Ruling

Except for the penalty, we agree with the Report and Recommendation of Investigating Commissioner Cunanan and the Board of Governors of the IBP Committee on Bar Discipline.

We take judicial notice that this disbarment complaint is not the only one so far filed involving the respondent; another complaint invoking similar grounds has previously been filed. In *Plus Builders, Inc. and Edgardo C. Garcia v. Atty. Anastacio E. Revilla, Jr.*,[15] we suspended the respondent from the practice of law for his willful and intentional falsehood before the court; for misuse of court procedures and processes to delay the execution of a judgment; and for collaborating with non-lawyers in the illegal practice of law. We initially imposed a suspension of two (2) years, but in an act of leniency subsequently reduced the suspension to six (6) months.[16]

Abuse of court procedures and processes

The following undisputed facts fully support the conclusion that the respondent is guilty of serious misconduct for abusing court procedures and processes to shield his clients from the execution of the final judgments of the MeTC and RTC in the unlawful detainer case against these clients:

First, the respondent filed a petition for *certiorari* (docketed as CA-G.R. SP No. 53892) with prayer for the issuance of preliminary injunction and temporary restraining order to question the final judgments of the MeTC and RTC for lack of jurisdiction. In dismissing the respondent's petition, the CA held:

> Even for the sake of argument considering that the petition case be the proper remedy, still it must be rejected for failure of petitioners to satisfactorily demonstrate lack of jurisdiction on the part of the Metropolitan Trial Court of Quezon City over the ejectment case.[17]

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[15] A.C. No. 7056 dated September 13, 2006, 501 SCRA 615.

[16] A.C. No. 7056 dated February 11, 2009.

[17] *Rollo*, p. 6.

Second, notwithstanding the CA's dismissal of the petition for *certiorari*, the respondent again questioned the MeTC's and the RTC's lack of jurisdiction over the unlawful detainer case in a petition for annulment of judgment (docketed as Civil Case No. Q-01-45556) before the RTC with an ancillary prayer for the grant of a temporary restraining order and preliminary injunction. The RTC dismissed this petition on the basis of the motion to dismiss filed.[18]

Third, the respondent successively filed two petitions (docketed as Civil Case No. Q-99-38780 and Civil Case No. Q-02-46885) for annulment of the complainant's title to the property involved in the unlawful detainer case. The records show that these petitions were both dismissed "*for lack of legal personality on the part of the plaintiffs*" to file the petition.[19]

Fourth, after the dismissals of the petition for annulment of judgment and the petitions for annulment of title, the respondent this time filed a petition for declaratory relief with prayer for a writ of preliminary injunction to enjoin the complainant and his siblings from exercising their rights over the same property subject of the unlawful detainer case. The respondent based the petition on the alleged nullity of the complainant's title because the property is a part of forest land.

Fifth, the persistent applications by the respondent for injunctive relief in the four petitions he had filed in several courts — the petition for *certiorari*, the petition for annulment of judgment, the second petition for annulment of complainant's title and the petition for declaratory relief — reveal the respondent's persistence in preventing and avoiding the execution of the final decisions of the MeTC and RTC against his clients in the unlawful detainer case.

Under the circumstances, the respondent's repeated attempts go beyond the legitimate means allowed by professional ethical rules in defending the interests of his client. These are already

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[18] *Id.* at 12.

[19] *Id.* at 7-8.

uncalled for measures to avoid the enforcement of final judgments of the MeTC and RTC. In these attempts, the respondent violated Rule 10.03, Canon 10 of the Code of Professional Responsibility which makes it obligatory for a lawyer to "observe the rules of procedure and. . . *not [to] misuse them to defeat the ends of justice*." By his actions, the respondent used procedural rules to thwart and obstruct the speedy and efficient administration of justice, resulting in prejudice to the winning parties in that case.[20]

Filing of multiple actions and forum shopping

The respondent likewise violated Rule 12.02 and Rule 12.04, Canon 12 of the Code of Professional Responsibility,[21] as well as the rule against forum shopping, both of which are directed against the filing of multiple actions to attain the same objective. Both violations constitute abuse of court processes; they tend to degrade the administration of justice; wreak havoc on orderly judicial procedure;[22] and add to the congestion of the heavily burdened dockets of the courts.[23]

While the filing of a petition for *certiorari* to question the lower courts' jurisdiction may be a procedurally legitimate (but substantively erroneous) move, the respondent's subsequent petitions involving the same property and the same parties not only demonstrate his attempts to secure favorable ruling using different fora, but his obvious objective as well of preventing the execution of the MeTC and RTC decisions in the unlawful detainer case against his clients. This intent is most obvious

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[20] *See*: Agpalo, *Comments on the Code of Professional Responsibility and the Code of Judicial Conduct,* p. 104 (2004 edition).

[21] Rule 12.02 — A lawyer shall not file multiple actions.

Rule 12.04 — A lawyer shall not unduly delay a case, impede the execution of judgment or misuse court processes.

[22] *Supra* note 20 at 104.

[23] *Pena v. Aparicio*, A.C. No. 7298, June 25, 2007, 525 SCRA 444, 454; *see*: Agpalo, *supra* note 20 at 121, citing *Chempil Export & Export Corp. v. Court of Appeals*, 321 Phil 619 (1995); and *Ligon v. Court of Appeals*, 355 Phil 503 (1998).

with respect to the petitions for annulment of judgment and declaratory relief, both geared towards preventing the execution of the unlawful detainer decision, long after this decision had become final.

Willful, intentional and deliberate falsehood before the courts

The records also reveal that the respondent committed willful, intentional and deliberate falsehood in the pleadings he filed with the lower courts.

First, in the petition for annulment of judgment filed before the RTC, Branch 101, Quezon City, the respondent cited extrinsic fraud as one of the grounds for the annulment sought. The extrinsic fraud was alleged in the last paragraph of the petition, as follows:

> In here, counsel for the petitioners (defendants therein), deliberately neglected to file the proper remedy then available after receipt of the denial of their Motion for Reconsideration . . . thus **corruptly sold out the interest of the petitioners** (defendants therein) by keeping them away to the Court and in complete ignorance of the suit by a false pretense of compromise and fraudulent acts of alleging representing them when in truth and in fact, have **connived with the attorney of the prevailing party at his defeat to the prejudice of the petitioner** (defendants therein) . . .[24]

Yet, in paragraph 35 of the same petition, the respondent alleged that no second motion for reconsideration or for new trial, or no other petition with the CA had been filed, as he believed "*that the decisions rendered both by the MeTC and the RTC are null and void*."[25] These conflicting claims, no doubt, involve a fabrication made for the purpose of supporting the petition for annulment. Worse, it involved a direct and unsubstantiated attack on the reputation of a law office colleague, another violation we shall separately discuss below.

Second, the respondent employed another obvious subterfuge when he filed his second petition for annulment of title, which

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[24] Petition for Annulment of Judgment, p. 25; *rollo*, p. 11.

[25] *Ibid.*

was an unsuccessful attempt to circumvent the rule that only the Solicitor General may commence reversion proceedings of public lands[26] on behalf of the Republic of the Philippines. This second petition, filed by a private party and not by the Republic, showed that: (a) the respondent and his clients requested that they be represented by the Solicitor General in the proceedings; (b) the Republic of the Philippines was simply impleaded in the amended petition without its consent as a plaintiff; and (c) the respondent signed the amended petition where he alone stood as counsel for the "plaintiffs." In this underhanded manner, the respondent sought to compel the Republic to litigate and waste its resources on an unauthorized and unwanted suit.

Third, the respondent also committed falsehood in his motion for reconsideration of the order dismissing his petition for annulment of judgment where he misrepresented to the court and his clients what actually transpired in the hearing of June 28, 2002 in this wise:

> Likewise, the proceedings on said date of hearing (June 28, 2002) show, that after both counsel have argued on the aforesaid pending incident, the Honorable Presiding Judge, in open court, and in the presence and within the hearing distance of all the plaintiffs and their counsel as well as the counsel of the defendants resolved: ***TO DENY THE MOTION TO DISMISS FILED AND DIRECTED DEFENDANTS COUNSEL TO FILE AN ANSWER TO THE COMPLAINT WITHIN THE REMAINING PERIOD.***[27] [Underscoring and emphasis theirs]

The records, however, disclose that the scheduled hearing for June 28, 2002 was actually for the respondent's application for temporary restraining order and was not a hearing on the adverse party's motion to dismiss.[28] The records also show that RTC-Branch 101 held in abeyance the respondent's application for injunctive relief pending the resolution of the motion to dismiss

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[26] *Id.*, pp. 30-31; PUBLIC LAND ACT, Section 101.

[27] *Id.* at 13.

[28] *Id.* at 13-14.

filed by the adverse party.[29] As stated in the order of the Presiding Judge of RTC-Branch 101:

> Browsing over the records of this case specifically the transcripts of stenographic notes as transcribed by the Stenographer, <u>the same will indicate that the allegations in the Motion for Reconsideration are not true.</u>
>
> . . . how can this Court make a ruling on the matter even without stating the factual and legal bases as required/mandated by the Rules. Moreover, there are no indications or iota of irregularity in the preparation by Stenographer of the transcripts, and by the Court interpreter of the Minutes of the open Court session. [Underscoring theirs]

The records further disclose that despite knowledge of the falsity of his allegations, the respondent took advantage of his position and the trust reposed in him by his clients (who are all squatters) to convince them to support, through their affidavits, his false claims on what allegedly transpired in the June 28, 2002 hearing.[30]

For these acts, we find the respondent liable under Rule 10.01 of Canon 10 the Code of Professional Responsibility for violating the lawyer's duty to observe candor and fairness in his dealings with the court. This provision states:

> CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT
>
> Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court, nor shall he mislead or allow the Court to be mislead by an artifice.

Likewise, the respondent violated his duty as an attorney and his oath as a lawyer "*never to mislead the judge or any judicial officer by an artifice or false statement of fact or law*."[31] The respondent failed to remember that his duty as an officer

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[29] *Id.* at 12.

[30] *Id.* at 155.

[31] RULES OF COURT, Rule 138, Section 20 (d).

of the court makes him an indispensable participant in the administration of justice,[32] and that he is expected to act candidly, fairly and truthfully in his work.[33] His duty as a lawyer obligates him not to conceal the truth from the court, or to mislead the court in any manner, no matter how demanding his duties to his clients may be.[34] In case of conflict, his duties to his client yield to his duty to deal candidly with the court.[35]

In defending his clients' interest, the respondent also failed to observe Rule 19.01, Canon 19 of the Code of Professional Responsibility, which reads:

> CANON 19 — A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF LAW
>
> Rule 19.01 — A lawyer shall employ only fair and honest means to attain the lawful objectives of his clients x x x

This Canon obligates a lawyer, in defending his client, to employ only such means as are consistent with truth and honor.[36] He should not prosecute patently frivolous and meritless appeals or institute clearly groundless actions.[37] The recital of what the respondent did to prevent the execution of the judgment against his clients shows that he actually committed what the above rule expressly prohibits.

Maligning the name of his fellow lawyers

To support the charge of extrinsic fraud in his petition for annulment of judgment, the respondent attacked (as quoted above) the name and reputation of the late Atty. Catolico and accused him of deliberate neglect, corrupt motives and connivance with the counsel for the adverse party.

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[32] Agpalo, *supra* note 20 at 99.

[33] *Id.* at 100.

[34] *Id.* at102.

[35] *Ibid.*

[36] *Id.* at 226.

[37] *Ibid.*

We find it significant that the respondent failed to demonstrate how he came upon his accusation against Atty. Catolico. The respondent, by his own admission, only participated in the cases previously assigned to Atty. Catolico after the latter died. At the same time, the respondent's petition for annulment of judgment also represented that no second motion for reconsideration or appeal was filed to contest the MeTC and RTC decisions in the unlawful detainer case for the reason that the respondent believed the said decisions were *null* and *void ab initio*.

Under these circumstances, we believe that the respondent has been less than fair in his professional relationship with Atty. Catolico and is thus liable for violating Canon 8 of the Code of Professional Responsibility, which obligates a lawyer to "*conduct himself with courtesy, fairness, and candor toward his professional colleagues*." He was unfair because he imputed wrongdoing to Atty. Catolico without showing any factual basis therefor; he effectively maligned Atty. Catolico, who is now dead and unable to defend himself.

<u>Unauthorized appearances</u>

We support Investigating Commissioner Cunanan's finding that the respondent twice represented parties without proper authorization: first, in the petition for annulment of judgment; and second, in the second petition for annulment of title.[38]

In the first instance, the records show that the respondent filed the petition for annulment of judgment on behalf of 49 individuals, 31 of whom gave their consent while the other 15 individuals did not. We cannot agree with the respondent's off-hand explanation that he truly believed that a majority of the litigants who signed the certification of non-forum shopping in the petition already gave him the necessary authority to sign for the others. We find it highly improbable that this kind of lapse could have been committed by a seasoned lawyer like the respondent, who has been engaged in the practice of law for more than 30 years and who received *rigid and strict training*

[38] *Rollo,* pp. 155-156.

as he so proudly declares, from the University of the Philippines College of Law and in the two law firms with which he was previously associated.[39] As Investigating Commissioner Cunanan found, the respondent's explanation of compliance with the rule on the certification of non-forum shopping glossed over the real charge of appearing in court without the proper authorization of the parties he allegedly represented.

In the second instance, which occurred in the second complaint for annulment of title, the respondent knew that only the Solicitor General can legally represent the Republic of the Philippines in actions for reversion of land. Nevertheless, he filed an amended petition where he impleaded the Republic of the Philippines as plaintiff without its authority and consent, as a surreptitious way of forcing the Republic to litigate. Notably, he signed the amended complaint on behalf of all the plaintiffs — his clients and the Republic.

In both instances, the respondent violated Sections 21 and 27, Rule 138 of the Rules of Court when he undertook the unauthorized appearances. The settled rule is that a lawyer may not represent a litigant without authority from the latter or from the latter's representative or, in the absence thereof, without leave of court.[40] The willful unauthorized appearance by a lawyer for a party in a given case constitutes contumacious conduct and also warrants disciplinary measures against the erring lawyer for professional misconduct.[41]

The Respondent's Defenses

We find no merit in the respondent's defenses.

"Good faith connotes an honest intention to abstain from taking unconscientious advantage of another. Accordingly, in *University of the East v. Jader* we said that "[g]ood faith connotes an honest intention to abstain from taking undue advantage of

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[39] *Id.* at 26.

[40] RULES OF COURT, Rule 138, Section 21.

[41] *Id.,* Sections 21 and 27.

another, even though the forms and technicalities of law, together with the absence of all information or belief of facts, would render the transaction unconscientious."[42] Bad faith, on the other hand, is a state of mind affirmatively operating with furtive design or with some motive of self-interest, ill will or for an ulterior purpose.[43] As both concepts are states of mind, they may be deduced from the attendant circumstances and, more particularly, from the acts and statements of the person whose state of mind is the subject of inquiry.

In this case, we find that the respondent acted in bad faith in defending the interests of his clients. We draw this conclusion from the misrepresentations and the dubious recourses he made, all obviously geared towards forestalling the execution of the final judgments of the MeTC and RTC. That he took advantage of his legal knowledge and experience and misread the Rules immeasurably strengthen the presence of bad faith.

We find neither sincerity nor honest belief on the part of the respondent in pleading the soundness and merit of the cases that he filed in court to prevent the execution of the MeTC and RTC decisions, considering his own conduct of presenting conflicting theories in his petitions. The succession of cases he filed shows a desperation that negates the sincere and honest belief he claims; these are simply scattershot means to achieve his objective of avoiding the execution of the unlawful detainer judgment against his clients.

On the respondent's allegations regarding his discretion to determine legal strategy, it is not amiss to note that this was the same defense he raised in the first disbarment case.[44] As we explained in *Plus Builders,* the exercise of a lawyer's discretion

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[42] *Philippine National Bank v. Heirs of Estanislao Militar and Deogracias Militar*, G.R. Nos. 164801 & 165165, June 30, 2006, 494 SCRA 308, 318; citing *University of the East v. Jader*, 382 Phil. 697, 705 (2000).

[43] *Santiago v. Court of Appeals*, G.R. No. 127440, January 27, 2007, 513 SCRA 69, 83.

[44] *Plus Builders, Inc. and Edgardo C. Garcia v. Atty. Anastacio E. Revilla, Jr.*, *supra* note 15.

in acting for his client can never be at the expense of truth and justice. In the words of this cited case:

> While a lawyer owes absolute fidelity to the cause of his client, full devotion to his genuine interest, and warm zeal in the maintenance and defense of his rights, as well as the exertion of his utmost learning and ability, he must do so only within the bounds of the law. He must give a candid and honest opinion on the merits and probable results of his client's case with the end in view of promoting respect for the law and legal processes, and counsel or maintain such actions or proceedings only as appear to him to be just, and such defenses only as he believes to be honestly debatable under the law. He must always remind himself of the oath he took upon admission to the Bar that he 'will not wittingly or willingly promote or sue any groundless, false or unlawful suit nor give aid nor consent to the same'; and that he 'will conduct [himself] as a lawyer according to the best of [his] knowledge and discretion with all good fidelity as well to the courts as to [his] clients.' Needless to state, the lawyer's fidelity to his client must not be pursued at the expense of truth and the administration of justice, and it must be done within the bounds of reason and common sense. A lawyer's responsibility to protect and advance the interests of his client does not warrant a course of action propelled by ill motives and malicious intentions against the other party.[45]

We cannot give credence to the respondent's claim that the disbarment case was filed because the counsel of the complainant, Atty. Uy, had an axe to grind against him. We reject this argument, considering that it was not Atty. Uy who filed the present disbarment case against him; Atty. Uy is only the counsel in this case. In fact, Atty. Uy has filed his own separate disbarment case against the respondent.

The *sui generis* nature of a disbarment case renders the underlying motives of the complainants unimportant and with very little relevance. The purpose of a disbarment proceeding is mainly to determine the fitness of a lawyer to continue acting as an officer of the court and a participant in the dispensation of justice — an issue where the complainant's personal motives

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[45] *Ibid.*, citing *Choa v. Chiongson*, 329 Phil 270, 275-276 (1996).

have little relevance. For this reason, disbarment proceedings may be initiated by the Court *motu proprio* upon information of an alleged wrongdoing. As we also explained in the case *In re: Almacen*:

. . . disciplinary proceedings like the present are sui generis. Neither purely civil nor purely criminal, this proceeding is not - and does not involve - a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution.

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It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of-the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor.[46]

Hence, we give little or no weight to the alleged personal motivation that drove the complainant Que and his counsel to file the present disbarment case.

Conclusion

Based on the foregoing, we conclude that the respondent committed various acts of professional misconduct and thereby failed to live up to the exacting ethical standards imposed on members of the Bar. We cannot agree, however, that only a penalty of one-year suspension from the practice of law should be imposed. Neither should we limit ourselves to the originally recommended penalty of suspension for two (2) years.

Given the respondent's multiple violations, his past record as previously discussed, and the nature of these violations which

[46] G.R. No. L-27654, February 18, 1970, 31 SCRA 562, 600-601.

shows the readiness to disregard court rules and to gloss over concerns for the orderly administration of justice, we believe and so hold that the appropriate action of this Court is to disbar the respondent to keep him away from the law profession and from any significant role in the administration of justice which he has disgraced. He is a continuing risk, too, to the public that the legal profession serves. Not even his ardor and overzealousness in defending the interests of his client can save him. Such traits at the expense of everything else, particularly the integrity of the profession and the orderly administration of justice, this Court cannot accept nor tolerate.

Additionally, disbarment is merited because this is not the respondent's first ethical infraction of the same nature. We penalized him in *Plus Builders, Inc. and Edgardo Garcia versus Atty. Anastacio E. Revilla* for his willful and intentional falsehood before the court; for misuse of court procedures and processes to delay the execution of a judgment; and for collaborating with non-lawyers in the illegal practice of law. We showed leniency then by reducing his penalty to suspension for six (6) months. We cannot similarly treat the respondent this time; it is clear that he did not learn any lesson from his past experience and since then has exhibited traits of incorrigibility. It is time to put a *finis* to the respondent's professional legal career for the sake of the public, the profession and the interest of justice.

WHEREFORE, premises considered, we hereby *AFFIRM* Resolution No. XVII-2005-164 dated December 17, 2005 and Resolution No. XVII-2008-657 dated December 11, 2008 of the Board of Governors of the IBP Committee on Bar Discipline insofar as respondent Atty. Anastacio Revilla, Jr. is *found liable for professional misconduct* for violations of the Lawyer's Oath; Canon 8; Rules 10.01 and 10.03, Canon 10; Rules 12.02 and 12.04, Canon 12; Rule 19.01, Canon 19 of the Code of Professional Responsibility; and Sections 20(d), 21 and 27 of Rule 138 of the Rules of Court. However, we modify the penalty the IBP imposed, and hold that the respondent should be *DISBARRED* from the practice of law.

SO ORDERED.

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

Velasco, Jr., J., took no part due to close relations to a party.

EN BANC

[A.M. No. P-09-2636. December 4, 2009]
(Formerly OCA IPI No. 07-2681-P)

ATTY. EDUARDO E. FRANCISCO, in his capacity as Attorney-in-Fact of LAMBERTO LANDICHO, *complainant, vs.* **LIZA O. GALVEZ, Officer-in-Charge, Clerk of Court, Metropolitan Trial Court, Branch 73, Pateros, Metro Manila,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; REQUIRED DECORUM. —** No less than the Constitution mandates that all public officers and employees should serve with responsibility, integrity and efficiency. Indeed, public office is a public trust. Thus, this Court has often stated that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, is circumscribed with the heavy burden of responsibility. The Judiciary expects the best from all its employees who must be paradigms in the administration of justice.

2. **ID.; ID.; CODE OF CONDUCT FOR COURT PERSONNEL; DUTY TO PERFORM OFFICIAL DUTIES PROPERLY**

AND WITH DILIGENCE; CERTIFYING A PHOTOCOPY WITHOUT VERIFYING THE TRUTHFULNESS THEREOF FROM THE RECORDS, NOT PROPER; CASE AT BAR. — Section 1, Canon IV of the Code of Conduct for Court Personnel mandates: Section 1. **Court Personnel shall at all times perform official duties properly and with diligence.** They shall commit themselves exclusively to the business and responsibilities of their office during working hours. There is nothing proper in certifying a mere photocopy without verifying the truthfulness thereof from any resources. Reliance with one person's familiarity with another person's signature cannot be made a basis of a certification. A certificate is a written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality has been complied with. To certify is to attest the truthfulness of the document. Without the records to verify the truthfulness and authenticity of a document, no certification should be issued. This is basic. More appalling is the fact that [court employee] Galvez, in issuing the certifications, also relied on Chavez's assurances when the latter is not even a court employee. It should also be pointed out that there is no record of an official receipt for the issuance of the certifications. From the foregoing, it is evident that respondent has shown herself to have been less than zealous in the performance of the duties of her office, which demands utmost dedication and efficiency. Her lackadaisical attitude betrays her inefficiency and incompetence and amounts to gross negligence if not gross misconduct. Respondent should have been more diligent in performing her duties. At the very least, she should have informed the presiding judge of the court about the request for certification and the fact that there exist no records to support the certification. These, Galvez miserably failed to perform.

3. **ID.; ID.; COURT EMPLOYEES; GROSS NEGLECT OF DUTY; COMMITTED WHEN COURT EMPLOYEE CERTIFIED A SPURIOUS AND NON EXISTENT DECISION.** — Galvez should know that when she certified the questioned decision, she did so under the seal of the court. Thus, when the decision she certified turned out to be spurious and non-existent, she undoubtedly put the Judiciary into shambles and jeopardized the integrity of the court. Respondent's acts betray her complicity, if not participation,

in acts that were irregular and violative of ethics and procedure, causing damage not only to the complainant but also to the public. Her actuations reflect adversely on the integrity and efficiency of the Judiciary. Thus, considering the severity of the repercussions and damages resulting from Galvez's negligence and lack of prudence in the performance of her duties, we disagree that her neglect of duty was only simple. It is, in fact, gross.

4. **ID.; ID.; ID.; ID.; ID.; DEFENSE OF GOOD FAITH, NOT ACCEPTABLE. —** Galvez cannot raise "good faith" as a defense. In common usage, the term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder on inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with the absence of all information, notice, or benefit, or belief of facts which render transaction unconscientious." Clearly, Galvez, from her actuations, cannot be considered to have acted in good faith when she certified the questioned decision, since she herself admitted that there were no court records to support the certification. She also failed to take precautionary measures to determine the authenticity of the document, which on its face appeared to be suspicious. This is another aberrant behavior contrary to good faith.

5. **ID.; ID.; ID.; CLERK OF COURT; REQUIRED DECORUM. —** Time and again, we have repeatedly stressed that a clerk of court occupies a very sensitive position that requires competence and efficiency to insure the public's confidence in the administration of justice. She is expected to uphold the law and implement the pertinent rules and must be assiduous in the performance of her duties since she performs delicate administrative functions that are essential to the prompt and proper administration of justice. She cannot err without affecting the integrity of the court or the efficient administration of justice. Thus, she cannot be permitted to slacken on her job under one pretext or another.

6. **ID.; ID.; UNIFORM RULE ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GROSS NEGLECT OF DUTY IS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL; FIRST OFFENSE AS MITIGATING CIRCUMSTANCE,**

NEGATED BY THE GRAVITY OF THE OFFENSE COMMITTED IN CASE AT BAR. — Gross neglect of duty is a grave offense punishable by dismissal under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. While Galvez invoked the "first offense" circumstance as mitigating, the gravity of the offense committed negates its application. Galvez' act of certifying a decision in the absence of any records warranting its certification is, in fact, criminal in nature as it is tantamount to falsification under the Revised Penal Code. This Court cannot turn a blind eye to Galvez' lapses. The facts and the evidence, coupled with Galvez' own admission, sufficiently established her culpability. x x x Even though the offense Galvez was found guilty of was her first offense, the gravity thereof outweighs the fact that it was her first offense.

7. **ID.; ID.; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES; REQUIRED CONDUCT OF COURT PERSONNEL, EMPHASIZED AND ANY VIOLATION THEREOF IS CONDEMNED. —** As a final note, the Code of Conduct and Ethical Standards for Public Officials and Employees (Rep. Act No. 6713) enunciates the state's policy of promoting a high standard of ethics and utmost responsibility in the public service. And no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the Judiciary. We have repeatedly emphasized that the conduct of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the Judiciary. The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice, which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.

D E C I S I O N

***PER CURIAM*:**

Before us is an administrative complaint for grave misconduct and conduct unbecoming a court employee filed by complainant Atty. Eduardo E. Francisco in his capacity as attorney-in-fact[1] of Lamberto Ilagan Landicho, against respondent Liza O. Galvez, Officer-in-Charge (OIC)- Clerk of Court of the Metropolitan Trial Court of Pateros City, Branch 73, for issuing a certified photocopy of a spurious decision[2] dated December 16, 1974 and an undated certificate of finality[3] of the said decision.

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

Lamberto Ilagan Landicho was married to Evelyn Carandang on February 3, 1975 at Toronto, Province of Ontario, Canada, upon Carandang's representation that she was single and without any legal impediment to contract marriage.

In October 2001, Carandang filed for divorce against Landicho before the Superior Court of Rancho Cucamonga, County of San Bernardino, Los Angeles, California, USA.

In January 2002, Carandang obtained a divorce decree from the said court against Landicho and was awarded spousal support in the amount of US $1,100.00 a month. Consequently, Landicho regularly provided monthly support to Carandang from January 2002 up to September 2006, until he discovered that Carandang had a previous marriage to a certain Norberto Bagnate in August 2, 1973 in the Philippines before she contracted marriage with him.

Betrayed, Landicho filed an action to stop payment of support to Carandang and to declare invalid the decree of divorce.

During the proceeding, by way of defense, Carandang presented the questioned Decision dated December 16, 1974, purportedly

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[1] *Rollo,* pp. 8-9.

[2] *Id.* at 14.

[3] *Id.* at 13.

issued by Judge Eustaquio P. Sto. Domingo, then Presiding Judge of the Municipal Trial Courts of Pateros and Fort Bonifacio, Rizal, as proof that her previous marriage to her first husband was already nullified as early as 1974; thus, there was no legal impediment on her part at the time of her marriage with Landicho in 1975.

However, Landicho contended that the questioned Decision dated December 16, 1974 was spurious, because the former trial court, which allegedly issued it, has no jurisdiction to try cases for annulment of marriage. Complainant also pointed out that the subject decision was registered only in the year 2007.

Later, in a Decision[4] dated May 4, 2008, the Regional Trial Court of Pateros, Branch 262, declared the questioned Decision as null and void and directed the Office of the Local Registrar of Makati City and the National Statistics Office to cause the cancellation of the annotation of the annulment of marriage between Norberto Bagnate and Evelyn Carandang.

Aggrieved, Landicho, through Atty. Francisco, filed an administrative complaint against Judge Sto. Domingo for issuing the spurious decision. However, said complaint was terminated in view of Judge Sto. Domingo's retirement from service in September 20, 1997.[5] Persistent, complainant instead filed an instant administrative complaint against Galvez as she was the one who certified the spurious decision and issued the certificate of finality.

In her Comment[6] dated 17 September 2007, Galvez narrated that in April 3, 2007, a certain Rebecca Bautista, accompanied by Ms. Perla A. Chavez, who is an employee of the Office of the Civil Registrar-Pateros, came to her and introduced herself as a relative of Evelyn Carandang. She claimed that Bautista showed her a duplicate copy of the questioned December 16, 1974 Decision and requested her to certify it and issue a certificate of finality thereof. Galvez contended that she initially refused

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[4] *Id.* at 59-63.

[5] *Id.* at 16.

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

to issue the certificate as there are no more records of Fort Bonifacio cases left in the court of Pateros.[7]

However, respondent Galvez claimed that despite lack of records, Bautista and Chavez insisted that she can still certify the decision, since she was anyway familiar with Judge Sto. Domingo's signature. Hence, she searched for other orders and decisions with Judge Domingo's signature available in their office and compared it with the signature appearing in the questioned decision dated December 16, 1974. After she found the signatures to be similar, she then certified the questioned decision and issued the certificate of finality.[8] Galvez further pointed out that at the time the questioned decision was rendered in 1974, she was still a mere clerk and was unaware that the MTC of Pateros has no jurisdiction over annulment cases. Finally, Galvez invoked good faith in issuing the certified photocopy of the decision and the certificate of finality.

For her part, Chavez admitted that indeed it was she who convinced and reassured respondent to issue the certification despite lack of records.[9]

After the Office of the Court Administrator (OCA) recommended that the matter be investigated, we referred the case to Executive Judge Amelia C. Manalastas of the Regional Trial Court of Pasig City for investigation, report and recommendation.[10]

In her Compliance[11] dated October 3, 2008, Judge Manalastas found Galvez guilty of simple negligence only for failure to exercise diligence in the performance of her official function in violation of Sections 1 and 3,[12] Canon IV of the Code of Conduct for Court Personnel.

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[7] *Id.*

[8] *Id.*

[9] *Id.* at 44; 79-80.

[10] Supreme Court Third Division Resolution dated February 13, 2008; *id.* at 36.

[11] *Rollo,* pp. 52-53.

[12] Section 1. Court personnel shall at all times perform official duties properly and with diligence.

On March 18, 2009, the OCA recommended that Galvez be suspended from the service for one (1) month and one (1) day for having been found guilty of simple neglect of duty.[13]

We are unconvinced.

No less than the Constitution mandates that all public officers and employees should serve with responsibility, integrity and efficiency. Indeed, public office is a public trust. Thus, this Court has often stated that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, is circumscribed with the heavy burden of responsibility. The Judiciary expects the best from all its employees who must be paradigms in the administration of justice.[14]

In the instant case, respondent Galvez' performance as a court employee is clearly wanting. There is no question as to the guilt of Galvez as the records speak for itself. In issuing the disputed certification, (1) Galvez knew that there were no existing records that could have served as basis for the issuance of the certificates; (2) Galvez did not exert efforts to inquire from authorized persons whether the court that rendered the decision had jurisdiction to try, much less decide, a case for annulment of marriage, or whether the document presented to her for certification was valid and authentic; (3) Galvez merely relied on her familiarity with the signature of the late Judge Sto. Domingo; (4) Galvez did not even give proper attention to the fact that the decision was of doubtful origin, considering that it was dated more than (30) years ago; and (5) Galvez carelessly relied on the assurance of Chavez. These acts clearly demonstrated lack of sufficient or reasonable diligence on the part of Galvez in the performance of her duties.

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Section 3. Court personnel shall not alter, falsify, destroy or mutilate any record within their control.

[13] Memorandum for the Chief Justice dated March 18, 2009.

[14] *Judge Ibay v. Lim*, 394 Phil. 415, 420-421 (2000).

Section 1, Canon IV of the Code of Conduct for Court Personnel mandates:

Section 1. **Court Personnel shall at all times perform official duties properly and with diligence**. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.[15]

There is nothing proper in certifying a mere photocopy without verifying the truthfulness thereof from any resources.[16] Reliance with one person's familiarity of another person's signature cannot be made a basis of a certification. A certificate is a written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality has been complied with.[17] To certify is to attest the truthfulness of the document. Without the records to verify the truthfulness and authenticity of a document, no certification should be issued. This is basic. More appalling is the fact that Galvez, in issuing the certifications, also relied on Chavez' assurances when the latter is not even a court employee. It should also be pointed out that there is no record of official receipt for the issuance of the certifications.

From the foregoing, it is evident that respondent has shown herself to be less than zealous in the performance of the duties of her office which demands utmost dedication and efficiency. Her lackadaisical attitude betrays her inefficiency and incompetence and amounts to gross negligence if not gross misconduct. Respondent should have been more diligent in performing her duties. At the very least, she should have informed the presiding judge of the court about the request for certification

[15] Emphasis ours.

[16] Rule 136 — *Court Record and General Duties of Clerks and Stenographers.*

Section 11. *Certified Copies*. — The clerk shall prepare, for any person demanding the same, a copy of certified under the seal of the court of any paper, record, order, judgment, or entry in his office, ***proper to be certified***, for the fees prescribed by these rules. (Rules of Court)

[17] *Black's Law Dictionary*, Fifth Edition, copyright 1979.

and the fact that there exist no records to support the certification. These, Galvez miserably failed to perform.

Moreover, Galvez should know that when she certified the questioned decision, she did so under the seal of the court. Thus, when the decision she certified turned out to be spurious and non-existent, she undoubtedly put the Judiciary into shambles and jeopardized the integrity of the court. Respondent's acts betray her complicity, if not participation, in acts that were irregular and violative of ethics and procedure, causing damage not only to the complainant but also to the public. Her actuations reflect adversely on the integrity and efficiency of the Judiciary. Thus, considering the severity of the repercussions and damages resulting from Galvez' negligence and lack of prudence in the performance of her duties, we disagree that her neglect of duty was only simple. It is, in fact, gross.

Likewise, Galvez cannot raise "good faith" as a defense. In common usage, the term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder on inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with the absence of all information, notice, or benefit, or belief of facts which render transaction unconscientious. Clearly, Galvez, from her actuations, cannot be considered to have acted in good faith when she certified the questioned decision, since she herself, admitted that there were no court records to support the certification. She also failed to take precautionary measures to determine the authenticity of the document which on its face appeared to be suspicious. This is another aberrant behavior contrary to good faith.

Time and again, we have repeatedly stressed that a clerk of court occupies a very sensitive position that requires competence and efficiency to insure the public's confidence in the administration of justice. She is expected to uphold the law and implement the pertinent rules and must be assiduous in the performance of her duties since she performs delicate administrative functions that are essential to the prompt and

proper administration of justice. She cannot err without affecting the integrity of the court or the efficient administration of justice. Thus, she cannot be permitted to slacken on her job under one pretext or another.[18]

In *Judge Divina Luz P. Aquino-Simbulan v. Judge Nicasio Bartolome,*[19] the Court has categorized as a grave offense of gross neglect of duty, respondent's act of releasing the accused on temporary liberty despite absence of supporting documents for bail. As corollarily applied to the present case, where Galvez certified a questionable decision and issued a certificate of finality thereof without any records as basis, Galvez is likewise liable for gross neglect of duty.

We come to the imposition of the proper penalty.

Gross neglect of duty[20] is a grave offense punishable by dismissal under Section 52, Rule IV of the Uniform Rules on Administrative Case in the Civil Service.[21] While Galvez invoked the "first offense" circumstance as mitigating, the gravity of the offense committed negates its application. Galvez' act of certifying a decision in the absence of any records warranting its certification is, in fact, criminal in nature as it is tantamount to falsification under the Revised Penal Code.[22] This Court cannot turn a blind

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[18] *Id.*

[19] A.M. No. MTJ-05-1588, June 5, 2009.

[20] Gross neglect is such neglect which, **from the gravity of the case** or the frequency of instances, **becomes so serious in its character as to endanger or threaten the public welfare.** *(Judge Divina Luz P. Aquino-Simbulan v. Judge Nicasio Bartolome, supra* note 19.)

[21] Sec. 52. *Classification of Offenses.* —

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2. Gross Neglect of Duty

1st offense — Dismissal

[22] Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of *prision mayor* and a fine not to exceed ₱5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

eye to Galvez' lapses. The facts and the evidence, coupled with Galvez' own admission, sufficiently established her culpability.

In several cases, we imposed the heavier penalty of dismissal or a fine of more than ₱20,000.00, considering the gravity of the offense committed, even if the offense charged was respondent's first offense. This case is no different. Even though the offense Galvez was found guilty of was her first offense, the gravity thereof outweighs the fact that it was her first offense.[23]

As a final note, the Code of Conduct and Ethical Standards for Public Officials and Employees (Rep. Act No. 6713) enunciates the state's policy of promoting a high standard of ethics and utmost responsibility in the public service. And no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the Judiciary. We have repeatedly emphasized that the conduct of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the Judiciary. The Court condemns and would never countenance any conduct, act or

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1. Counterfeiting or imitating any handwriting, signature or rubric;

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;

4. Making untruthful statements in a narration of facts;

5. Altering true dates;

6. Making any alteration or intercalation in a genuine document which changes its meaning;

7. ***Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original***; or

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

[23] See *Civil Service Commission v. Cortez,* G.R. No. 155732, June 3, 2004, 430 SCRA 593.

omission on the part of all those involved in the administration of justice, which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.[24]

WHEREFORE, the Court finds Liza Galvez, Officer-in-Charge- Clerk of Court of the Metropolitan Trial Court of Pateros, Branch 73, *GUILTY* of *GROSS NEGLECT OF DUTY* and orders her *DISMISSAL* from the service, with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

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

EN BANC

[G.R. No. 149548. December 4, 2009]

ROXAS & COMPANY, INC., *petitioner, vs.* **DAMBA-NFSW and the DEPARTMENT OF AGRARIAN REFORM,**[*] *respondents.*

[G.R. No. 167505. December 4, 2009]

DAMAYAN NG MGA MANGGAGAWANG BUKID SA ASYENDA ROXAS-NATIONAL FEDERATION OF

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[24] *Judge Madrid v. Quebral*, 459 Phil. 306, 320 (2003).

[*] Now the Department of Land Reform.

SUGAR WORKERS (DAMBA-NFSW), *petitioner, vs.* **SECRETARY OF THE DEPT. OF AGRARIAN REFORM, ROXAS & CO., INC. AND/OR ATTY. MARIANO AMPIL,** *respondents.*

[G.R. No. 167540. December 4, 2009]

KATIPUNAN NG MGA MAGBUBUKID SA HACIENDA ROXAS, INC. (KAMAHARI), rep. by its President CARLITO CAISIP, and DAMAYAN NG MANGGAGAWANG BUKID SA ASYENDA ROXAS-NATIONAL FEDERATION OF SUGAR WORKERS (DAMBA-NFSW), represented by LAURO MARTIN, *petitioners, vs.* **SECRETARY OF THE DEPT. OF AGRARIAN REFORM, ROXAS & CO., INC.,** *respondents.*

[G.R. No. 167543. December 4, 2009]

DEPARTMENT OF LAND REFORM, FORMERLY DEPARTMENT OF AGRARIAN REFORM (DAR), *petitioner, vs.* **ROXAS & CO, INC.,** *respondent.*

[G.R. No. 167845. December 4, 2009]

ROXAS & CO., INC., *petitioner, vs.* **DAMBA-NFSW,** *respondent.*

[G.R. No. 169163. December 4, 2009]

DAMBA-NFSW REPRESENTED BY LAURO V. MARTIN, *petitioner, vs.* **ROXAS & CO., INC.,** *respondent.*

[G.R. No. 179650. December 4, 2009]

DAMBA-NFSW, *petitioner, vs.* **ROXAS & CO., INC.,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; PRESIDENTIAL PROCLAMATION (PP) 1520 DID NOT AUTOMATICALLY CONVERT THE AGRICULTURAL LANDS TO NON-AGRICULTURAL LANDS. —** To determine the chief intent of PP 1520, reference to the "*whereas clauses*" is in order. x x x The perambulatory clauses of PP 1520 identified only "certain areas in the sector comprising the [three Municipalities that] have potential tourism value" and mandated the conduct of "necessary studies" and the segregation of "specific geographic areas" to achieve its purpose. Which is why the PP directed the Philippine Tourism Authority (PTA) to identify what those potential tourism areas are. If all the lands in those tourism zones were to be wholly converted to non-agricultural use, there would have been no need for the PP to direct the PTA to identify what those "specific geographic areas" are. In the case of *Roxas & Co. v. CA*, the Court made it clear that the "power to determine whether *Haciendas Palico*, *Banilad* and *Caylaway* are non-agricultural, hence, exempt from the coverage of the [Comprehensive Agrarian Reform Law] lies with the [Department of Agrarian Reform], not with this Court." The DAR, an administrative body of special competence, denied, by Order of October 22, 2001, the application for CARP exemption of Roxas & Co., it finding that PP 1520 did ***not*** automatically reclassify all the lands in the affected municipalities from their original uses. It appears that the PTA had not yet, at that time, identified the "specific geographic areas" for tourism development and had no pending tourism development projects in the areas. Further, report from the Center for Land Use Policy Planning and Implementation (CLUPPI) indicated that the areas were planted with sugar cane and other crops. x x x The DAR's reading into these general proclamations of tourism zones deserves utmost consideration, more especially in the present petitions which involve vast tracts of agricultural land. To reiterate, PP 1520 merely recognized the "potential tourism value" of certain areas within the general area declared as tourism zones. It did not reclassify the areas to non-agricultural use. x x x It bears emphasis that a mere reclassification of an agricultural land does *not* automatically allow a landowner to change its use since there is still that process of conversion before one is permitted to use it for other purposes. The recent passage of the *Tourism*

Act of 2009 also impacts on the present petitions since Section 32 thereof states that: Sec. 32. x x x. — Any other area specifically defined as a tourism area, zone or spot **under any special or general law, decree or presidential issuance shall, *as far as practicable*, be organized into a TEZ** under the provisions of this Act. x x x. Furthermore, it is only under this same Act that it is explicitly declared that lands identified as part of a tourism zone shall qualify for exemption from CARP coverage.

2. **REMEDIAL LAW; EVIDENCE; THAT FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES RESPECTED; NOT APPLICABLE IN CASE AT BAR WHERE THERE ARE UNSETTLED ISSUES. —** While ordinarily findings of facts of quasi-judicial agencies are generally accorded great weight and even finality by the Court if supported by substantial evidence in recognition of their expertise on the specific matters under their consideration, this legal precept cannot be made to apply in G.R. No. 179650. Even as the existence and validity of *Nasugbu MZO No. 4* had already been established, there remains in dispute the issue of whether the parcels of land involved in DAR Administrative Case No. A-9999-142-97 subject of G.R. No. 179650 are actually within the said zoning ordinance.

3. **ID.; CIVIL PROCEDURE; APPEALS; PERFECTION OF APPEAL WITHIN THE STATUTORY PERIOD IS JURISDICTIONAL; LIBERAL APPLICATION OF THE RULE. —** Indeed, the perfection of an appeal within the statutory period is jurisdictional and failure to do so renders the assailed decision final and executory. A relaxation of the rules may, however, for meritorious reasons, be allowed in the interest of justice. x x x Unlike courts of justice, the DARAB, as a quasi-judicial body, is not bound to strictly observe rules of procedure and evidence. To strictly enforce rules on appeals in this case would render to naught the Court's dispositions on the other issues in these consolidated petitions.

4. **POLITICAL LAW; R.A. NO. 3844; ON DISTURBANCE COMPENSATION TO BE GIVEN TO TENANTS OF PARCELS OF LAND; CASE AT BAR. —** Conformably, *Republic Act No. 3844* (R.A. No. 3844), as amended, mandates that disturbance compensation be given to tenants of parcels

of land upon finding that "(t)he landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes." In addition, DAR AO No. 6, Series of 1994 directs the payment of disturbance compensation before the application for exemption may be completely granted. Roxas & Co. is thus mandated to *first* satisfy the disturbance compensation of affected farmer-beneficiaries in the areas covered by the nine parcels of lands in DAR AO No. A-9999-008-98 before the CLOAs covering them can be cancelled. And it is enjoined to *strictly* follow the instructions of R.A. No. 3844.

PUNO, *C.J., separate concurring opinion*:

1. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL); COMMITMENT AND IMPLEMENTATION THEREOF. —** The CARL implements the command for agrarian reform in Section 4, Article XIII of the Constitution. x x x The CARL, being a general welfare legislation, embodies the Constitution's priority and commitment to further social justice. As an exercise of both police power as it prescribes retention limits for landowners, and of eminent domain as it provides for the compulsory acquisition of private agricultural lands for redistribution, the CARL remains consistent with this commitment. Private rights must "yield to the irresistible demands of . . . that the welfare of the people is the supreme law." x x x The effective implementation of the CARL, and ultimately the constitutional mandate for social justice, relies on a balance brought forth by "a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation," to achieve the objective of providing "farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands."

2. **ID.; ID.; COVERAGE; AGRICULTURAL LAND; EXEMPTIONS. —** Section 4 of R.A. No. 6657 provides that the CARL shall "cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands." The CARL

defines agricultural land as "land devoted to agricultural activity as defined in [the] Act and not classified as mineral, forest, residential, commercial or industrial land." x x x The CARL's coverage is further subject to Section 10 of the same, which enumerates the exemptions from the coverage of the Act.

3. **ID.; ID.; ID.; CASE OF *NATALIA REALTY, INC. V. DAR*; ON AREAS EXCLUDED FROM CARL; APPLICATION MUST NOT BE STRETCHED WITH UNBRIDLED DISCRETION. —** In *Natalia Realty, Inc. v. Department of Agrarian Reform (DAR)*, we held that "lands previously converted to non-agricultural uses prior to the effectivity of CARL by other government agencies other than . . . DAR" are lands not devoted to agricultural activity and therefore outside the coverage of CARL. Its import rests on the premise that "the CARL prohibits . . . the *conversion of agricultural lands for non-agricultural purposes* after the effectivity of the CARL." Although the ruling in *Natalia* was reiterated in a number of cases, prudence dictates that its application must not be stretched with unbridled discretion. The constitutional mandate to promote social justice through an agrarian reform program, such as that embodied in the CARL, remains the prevailing benchmark by which we measure whether there is, primarily, any merit in *Natalia's* application to the cases at bar. Thus, citing *Natalia*, we upheld the exclusion of land from the coverage of the CARL on the basis of a specific set of circumstances. These include the following: (1) municipal and/or city council zoning ordinances issued prior to the CARL's effectivity that prescribe the uses for the disputed land as non-agricultural, later approved by government agencies other than the DAR; and (2) Presidential Proclamations enacted prior to the CARL's effectivity that provide the uses of the disputed land for housing.

4. **ID.; ID.; ID.; ID.; EXCLUSION OF LAND FROM CARL DUE TO PRESIDENTIAL PROCLAMATIONS ENACTED PRIOR TO CARL's EFFECTIVITY THAT PROVIDE THE USES OF DISPUTED LAND FOR HOUSING; PRESIDENTIAL PROCLAMATION NO. 1520 REVEALS ABSENCE OF SPECIFIED TECHNICAL DESCRIPTION OF THE LAND SUBJECT TO ITS COVERAGE; EFFECT THEREOF. —** x x x Considering that the cases at bar do not involve zoning ordinances that reclassified the disputed land to non-agricultural

uses, a discussion of the second category of cases that uphold the exclusion of the disputed land from the coverage of CARL is in order. **A review of the provisions of Presidential Proclamation No. 1520 reveals the absence of a specified technical description of the land subject to its coverage.** This glaring omission should, at the very least, subject the issue of whether *Natalia* applies to the cases at bar to further scrutiny. In *Natalia*, the Court excluded the disputed land from the coverage of CARL on the basis of Presidential Proclamation No. 1637, which "converted for residential use what were erstwhile agricultural lands." A subsequent case, *National Housing Authority v. Allarde* reiterated the ruling in *Natalia*, and excluded the disputed land from the coverage of CARL on the basis of Presidential Proclamation No. 843, which "categorized [the disputed land] as not being devoted to the agricultural activity contemplated by Section 3(c) of R.A. No. 6657." It is worthy to note that the Presidential Proclamations cited in both cases provide specified technical descriptions of the lands that were "converted" to residential or "categorized" as non-agricultural, hence, there were no doubts as to their coverage. It is respectfully submitted that our ruling in *DAR v. Franco* gives the guidelines for the proper interpretation of Presidential Proclamation No. 1520. The said case required a review of Presidential Proclamation No. 2052, which, except for the municipalities identified, mirrors the provisions of Presidential Proclamation No. 1520. x x x In other words, without a technical description of the areas comprising a tourist zone, the Philippine Tourism Authority's (PTA's) identification of these areas is necessary for exclusion from coverage of the CARL.

5. **STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; PROPER FOR STATUTE WITH AMBIGUOUS MEANING. —** Basic is the rule that only statutes with an ambiguous or doubtful meaning may be the subject of statutory construction. The irreconcilable interpretations offered by the contending parties, however, prove that the proclamation suffers from ambiguity.

6. **ID.; ID.; ON STATUTES *IN PARI MATERIA*; IN CASES AT BAR, PRESIDENTIAL PROCLAMATION NO. 1520 MUST BE CONSTRUED WITHIN THE CONTEXT OF THE CARL, PD NO. 564 WHICH REVISED THE CHARTER OF THE**

PTA, AND THE CONSTITUTION AND ITS PROVISIONS MANDATING AGRARIAN REFORM AND SOCIAL JUSTICE. — I do not subscribe to the view that the very terms expressed in the proclamation as well as by its title declared as a single tourist zone the area comprising the municipalities of Nasugbu, Ternate, and Maragondon. It is well to remember that statutes *in pari materia* should be construed together to attain the purpose of an expressed national policy. Likewise, in interpretating a statute, the Court should start with the assumption that the legislature intended to enact an effective law; it cannot be presumed to have done a vain thing. An interpretation should be avoided under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative or nugatory. In the cases at bar, we should construe Presidential Proclamation No. 1520 within the context of the CARL, Presidential Decree No. 564 which revised the charter of the PTA, and the Constitution and its provisions mandating agrarian reform and social justice. Taking this approach, we have to recognize the power of the PTA to identify and specify geographic areas with potential tourism value in a declared tourist zone which includes a huge area, not all of which are tourism-ready. This is supported by Section 38 of Presidential Decree No. 564, which defines a "tourist zone" as a "geographic area with well-defined boundaries proclaimed as such by the President, upon the recommendation of the Authority [the PTA], and placed under the administration and control of the Authority." Hence, absent such a determination and development plan by the PTA, the area can still be considered subject to the coverage of the CARL. Moreover, the application of CARL fits within the landscape of Section 5.A.2 of Presidential Decree No. 564, which tasks the PTA to formulate a development plan for each zone, with the following proviso: . . . [that] in case the zone in question to be developed is not solely for tourism purposes, the development plan shall cover specifically those aspects pertaining to tourism; *Provided, further,* That the tourism development plan is fully coordinated and integrated with other sectoral plans for the area. Therefore, the logical conclusion is that pockets of tourist zones can exist alongside areas subject to the coverage of the CARL, as long as the requirements in Presidential Decree No. 564 and Presidential Proclamation

No. 1520 are met. The overly broad interpretation of Presidential Proclamation No. 1520 with regard to the declaration of a tourist zone will open the gates to attempts to defeat the spirit of the CARL, and more importantly, the Constitution. The march of our farmers towards social justice has been in slow motion for ages now.

CHICO-NAZARIO, *J., dissenting and concurring opinion*:

1. **POLITICAL LAW; PRESIDENTIAL PROCLAMATION 1520; DECLARATION OF THE THREE MUNICIPALITIES AS TOURIST ZONE CONSEQUENTIALLY TRANSLATES TO THE CLASSIFICATION OF ALL LAND THEREIN TO TOURISM AND THEREFORE, NON-AGRICULTURAL USES. —** A careful scrutiny of Presidential Proclamation No. 1520 reveals that the declaration of the three Municipalities as a tourist zone consequentially translates to the classification of all lands therein to tourism and, therefore, non-agricultural uses. x x x Right after the enacting clause is the very purpose of Presidential Proclamation No. 1520, as it is also stated in its title: the declaration by former President Marcos of "the area comprising the Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas Province as a tourist zone under the administration and control of the Philippine Tourism Authority (PTA)." There is no mistaking the plain and clear intent of Presidential Proclamation No. 1520. It declares the whole of the Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas Province as a tourist zone. The presidential issuance, without qualification, refers to the "area comprising" the three Municipalities as "a tourist zone," which can only mean that the contiguous Municipalities are to form a single tourist zone.

2. **STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; WHEN THE LAW IS CLEAR AND UNAMBIGUOUS, THERE IS NO ALTERNATIVE BUT TO APPLY THE SAME ACCORDING TO ITS CLEAR LANGUAGE. —** Basic is the rule of statutory construction that when the law is clear and unambiguous, the Court is left with no alternative but to apply the same according to its clear language. There cannot be any room for interpretation or construction in the clear and unambiguous language of the law.

This Court had steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms, interpretation being called for only when such literal application is impossible. No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application. Where a requirement or condition is made in explicit and unambiguous terms, no discretion is left to the judiciary. It must see to it that its mandate is obeyed.

3. **ID.; ID.; RULE THAT THE EXPRESS MENTION OF EXCEPTIONS OPERATES TO EXCLUDE OTHER EXCEPTIONS; CASE AT BAR. —** Presidential Proclamation No. 1520 has only one express exclusion from its coverage, *i.e.*, duly established military reservation existing within the zone. Such a military reservation is to remain as such and not to be developed for tourism purposes. This also means that the rest of the lands in Maragondon, Ternate, and Nasugbu, other than an established military reservation, are subject to tourism development. A maxim of recognized practicality is the rule that the expressed exception or exemption excludes others. *Exceptio firmat regulim in casibus non exceptis*. The express mention of exceptions operates to exclude other exceptions; conversely, those which are not within the enumerated exceptions are deemed included in the general rule.

4. **POLITICAL LAW; PRESIDENTIAL PROCLAMATION 1520; EFFECTIVITY THEREOF SHOULD NOT BE AFFECTED BY FAILURE OF THE DIRECTOR OF LANDS TO PROVIDE TECHNICAL DESCRIPTION OF THE TOURIST ZONE AS PER LETTER OF INSTRUCTION NO. 352. —** Failure of the Director of Lands to provide the technical description of the Maragondon-Ternate-Nasugbu Tourist Zone should not affect the effectivity of Presidential Proclamation No. 1520. Letter of Instructions No. 352 only said that the technical description of the Tourist Zone shall form part of Presidential Proclamation No. 1520, but it did not say that the lack of the former shall suspend the effectivity of the latter. And even absent the technical description of the tourist zone, it is undisputed that it includes the whole Municipality of Nasugbu, and that the three *haciendas* of Roxas & Co. are located within Nasugbu; *ergo*, the three *haciendas* are part of the tourist zone.

5. **ID.; ID.; RECLASSIFICATION OF LAND FROM AGRICULTURAL TO NON-AGRICULTURAL USES; ELUCIDATED. —** KAMAHARI, DAMBA-NFSW, and DAR, call attention to the definition of reclassification as the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, or commercial. x x x KAMAHARI, *et al*. fail to understand that the essential point in reclassification is that agricultural lands are henceforth to be specifically utilized **for non-agricultural uses**, regardless of whether such uses be residential, industrial, or commercial. When parcels of land are declared to be in a tourist zone, they are already specially devoted to tourism purposes, which unmistakably constitute non-agricultural, rather than agricultural, uses. x x x Now as to whether particular parcels of land within the tourist zone are to be used as residential, industrial, or commercial (but still in furtherance of tourism purposes), it can be subsequently determined under the zone development plan which, according to Letter of Instructions No. 352, the PTA must formulate in coordination with the DOT, LGUs, and other government agencies.

6. **REMEDIAL LAW; *OBITER DICTUM*; ELUCIDATED. —** An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause, "by the way," that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. Such are not binding as precedent.

7. **POLITICAL LAW; PRESIDENTIAL PROCLAMATION 1520; NOT REPEALED BY THE COMPREHENSIVE AGRARIAN REFORM LAW. —** It cannot be said that the CARL repealed Presidential Proclamation No. 1520, whether expressly or impliedly. Presidential Proclamation No. 1520 is not among the laws expressly repealed by the CARL in the latter's Section 76: x x x Neither can it be said that the CARL impliedly repealed Presidential Proclamation No. 1520. As a rule, repeal by implication is frowned upon, unless there is clear showing that the later statute is so inconsistent and repugnant to the existing law that they cannot be reconciled and made to stand together.

The CARL is not inconsistent with or repugnant to Presidential Proclamation No. 1520. In truth, there is no point at which the two laws pertain to the same thing for them to be in conflict with each other. Presidential Proclamation No. 1520 was issued on 28 November 1975 declaring the Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas Province as a tourist zone, thus, reclassifying all agricultural lands located therein to non-agricultural uses. When CARL took effect on 15 June 1988, its scope was limited to public and private agricultural lands, which no longer include the previously reclassified parcels of land in Maragondon, Ternate, and Nasugbu. It is this very reason that entitles Roxas & Co. to an exemption clearance for Haciendas Caylaway, Banilad, and Palico, under DAR Administrative Order No. 6, series of 1994.

8. ID.; CERTIFICATES OF LAND OWNERSHIP AWARD (CLOA); NULLIFICATION THEREOF IS WITHIN THE PRIMARY JURISDICTION OF THE DAR. — DAMBA-NFSW maintains that the petitions of Roxas & Co. in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 and No. 401-239-2001, for the partial and complete cancellations, respectively, of CLOA No. 6654, are in violation of the ruling of the Court in *Roxas & Co. v. Court of Appeals* that the issued CLOAs "cannot and should not be cancelled." x x x DAMBA-NFSW evidently misunderstood the afore-quoted paragraph in *Roxas & Co. v. Court of Appeals*. There is nothing therein categorically prohibiting the cancellation of the CLOAs issued to the farmer-beneficiaries. What the Court plainly said was that despite its finding that the DAR failed to comply with due process in the acquisition proceedings, the Court still had no power to nullify the CLOAs because such matter lies within the primary jurisdiction of the DAR. Thus, the DARAB, which has exclusive original jurisdiction over petitions for cancellation of CLOAs, cannot be precluded from acting on and granting such petitions filed by Roxas & Co.

9. ID.; 1994 DARAB RULES OF PROCEDURE; MOTION FOR RECONSIDERATION AND APPEAL; PERIOD; NOTICE OF APPEAL FILED BEYOND THE REGLEMENTARY PERIOD FOR APPEAL; NOT EXCUSED IN CASE AT BAR. — The reglementary periods for the filing of a motion for reconsideration and the succeeding appeal are governed by

Section 12 of the 1994 DARAB Rules of Procedure, which stated: Section 12. *Motion for Reconsideration.* — Within fifteen (15) days from receipt of notice of the order, resolution or decision of the Board or Adjudicator, a party may file a motion for reconsideration of such order or decision , together with proof of service of one (1) copy thereof upon the adverse party. Only one (1) motion for reconsideration shall be allowed a party which shall be based on the ground that: (a) the findings of fact in the said decision, order or resolution was not supported by substantial evidence, or (b) the conclusions stated therein are against the law or jurisprudence. **The filing of a motion for reconsideration shall suspend the running of the period within (which) the appeal must be perfected. If a motion for reconsideration is denied, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial.** If the decision is reversed on reconsideration, the aggrieved party shall have fifteen (15) days from receipt of the resolution of reversal within which to perfect his appeal. DAMBA-NFSW received both the 21 May 2001 Joint Order in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 and 27 May 2001 Decision in DARAB Case No. 401-239-2001 on 13 June 2001. It had until 28 June 2001 to file its Motions for Reconsideration. DAMBA-NFSW claims to have filed via registered mail on 28 June 2001 its Motions for Reconsideration, and filed by personal delivery on 29 June 2001 additional copies of said Motions. The PARAD, in her 10 July 2001 Joint Resolution, dismissed both Motions for Reconsideration, finding that they were filed one day late, on **29 June 2001.** Apparently working against the claim of DAMBA-NFSW was its failure to attach the actual registry receipt to prove that it sent its Motions for Reconsideration by registered mail on 28 June 2001, instead of a mere handwritten notation of the registry receipt number on the said Motions. Even conceding that the said Motions for Reconsideration were filed on 28 June 2001, the Notice of Appeal of DAMBA-NFSW was unmistakably filed beyond the reglementary period for appeal. DAMBA-NFSW received a copy of the 10 July 2001 Resolution of the PARAD denying its Motions for Reconsideration on **21 August 2001.** Considering that DAMBA-NFSW filed its Motions for Reconsideration on the 15th day of the reglementary period,

pursuant to Section 12 of the 1994 DARAB Rules of Procedure, it had only one more day from receipt of the denial of its Motions to file its appeal, which, in this case, would be on **22 August 2001.** This is in accord with the rule that says a motion for reconsideration only suspends the period within which the appeal should be perfected. In case of denial of the motion for reconsideration, as in these cases, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial. Erroneously believing it had a fresh 15-day reglementary period though, DAMBA-NFSW filed its Notice of Appeal on **5 September 2001.** While it may be acknowledged that there are exceptional circumstances warranting the acceptance of the appeal despite its late filing, none exists at the case at bar. Quite beyond cavil, the delay incurred by the counsel of DAMBA-NFSW in filing the Notice of Appeal, totaling 14 days, was simply inexcusable. This Court had already held that "(a)n erroneous application of the law or rules is not excusable error."

10. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; FINAL AND EXECUTORY JUDGMENT IS IMMUTABLE AND UNALTERABLE; ELUCIDATED. —** Nothing is more settled in law than that when a final judgment is executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time. Litigation must at some time be terminated, even at the risk of occasional errors. Public policy dictates that once a judgment becomes final, executory and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality. Apparent from the foregoing are the two-fold purposes for the doctrine of the immutability and inalterability of a final judgment: *first*, to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge

of judicial business; and, *second*, to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Obviously, the first purpose is in line with the dictum that justice delayed is justice denied. But said dictum presupposes that the court properly appreciates the facts and the applicable law to arrive at a judicious decision. The end should always be the meting out of justice. As to the second purpose, controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time. It must be adjudicated properly and seasonably to better serve the ends of justice and to place everything in proper perspective. In the process, the possibility that errors may be committed in the rendition of a decision cannot be discounted. The only recognized exceptions to the foregoing doctrine are the corrections of clerical errors or the making of the so-called *nunc pro tunc* entries, which cause no prejudice to any party, and, where the judgment is void. Void judgments may be classified into two groups: those rendered by a court without jurisdiction to do so and those obtained by fraud or collusion. None of these exceptions can be applied to the final and executory judgment of the Court of Appeals in CA-G.R. SP No. 36299.

11. **ID.; ID.; FORUM SHOPPING. —** There is forum-shopping when as a result of an adverse decision in one forum or, it may be added, in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*, raising identical causes of action, subject matter, and issues. Forum-shopping exists when two or more actions involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues. Yet another indication is when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in the other case. The test is whether in the two or more pending cases there is an identity of (a) parties, (b) rights or causes of action, and (c) reliefs sought.

12. **POLITICAL LAW; OFFICE OF THE DAR SECRETARY AND THE DARAB; JURISDICTION; ON APPLICATION FOR EXEMPTION FROM CARP COVERAGE AND PETITIONS FOR CANCELLATION OF CLOAs. —** Even though they may involve the very same landholdings, applications for exemption from CARP coverage and petitions for

cancellation of CLOAs fall within the jurisdictions of separate DAR offices: the Office of the DAR Secretary for the former, and the DARAB for the latter. The DAR Secretary has exclusive jurisdiction over all matters involving the administrative implementation of the CARL and other agrarian reform laws, and what would later be referred to as Agrarian Law Implementation (ALI) cases. Applications for exemptions fall under such cases. According to DAR Administrative Order No. 6, series of 1994, applications for exemptions shall be filed with the DAR Regional Office where the subject parcel of land is located, but only the DAR Secretary shall sign the Order granting or denying the exemption. On the other hand, petitions for cancellation of issued CLOAs are considered agrarian reform disputes, since they relate to terms and conditions of transfer of ownership from landlord to agrarian reform beneficiaries, the exclusive original jurisdiction over which is vested with the DARAB. DAR Administrative Order No. 2, series of 1994, provides that the land with issued CLOAs found to be exempt from CARP coverage may be cancelled only upon the application of the landowner with the DARAB.

13. **ID.; DAR ADM. ORDER NO. 6, SERIES OF 1994, WHICH IMPLEMENTS DOJ OPINION NO. 44, SERIES OF 1990; APPROVAL BY DAR OF CONVERSION OF AGRICULTURAL LAND TO NON-AGRICULTURAL USES FROM DATE OF CARLs EFFECTIVITY ON 15 JUNE 1988; NOT APPLICABLE TO LAND ALREADY CLASSIFIED AS COMMERCIAL, INDUSTRIAL OR RESIDENTIAL PRIOR TO 15 JUNE 1988. —** The Applications for Exemption of Roxas & Co. had been filed pursuant to DAR Administrative Order No. 6, series of 1994, which implements DOJ Opinion No. 44, series of 1990. According to said administrative order, the DAR may only exercise its authority to approve conversion of agricultural land to non-agricultural uses from the date of effectivity of the CARL on 15 June 1988. Thus, all lands that were already classified as commercial, industrial, or residential **prior to 15 June 1988** need no longer secure conversion clearance from the DAR. Instead, such lands shall be covered by an exemption clearance.

14. **ID.; CONSTITUTIONAL LAW; SOCIAL JUSTICE AND HUMAN RIGHTS; RIGHT OF FARMERS RECOGNIZED ALONGSIDE THE RIGHT OF LANDOWNERS, CASE AT**

BAR. — KAMAHARI and DAMBA-NFSW submits that for the Court to rule that Presidential Proclamation No. 1520, in declaring Maragondon, Ternate, and Nasugbu, as a tourist zone, also had the effect of reclassifying all agricultural lands in said Municipalities to non-agricultural uses, would be a huge setback to the CARP and its social justice goals. x x x I am not cowed by accusations that my position on the instant Petitions is contrary to social justice, because it substantially favors Roxas & Co., the landowners. Article XIII, Section 5 of the 1987 Constitution recognize the right of the landowners, alongside the farmers and farmworkers, in the implementation of the CARP. It has been declared, furthermore, that the duty of the Court to protect the weak and the underprivileged should not be carried out to such an extent as to deny justice to the landowner whenever truth and justice happen to be on his side.

15. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES SUPPORTED BY SUBSTANTIAL EVIDENCE, RESPECTED. —** In its appeals from the grant by the DAR Secretary of the applications for exemptions in DAR Administrative Cases No. A-9999-142-97 (G.R. No. 149548 and No. 179650) and No. A-9999-008-98 (G.R. No. 167505), DAMBA-NSFW was, in effect, questioning the sufficiency of the evidence of Roxas & Co. Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact. Whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight — all these are issues of fact. Questions like these are not reviewable by this Court which, as a rule, confines its review of cases decided by the Court of Appeals only to questions of law raised in the petition and therein distinctly set forth. Well-settled in this jurisdiction is the doctrine that findings of fact of administrative agencies must be respected as long as they are supported by substantial

evidence, even if such evidence is not overwhelming or preponderant. If supported by substantial evidence, the factual finding of an administrative body, charged with a specific field of expertise, is conclusive and should not be disturbed. Substantial evidence, which is the quantum of evidence required to establish a fact in cases before administrative or quasi-judicial bodies, is that level of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

16. **ID.; ID.; PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; CASE AT BAR.** — The Certifications, issued by the appropriate public officers, is *prima facie* evidence of the facts therein set out. To overcome the presumption of regularity of performance of official functions in favor of such Certifications, the evidence against them must be clear and convincing. Belief, suspicion, and conjectures cannot overcome the presumption of regularity and legality which attaches to the disputed Certifications. The bare allegations of DAMBA-NFSW that the provisions of Nasugbu Municipal Zoning Ordinance No. 4, series of 1982, were too vague or inexact to be used as bases for determining the zoning classification of the lots of Roxas & Co., failed to defeat the Certifications issued by the Deputized Zoning Administrator and the HLURB — who are charged with the approval, interpretation, and implementation of said zoning ordinance — expressly confirming that the said lots are located in non-agricultural zones. There is also utter lack of basis for the insistence of DAMBA-NFSW that in addition to Nasugbu Municipal Zoning Ordinance No. 4, series of 1982, Roxas & Co. should have also submitted a Land Use Plan approved prior to 15 June 1988. The validity and effectivity of the municipal ordinance is not, in any way, dependent on the existence of a land use plan. Once more, it should be kept in mind that administrative bodies are given wide latitude in the evaluation of evidence, including the authority to take judicial notice of facts within their special competence. Absent any proof to the contrary, the presumption is that official duty has been regularly performed. Hence, the DAR Secretary is presumed to have performed his duty of studying the available evidence, prior to the grant of the applications for exemption of Roxas & Co.

17. **POLITICAL LAW; COMPREHENSIVE AGRARIAN REFORM LAW AND RELATED LAWS; ON THE REQUIREMENT OF SERVICE OF NOTICE AND OPPORTUNITY TO BE HEARD; CASE AT BAR. —** The decision in *Roxas & Co. v. Court of Appeals* painstakingly presented the specific provisions in the CARL; *etc*., which explicitly require the service of notice upon the landowner in both voluntary and compulsory acquisition proceedings. Other than a general averment of its right to due process, DAMBA-NFSW was not able to cite a rule expressly requiring the landowner who is applying for exemption from CARP coverage of his landholding based on Section 3(c) of the CARL and DAR Administrative Order No. 6, series of 1994, to give notices of the filing of said application and the subsequent proceedings as regards the same to the occupants of the subject property. It bears to point out that at the time Roxas & Co. filed its applications for exemption in DAR Administrative Cases No. A-9999-142-97 and No. A-9999-008-98 on 29 May 1997 and 29 September 1997, respectively, only DAR Administrative Order No. 6, series of 1994, governed such applications. Said administrative order does not contain any provision on notices. Rights of farmers and other occupants of the land subject of the application for exemption could only be presumed to have been taken into consideration by the DAR officials mandated to conduct a joint investigation following the filing of the application for exemption. x x x Even granting that DAMBA-NFSW should have been given notices of the applications for exemption of Roxas & Co., the lack thereof does not necessarily mean that DAMBA-NFSW was deprived of due process that would render the proceedings in DAR Administrative Cases No. A-9999-142-97 and No. A-9999-008-98 void. The Court has consistently held that the essence of due process is simply the opportunity to be heard or, as applied to administrative proceedings, the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of; and any seeming defect in its observance is cured by the filing of a motion for reconsideration. Denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.

APPEARANCES OF COUNSEL

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Nenita C. Mahinay for DAMBA-NFSW and KAMAHARI, *et al.*

D E C I S I O N

CARPIO MORALES, *J.*:

The main subject of the seven consolidated petitions is the application of petitioner Roxas & Co., Inc. (Roxas & Co.) for conversion from agricultural to non-agricultural use of its three *haciendas* located in Nasugbu, Batangas containing a total area of almost 3,000 hectares. The facts are not new, the Court having earlier resolved intimately-related issues dealing with these *haciendas.* Thus, in the 1999 case of *Roxas & Co., Inc. v. Court of Appeals*,[1] the Court presented the facts as follows:

> . . . Roxas & Co. is a domestic corporation and is the registered owner of three *haciendas*, namely, **Haciendas Palico, Banilad and Caylaway**, all located in the Municipality of Nasugbu, Batangas. Hacienda Palico is 1,024 hectares in area and is registered under Transfer Certificate of Title (TCT) No. 985. This land is covered by Tax Declaration Nos. 0465, 0466, 0468, 0470, 0234 and 0354. Hacienda Banilad is 1,050 hectares in area, registered under TCT No. 924 and covered by Tax Declaration Nos. 0236, 0237 and 0390. Hacienda Caylaway is 867.4571 hectares in area and is registered under TCT Nos. T-44662, T-44663, T-44664 and T-44665.
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> On July 27, 1987, the Congress of the Philippines formally convened and took over legislative power from the President. This Congress passed Republic Act No. 6657, the Comprehensive Agrarian Reform Law (CARL) of 1988. The Act was signed by the President on June 10, 1988 and took effect on June 15, 1988.

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[1] G.R. No. 127876, 378 Phil. 727 (1999).

Before the law's effectivity, on May 6, 1988, [Roxas & Co.] filed with respondent DAR a **voluntary offer to sell [VOS]** Hacienda Caylaway pursuant to the provisions of E.O. No. 229. Haciendas Palico and Banilad were later placed under compulsory acquisition by . . . DAR in accordance with the CARL.

x x x x x x x x x

Nevertheless, on August 6, 1992, [Roxas & Co.], through its President, Eduardo J. Roxas, sent a letter to the Secretary of . . . DAR **withdrawing its VOS of Hacienda Caylaway. —**The Sangguniang Bayan of Nasugbu, Batangas **allegedly authorized the reclassification of Hacienda Caylaway from agricultural to non-agricultural**. As a result, petitioner informed respondent DAR that it was **applying for conversion of Hacienda Caylaway from agricultural to other uses**.

x x x[2] (emphasis and underscoring supplied)

The petitions in **G.R. Nos. 167540** and **167543** nub on the interpretation of *Presidential Proclamation (PP) 1520* which was issued on November 28, 1975 by then President Ferdinand Marcos. The PP reads:

DECLARING THE MUNICIPALITIES OF MARAGONDON AND TERNATE IN CAVITE PROVINCE AND THE MUNICIPALITY OF NASUGBU IN BATANGAS AS A TOURIST ZONE, AND FOR OTHER PURPOSES

WHEREAS, **certain areas in the sector comprising the Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas have potential tourism value** after being developed into resort complexes for the foreign and domestic market; and

WHEREAS, **it is necessary to conduct the necessary studies and to segregate specific geographic areas** for concentrated efforts of both the government and private sectors in developing their tourism potential;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby declare the area comprising the

[2] *Id.* at 744-745.

Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas Province as **a tourist zone under the administration and control of the Philippine Tourism Authority (PTA)** pursuant to Section 5 (D) of P.D. 564.

The PTA shall identify well-defined geographic areas within the zone with potential tourism value, wherein optimum use of natural assets and attractions, as well as existing facilities and concentration of efforts and limited resources of both government and private sector may be affected and realized in order to generate foreign exchange as well as other tourist receipts.

Any duly established military reservation existing within the zone shall be excluded from this proclamation.

All proclamation, decrees or executive orders inconsistent herewith are hereby revoked or modified accordingly. (emphasis and underscoring supplied).

The incidents which spawned the filing of the petitions in **G.R. Nos. 149548, 167505, 167845, 169163** and **179650** are stated in the dissenting opinion of Justice Minita Chico-Nazario, the original draft of which was made the basis of the Court's deliberations.

Essentially, Roxas & Co. filed its application for conversion of its three *haciendas* from agricultural to non-agricultural on the assumption that the issuance of PP 1520 which declared Nasugbu, Batangas as a tourism zone, reclassified them to non-agricultural uses. Its pending application notwithstanding, the Department of Agrarian Reform (DAR) issued Certificates of Land Ownership Award (CLOAs) to the farmer-beneficiaries in the three *haciendas* including CLOA No. 6654 which was issued on October 15, 1993 covering 513.983 hectares, the subject of G.R. No. 167505.

The application for conversion of Roxas & Co. was the subject of the above-stated *Roxas & Co., Inc. v. Court of Appeals* which the Court remanded to the DAR for the observance of proper acquisition proceedings. As reflected in the above-quoted statement of facts in said case, during the pendency before the DAR of its application for conversion following its remand to the DAR or on May 16, 2000, Roxas & Co. filed with the DAR

an application for exemption from the coverage of the Comprehensive Agrarian Reform Program (CARP) of 1988 on the basis of PP 1520 and of DAR Administrative Order (AO) No. 6, Series of 1994[3] which states that all lands already classified as commercial, industrial, or residential before the effectivity of CARP no longer need conversion clearance from the DAR.

It bears mentioning at this juncture that on April 18, 1982, the *Sangguniang Bayan* of Nasugbu enacted Municipal Zoning Ordinance No. 4 *(Nasugbu MZO No. 4)* which was approved on May 4, 1983 by the Human Settlements Regulation Commission, now the Housing and Land Use Regulatory Board (HLURB).

The records show that *Sangguniang Bayan* and Association of Barangay Captains of Nasugbu filed before this Court petitions for intervention which were, however, denied by Resolution of June 5, 2006 for lack of standing.[4]

After the seven present petitions were consolidated and referred to the Court *en banc*,[5] oral arguments were conducted on July 7, 2009.

The core issues are:

1. Whether PP 1520 reclassified in 1975 all lands in the Maragondon-Ternate-Nasugbu tourism zone to non-agricultural use to exempt Roxas & Co.'s three *haciendas* in Nasugbu from CARP coverage;
2. Whether *Nasugbu MSO No. 4*, Series of 1982 exempted certain lots in *Hacienda Palico* from CARP coverage; and
3. Whether the partial and complete cancellations by the DAR of CLOA No. 6654 subject of G.R. No. 167505 is valid.

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[3] GUIDELINES FOR THE ISSUANCE OF EXEMPTION CLEARANCES BASED ON SECTION 3(c) OF RA 6657 AND THE DEPARTMENT OF JUSTICE (DOJ) OPINION NO. 44, SERIES OF 1990.

[4] *Rollo* (G.R. No. 167540), pp. 1280-1281.

[5] Resolutions of February 22, 2006; October 22, 2006; and February 4, 2009.

The Court shall discuss the issues *in seriatim*.

I. PP 1520 DID ***NOT*** AUTOMATICALLY CONVERT THE AGRICULTURAL LANDS IN THE THREE MUNICIPALITIES INCLUDING NASUGBU TO NON-AGRICULTURAL LANDS.

Roxas & Co. contends that PP 1520 declared the three municipalities as each constituting a tourism zone, reclassified all lands therein to tourism and, therefore, converted their use to non-agricultural purposes.

To determine the chief intent of PP 1520, reference to the "*whereas clauses*" is in order. By and large, a reference to the congressional deliberation records would provide guidance in dissecting the intent of legislation. But since PP 1520 emanated from the legislative powers of then President Marcos during martial rule, reference to the *whereas clauses* cannot be dispensed with.[6]

The perambulatory clauses of PP 1520 identified only "certain areas in the sector comprising the [three Municipalities that] have potential tourism value" and mandated the conduct of "necessary studies" and the segregation of "specific geographic areas" to achieve its purpose. Which is why the PP directed the Philippine Tourism Authority (PTA) to identify what those potential tourism areas are. If all the lands in those tourism zones were to be wholly converted to non-agricultural use, there would have been no need for the PP to direct the PTA to identify what those "specific geographic areas" are.

The Court had in fact passed upon a similar matter before. Thus in *DAR v. Franco,*[7] it pronounced:

> Thus, the DAR Regional Office VII, **in coordination with the Philippine Tourism Authority, has to determine precisely which areas are for tourism development** and excluded from the Operation Land Transfer and the Comprehensive Agrarian Reform Program. And suffice it to state here that the Court has repeatedly ruled that

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[6] Vide *Evangelista v. Santiago,* G.R. No. 157447, 457 SCRA 744 (2005).

[7] G.R. No. 147479, September 26, 2005, 471 SCRA 74.

lands already classified as non-agricultural before the enactment of RA 6657 on 15 June 1988 do not need any conversion clearance.[8] (emphasis and underscoring supplied).

While the above pronouncement in *Franco* is an *obiter*, it should not be ignored in the resolution of the present petitions since it reflects a more rational and just interpretation of PP 1520. There is no prohibition in embracing the rationale of an *obiter dictum* in settling controversies, or in considering related proclamations establishing tourism zones.

In the above-cited case of *Roxas & Co. v. CA*,[9] the Court made it clear that the "power to determine whether *Haciendas Palico*, *Banilad* and *Caylaway* are non-agricultural, hence, exempt from the coverage of the [Comprehensive Agrarian Reform Law] lies with the [Department of Agrarian Reform], not with this Court."[10] The DAR, an administrative body of special competence, denied, by Order of October 22, 2001, the application for CARP exemption of Roxas & Co., it finding that PP 1520 did ***not*** automatically reclassify all the lands in the affected municipalities from their original uses. It appears that the PTA had not yet, at that time, identified the "specific geographic areas" for tourism development and had no pending tourism development projects in the areas. Further, report from the Center for Land Use Policy Planning and Implementation (CLUPPI) indicated that the areas were planted with sugar cane and other crops.[11]

Relatedly, the DAR, by *Memorandum Circular No. 7, Series of 2004*,[12] came up with clarificatory guidelines and therein decreed that

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[8] *Id.* at 92.

[9] *Supra* note 2.

[10] *Id.* at 783.

[11] *Ibid.*

[12] CLARIFICATORY GUIDELINES ON THE EFFECT OF DECLARATIONS OF GENERAL AREAS IN THE COUNTRY AS "TOURIST ZONES" TO THE COVERAGE OF LANDS DEVOTED TO OR SUITABLE FOR AGRICULTURE WITHIN SAID AREAS UNDER THE [CARP]. Issued on March 29, 2004 by then Acting Secretary Jose Mari B. Ponce.

A. x x x.

B. Proclamations declaring general areas such as whole provinces, municipalities, *barangays*, islands or peninsulas as tourist zones that merely:

(1) recognize certain still unidentified areas within the covered provinces, municipalities, barangays, islands, or peninsulas to be with potential tourism value and charge the Philippine Tourism Authority with the task to identify/delineate specific geographic areas within the zone with potential tourism value and to coordinate said areas' development; or

(2) recognize the potential value of identified spots located within the general area declared as tourist zone (*i.e.* x x x) and direct the Philippine Tourism Authority to coordinate said areas' development;

***could not be regarded as effecting an automatic reclassification* of the entirety of the land area declared as tourist zone. This is so because "reclassification of lands" denotes their allocation into some specific use and "providing for the manner of their utilization and disposition (Sec. 20, Local Government Code) or the "act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, or commercial, as embodied in the land use plan."** (Joint HLURB, DAR, DA, DILG Memo. Circular Prescribing Guidelines for MC 54, S. 1995, Sec.2)

A proclamation that merely recognizes the potential tourism value of certain areas within the general area declared as tourist zone clearly *does not allocate, reserve, or intend the entirety of the land area of the zone for non-agricultural purposes*. Neither does said proclamation direct that otherwise CARPable lands within the zone shall already be used for purposes other than agricultural.

Moreover, to view these kinds of proclamation as a reclassification for non-agricultural purposes of entire provinces, municipalities, *barangays*, islands, or peninsulas would be unreasonable as it amounts to an automatic and sweeping exemption from CARP in the name of tourism development. The same would also undermine the land use reclassification powers vested in local government units in conjunction with pertinent agencies of government.

C. There being no reclassification, it is clear that said proclamations/issuances, assuming [these] took effect before June 15, 1988, could not supply a basis for exemption of the entirety of the lands embraced therein from CARP coverage x x x.

D. x x x. (underscoring in the original; emphasis and italics supplied)

The DAR's reading into these general proclamations of tourism zones deserves utmost consideration, more especially in the present petitions which involve vast tracts of agricultural land. To reiterate, PP 1520 merely recognized the "potential tourism value" of certain areas within the general area declared as tourism zones. It did not reclassify the areas to non-agricultural use.

Apart from PP 1520, there are similarly worded proclamations declaring the whole of Ilocos Norte and Bataan Provinces, Camiguin, Puerto Prinsesa, Siquijor, Panglao Island, parts of Cebu City and Municipalities of Argao and Dalaguete in Cebu Province as tourism zones.[13]

Indubitably, these proclamations, particularly those pertaining to the Provinces of Ilocos Norte and Bataan, did not intend to reclassify all agricultural lands into non-agricultural lands in one fell swoop. The Court takes notice of how the agrarian reform program was—and still is—implemented in these provinces since there are lands that do not have any tourism potential and are more appropriate for agricultural utilization.

Relatedly, a reference to the *Special Economic Zone Act of 1995*[14] provides a parallel orientation on the issue. Under said *Act*, several towns and cities encompassing the whole Philippines were readily identified as economic zones.[15] To uphold Roxas

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[13] Proclamation Nos. 1653, 1801, 2052 and 2067.

[14] Republic Act No. 7916.

[15] SECTION 5. *Establishment of ECOZONES.*— To ensure the viability and geographic dispersal of ECOZONES through a system of prioritization, the following areas are initially identified as ECOZONES, subject to the criteria specified in Section 6:

a) So much as may be necessary of that portion of Morong, Hermosa, Dinalupihan, Orani, Samal, and Abucay in the Province of Bataan;

& Co.'s reading of PP 1520 would see a total reclassification of practically all the agricultural lands in the country to non-

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b) So much as may be necessary of that portion of the municipalities of Ibaan, Rosario, Taysan, San Jose, San Juan, and cities of Lipa and Batangas;

c) So much as may be necessary of that portion of the City of Cagayan de Oro in the Province of Misamis Oriental;

d) So much as may be necessary of that portion of the City of Iligan in the Province of Lanao del Norte;

e) So much as may be necessary of that portion of the Province of Saranggani;

f) So much as may be necessary of that portion of the City of Laoag in the Province of Ilocos Norte;

g) So much as may be necessary of that portion of Davao City and Samal Island in the Province of Ilocos Norte;

h) So much as may be necessary of that portion of Oroquieta City in the Province of Misamis Occidental;

i) So much as may be necessary of that portion of Tubalan Cove, Malita in the Province of Davao del Sur;

j) So much as may be necessary of that portion of Baler, Dinalungan and Casiguran including its territorial waters and islets and its immediate environs in the Province of Aurora;

k) So much as may be necessary of that portion of cities of Naga and Iriga in the Province of Camarines Sur, Legaspi and Tabaco in the Province of Albay, and Sorsogon in the Province of Sorsogon;

l) So much as may be necessary of that portion of Bataan Island in the province of Batanes;

m) So much as may be necessary of that portion of Lapu-lapu in the Island of Mactan, and the municipalities of Balamban and Pinamungahan and the cities of Cebu and Toledo and the Province of Cebu, including its territorial waters and islets and its immediate environs;

n) So much as may be necessary of that portion of Tacloban City;

o) So much as may be necessary of that portion of the Municipality of Barugo in the Province of Leyte;

p) So much as may be necessary of that portion of the Municipality of Buenavista in the Province of Guimaras;

q) So much as may be necessary of that portion of the municipalities of San Jose de Buenavista, Hamtic, Sibalom, and Culasi in the Province of Antique;

r) So much as may be necessary of that portion of the municipalities of Catarman, Bobon and San Jose in the Province of Northern Samar, the Island of Samar;

s) So much as may be necessary of that portion of the Municipality of Ternate and its immediate environs in the Province of Cavite;

agricultural use. Propitiously, the legislature had the foresight to include a bailout provision in Section 31 of said *Act* for land

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t) So much as may be necessary of that portion of Polloc, Parang in the Province of Maguindanao;

u) So much as may be necessary of that portion of the Municipality of Boac in the Province of Marinduque;

v) So much as may be necessary of that portion of the Municipality of Pitogo in the Province of Zamboanga del Sur;

w) So much as may be necessary of that portion of Dipolog City-Manukan Corridor in the Province of Zamboanga del Norte;

x) So much as may be necessary of that portion of Mambajao, Camiguin Province;

y) So much as may be necessary of that portion of Infanta, Real, Polillo, Alabat, Atimonan, Mauban, Tiaong, Pagbilao, Mulanay, Tagkawayan, and Dingalan Bay in the Province of Quezon;

z) So much as may be necessary of that portion of Butuan City and the Province of Agusan del Norte, including its territorial waters and islets and its immediate environs;

aa) So much as may be necessary of that portion of Roxas City including its territorial waters and islets and its immediate environs in the Province of Capiz;

bb) So much as may be necessary of that portion of San Jacinto, San Fabian, Mangaldan, Lingayen, Sual, Dagupan, Alaminos, Manaoag, Binmaley in the Province of Pangasinan;

cc) So much as may be necessary of that portion of the autonomous region;

dd) So much as may be necessary of that portion of Masinloc, Candelaria and Sta. Cruz in the Province of Zambales;

ee) So much as may be necessary of that portion of the Palawan Island;

ff) So much as may be necessary of that portion of General Santos City in South Cotabato and its immediate environs;

gg) So much as may be necessary of that portion of Dumaguete City and Negros Oriental, including its territorial waters and islets and its immediate environs.

hh) So much as may be necessary of that portion of the Province of Ilocos Sur;

ii) So much as may be necessary of that portion of the Province of La Union;

jj) So much as may be necessary of that portion of the Province of Laguna, including its territorial waters and its immediate environs;

kk) So much as may be necessary of that portion of the Province of Rizal;

conversion.[16] The same cannot be said of PP 1520, despite the existence of Presidential Decree (PD) No. 27 or the *Tenant Emancipation Decree*,[17] which is the precursor of the CARP.

Interestingly, then President Marcos also issued on September 26, 1972 PD No. 2 which declared the *entire* Philippines as land reform area.[18] Such declaration did not intend to reclassify all lands in the entire country to agricultural lands. President Marcos, about a month later or on October 21, 1972, issued PD 27 which decreed that all private agricultural lands primarily devoted to rice and corn were deemed awarded to their tenant-farmers.

Given these martial law-era decrees and considering the socio-political backdrop at the time PP 1520 was issued in 1975, it is inconceivable that PP 1520, as well as other similarly worded proclamations which are completely silent on the aspect of reclassification of the lands in those tourism zones, would nullify the gains already then achieved by PD 27.

Even so, Roxas & Co. turns to *Natalia Realty v. DAR* and *NHA v. Allarde* to support its position. These cases are not even closely similar to the petitions in G.R. Nos. 167540 and 167543. The only time that these cases may find application to said petitions is when the PTA *actually identifies* "well-defined geographic areas within the zone with potential tourism value."

In remotely tying these two immediately-cited cases that involve specific and defined townsite reservations for the housing program of the National Housing Authority to the present petitions, Roxas & Co. cites Letter of Instructions No. 352 issued on December 22, 1975 which states that the survey and technical description of the tourism zones shall be considered an integral part of PP 1520. There were, however, at the time no surveys and technical delineations yet of the intended tourism areas.

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[16] *Land Conversion*. — Agricultural lands may be converted for residential, commercial, industrial and other non-agricultural purposes, subject to the conditions set forth under Republic Act. No.. 6657 and other existing laws.

[17] TENANT EMANCIPATION DECREE of 1972.

[18] On September 26, 1972.

On hindsight, *Natalia* and *Allarde* find application in the petitions in G.R. Nos. 179650 & 167505, which petitions are anchored on the extenuating effects of *Nasugbu MZO No. 4*, but not in the petitions in G.R. Nos. 167540 & 167543 bearing on PP 1520, as will later be discussed.

Of significance also in the present petitions is the issuance on August 3, 2007 of *Executive Order No. 647*[19] by President Arroyo which proclaimed the areas in the Nasugbu Tourism Development Plan as Special Tourism Zone. Pursuant to said Executive Order, the PTA completed its validation of 21 out of 42 *barangays* as tourism priority areas, hence, it is only after such completion that these identified lands may be subjected to reclassification proceedings.

It bears emphasis that a mere reclassification of an agricultural land does *not* automatically allow a landowner to change its use since there is still that process of conversion before one is permitted to use it for other purposes.[20]

The recent passage of the *Tourism Act of 2009*[21] also impacts on the present petitions since Section 32 thereof states that:

> Sec. 32. x x x. — Any other area specifically defined as a tourism area, zone or spot **under any special or general law, decree or presidential issuance shall, *as far as practicable*, be organized into a TEZ** under the provisions of this Act. x x x. (italics and emphasis supplied)

Furthermore, it is only under this same Act that it is explicitly declared that lands identified as part of a tourism zone shall qualify for exemption from CARP coverage.[22]

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[19] On August 3, 2007.

[20] Section 2(k) of DAR Administrative Order No. 01-99, Revised Rules and Regulations on the Conversion of Agricultural Lands to Non-Agricultural Uses.

[21] Republic Act No. 9593.

[22] SEC. 61. Development Planning. — x x x.

x x x x x x x x x.

The dissenting opinion ignores the supervening issuances mentioned above during the pendency of the present petitions because they came *after* the effectivity of the CARP on June 15, 1988. It labors on the supposition that PP 1520 had already reclassified the lands encompassing the tourism zones; and that those subsequent issuances, even if applied in the present cases, cannot be applied retroactively.

Relevantly, while it may be argued that a remand to the DAR would be proper in light of the recent formulation of a tourism development plan, which was validated by the PTA, that would put the cases within the ambit of PP 1520, the Court sees otherwise. Roxas & Co. can only look to the provisions of the *Tourism Act*, and not to PP 1520, for possible exemption.

II. ROXAS & CO.'S APPLICATION IN DAR Administrative Case No. A-9999-142-97 FOR CARP EXEMPTION IN HACIENDA PALICO SUBJECT OF G.R. NO. 179650 *CANNOT* BE GRANTED IN VIEW OF DISCREPANCIES IN THE LOCATION AND IDENTITY OF THE SUBJECT PARCELS OF LAND.

Since PP 1520 did *not* automatically convert *Haciendas Caylaway, Banilad* and *Palico* into non-agricultural estates, can Roxas & Co. invoke in the alternative *Nasugbu MZO No. 4,* which reclassified in 1982 the *haciendas* to non-agricultural use to exclude six parcels of land in *Hacienda Palico* from CARP coverage?

No [Tourism Enterprise Zone] shall be designated without a development plan duly approved by the [Tourism Infrastructure and Enterprise Zone Authority] and without the approval, by resolution, of the [local government unit] concerned. Any deviation or modification from the development plan shall require the prior authorization of the TIEZA. The TIEZA may cause the suspension of granted incentives and withdrawal of recognition as a TEZ Operator. It may likewise impose reasonable fines and penalties upon TEZ Operators and responsible persons for any failure to properly implement the approved development plan.

Lands identified as part of a TEZ shall qualify for exemption form the coverage of Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992, and Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law, subject to rules and regulations to be crafted by the TIEZA, the Housing and Urban Development Coordinating Council and the Department of Agrarian Reform.

By Roxas & Co.'s contention, the affected **six** parcels of land which are the subject of DAR Administrative Case No. A-9999-142-97 and **nine** parcels of land which are the subject of DAR Administrative Case No. A-9999-008-98 involved in G.R. No. 167505, all in *Hacienda Palico*, have been reclassified to non-agricultural uses via *Nasugbu MZO No. 4* which was approved by the forerunner of HLURB.

Roxas & Co.'s contention fails.

To be sure, the Court had on several occasions decreed that a local government unit has the power to classify and convert land from agricultural to non-agricultural prior to the effectivity of the CARL.[23] In *Agrarian Reform Beneficiaries Association v. Nicolas*,[24] it reiterated that

> . . . the facts obtaining in this case are similar to those in *Natalia Realty*. Both subject lands form part of an area designated for non-agricultural purposes. Both were classified as non-agricultural lands *prior* to June 15, 1988, the date of effectivity of CARL.
>
> x x x x x x x x x
>
> In the case under review, the subject parcels of lands were reclassified within an urban zone as per approved Official Comprehensive Zoning Map of the City of Davao. **The reclassification was embodied in City Ordinance No. 363, Series of 1982. As such, the subject parcels of land are considered "non-agricultural" and may be utilized for residential, commercial, and industrial purposes. The reclassification was later approved by the HLURB**.[25] (emphasis, italics and underscoring supplied)

The DAR Secretary[26] denied the application for exemption of Roxas & Co., however, in this wise:

> Initially, CLUPPI-2 based [its] evaluation on the lot nos. as appearing in CLOA No. 6654. However, for purposes of clarity and

[23] Vide: *Pasong Bayabas Farmers Association v. CA*, G.R. No. 142359, May 25, 2004; and *Junio v. Garilao,* G.R. No. 147146, July 29, 2005.

[24] G.R. No. 168394, October 6, 2008, 567 SCRA 540.

[25] *Id.* at 553-554.

[26] Then Secretary Horacio R. Morales, Jr.

to ensure that the area applied for exemption is indeed part of TCT No. T-60034, CLUPPI-2 sought to clarify with [Roxas & Co.] the origin of TCT No. T-60034. In a letter dated May 28, 1998, [Roxas & Co.] explains that portions of TCT No. T-985, the mother title, . . . was subdivided into 125 lots pursuant to PD 27. A total of 947.8417 was retained by the landowners and was subsequently registered under TCT No. 49946. [Roxas & Co.] further explains that TCT No. 49946 was further subdivided into several lots (Lot 125-A to Lot 125-P) with Lot No. 125-N registered under TCT No. 60034. **[A] review of the titles, however, shows that <u>the origin of T-49946 is T-783 and not T-985</u>. On the other hand, <u>the origin of T-60034 is listed as 59946, and not T-49946</u>. The discrepancies were attributed by [Roxas & Co.] to typographical errors which were "acknowledged and initialled" [sic] by the ROD. Per verification . . ., <u>the discrepancies . . . cannot be ascertained</u>.**[27] (emphasis and underscoring supplied)

In denying Roxas & Co.'s motion for reconsideration, the DAR Secretary held:

The landholdings covered by the aforesaid titles <u>do not correspond to the Certification dated February 11, 1998 of the [HLURB], the Certification dated September 12, 1996 issued by the Municipal Planning and Development Coordinator, and the Certifications dated July 31, 1997 and May 27, 1997 issued by the National Irrigation Authority</u>. The certifications were issued for Lot Nos. 21, 24, 28, 31, 32 and 34. Thus, it was not even possible to issue exemption clearance over the lots covered by TCT Nos. 60019 to 60023.

Furthermore, we also <u>note the discrepancies between the certifications issued by the HLURB and the Municipal Planning Development Coordinator as to the area of the specific lots</u>.[28] (emphasis and underscoring supplied)

In affirming the DAR Secretary's denial of Roxas & Co.'s application for exemption, the Court of Appeals, in CA-G.R. SP No. 63146 subject of G.R. No. 179650, observed:

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[27] CA *rollo* (CA G.R. No. 63146 as part of G.R. No. 149548), pp. 9-11.

[28] *Id.* (CA G.R. No. 63146 as part of G.R. No. 149548) at 12-17.

In the instant case, a perusal of the documents before us shows that there is no indication that the said TCTs refer to the same properties applied for exemption by [Roxas & Co.] It is true that the certifications . . . refer, among others, to DAR Lot Nos. 21, 24, 28, 31, 32 and 34 . . . **But these certifications contain nothing to show that these lots are the same as Lots 125-A, 125-B, 125-C, 125-D and 125-E covered by TCT Nos. 60019, 60020, 60021, 60022 and 60023, respetively. While [Roxas & Co.] claims that DAR Lot Nos. 21, 24 and 31 correspond to the aforementioned TCTs submitted to the DAR no evidence was presented to substantiate such allegation**.

Moreover, **[Roxas & Co.] failed to submit TCT 634 which it claims covers DAR Lot Nos. 28, 32 and 24**. (TSN, April 24, 2001, pp. 43-44)

x x x x x x x x x

[Roxas & Co.] also claims that subject properties are located at Barangay Cogunan and Lumbangan and that these properties are part of the zone classified as Industrial under Municipal Ordinance No. 4, Series of 1982 of the Municipality of Nasugbu, Batangas. **. . . a scrutiny of the said Ordinance shows that only Barangays Talangan and Lumbangan of the said municipality were classified as Industrial Zones . . . Barangay Cogunan was not included**. x x x. In fact, the TCTs submitted by [Roxas & Co.] show that the properties covered by said titles are all located at Barrio Lumbangan.[29] (emphasis and underscoring supplied)

Its foregoing findings notwithstanding, the appellate court still allowed Roxas & Co. to adduce additional evidence to support its application for exemption under *Nasugbu MZO No. 4*.

Meanwhile, Roxas & Co. appealed the appellate court's decision in CA-G.R. No. SP No. 63146 affirming the DAR Secretary's denial of its application for CARP exemption in *Hacienda Palico* (now the subject of G.R. No. 149548).

When Roxas & Co. sought the re-opening of the proceedings in DAR Administrative Case No. A-9999-142-97 (subject of G.R. No. 179650), and offered additional evidence in support

[29] *Id.* (CA G.R. No. 63146 as part of G.R. No. 149548) at 345-347.

of its application for CARP exemption, the DAR Secretary, this time, granted its application for the **six** lots including Lot No. 36 since the additional documents offered by Roxas & Co. mentioned the said lot.

In granting the application, the DAR Secretary[30] examined anew the evidence submitted by Roxas & Co. which consisted mainly of certifications from various local and national government agencies.[31] Petitioner in G.R. Nos. 167505, 167540, 169163

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[30] Then Secretary Hernani Braganza.

[31] The DAR Secretary ruled that:

In the case at hand Records show that subject properties were originally registered under TCT No. T-985. This is shown in the Certification dated 17 June 1998 issued by Alexander Bonuan, Deputy Register of Deeds II, Registry of Deeds, Nasugbu, Batangas. x x x.

CERTIFICATION

x x x   x x x   x x x.

This is to certify that Lot No. 125 of Psd-04016141 (OLT) under TCT No. 49946 is a transfer from TCT-985. Further, it is certified that Lot 125-N Psd-04-046912 under TCT No. 60034 is a transfer from TCT No. T-49946.

x x x   x x x   x x x.

In a letter dated 18 July 2000 addressed to Director Ricardo R. San Andres, Head, Center for Land Use, Policy, Planning and Implementation (CLUPPI)-2 Secretariat, Deputy Register of Deeds Bonuan clarified that "TCT No. 49946" should read "TCT No. 59946." Attached to said letter is a certified true copy of TCT No. T-59946. A scrutiny of TCT No. T-59946 shows that it covers a parcel of land identified as Lot No. 125 of the subdivision plan Psd-04-016144 with an area of 947.8417 hectares situated in Barangays Bilaran, Lumbangan, Cogonan, and Reparo, Nasugbu, Batangas.

x x x   x x x   x x x.

A scrutiny of TCT Nos. T-60019, T-60020, T-60021, T-60022, T-60023 and T-60034 shows that they are transfers from TCT No. T-59946. Furthermore, a Certification dated 6 September 2001 issued by Dante Ramirez, Deputy Register of Deeds, Nasugbu, Batangas, states that the mother title of TCT Nos. T-60019, T-60020, T-60021, T-60022, T-60023 and T-60034 is TCT No. T-985. registered in the name of Roxas Y Cia.

x x x   x x x   x x x.

In the case at hand, the Certification dated 19 September 1996 issued by Reynaldo H. Garcia, Zoning Administrator of Nasugbu, Batangas states, among others, that Lots Nos. 31, 24, 21, 32, 28 and 34 situated in Barangays

and 179650, *Damayan Ng Mga Manggagawang Bukid Sa Asyenda* Roxas-National Federation of Sugar Workers (DAMBA-NFSW), the organization of the farmer-beneficiaries, moved to have the grant of the application reconsidered but the same was denied by the DAR by Order of December 12, 2003, hence, it filed a petition for *certiorari* before the Court of Appeals, docketed as CA-G.R. SP No. 82225, on grounds of forum-shopping and grave abuse of discretion. The appellate court, by Decision of October 31, 2006, ruled that DAMBA-NFSW availed of the wrong mode of appeal. At all events, it dismissed its petition as it upheld the DAR Secretary's ruling that Roxas & Co. did not commit forum-shopping, hence, the petition of DAMBA-NGSW in G.R. No. 179650.

While ordinarily findings of facts of quasi-judicial agencies are generally accorded great weight and even finality by the Court if supported by substantial evidence in recognition of their expertise on the specific matters under their consideration,[32] this legal precept cannot be made to apply in G.R. No. 179650.

Even as the existence and validity of *Nasugbu MZO No. 4* had already been established, there remains in dispute the issue of whether the parcels of land involved in DAR Administrative Case No. A-9999-142-97 subject of G.R. No. 179650 are actually within the said zoning ordinance.

The Court finds that the DAR Secretary indeed committed grave abuse of discretion when he ignored the glaring inconsistencies

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Cogunan and Lumbangan, Nasugbu, Batangas, are within the Industrial Zone . . . Moreover, a Certification also dated 19 September 1996 issued by Zoning Administrator Reynaldo H. Garcia states that DAR Lot No. 36 with an area of 0.6273 hectares situated in Brgy. Lumbanga, Nasugbu, Batangas, is within the industrial zone . . . Moreover, a Certification dated 7 January 1998 issued by Maria Luisa G. Pangan, under authority of the HLURB Secretariat, states that Resolution No. 28, Municipal Ordinance No. 4 of the Sangguniang Bayan of Nasugbu, Batangas, dated 18 April 1982, was approved by the HSRC, now HLURB, under Resolution No. R-123, Series of 1983, dated 4 May 1983. x x x.

[32] *Viva Footwear Manufacturing Corp. v. SEC*, G.R. No. 163235, April 27, 2007, 522 SCRA 609, 615 citing *Quiambao v. CA,* G.R. No. 128305, March 28, 2005, 454 SCRA 17, 40.

in the certifications submitted early on by Roxas & Co. in support of its application *vis-à-vis* the certifications it later submitted when the DAR Secretary reopened DAR Administrative Case No. A-9999-142-97.

Notably, then DAR Secretary Horacio Morales, on one hand, observed that the "landholdings covered by the aforesaid titles do not correspond to the Certification dated February 11, 1998 of the [HLURB], the Certification dated September 12, 1996 issued by the Municipal Planning and Development Coordinator, and the Certifications dated July 31, 1997 and May 27, 1997 issued by the National Irrigation Authority." On the other hand, then Secretary Hernani Braganza relied on a *different* set of certifications which were issued later or on September 19, 1996.

In this regard, the Court finds in order the observation of DAMBA-NFSW that Roxas & Co. should have submitted the comprehensive land use plan and pointed therein the exact locations of the properties to prove that indeed they are within the area of coverage of *Nasugbu MZO No. 4*.

The petitions in G.R. Nos. 179650 & 149548 must be distinguished from *Junio v. Garilao*[33] wherein the certifications submitted in support of the application for exemption of the therein subject lot were mainly considered on the presumption of regularity in their issuance, there being *no doubt* on the location and identity of the subject lot.[34] In G.R. No. 179650, there exist uncertainties on the location and identities of the properties being applied for exemption.

G.R. No. 179650 & G.R. No. 149548 must accordingly be denied for lack of merit.

III. ROXAS & CO.'S APPLICATION FOR CARP EXEMPTION IN DAR ADMINISTRATIVE CASE NO. A-9999-008-98 FOR THE NINE PARCELS OF LAND IN HACIENDA PALICO SUBJECT OF G.R. NO. 167505 SHOULD BE *GRANTED*.

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[33] G.R. No. 147146, July 29, 2005, 465 SCRA 173.

[34] *Id.* at 187.

The Court, however, takes a different stance with respect to Roxas & Co.'s application for CARP exemption in DAR Administrative Case No. A-9999-008-98 over **nine** parcels of land identified as Lot Nos. 20, 13, 37, 19-B, 45, 47, 49, 48-1 and 48-2 which are portions of TCT No. 985 covering 45.9771 hectares in *Hacienda Palico,* subject of G.R. No. 167505.

In its application, Roxas & Co. submitted the following documents:

1. Letter-application dated 29 September 1997 signed by Elino SJ. Napigkit, for and on behalf of Roxas & Company, Inc., seeking exemption from CARP coverage of subject landholdings;

2. Secretary's Certificate dated September 2002 executed by Mariano M. Ampil III, Corporate Secretary of Roxas & Company, Inc., indicating a Board Resolution authorizing him to represent the corporation in its application for exemption with the DAR. The same Board Resolution revoked the authorization previously granted to the Sierra Management & Resources Corporation;

3. Photocopy of TCT No. 985 and its corresponding Tax Declaration No. 0401;

4. **Location and vicinity maps of subject landholdings;**

5. **Certification dated 10 July 1997 issued by Reynaldo Garcia, Municipal Planning and Development Coordinator (MPDC) and Zoning Administrator of Nasugbu, Batangas, stating that the subject parcels of land are within the Urban Core Zone as specified in Zone A. VII of Municipal Zoning Ordinance No. 4**, Series of 1982, approved by the Human Settlements Regulatory Commission (HSRC), now the Housing and Land Use Regulatory Board (HLURB), under Resolution No. 123, Series of 1983, dated 4 May 1983;

6. **Two (2) Certifications both dated 31 August 1998, issued by Alfredo Tan II, Director, HLURB, Region IV, stating that the subject parcels of land appear to be within the Residential cluster Area as specified in Zone VII of Municipal Zoning Ordinance No. 4**, Series of 1982,

> approved under HSRC Resolution No. 123, Series of 1983, dated 4 May 1983;[35]
>
> x x x (emphasis and underscoring supplied)

By Order of November 6, 2002, the DAR Secretary granted the application for exemption but issued the following conditions:

> 1. The farmer-occupants within subject parcels of land shall be maintained in their peaceful possession and cultivation of their respective areas of tillage until a final determination has been made on the amount of disturbance compensation due and entitlement of such farmer-occupants thereto by the PARAD of Batangas;
> 2. No development shall be undertaken within the subject parcels of land until the appropriate disturbance compensation has been paid to the farmer-occupants who are determined by the PARAD to be entitled thereto. Proof of payment of disturbance compensation shall be submitted to this Office within ten (10) days from such payment; and
> 3. The cancellation of the CLOA issued to the farmer-beneficiaries shall be subject of a separate proceeding before the PARAD of Batangas.[36]

DAMBA-NSFW moved for reconsideration but the DAR Secretary denied the same and explained further why CLOA holders need not be informed of the pending application for exemption in this wise:

> As regards the first ground raised by [DAMBA-NSFW], it should be remembered that an application for CARP-exemption pursuant to DOJ Opinion No. 44, series of 1990, as implemented by DAR Administrative Order No. 6, series of 1994, is non-adversarial or non-litigious in nature. Hence, applicant is correct in saying that nowhere in the rules is it required that occupants of a landholding should be notified of an initiated or pending exemption application.
>
> x x x x x x x x x

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[35] *Rollo* (G.R. No. 167505), pp. 529-532.

[36] *Id.* at 533-534.

With regard [to] the allegation that oppositors-movants are already CLOA holders of subject propert[ies] and deserve to be notified, as owners, of the initiated questioned exemption application, is of no moment. The Supreme Court in the case of *Roxas [&] Co., Inc. v. Court of Appeals*, 321 SCRA 106, held:

"We stress that the failure of respondent DAR to comply with the requisites of due process in the acquisition proceedings does not give this Court the power to nullify the CLOA's already issued to the farmer beneficiaries. x x x. Anyhow, the farmer[-]beneficiaries hold the property in trust for the rightful owner of the land."

Since subject landholding has been validly determined to be CARP-exempt, therefore, the previous issuance of the CLOA of oppositors-movants is erroneous. Hence, similar to the situation of the above-quoted Supreme Court Decision, oppositors-movants only hold the property in trust for the rightful owners of the land and are not the owners of subject landholding who should be notified of the exemption application of applicant Roxas & Company, Incorporated.

Finally, this Office finds no substantial basis to reverse the assailed Orders since there is substantial compliance by the applicant with the requirements for the issuance of exemption clearance under DAR AO 6 (1994).[37]

On DAMBA-NSFW's petition for *certiorari*, the Court of Appeals, noting that the petition was belatedly filed, sustained, by Decision of December 20, 1994 and Resolution of May 7, 2007,[38] the DAR Secretary's finding that Roxas & Co. had substantially complied with the prerequisites of DAR AO 6, Series of 1994. Hence, DAMBA-NFSW's petition in G.R. No. 167505.

The Court finds no reversible error in the Court of Appeals' assailed issuances, the orders of the DAR Secretary which it sustained being amply supported by evidence.

IV. THE CLOAs ISSUED BY THE DAR in ADMINISTRATIVE CASE NO. A-9999-008-98 SUBJECT OF G.R. No. 179650 TO THE FARMER-BENEFICIARIES INVOLVING THE

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[37] *Id.* at 525-526.

[38] *Id.* at 91-93.

NINE PARCELS OF LAND IN HACIENDA PALICO MUST BE *CANCELLED*.

Turning now to the validity of the issuance of CLOAs in *Hacienda Palico vis-à-vis* the present dispositions: It bears recalling that in DAR Administrative Case Nos. A-9999-008-98 and A-9999-142-97 (G.R. No. 179650), the Court ruled for Roxas & Co.'s grant of exemption in DAR Administrative Case No. A-9999-008-98 but denied the grant of exemption in DAR Administrative Case No. A-9999-142-97 for reasons already discussed. It follows that the CLOAs issued to the farmer-beneficiaries in DAR Administrative Case No. A-9999-008-98 must be cancelled.

But first, the Court digresses. The assertion of DAMBA-NSFW that the petitions for partial and complete cancellations of the CLOAs subject of DARAB Case Nos. R-401-003-2001 to R-401-005-2001 and No. 401-239-2001 violated the earlier order in *Roxas v. Court of Appeals* does not lie. Nowhere did the Court therein pronounce that the CLOAs issued "cannot and should not be cancelled," what was involved therein being the legality of the acquisition proceedings. The Court merely reiterated that it is the DAR which has primary jurisdiction to rule on the validity of CLOAs. Thus it held:

> . . . [t]he failure of respondent DAR to comply with the requisites of due process in the acquisition proceedings does not give this Court the power to nullify the [CLOAs] already issued to the farmer-beneficiaries. To assume the power is to short-circuit the administrative process, which has yet to run its regular course. Respondent DAR must be given the chance to correct its procedural lapses in the acquisition proceedings. x x x. Anyhow, the farmer beneficiaries hold the property in trust for the rightful owner of the land.[39]

On the procedural question raised by Roxas & Co. on the appellate court's relaxation of the rules by giving due course to DAMBA-NFSW's appeal in CA G.R. SP No. 72198, the subject of G.R. No. 167845:

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[39] *Supra* note 1 at 783.

Indeed, the perfection of an appeal within the statutory period is jurisdictional and failure to do so renders the assailed decision final and executory.[40] A relaxation of the rules may, however, for meritorious reasons, be allowed in the interest of justice.[41] The Court finds that in giving due course to DAMBA-NSFW's appeal, the appellate court committed no reversible error. Consider its ratiocination:

> x x x. To deny [DAMBA-NSFW]'s appeal with the PARAD will not only affect their right over the parcel of land subject of this petition with an area of 103.1436 hectares, but also that of the whole area covered by CLOA No. 6654 since the PARAD rendered a Joint Resolution of the Motion for Reconsideration filed by the [DAMBA-NSFW] with regard to [Roxas & Co.]'s application for partial and total cancellation of the CLOA in DARAB Cases No. R-401-003-2001 to R-401-005-2001 and No. 401-239-2001. There is a pressing need for an extensive discussion of the issues as raised by both parties as the matter of cancelling CLOA No. 6654 is of utmost importance, involving as it does the probable displacement of hundreds of farmer-beneficiaries and their families. x x x (underscoring supplied)

Unlike courts of justice, the DARAB, as a quasi-judicial body, is not bound to strictly observe rules of procedure and evidence. To strictly enforce rules on appeals in this case would render to naught the Court's dispositions on the other issues in these consolidated petitions.

In the main, there is no logical recourse except to **cancel** the CLOAs issued for the **nine** parcels of land identified as Lot Nos. 20, 13, 37, 19-B, 45, 47, 49, 48-1 and 48-2 which are portions of TCT No. 985 covering 45.9771 hectares in *Hacienda Palico* (or those covered by DAR Administrative Case No. A-9999-008-98). As for the rest of the CLOAs, they should be respected since Roxas & Co., as shown in the discussion in G.R. Nos. 167540, 167543 and 167505, failed to prove that the other lots in *Hacienda Palico* and the other two *haciendas*, aside from the above-mentioned nine lots, are CARP-exempt.

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[40] *Sublay v. NLRC*, 324 SCRA 188 (2000).

[41] *Cuevas v. Bais Steel Corporation,* G.R. No. 142689, October 17, 2002, 391 SCRA 192.

Conformably, *Republic Act No. 3844* (R.A. No. 3844), as amended,[42] mandates that disturbance compensation be given to tenants of parcels of land upon finding that "(t)he landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes."[43] In addition, DAR AO No. 6, Series of 1994 directs the payment of disturbance compensation before the application for exemption may be completely granted.

Roxas & Co. is thus mandated to *first* satisfy the disturbance compensation of affected farmer-beneficiaries in the areas covered by the **nine** parcels of lands in DAR AO No. A-9999-008-98 before the CLOAs covering them can be cancelled. And it is enjoined to *strictly* follow the instructions of R.A. No. 3844.

Finally then, and in view of the Court's dispositions in G.R. Nos. 179650 and 167505, the May 27, 2001 Decision of the Provincial Agrarian Reform Adjudicator (PARAD)[44] in DARAB Case No. 401-239-2001 ordering the total cancellation of CLOA

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[42] AN ACT TO ORDAIN THE AGRICULTURAL LAND REFORM CODE AND TO INSTITUTE LAND REFORMS IN THE PHILIPPINES, INCLUDING THE ABOLITION OF TENANCY AND THE CHANNELING OF CAPITAL INTO INDUSTRY, PROVIDE FOR THE NECESSARY IMPLEMENTING AGENCIES, APPROPRIATE FUNDS THEREFOR AND FOR OTHER PURPOSES. AS AMENDED BY REPUBLIC ACT NO. 6389.

[43] Section 36 (1) of R.A. No. 3844.

[44] PARAD Barbara P. Tan. In the Decision of May 27, 2001, the PARAD disposed as follows:

WHEREFORE, premises considered, Judgment is hereby rendered:

1. Finding and declaring the issuance of CLOA 6654 not in accordance with the mandate of Sec. 16, RA 6657 thereby effectively circumventing the implementation of the CARP;
2. Finding CLOA 6654 to be fictitious/null and void having been generated on the basis of a subdivision survey which was plotted on a survey plan which has already been previously cancelled, superseded and extinct, accordingly;
3. Ordering the cancellation of CLOA 6654, as prayed for by Petitioner, without prejudice, however, to the execution of the proper subdivision survey for purposes of delineating accurately the boundaries of the

No. 6654, subject of G.R. No. 169163, is SET ASIDE except with respect to the CLOAs issued for Lot Nos. 20, 13, 37, 19-B, 45, 47, 49, 48-1 and 48-2 which are portions of TCT No. 985 covering 45.9771 hectares in *Hacienda Palico* (or those covered by DAR Administrative Case No. A-9999-008-98). It goes without saying that the motion for reconsideration of DAMBA-NFSW is granted to thus vacate the Court's October 19, 2005 Resolution dismissing DAMBA-NFSW's petition for review of the appellate court's Decision in CA-G.R. SP No. 75952;[45]

WHEREFORE,

1) In **G.R. No. 167540**, the Court *REVERSES* and *SETS ASIDE* the November 24, 2003 Decision[46] and March 18, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 72131 which declared that Presidential Proclamation No. 1520 reclassified the lands in the municipalities of Nasugbu in Batangas and Maragondon and Ternate in Cavite to non-agricultural use;

2) The Court accordingly *GRANTS* the Motion for Reconsideration of the Department of Agrarian Reform in **G.R. No. 167543** and *REVERSES* and *SETS ASIDE* its Resolution of July 20, 2005;

3) In **G.R. No. 149548**, the Court *DENIES* the petition for review of Roxas & Co. for lack of merit;

4) In **G.R. No. 179650**, the Court *GRANTS* the petition for review of DAMBA-NSFW and *REVERSES* and *SETS ASIDE* the October 31, 2006 Decision and August 16, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 82225;

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properties subject of acquisition proceedings for purposes of determining their coverage under the CARP or their negotiability for conversion and/or exclusion from the Program.

[45] Penned by Justice Andres B. Reyes, Jr. with the concurrence of Justices Lucas P. Bersamin and Celia C. Librea-Leagogo.

[46] Penned by Justice Jose L. Sabio, Jr. with the concurrence of Justices Amelita G. Tolentino and Regalado E. Maambong and the dissent of Justices Ruben T. Reyes (now a retired member of the Court) and Portia Aliño-Hormachuelos.

5) In **G.R. No. 167505**, the Court *DENIES* the petition for review of DAMBA-NSFW and *AFFIRMS* the December 20, 2004 Decision and March 7, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 82226;

6) In **G.R. No. 167845**, the Court *DENIES* Roxas & Co.'s petition for review for lack of merit and *AFFIRMS* the September 10, 2004 Decision and April 14, 2005 Resolution of the Court of Appeals;

7) In **G.R. No. 169163**, the Court *SETS ASIDE* the Decisions of the Provincial Agrarian Reform Adjudicator in DARAB Case No. 401-239-2001 ordering the cancellation of CLOA No. 6654 and DARAB Cases Nos. R-401-003-2001 to No. R-401-005-2001 granting the partial cancellation of CLOA No. 6654. The CLOAs issued for Lots No. 21 No. 24, No. 26, No. 31, No. 32 and No. 34 or those covered by DAR Administrative Case No. A-9999-142-97) remain; and

8) Roxas & Co. is *ORDERED* to pay the disturbance compensation of affected farmer-beneficiaries in the areas covered by the nine parcels of lands in DAR Administrative Case No. A-9999-008-98 before the CLOAs therein can be cancelled, and is *ENJOINED* to strictly follow the mandate of R.A. No. 3844.

No pronouncement as to costs.

SO ORDERED.

Carpio, Corona, Velasco, Jr., Peralta, Del Castillo, Abad, and *Villarama, Jr., JJ.,* concur.

Puno, C.J., see separate concurring opinion.

Chico-Nazario, J., please see dissenting opinion.

Leonardo-de Castro, J., joined the dissent of Justice Minita Chico-Nazario.

Nachura, Brion, and *Bersamin, JJ.,* took no part.

SEPARATE CONCURRING OPINION

PUNO, *C.J.*:

At test is our commitment to a centerpiece of the Constitution: social justice. In the past, we have always struck a blow for agrarian reform and taken the cudgels for farmers in their struggle for a life with dignity. We cannot abandon that stance for that is dictated by the fundamental law of the land.

In G.R. Nos. 167540 and 167543, the issue for resolution is whether Presidential Proclamation No. 1520 excludes the disputed lots from the coverage of Republic Act No. 6657 or the Comprehensive Agrarian Reform Law (CARL), effective on June 15, 1988.

The CARL implements the command for agrarian reform in Section 4, Article XIII of the Constitution:

> SECTION 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

The CARL, being a general welfare legislation, embodies the Constitution's priority and commitment to further social justice.

As an exercise of both police power as it prescribes retention limits for landowners, and of eminent domain as it provides for the compulsory acquisition of private agricultural lands for redistribution, the CARL remains consistent with this commitment.[1]

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[1] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343, 373-374.

Private rights must "yield to the irresistible demands of the public interest on the time-honored justification … that the welfare of the people is the supreme law."[2] We have underscored the import of fulfilling the objectives of an agrarian reform program:

> The expropriation before us affects *all* private agricultural lands whenever found and of whatever kind as long as they are in excess of the maximum retention limits allowed their owners. This kind of expropriation is intended for the benefit not only of a particular community or of a small segment of the population but of the entire Filipino nation, from all levels of our society, from the impoverished farmer to the land-glutted owner. Its purpose does not cover only the whole territory of this country but goes beyond in time to the foreseeable future, which it hopes to secure and edify with the vision and the sacrifice of the present generation of Filipinos. Generations yet to come are as involved in this program as we are today, although hopefully only as beneficiaries of a richer and more fulfilling life we will guarantee to them tomorrow through our thoughtfulness today. And, finally, let it not be forgotten that it is no less than the Constitution itself that has ordained this revolution in the farms, calling for 'a just distribution' among the farmers of lands that have heretofore been the prison of their dreams but can now become the key at least to their deliverance.[3]

The effective implementation of the CARL, and ultimately the constitutional mandate for social justice, relies on a balance brought forth by "a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation," to achieve the objective of providing "farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands."[4]

Section 4 of R.A. No. 6657 provides that the CARL shall "cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands." The CARL defines agricultural land as "land devoted to agricultural activity

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[2] *Id.* at 376.

[3] *Id.* at 386.

[4] Republic Act No. 6657 (1988), Sec. 2.

as defined in [the] Act and not classified as mineral, forest, residential, commercial or industrial land."[5] The deliberations of the Constitutional Commission confirm the CARL's limitation of the meaning of the word "agricultural":

> The intention of the Committee is to limit the application of the word 'agriculture.' Commissioner Jamir proposed to insert the word 'ARABLE' to distinguish this kind of agricultural land from such lands as commercial and industrial lands and residential properties because all of them fall under the general classification of the word 'agricultural.' This proposal, however, was not considered because the Committee contemplated that agricultural lands are limited to arable and suitable agricultural lands and therefore, do not include commercial, industrial and residential lands.[6]

The CARL's coverage is further subject to Section 10 of the same, which enumerates the exemptions from the coverage of the Act.[7]

In the cases at bar, it must be emphasized that there is no question of whether the disputed land is among the exemptions under Section 10 of R.A. No. 6657. The issue is whether the land in dispute is devoted to non-agricultural activity. In *Natalia*

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[5] Sec. 3(c).

[6] *Luz Farms v. Secretary of Department of Agrarian Reform,* G.R. No. 86889, December 4, 1990, 192 SCRA 51, 57 *citing* III Record, CONSTITUTIONAL COMMISSION 30 (August 7, 1986); *See also Natalia Realty Inc. v. Department of Agrarian Reform,* G.R. No. 103302, August 12, 1993, 225 SCRA 278, 283.

[7] This section provides:

SECTION 10. Exemptions and Exclusions. — Lands actually, directly and exclusively used and found to be necessary for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds, and mangroves, national defense, school sites and campuses including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production centers, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent (18%) slope and over, except those already developed shall be exempt from the coverage of the Act.

Realty, Inc. v. Department of Agrarian Reform (DAR), we held that "lands previously converted to non-agricultural uses prior to the effectivity of CARL by other government agencies other than . . . DAR" are lands not devoted to agricultural activity and therefore outside the coverage of CARL.[8] Its import rests on the premise that "the CARL prohibits . . . the *conversion of agricultural lands for non-agricultural purposes* after the effectivity of the CARL."[9]

Although the ruling in *Natalia* was reiterated in a number of cases, prudence dictates that its application must not be stretched with unbridled discretion. The constitutional mandate to promote social justice through an agrarian reform program, such as that embodied in the CARL, remains the prevailing benchmark by which we measure whether there is, primarily, any merit in *Natalia's* application to the cases at bar. Thus, citing *Natalia*, we upheld the exclusion of land from the coverage of the CARL on the basis of a specific set of circumstances. These include the following: (1) municipal and/or city council zoning ordinances issued prior to the CARL's effectivity that prescribe the uses for the disputed land as non-agricultural, later approved by government agencies other than the DAR; and (2) Presidential Proclamations enacted prior to the CARL's effectivity that provide the uses of the disputed land for housing.

The cases at bar must be set apart from the first category of cases that reiterated *Natalia,* or those that upheld the exclusion of land from CARL due to zoning ordinances that prescribed the uses for the disputed land as non-agricultural and subsequently approved by government agencies other than the DAR. *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals* held that pursuant to Section 3 of R.A. No. 2264, amending the Local Government Code, municipal and/or city councils have the power to "adopt zoning and subdivision ordinances or regulations in consultation with the National Planning

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[8] *Natalia Realty, Inc. v. Department of Agrarian Reform, supra* note 6.

[9] *Department of Agrarian Reform v. Sutton,* G.R. No. 162070, October 19, 2005, 473 SCRA 392, 401.

Commission."[10] While the Court defined a zoning ordinance as one that "prescribes, defines, and apportions a given political subdivision into specific land uses as present and future projection of needs," the Court specified that a local government has the power to convert or reclassify lands to residential lands.[11] For this reason, the approval by the Municipal Council of Carmona, Cavite, of *Kapasiyahang Blg.* 30 on May 30, 1976 "reclassified and converted [the land] from agricultural to non-agricultural or residential."[12] However, it is worthy to stress that in confirming the reclassification and conversion of the land, the Court not only considered the municipal council's zoning ordinance, but also its approval by the Human Settlements Regulatory Commission (HSRC).[13]

Similarly, *Junio v. Garilao* upheld the exemption of the disputed land from CARL, because the City Council of Bacolod reclassified the land as residential prior to the CARL's effectivity, which was subsequently affirmed by the HSRC.[14] *Agrarian Reform Beneficiaries Association v. Nicolas* used the same reasoning in exempting the disputed land from CARL coverage, holding that a city ordinance reclassified the land within an urban zone, likewise prior to the CARL's effectivity, which reclassification was later approved by the Housing and Land Use Regulatory Board (HLURB).[15] The Court concluded that the disputed land was "considered 'non-agricultural' [which] may be utilized for residential, commercial, and industrial purposes."[16] Considering that the cases at bar do not involve zoning ordinances that reclassified the disputed land to non-agricultural uses, a discussion of the second category of cases

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[10] G.R. No. 142359, May 25, 2004, 429 SCRA 109, 135.

[11] *Id.*

[12] *Id.* at 132.

[13] *Id.* at 133.

[14] G.R. No. 147146, July 29, 2005, 465 SCRA 173, 186.

[15] G.R. No. 168394, October 6, 2008, 567 SCRA 540, 553-554.

[16] *Id.*

that uphold the exclusion of the disputed land from the coverage of CARL is in order.

A review of the provisions of Presidential Proclamation No. 1520 reveals the absence of a specified technical description of the land subject to its coverage. This glaring omission should, at the very least, subject the issue of whether *Natalia* applies to the cases at bar to further scrutiny. In *Natalia*, the Court excluded the disputed land from the coverage of CARL on the basis of Presidential Proclamation No. 1637, which "converted for residential use what were erstwhile agricultural lands."[17] A subsequent case, *National Housing Authority v. Allarde* reiterated the ruling in *Natalia*, and excluded the disputed land from the coverage of CARL on the basis of Presidential Proclamation No. 843, which "categorized [the disputed land] as not being devoted to the agricultural activity contemplated by Section 3(c) of R.A. No. 6657."[18] It is worthy to note that the Presidential Proclamations cited in both cases provide specified technical descriptions of the lands that were "converted" to residential or "categorized" as non-agricultural, hence, there were no doubts as to their coverage.

It is respectfully submitted that our ruling in *DAR v. Franco* gives the guidelines for the proper interpretation of Presidential Proclamation No. 1520.[19] The said case required a review of Presidential Proclamation No. 2052,[20] which, except for the

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[17] *Natalia Realty, Inc. v. Department of Agrarian Reform, supra* note 6, at 282.

[18] G.R. No. 106593, November 16, 1999, 318 SCRA 22, 29.

[19] G.R. No. 147479, September 26, 2005, 471 SCRA 74.

[20] The pertinent portion of Proclamation No. 2052 (January 30, 1981) is quoted below:

> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby **declare the areas comprising the Barangays of Sibugay, Malubog, Babag and Sirao including the proposed Lusaran Dam in the City of Cebu and the municipalities of Argao and Dalaguete in the Province of Cebu as tourist zones under the administration and control of the Philippine Tourism Authority pursuant to Section 5 (d) of Presidential Decree 564.**

municipalities identified, mirrors the provisions of Presidential Proclamation No. 1520.[21] Thus, we held:

> . . . the DAR Regional Office VII, in coordination with the Philippine Tourism Authority, has to determine precisely which areas are for tourism development and excluded from the Operation Land Transfer and the Comprehensive Agrarian Reform Program. And suffice it to state here that the Court has repeatedly ruled that lands already classified as non-agricultural before the enactment of RA 6657 on 15 June 1988 do not need any conversion clearance.[22]

In other words, without a technical description of the areas comprising a tourist zone, the Philippine Tourism Authority's (PTA's) identification of these areas is necessary for exclusion from coverage of the CARL.

> **The PTA shall identify well-defined geographic areas within the zones with potential tourism value**, wherein optimum use of natural assets and attractions, as well as existing facilities and concentration of efforts and limited resources of both government and private sector may be affected and realized in order to generate foreign exchange as well as other tourist receipts.
>
> Any duly established military reservations existing within the zones shall be excluded from this proclamation. (Emphasis supplied)

[21] The pertinent portion of Proclamation No. 1520 (November 28, 1975) is quoted below:

> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby **declare the area comprising the Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas Province as a tourist zone under the administration and control of the Philippine Tourism Authority (PTA) pursuant to Section 5 (D) of P.D. 564.**
>
> **The PTA shall identify well-defined geographic areas within the zone with potential tourism value**, wherein optimum use of natural assets and attractions, as well as existing facilities and concentration of efforts and limited resources of both government and private sector may be affected and realized in order to generate foreign exchange as well as other tourist receipts.
>
> Any duly established military reservation existing within the zone shall be excluded from this proclamation. (Emphasis supplied)

[22] *Department of Agrarian Reform v. Franco, supra* note 19, at 92.

Franco's application to the cases at bar cannot be dismissed for the reason that the Court's abovementioned pronouncement only took note of the contents of the DAR Secretary's order. A conclusion that the only issue in the appeal concerned the handwritten note of a Department of Agrarian Reform Adjudication Board (DARAB) member thereby making any pronouncement unrelated thereto *obiter dictum*, is unwarranted.

In *Franco*, the petitioners expressly raised the issue of whether Presidential Proclamation No. 2052 "has taken outside the coverage of agrarian reform all agricultural lands included within [it] or only those that are acquired and developed by the PTA for tourism purposes" before the Court.[23] It is well established that an adjudication on any point within the issues presented by the case is not *obiter dictum*:

> Accordingly, a point expressly decided does not lose its value as a precedent because the disposition of the case is, or might have been, made on some other ground, or even though, by reason of other points in the case, the result reached might have been the same if the court had held, on the particular point, otherwise than it did. A decision which the case could have turned on is not regarded as *obiter dictum* merely because . . . an additional reason in a decision, brought forward after the case has been disposed of on one ground, be regarded as *dicta*.[24]

Although the Court resolved the issue of whether the DARAB member's handwritten note was the proper subject of an appeal, the Court decided the important issue of the validity of the DAR Secretary's order, which declared that the 808 hectares of land delineated by the PTA as needed for tourism development was excluded from CARL.[25] This ruling in *Franco* is an authoritative precedent in resolving the cases at bar.

But assuming for the sake of argument that *Franco* is not applicable to the cases at bar, the proper statutory construction

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[23] *Id.* at 85.

[24] *Villanueva, Jr. v. Court of Appeals*, G.R. No. 142947, March 19, 2002, 379 SCRA 463, 469-470.

[25] *Department of Agrarian Reform v. Franco, supra* note 19.

of Presidential Proclamation No. 1520 in light of the CARL will still yield a similar outcome.

Basic is the rule that only statutes with an ambiguous or doubtful meaning may be the subject of statutory construction.[26] The irreconcilable interpretations offered by the contending parties, however, prove that the proclamation suffers from ambiguity: first, the blanket classification of the subject municipalities, as claimed by the Roxas & Co., and second, the piecemeal classification of areas for tourism within the subject municipalities, as contended by Katipunan ng mga Magbubukid sa Hacienda Roxas, Inc. (KAMAHARI) and Damayan ng Manggagawang Bukid sa Asyenda Roxas-National Federation of Sugar Workers (DAMBA-NFSW). Too, the Whereas clauses of the proclamation incite doubt as to the role of the PTA in the delineation of tourist zone boundaries as they speak of "certain areas in the sector comprising the Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas" and of the necessity to "segregate specific geographic areas for concentrated efforts." Finally, the area declared as a tourist zone in the proclamation was not defined by metes and bounds, putting into question the scope of the proclamation. Hence, the apparent need for construction.

I do not subscribe to the view that the very terms expressed in the proclamation as well as by its title declared as a single tourist zone the area comprising the municipalities of Nasugbu, Ternate, and Maragondon. It is well to remember that statutes *in pari materia* should be construed together to attain the purpose of an expressed national policy.[27] Likewise, in interpretating a statute, the Court should start with the assumption that the legislature intended to enact an effective law; it cannot be presumed to have done a vain thing.[28] An interpretation should be avoided

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[26] *Daong v. Municipal Judge*, No. L-34568, March 28, 1988, 159 SCRA 369.

[27] *C & C Commercial Corporation v. National Waterworks and Sewerage Authority*, G.R. No. L-27275, November 18, 1967, 21 SCRA 984, 992.

[28] *Asturias Sugar Central, Inc. v. Commissioner of Customs*, No. L-19337, September 30, 1969, 29 SCRA 617, 627.

under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative or nugatory.[29]

In the cases at bar, we should construe Presidential Proclamation No. 1520 within the context of the CARL, Presidential Decree No. 564 which revised the charter of the PTA, and the Constitution and its provisions mandating agrarian reform and social justice. Taking this approach, we have to recognize the power of the PTA to identify and specify geographic areas with potential tourism value in a declared tourist zone which includes a huge area, not all of which are tourism-ready. This is supported by Section 38 of Presidential Decree No. 564, which defines a "tourist zone" as a "geographic area with well-defined boundaries proclaimed as such by the President, upon the recommendation of the Authority [the PTA], and placed under the administration and control of the Authority." Hence, absent such a determination and development plan by the PTA, the area can still be considered subject to the coverage of the CARL.

Moreover, the application of CARL fits within the landscape of Section 5.A.2 of Presidential Decree No. 564, which tasks the PTA to formulate a development plan for each zone, with the following proviso:

> . . . [that] in case the zone in question to be developed is not solely for tourism purposes, the development plan shall cover specifically those aspects pertaining to tourism; *Provided, further,* That the tourism development plan is fully coordinated and integrated with other sectoral plans for the area.

Therefore, the logical conclusion is that pockets of tourist zones can exist alongside areas subject to the coverage of the CARL, as long as the requirements in Presidential Decree No. 564 and Presidential Proclamation No. 1520 are met.

The overly broad interpretation of Presidential Proclamation No. 1520 with regard to the declaration of a tourist zone will

[29] *Id.* at 628.

open the gates to attempts to defeat the spirit of the CARL, and more importantly, the Constitution. The march of our farmers towards social justice has been in slow motion for ages now.

I concur.

DISSENTING AND CONCURRING OPINION

CHICO-NAZARIO, *J.*:

There are seven consolidated Petitions before this Court, involving the question of whether all or certain parcels of land located in Nasugbu, Batangas, are subject to distribution to farmer-beneficiaries under the Comprehensive Agrarian Reform Program (CARP). The seven Petitions are broken into three groups depending on their bases and/or subject matters.

I

ANTECEDENT FACTS

A. CARP Exemption of the Three *Haciendas* based on Presidential Proclamation No. 1520

G.R. No. 167540

On 28 November 1975, then President Ferdinand E. Marcos (Marcos) issued Presidential Proclamation No. 1520, with the title "Declaring the municipalities of Maragondon and Ternate in Cavite and the municipality of Nasugbu in Batangas province as a Tourist Zone, and for other purposes."

After the People Power Revolution which resulted in the ouster of former President Marcos on 24 February 1986, a Constitutional Convention drafted, and the people ratified in a plebiscite held on 2 February 1987, the new Constitution (1987 Constitution). The 1987 Constitution includes, under Article XIII, the following provisions explicitly mandating the State to undertake an agrarian reform program:

Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till

or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

Sec. 5. The State shall recognize the right of farmers, farm-workers, and landowners, as well as cooperatives, and other independent farmers' organizations to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services.

In compliance with the afore-mentioned constitutional mandate, Congress passed, and then President Corazon C. Aquino signed into law, Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), which became effective on 15 June 1988. The CARL provided the mechanism for the implementation of the CARP, in order to promote social justice and industrialization.

Roxas & Company, Inc. (Roxas & Co.) was the registered owner of the following vast parcels of land located in Nasugbu, Batangas:

Hacienda	**Area (hectares)**	**Transfer Certificate of Title (TCT)**
Hacienda Caylaway	867.9571	TCT No. T-44662 TCT No. T-44663 TCT No. T-44664 TCT No. T-44665
Hacienda Banilad	1,050	TCT No. 924
Hacienda Palico	1,024	TCT No. 985

In a letter dated 6 May 1988, Roxas & Co. informed the Department of Agrarian Reform (DAR) Secretary of the former's intention to sell to the Government Hacienda Caylaway under the voluntary offer to sell (VOS) component of the CARP. A

year later, the Government also sought to acquire Haciendas Banilad and Palico under the compulsory acquisition component of the CARP, and issued to Roxas & Co. notices of acquisition for the two properties.

Notices of land valuation were subsequently issued by the DAR Regional Director fixing the compensation for Haciendas Banilad and Palico, but Roxas & Co. rejected the valuation and protested the compulsory acquisition proceedings for its two *haciendas*.

On 5 August 1992, Roxas & Co. withdrew its earlier VOS covering Hacienda Caylaway on the ground that the said property had been previously reclassified for non-agricultural purposes. Insisting that Hacienda Caylaway was not exempt from the coverage of CARP, the DAR Secretary sent Roxas & Co. a notice of valuation for the said property, which Roxas & Co. likewise opposed and protested.

Roxas & Co. filed with the DAR on 4 May 1993 an application for conversion of its three *haciendas* from agricultural to non-agricultural uses.

Even during the pendency of the application for conversion of Roxas & Co., the DAR already cancelled the TCTs of Roxas & Co. and started issuing Certificates of Land Ownership Award (CLOAs) covering the three *haciendas* to farmer-beneficiaries, including members of Katipunan ng mga Magbubukid sa Hacienda Roxas, Inc. (KAMAHARI) and Damayan ng Manggagawang Bukid sa Asyenda Roxas-National Federation of Sugar Workers (DAMBA-NFSW). Among such CLOAs was CLOA No. 6654, issued on 15 October 1993, covering a portion of Hacienda Palico measuring 513.9863 hectares. This prompted Roxas & Co. to file on 24 August 1993 a Complaint with the DAR Adjudication Board (DARAB), docketed as **Case No. N-0017-96-46 (BA)**. Roxas & Co. argued in its Complaint that the Municipality of Nasugbu, where the *haciendas* are located, had been declared a tourist zone; that the land is not suitable for agricultural production; and that the Sangguniang Bayan of Nasugbu had already reclassified the land to non-agricultural uses. Roxas & Co. thus prayed for the cancellation of the CLOAs already issued for its three *haciendas*. DARAB, however, referred

Case No. N-0017-96-46 (BA) to the Office of the DAR Secretary since it involved the prejudicial question of whether the properties of Roxas & Co. were subject to CARP.

On 29 October 1993, Roxas & Co. filed with the Court of Appeals a Petition for Prohibition and *Mandamus*, questioning the expropriation of its properties under the CARP and the denial of due process in the acquisition of its landholdings. Roxas & Co. prayed in its Petition that the appellate court (1) direct the DAR to desist from further acquisition proceedings involving the three *haciendas*; and (2) compel DAR to approve the application of Roxas & Co. for the conversion of the three *haciendas* to non-agricultural uses. The Petition was docketed as **CA-G.R. SP No. 32484**.

The Court of Appeals, in its Decision dated 28 April 1994, dismissed the Petition in CA-G.R. SP No. 32484, for being premature since Roxas & Co. failed to exhaust prior administrative remedies. The appellate court also stated that the filing by Roxas & Co. of an application for conversion of its *haciendas* to non-agricultural seemed to be a clear manifestation that the said properties were not yet exempted or excluded from CARP. The Court of Appeals, in a Resolution dated 17 January 1997, denied the Motion for Reconsideration of Roxas & Co.

Roxas & Co. filed an appeal with this Court, bearing the title *Roxas & Co. v. Court of Appeals*, docketed as **G.R. No. 127876**. In its Decision dated 17 December 1999, the Court granted in part the appeal of Roxas & Co. and nullified the acquisition proceedings over the three *haciendas* because DAR did not accord Roxas & Co. due process. The DAR failed to give proper notices as regards the acquisition proceedings to Roxas & Co. and to identify specifically the portions of the three *haciendas* placed under CARP. Nevertheless, the Court refused to rule upon the issue of conversion of the three *haciendas* from agricultural to non-agricultural, for the agency charged with the mandate of approving or disapproving applications for conversion was the DAR. Consequently, the case was remanded to DAR for proper acquisition proceedings and determination of the application for conversion of Roxas & Co., in accordance with

the guidelines set forth in the Decision and applicable administrative procedure.

On 16 May 2000, Roxas & Co. filed with DAR an application for exemption of the three *haciendas* from CARP coverage, docketed as **DAR Administrative Case No. A-9999-084-00**. Roxas & Co. essentially contended that Presidential Proclamation No. 1520, issued on 28 November 1975, had already declared the Municipalities of Ternate and Margondon in Cavite and Nasugbu in Batangas a tourism zone, and reclassified the entire three municipalities to non-agricultural use. Necessarily, the three *haciendas* located within Nasugbu were also reclassified to non-agricultural use, long before the effectivity of the CARL on 15 June 1988. As DAR Administrative Order No. 6, series of 1994,[1] provided, on the basis of Department of Justice (DOJ) Opinion No. 44, series of 1990, all lands that were already classified as commercial, industrial, or residential before 15 June 1988 no longer need conversion clearance from DAR.

KAMAHARI and DAMBA-NFSW opposed the application for CARP exemption of Roxas & Co. KAMAHARI and DAMBA-NFSW argued, among other things, that Presidential Proclamation No. 1520 did not, by itself, reclassify the three *haciendas* from agricultural to non-agricultural use, because said issuance merely directed the identification and segregation of specific geographic areas in the Municipalities of Ternate, Maragondon, and Nasugbu, to be developed for tourism purposes. The Department of Tourism (DOT) already identified specific areas in Nasugbu to be developed for tourism purposes and such areas did not include the three *haciendas* of Roxas & Co. Even the Municipality Government of Nasugbu and the barangays where the three *haciendas* are located opposed the application for exemption of Roxas & Co.

In an Order dated 22 October 2001, then DAR Secretary Hernani A. Braganza denied the application for CARP exemption of Roxas & Co. According to the DAR Secretary, although

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[1] Subject: Guidelines for the Issuance of Exemption Clearances based on Section 3(c) of Republic Act No. 6657 and the Department of Justice (DOJ) Opinion No. 44, Series of 1990.

Presidential Proclamation No. 1520 declared Nasugbu as part of a tourism zone, it did not automatically reclassify all the land in the said municipality from its original uses, whether agricultural or non-agricultural. The PTA should first define specifically the areas in Nasugbu that would fall within the tourism zone, but no such definition had been done yet by the PTA. The PTA even declared in its letter addressed to Santiago R. Elizalde, Director of Roxas & Co., that the PTA had no pending tourism development projects in the area. Likewise, the report of the Ocular Investigation Team (OCI) of the Center for Land Use Policy Planning and Implementation (CLUPPI)[2] did not indicate that the three *haciendas* of Roxas & Co. were being used in any way for tourism purposes and, instead, presented the finding that the properties of Roxas & Co. were agricultural lands planted with sugar cane and other crops.

The DAR Secretary, in its 22 October 2001 Order, refused to adhere to the position of Roxas and Co. that by virtue of Presidential Proclamation No. 1520, entire municipalities had been re-zoned for non-agricultural uses and, thus, became exempt from CARP coverage. This, the DAR Secretary reasoned, would result in absurdity as it would amount to a blanket and automatic CARP exemption without due regard to land use reclassification powers vested in other government agencies such as the PTA, DAR, local government units (LGUs), and the Housing and Land Use Regulatory Board (HLURB). Surely, Presidential Proclamation No. 1520 could have intended such a result.

The DAR Secretary found, in his Order of 22 October 2001, that DAR Administrative Order No. 6, series of 1994, did not apply to the case of Roxas & Co. since there was no express provision in Presidential Proclamation No. 1520 or in any other documents submitted by Roxas & Co. that the three *haciendas*

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[2] A special task force of the DAR which conducts the field investigation and dialogues with the applicants and the farmer beneficiaries to ascertain the information necessary for the processing of an application for conversion of land. The Chairman of the CLUPPI deliberates on the merits of the investigation report and recommends the appropriate action. This recommendation is transmitted to the Regional Director, thru the Undersecretary, or Secretary of the DAR.

in Nasugbu have been reclassified to nonagricultural use prior to the effectivity of the CARL. The DAR Secretary, therefore, decreed:

> WHEREFORE, premises considered, the herein application for exemption from CARP coverage pursuant to Administrative Order No. 6, Series of 1994 involving parcels of land covered by TCT Nos. T-985, T-924, T-44655 (*sic*), T-44664, and T-44663 located at Brgys. Caylaway, Palico and Banilad, Nasugbu, Batangas, and with an aggregate area of 2,930.2948 hectares is hereby **DENIED**. The DAR field office personnel concerned are directed to immediately proceed with the coverage and distribution of subject lands to qualified farmer beneficiaries.[3]

Roxas & Co. expectedly filed a Motion for Reconsideration of the foregoing Order of the DAR Secretary.

The DAR Secretary denied the Motion for Reconsideration of Roxas & Co. in an Order dated 12 July 2002. The DAR Secretary reiterated the need for the PTA to identify the geographical areas within the zone with potential tourism value, which the PTA still had not done as of yet. The Certifications submitted by Roxas & Co. only recognized that the three *haciendas* are covered by Presidential Proclamation No. 1520 and that Nasugbu is a priority area for tourism development; but these still did not provide the required delineation of tourism areas. The DAR Secretary also noted that Roxas & Co. did not submit a copy of the alleged Master Tourism Plan for Nasugbu, which purportedly included the three *haciendas*. And, even assuming the existence of such a Plan, it must still be approved by the Sangguniang Bayan of Nasugbu. As the HLURB asserted, DAR Administrative Order No. 6, series of 1994, requires that the three *haciendas* should have been included in a land use or zoning ordinance. Absent compliance with said requirement, the application for CARP exemption should be denied.

On 12 August 2002, Roxas & Co. filed with the Court of Appeals a Petition for Review on *Certiorari* with application for Temporary Restraining Order, docketed as **CA-G.R. SP**

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[3] *Rollo* (G.R. No. 167540), p. 383.

No. 72131. Roxas & Co. anchored its Petition on the following grounds:

I

THE HONORABLE SECRETARY OF AGRARIAN REFORM ERRED IN FAILING TO CONCLUDE THAT THE SUBJECT LANDS ARE NON-AGRICULTURAL LANDS, THE SAME HAVING BEEN CLASSIFIED BY PROCLAMATION NO. 1520 AS PART OF A TOURIST ZONE.

II

THE HONORABLE SECRETARY OF AGRARIAN REFORM ERRED IN NOT EXEMPTING THE SUBJECT LANDS FROM THE COVERAGE OF THE CARL.

The Former Tenth Division of the Court of Appeals, by a vote of three to two, resolved CA-G.R. SP No. 72131 in favor of Roxas & Co.

In the Decision[4] dated 24 November 2003, the majority determined that the only issue for resolution in CA-G.R. SP No. 72131 was "whether Proc. 1520 (which declared three municipalities of Maragondon, Ternate and Nasugbu as "tourist zone") issued in 1975 converted the entire three municipalities to non-agricultural areas, thereby exempting [Roxas & Co.]'s lands located in Nasugbu from CARP." Answering the said issue in the affirmative, the majority rationalized that:

> x x x [t]he Proclamation is clear and free from any doubt or ambiguity and leaves no room for construction or interpretation as what [DAR] has done. What is clear is that Nasugbu, Batangas where [Roxas & Co.]'s property is located was declared as Tourist Zone under the administration and control of the Philippine Toursim Authority. When the law speaks with clear and categorical language, there is no reason for interpretation or construction, but only for application (*Republic v. CA*, 299 SCRA 199).

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[4] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Amelita G. Tolentino and Regalado E. Maambong, concurring; and Associate Justices Ruben T. Reyes and Portia Aliño-Hormachuelos, dissenting. *Rollo* (G.R. No. 167540), pp. 58-68.

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Presidential Proclamation 1520 clearly established the following, in reference to the case at bench.

(a) It declared the area comprising Nasugbu in Batangas as a Tourist Zone. (underscoring for emphasis)

(b) It placed the said area under the administration and control of the Philippine Tourism Authority; therefore not subject to CARP.

(c) Since the entire Nasugbu area cannot at one time be immediately developed for tourism, as intended, there is a need to establish priorities based on potential tourism value within the Tourist Zone wherein optimum use of natural assets and attractions, as well as existing facilities where both the government and private sector can concentrate their efforts and limited resources in order to generate foreign exchange as well as other tourist receipts at the earliest possible time.

(d) The only area exempted from designation as Tourist Zone is any duly established military reservation existing within the zone.

It is therefore beyond any cavil of doubt that as early as 1985, when Proclamation No. 1520 was issued, Nasugbu, Batangas, where [Roxas & Co.]'s properties are located, has been declared as Tourist Zone and placed under the administration and control of the Philippine Tourism Authority. Under such circumstances, it necessarily follows it is exempt from the coverage of CARL and therefore the Secretary of DAR has no authority over the same.[5]

The majority applied *Natalia Realty, Inc. v. Department of Agrarian Reform (DAR)*[6] and *National Housing Authority (NHA) v. Hon. Allarde*[7] as judicial precedents to CA-G.R. SP No. 72131, addressing the contrary view of the DAR in the following manner:

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[5] *Id.* at 64-65.

[6] G.R. No. 103302, 12 August 1993, 225 SCRA 278.

[7] 376 Phil. 147 (1999).

What is sauce for the goose is also sauce for the gander. To do otherwise would definitely result in violating the constitutionally guaranteed equal protection right. In *Natalia Realty, Inc. vs. DAR*, 225 SCRA 278, the Supreme Court in an *En banc* decision upheld the force and effect of the exemption of the lands covered by Presidential Proclamation No. 1637 from the CARL. The said Proclamation declared 20,312 hectares of land located in the municipalities of Antipolo, San Mateo and Montalban as townsite. In the subsequent case of *NHA vs. Allarde*, 318 SCRA 22, which involved Presidential Proclamation No. 843 declaring Tala Estate as reserved for the housing program of the National Housing Authority, the Supreme Court reiterated the earlier pronouncement in *Natalia vs. DAR, supra*, the land reserved for or converted prior to the effectivity of Republic Act No. 6657, otherwise known as the CARL, are not considered and treated as agricultural lands and therefore, outside the ambit of said law.

[DAR], however, argues that in both cases, the covered land areas have technical descriptions while that in Proc. 1520 does not and therefore the ruling in said cases cannot be made applicable to the latter. Again, [DAR] conveniently forgot or did not mention that in both the Natalia and NHA cases, there was necessity to delineate the Tourist Zone. In Natalia, the area straddles several municipalities and only portions of said municipality was (*sic*) included. In the NHA case, it encompasses several parcels of land covered by different titles and involved only certain portions covered by the various titles.

In the case of Proc. 1520, there was no necessity to survey or make a technical description because <u>it included or declared on (1) whole municipality as Tourist Zone</u> exempting only a military reservation, if there is one earlier made (underscoring for emphasis). If both Proclamation 1637 and 843 are given the force and effect of a law by declaring them beyond the CARL coverage, there is no reason why Proc. No. 1520 should be treated otherwise. Such is the equal protection of the law guaranteed by the Constitution.[8]

In the end, the majority disposed of CA-G.R. SP No. 72131 as follows:

WHEREFORE, foregoing premises considered, the Petition having merit, the Orders issued by the Secretary of Agrarian Reform dated

[8] *Id.* at 66.

October 22, 2001 and July 12, 2002 are hereby SET ASIDE FOR HAVING BEEN ISSUED WITHOUT LEGAL BASIS AND DECLARING THAT THE PARCELS OF LAND COVERED BY TCT Nos. T-44665, T-44664 and T-44663, all in the name of [Roxas & Co.] and all situated in Nasugbu, Batangas, particularly those situated in Barangays Caylaway, Palico and Banilad, as exempt from the coverage of CARP pursuant to the declaration of Proclamation No. 1520 as Tourist Zone. No Costs.[9]

Court of Appeals Associate Justice Ruben T. Reyes, in his Separate Opinion (Dissenting), believed that Roxas & Co. committed forum shopping by filing its application for exemption while its previous application for conversion and complaint for cancellation of CLOAs were still pending with the DAR. Ordinarily, violation of the rule against forum-shopping shall be a cause for summary dismissal of the petition, complaint, application or any other initiatory pleading. However, in light of the substantial issues and subject matter involved in the case, Justice Reyes instead voted for the remand of the same to DAR for joint determination with the pending related cases on conversion and cancellation of CLOAs.

Court of Appeals Associate Justice Portia Aliño-Hormachuelos also dissented from the majority. While it is true that the three *haciendas* of Roxas & Co. are within the tourist zone, Justice Aliño-Hormachuelos observed in her Dissenting Opinion that there was no evidence that the said properties have been specified or segregated for having potential tourism value as required by law. She thus voted to deny the Petition of Roxas & Co. and affirm the Orders dated 22 October 2001 and 12 July 2002 of the DAR Secretary in DAR Administrative Case No. A-9999-084-00.

In the Resolution[10] dated 18 March 2005, the Court of Appeals denied the separate Motions for Reconsideration filed by KAMAHARI, DAMBA-NFSW, and DAR.

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[9] *Id.* at 67.

[10] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Amelita G. Tolentino and Regalado E. Maambong, concurring; and Associate Justices Ruben T. Reyes and Portia Aliño-Hormachuelos, dissenting. *Id.* at 136-138.

Aggrieved, KAMAHARI and DAMBA-NFSW jointly filed with this Court a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking (1) the nullification, reversal, and setting aside of the Decision dated 24 November 2003 and Resolution dated 18 March 2005 of the Court of Appeals in CA-G.R. SP No. 72131; (2) a declaration that the three *haciendas* of Roxas & Co. are within the coverage of the CARL; (3) and a ruling affirming the Orders dated 22 October 2001 and 12 July 2002 of the DAR Secretary which denied, for lack of merit, the application for CARP exemption of Roxas & Co. in DAR Administrative Case No. A-9999-084-00. The Petition was docketed as **G.R. No. 167540**, and raffled to the Second Division of the Court.

The Second Division of the Court directed Roxas & Co. and DAR to file their respective Comments on the Petition of KAMAHARI and DAMBA-NFSW.

G.R. No. 167543

In the meantime, DAR filed with this Court a separate Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, similarly praying for the setting aside of the Decision dated 24 November 2003 and Resolution dated 18 March 2005 of the Court of Appeals in CA-G.R. SP No. 72131; and the reinstatement of the Orders dated 22 October 2001 and 12 July 2002 of the DAR Secretary in DAR Administrative Case No. A-9999-084-00. The Petition was docketed as **G.R. No. 167543**, and raffled to the Third Division of the Court.

On 27 June 2005, the Second Division of the Court resolved to consolidate G.R. No. 167543, assigned to the Third Division, with G.R. No. 167540, pending with the Second Division, the latter being the lower-numbered case.

Apparently still unaware of the afore-mentioned Resolution dated 27 June 2005 of the Second Division, the Third Division issued a Minute Resolution on 20 July 2005 already denying the Petition in G.R. No. 167543 for the failure of DAR to show that a reversible error had been committed by the appellate court. DAR accordingly filed a Motion for Reconsideration of the denial of its Petition.

G.R. No. 167540 and No. 167543 were finally consolidated and given due course. During the pendency of these cases, the Sangguniang Bayan and the Association of Barangay Captains (ABC) of Nasugbu filed their separate Petitions for Intervention before this Court.

The Sangguniang Bayan of Nasugbu averred in its Petition for Intervention that its Chairman and Members, as the legislators of Nasugbu, stand to benefit or suffer from the results of the pending cases. The Local Government Code devolved upon them the important function of determining, on behalf of their constituents, the appropriate use of the lands of Nasugbu, as would be embodied in a Comprehensive Land Use Plan (CLUP). Per the record of the Sangguniang Bayan, the three *haciendas* of Roxas & Co. in Nasugbu have not been reclassified to tourism use, consequently, cannot be exempted from CARP coverage. The Sangguniang Bayan of Nasugbu further asserted that it could not perform its function of determining appropriate land use in Nasugbu, and it would remain inutile insofar as said function was concerned, unless the Court reverses the assailed judgment of the Court of Appeals in CA-G.R. SP No. 72131 that the entire lands of Nasugbu had been automatically reclassified by virtue of Presidential Proclamation No. 1520.

In its Petition for Intervention, the ABC of Nasugbu claimed that majority of its members are CARP beneficiaries themselves, who are entitled in their own right to intervene in G.R. No. 167540 and No. 167543; and those who are not CARP beneficiaries are still residents of Nasugbu whose rights may likewise be affected by the ruling of the Court of Appeals in CA-G.R. SP No. 72131. In addition, the *barangay* captains of Nasugbu are the local chief executives tasked to help the DAR implement the CARL at the grassroots level, as well as represent their *barangay* constituents in voting on land use issues in Nasugbu. As such, they stand to gain or suffer from the outcome of the two cases before this Court. The ABC of Nasugbu argued that with the automatic reclassification of the lands in the entire Nasugbu to tourism use by Presidential Proclamation No. 1520, as the appellate court erroneously and unjustly held, there was practically nothing more that could be done as regards the land

use plan for the municipality. Necessarily, there could be no way for the *barangay* chairmen to still help DAR as mandated by the Local Government Code since it would already be legally impossible to implement the CARP in Nasugbu given the exemption of all lands in said municipality from the program.

Roxas & Co. opposed the two Petitions for Intervention, contending that the parties intending to intervene had no legal interest in G.R. No. 167540 and No. 167543. The judgment on appeal before the Court does not deal with land use plans and zoning ordinances issued and implemented by LGUs pursuant to the Local Government Code; instead, it involves laws that are enforced by the DOT, through the PTA (for Presidential Proclamation No. 1520, implementing Presidential Decree No. 564[11]) and the DAR (CARL). The intervention of the Sangguniang Bayan and ABC of Nasugbu was already prohibited at this stage, and would only prejudicially and unduly delay the proceedings. They are not indispensable parties and their interest should be the subject of separate proceedings.

After further exchange of pleadings among the parties in G.R. No. 167540 and No. 167543, they were finally directed by this Court to submit their respective Memoranda.

B. CARP Exemption of Certain Lots in Hacienda Palico, based on Nasugbu Municipal Zoning Ordinance No. 4, series of 1982

G.R. No. 149548

On 15 October 1993, the DAR issued CLOA No. 6654 in the collective names of 202 farmer-beneficiaries,[12] 137 of whom are members of DAMBA-NFSW. CLOA No. 6654 covered an area of 513.9863 hectares of Hacienda Palico, which was placed by the DAR under CARP through compulsory acquisition.

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[11] Revising the Chapter of the Philippine Tourism Authority Created under Presidential Decree No. 189, dated May 11, 1973.

[12] Initially, CLOA No. 6654 was issued to only 153 regular sugar farms workers at Hacienda Palico; but pursuant to the Decision dated 3 August 1994 of Provincial Agrarian Reform Adjudicator (PARAD) Antonio Cabili, 49 more farmer workers were added.

Roxas & Co., through a letter dated 29 May 1997, applied for exemption from CARP coverage of Lots No. 21, No. 24, No. 28, No. 31, No. 32 and No. 34, comprising 51.5472 hectares, situated in Brgys. Cogunan and Lumbangan, Nasugbu, Batangas, which were included in CLOA No. 6654. Roxas & Co. averred that the six lots were already reclassified as non-agricultural by the Nasugbu Municipal Ordinance No. 4, Series of 1982, as approved by the Human Settlements Regulation Commission (HSRC), now Housing and Land Use Regulatory Board, under Resolution No. 123 dated 4 May 1983; hence, placing said lots outside the coverage of CARL. This application for exemption of Roxas & Co. was docketed as **DAR Administrative Case No. A-9999-142-97**. It proceeded without notice being given to DAMBA-NFSW and other occupants of the lots.

The DAR Secretary took into consideration the following pieces of evidence submitted by Roxas & Co. in support of the latter's application for exemption:

1. Certification dated February 11, 1998 issued by the HLRB (*sic*) stating that Lot Nos. 21, 32, 28, and 34, and portions of Lot Nos. 31 and 24 are within the industrial zone based on the approved Zoning Ordinance of the Municipality per HSRC Resolution No. R-123 dated May 4, 1983;

2. Certification dated September 12, 1996 issued by the Office of the Municipal Planning and Development Coordinator of Nasugbu, Batangas stating that the subject parcels of land are within the industrial zone based on Municipal Ordinance No. 4, Series of 1982 and approved per HSRC Resolution No. R-123, Series of 1983 dated May 4, 1983;

3. Certification dated July 31, 1997 issued by the National Irrigation Administration (NIA) stating that DAR Lot Nos. 32 and 34 are partially irrigated;

4. Certification dated May 27, 1997 issued by the National Irrigation Administration (NIA) stating that Lot Nos. 31, 24, 21 and 28 are not within the service area of any existing National Irrigation System and Communal Irrigation System of NIA and not within the area programmed for irrigation with firm funding commitment; and

5. Certification dated September 11, 1997 issued by the [Municipal Agrarian Reform Officer (MARO)] of Nasugbu, Batangas stating that DAR Lot No. 31, and portions of DAR Lot Nos. 24 and 21 are residential areas, Lot Nos. 32, 28, and 34 and remaining portions of DAR Lot No. 21 are vacant, and 1/3 of the remaining portion of DAR Lot No. 24 has occupants. The same certification states that the subject parcels of land are covered by a CLOA.

Per Ocular Inspection conducted by the CLUPPI-2 OCI team, the prevailing land use of DAR Lot No. 31 and portions of DAR Lot Nos. 21 and 24 is (*sic*) residential. The rest of the lots are vacant and covered mostly by grass and shrubs. Most of the occupants of DAR Lot Nos. 31, 21, and 24 are workers of the Don Pedro Azucarera located south of the property. Irrigation canals were noted in DAR Lot Nos. 32 and 34.[13]

The DAR Secretary, in an Order dated 26 January 1999, denied the application for exemption in DAR Administrative Case No. A-9999-142-97, basically due to the failure of Roxas & Co. to establish the identity of the six lots subject thereof:

Initially, CLUPPI-2 based their evaluation on the lot nos. as appearing in CLOA [No.] 6654. However, for purposes of clarity and to ensure that the area applied for exemption is indeed part of TCT No. T-60034, CLUPPI-2 sought to clarify with [Roxas & Co.] the origin of TCT No. T-60034. In a letter dated May 28, 1998, [Roxas & Co.] explains that portions of TCT No. T-985, the mother title, with an aggregate area of 1,023.9999 hectares was subdivided into 125 lots pursuant to PD 27. A total of 947.8417 was retained by the landowners and was subsequently registered under TCT No. 49946. [Roxas & Co.] further explains that TCT No. 49946 was further subdivided into several lots (Lot 125-A to Lot 125-P) with Lot No. 125-N registered under TCT No. 60034. Review of the titles, however, shows that the origin of T-49946 is T-783 and not T-985. On the other hand, the origin of T-60034 is listed as 59946, and not T-49946. The discrepancies were attributed by [Roxas & Co.] to typographical errors which were "acknowledged and initialled (*sic*)" by the ROD. Per verification conducted by CLUPPI-2 with the ROD of Nasugbu, Batangas, the discrepancies "acknowledged and initialled (*sic*)" by the ROD cannot be ascertained.

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[13] *Rollo* (G.R. No. 149548), pp. 95-96.

WHEREFORE, premises considered, an exemption clearance for the subject parcels of land covered by CLOA No. 6654 having an area of 51.5472 hectares and situated at Brgys. Cogunan and Lumbagan, Nasugbu Batangas is hereby **DENIED**.[14]

The DAR Secretary likewise denied the Motion for Reconsideration of Roxas & Co. in another Order dated 19 January 2001.

The DAR Secretary ratiocinated that CLOA No. 6654 was still valid and existing, except only as to the three parcels of land subject of CA-G.R. SP No. 36299.[15] This being the case, Roxas & Co. could not file the application for exemption of the six lots in question since the owners thereof were already the farmer-beneficiaries to whom CLOA No. 6654 was issued.

The DAR Secretary also remained steadfast in his earlier finding that the exact identity of the six lots subject of DAR Administrative Case No. A-9999-142-97 cannot be satisfactorily ascertained from the evidence submitted by Roxas & Co.:

Records also indicate that [Roxas & Co.] merely submitted the following Transfer Certificate of Titles (*sic*) registered under the name of Roxas Y Cia:

TCT No.	Lot No.	Area (ha)
60019	125-A	0.5324
60020	125-B	0.2209
60021	125-C	0.2237
60022	125-D	1.1960
60023	125-E	1.4106
	Total	3.5836

The landholdings covered by the aforesaid titles do not correspond to the Certification dated February 11, 1998 of the Housing and

[14] *Id.* at 96-97.

[15] The details of which will be subsequently presented herein under G.R. No. 167845.

Land Use Regulatory Board, the Certification dated September 12, 1996 issued by the Office of the Municipal Planning and Development Coordinator, and the Certifications dated July 31, 1997 and May 27, 1997 issued by the National Irrigation Authority. The certifications were issued for Lot Nos. 21, 24, 28, 31, 32 and 34. Thus, it was not even possible to issue exemption clearance over the lots covered by TCT Nos. 60019 to 60023.

Furthermore, we also note the discrepancies between the certifications issued by HLURB and the Municipal Planning Development Coordinator as to the area of the specific lots.

Lot No.	Area per HLURB	Area perMPDC
21	17.6113	17.6113
24	6.8088	16.8385
28	7.2333	7.2333
31	0.777	
32	1.286	15.7902
34	0.6273	1.286
Total	34.3437	58.7593

With such discrepancy, which appears to be the result of inability to identify specifically the landholdings, it would not be possible for us to grant the exemption clearance applied for.[16]

Roxas & Co. filed with the Court of Appeals a Petition for Review under Rule 43 of the Rules of Court, docketed as **CA-G.R. SP No. 63146**.

The observations of the Court of Appeals in its Decision[17] dated 30 May 2001 were consistent with those of the DAR Secretary. As regards the TCTs submitted by Roxas & Co., the appellate court wrote:

We agree with the DAR that the submission, among others, of the certified true copies of titles of the land subject of the application

[16] *Rollo* (G.R. No. 149548), pp. 101-102.

[17] Penned by Associate Justice Ma. Alicia Austria-Martinez with Associate Justices Hilarion L. Aquino and Jose L. Sabio, Jr., concurring. *Id.* at 54-62.

is necessary in order to ascertain the identity of the owner and of the property applied for exemption.

In the instant case, a perusal of the documents before us shows that there is no indication that the said TCTs refer to the same properties applied for exemption by [Roxas & Co.] It is true that the certifications issued by the Housing and Land Use Regulatory Board (HLURB), Office of the Municipal Planning and Development Coordinator (OMPDC) of Nasugbu, Batangas, and the National Irrigation Administration (NIA), Region IV refer, among others, to DAR Lot Nos. 21, 24, 28, 31, 32 and 34 (*Annexes "E", "F", "G" and "N", pp. 55-57 and 98, Rollo*). But these certifications contain nothing to show that these lots are the same as Lots 125-A, 125-B, 125-C, 125-D and 125-E covered by TCT Nos. 60019, 60020, 60021, 60022 and 60023, respectively. While [Roxas & Co.] claims that DAR Lot Nos. 21, 24 and 31 correspond to the aforementioned TCTs submitted to the DAR no evidence was presented to substantiate such allegation.

Moreover, [Roxas & Co.] failed to submit TCT 634 (*sic*) which it claims covers DAR Lot Nos. 28, 32 and 24 (TSN, April 24, 2001, pp. 43-44).

It is settled that mere allegation is not evidence and the party who alleges a fact has the burden of proving it (*Intestate Estate of the Late Don Mariano San Pedro y Esteban vs. Court of Appeals, 265 SCRA 735, 754*).[18]

The Court of Appeals noted the following discrepancies in the zoning classification of the land in Brgys. Cogunan and Lumbangan where the six lots subject of the application for exemption are supposedly located:

[Roxas & Co.] also claims that subject properties are located at Barangay Cogunan and Lumbangan and that these properties are part of the zone classified as Industrial under Municipal Ordinance No. 4, Series of 1982 of the Municipality of Nasugbu, Batangas. While this claim is affirmed by the Nasugbu OMPDC per certification dated September 12 and 19, 1996 (*Annexes "F" and "N", supra*), a scrutiny of the said Ordinance shows that only Barangays Talangan and Lumbangan of the said municipality were classified as Industrial

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[18] *Id.* at 59.

Zones (*Annex "D", p. 53, Rollo*). Barangays Cogunan was not included. Although there are indications in the said Ordinance that some parts of Barangay Cogunan are classified as residential, thus, non-agricultural, no evidence was submitted by [Roxas & Co.] to prove that portions of the subject properties are located in these areas. In fact, the TCTs submitted by [Roxas & Co.] show that the properties covered by said titles are all located at Barrio Lumbangan (*Annexes "H-1" to "H-5", supra*).[19]

The appellate court discerned finally that while Roxas & Co. claimed that the total area of the six lots subject of its application for exemption was 51.5472 hectares, the certifications of HLURB and OMPDC showed that it was only 49.5066 hectares. In comparison, the aggregate area of the lands covered by TCTs No. 60019 to No. 60023 was 3.5836 hectares. Roxas & Co. was unable to explain these discrepancies.

Hence, the Court of Appeals prescribed that until and unless Roxas & Co. identifies, with certainty, the six lots applied for exemption by showing their exact location and area; and adduces proof sufficient to show that the properties referred to by the TCTs submitted in evidence and the certifications issued by the HLURB, NIA, and the OMPDC of Nasugbu, are identical, the denial by DAR of the application for exemption of Roxas & Co. must be upheld.

Yet, unlike the DAR Secretary, the appellate court still recognized the right of Roxas & Co. to submit additional evidence in support of the latter's application for exemption for the six lots, thus:

However, this does not operate to divest [Roxas & Co.] of its right to present additional evidence before the DAR to substantiate its claim that the subject lots are indeed exempt from the coverage of RA 6657.

Meanwhile, in view of the Supreme Court ruling in *Roxas & Co., Inc. vs. Court of Appeals* (*supra*) recognizing the rights of the farmer-beneficiaries to possess and till the lands awarded them under CLOA 6654, respondent DAR may proceed to install farmer-beneficiaries

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[19] *Id.* at 59-60.

in the lands subject of the present dispute, without prejudice to a final determination of [Roxas & Co.]'s right over subject properties.[20]

The dispositive portion of the 30 May 2001 Decision of the Court of Appeals states:

WHEREFORE, herein petition is **DENIED DUE COURSE** without prejudice to [Roxas & Co.] adducing additional evidence before the DAR for the ascertainment of the identity, exact location and areas of the lands subject of the application for exemption.[21]

The Motion for Reconsideration of Roxas & Co. was denied by the Court of Appeals in its Resolution[22] dated 21 August 2001.

In its Petition for Review under Rule 45 of the Rules of Court, docketed as **G.R. No. 149548**, Roxas & Co. argues before this Court that:

THE ACT OF THE RESPONDENT DAR IN DISPOSSESSING [ROXAS & CO.] FROM ITS LAND, AND ORDERING THE INSTALLATION OF ALLEGED FARMER BENEFICIARIES THEREON IS NULL AND VOID.

THE COURT OF APPEALS EXCEEDED ITS AUTHORITY IN ORDERING THE INSTALLATION OF FARMER BENEFICIARIES UPON [ROXAS & CO.]'S PROPERTY NOTWITHSTANDING THE NULLITY OF THE DAR'S ACTUATIONS[;][23]

and seeks the following from the Court:

WHEREFORE, in view of the foregoing, [Roxas & Co.] prays that a Temporary Restraining Order be immediately issued and thereafter a Writ of Preliminary Mandatory Injunction be issued upon such terms and conditions as the Honorable Court may see fit to impose; and that after proceedings duly taken[,] the REVERSAL and SETTING ASIDE of the Decision of the Hon. Court of Appeals in CA-G.R. No. SP 63146 be ordered, insofar as the same allows

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[20] *Id.* at 61.

[21] *Id.*

[22] *Id.* at 66.

[23] *Id.* at 32.

the respondent DAR to allow installation of farmer-beneficiaries on the land in dispute and insofar as CLOA 6654 is not nullified with respect to the land in dispute; and thereafter that the Preliminary Mandatory Injunction be then made permanent.

Such other relief as may be just and equitable under the premises is also prayed for.[24]

DAMBA-NFSW filed a Motion to cite Roxas & Co. in contempt and for the dismissal of the latter's Petition on the ground of forum-shopping, contending that the six lots sought to be exempted herein were also the subject of CA-G.R. SP No. 82225 (G.R. No. 179650).

G.R. No. 179650

As previously narrated herein, after the Court of Appeals rendered its Decision dated 30 May 2001 and Resolution dated 21 August 2001 in CA-G.R. SP No. 63146, Roxas & Co. filed before this Court a Petition for Review, docketed as G.R. No. 149548, challenging the supposed premature installation of the farmer-beneficiaries to Lots No. 21, No. 24, No. 28, No. 31, No. 32 and No. 34, situated in Brgys. Cogunan and Lumbangan, Nasugbu, Batangas, while awaiting resolution by the DAR of the application of Roxas & Co. for exemption of the six lots in question.

At the same time, Roxas & Co. sought the re-opening by DAR of the proceedings in **DAR Administrative Case No. A-9999-142-97**, so that Roxas & Co. could adduce additional evidence to substantiate the latter's application for CARP exemption of the same six lots, plus Lot No. 36. The DAR Secretary granted the request of Roxas & Co., and conducted further proceedings in DAR Administrative Case No. A-9999-142-97 for the reception of the latter's additional evidence.

On 6 January 2003, the DAR Secretary issued an Order, this time, granting the application of Roxas & Co. for CARP exemption of the original six lots, as well as Lot No. 36. The DAR Secretary deemed it appropriate to include Lot No. 36 in the application

[24] *Id.* at 47.

for exemption since the additional documents presented by Roxas & Co. also covered the said lot.

According to the DAR Secretary, Roxas & Co. was able to establish the identity of all seven lots based on the following evidence:

Records show that subject properties were originally registered under TCT No. T-985. This is shown in the Certification dated 17 June 1998 issued by Alexander Bonuan, Deputy Register of Deeds II, Registry of Deeds, Nasugbu, Batangas. The pertinent portion of said Certification states as follows:

x x x x x x x x x

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

This is to certify that Lot No. 125 of Psd-04016141 (OLT) under TCT No. 49946 is a transfer from TCT-985. Further, it is certified that Lot 125-N Psd-04-046912 under TCT No. T-60034 is a transfer from TCT No. T-49946.

x x x x x x x x x

In a letter dated 18 July 2000 addressed to Director Ricardo R. San Andres, Head, Center for Land Use, Policy, Planning and Implementation (CLUPPI)-2 Secretariat, Deputy Register of Deeds Bonuan clarified that "TCT No. 49946" should read "T.C.T. No. 59946." Attached to said letter is a certified true copy of TCT No. T-59946. A scrutiny of TCT No. T-59946 shows that it covers a parcel of land identified as Lot No. 125 of the subdivision plan Psd-04-016141 with an area of 947.8417 hectares situated in Brgys. Bilaran, Lumbangan, Cogonan and Reparo, Nasugbu, Batangas.

TCT No. T-59946 (Lot No. 125) was subsequently subdivided into various lots including the following:

NEW TCT NO.	LOT NO.	AREA (in has.)
T-60019	125-A	0.5324
T-60020	125-B	0.2209
T-60021	125-C	0.0237
T-60022	125-D	1.1960

T-60023	125-E	1.4106
T-60034	125-N	839.5059

A scrutiny of TCT Nos. T-60019, T-60020, T-60021, T-60022, T-60023 and T-60034 shows that they are transfers from TCT No. T-59946. Furthermore, a Certification dated 6 September 2001 issued by Dante G. Ramirez, Deputy Register of Deeds I, Nasugbu, Batangas, states that the mother title of TCT Nos. T-60019, T-60020, T-60021, T-60022, T-60023 and T-60034 is TCT No. T-985 registered in the name of Roxas Y Cia.

On 15 October 1993, CLOA No. 6654 was issued covering a 513.9863-hectare property previously registered in the name of Roxas & Company, Inc. A photocopy of CLOA No. 6654 shows that DAR Lots Nos. 21, 24, 28, 31, 32, 34 and 36 are covered therein. The corresponding TCTs of said lots are shown in the Certification dated 8 June 2001 issued by MARO Limjoco, Jr., the pertinent portions of which states (*sic*) as follows:

x x x x x x x x x

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

This is to certify that as per verification with available records in this office, the parcels of land situated in Barangay Lumbangan, Nasugbu, Batangas, identified below as DAR lot Numbers used to be covered by the following Transfer Certificate of Title issued by the Registry of Deeds in Nasugbu, Batangas, to wit:

Lot Nos.	Areas (has.)	TCT Nos.
31	0.7770	T-60019
		T-60020
		T-60021
34	1.2860	T-60034
32	15.7902	T-60034
28	7.2333	T-60034
24	5.6128	T-60034
	1.1960	T-60034
21	17.6113	T-60034
	1.4106	T-60034
36	0.6300	T-60034

This is to certify further that the above-mentioned lots are now all covered and portions of CLOA No. 6654.[25]

Now as to whether the seven lots are exempted from CARP coverage, the DAR Secretary answered in the affirmative, analyzing the available evidence as follows:

In the case at hand, the Certification dated 19 September 1996 issued by Reynaldo H. Garcia, Zoning Administrator of Nasugbu, Batangas, states, among others, that Lots Nos. 31, 24, 21, 32, 28 and 34 situated in Brgys. Cogunan and Lumbangan, Nasugbu, Batangas, are within the Industrial Zone based on the Comprehensive Zoning Regulation of Municipal Ordinance No. 4, Series of 1982, approved by the HSRC, pursuant to Resolution No. R-123 dated May 4, 1983. Moreover, a Certification also dated 19 September 1996 issued by Zoning Administrator Reynaldo H. Garcia states that DAR Lot No. 36 with an area of 0.6273 hectares situated in Brgy. Lumbangan, Nasugbu, Batangas, is within the Industrial Zone based on the Comprehensive Zoning Regulation of Municipal Ordinance No. 4, Series of 1982, and approved by HSRC pursuant to Resolution No. R-123 dated May 4, 1983. Moreover, a Certification dated 7 January 1998 issued by Maria Luisa G. Pangan, under authority of the HLURB Board Secretariat, states that Resolution No. 28/Municipal Ordinance No. 4 of the Sangguniang Bayan of Nasugbu, Batangas, dated 18 April 1982, was approved by the HSRC, now the HLURB, under Resolution No. R-123, Series of 1983, dated 4 May 1983. Clearly, the subject properties were already reclassified to industrial use prior to 15 June 1988, hence, are beyond the ambit of the CARP.

However, we note that the Certification dated 19 September 1996 issued by Zoning Administrator Reynaldo H. Garcia with respect to DAR Lot No. 36 only indicates an area of 0.6273 hectares as having been reclassified as part of Industrial Zone pursuant to the Comprehensive Zoning Regulation of Municipal Ordinance No. 4, Series of 1982, approved by HSRC pursuant to Resolution No. R-123 dated 4 May 1983. On the other hand, herein [Roxas & Co.]'s listing and the Certification dated 8 June 2001 issued by MARO Limjoco, Jr., shows that DAR Lot No. 36 has an area of 0.6300 hectare. Because the remaining portion with an area of 0.0027 hectare of DAR Lot No. 36 is not included in the Certification issued by

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[25] *Rollo* (G.R. No. 179650), pp. 125-127.

Zoning Administrator Reynaldo H. Garcia, said portion should be denied for exemption.

This Office finds proper compliance by the [Roxas & Co.] with the requirements for exemption clearance under DAR AO 6 (1994).[26]

As a last note, the DAR Secretary differentiated the present application of Roxas & Co. for exemption of the seven lots in Hacienda Palico, from the application of the same corporation for exemption of the entire Haciendas Caylaway, Banilad, and Palico in DAR Administrative Case No. A-9999-084-00 (G.R. No. 167540 and No. 167543). The DAR Secretary, in an Order dated 22 October 2001, denied the application for exemption in the latter case and directed the DAR field office personnel concerned to immediately proceed with the distribution of the said *haciendas* to qualified farmer-beneficiaries. The DAR Secretary explained herein that:

x x x the grounds for exemption invoked in the present case and the [DAR Administrative Case No. A-9999-084-00] cited above are not the same. The present case involves an application for exemption on the ground that the properties enumerated herein were classified in 1982 for industrial use by the Municipality of Nasugbu, Batangas, which reclassification was approved by the HLURB prior to 15 June 1988. On the other hand, the ground for exemption in ADMIN. CASE No. A-9999-084-00 was an allegation that the properties involved therein were reclassified as tourist zone by virtue of Presidential Proclamation No. 1520. Thus, we find no inconsistency between our findings in the present case and that in ADMIN. CASE NO. A-9999-084-00 as the two (2) cases involves (*sic*) different issues.[27]

Accordingly, the 6 January 2003 Order of the DAR Secretary in DAR Administrative Case No. A-9999-142-97 ended with the following decretal portion:

WHEREFORE, premises considered, the Application for Exemption Clearance from CARP coverage filed by Roxas & Company, Inc., involving seven (7) parcels of land identified as DAR Lots Nos. 21, 24, 28, 31, 32, 34 and 36 (portion only with an area of 0.6273

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[26] *Id.* at 128-129.

[27] *Id.* at 130.

hectares), covered by TCT Nos. T-60019, T-600020, T-60021, T-60022, T-60023 and T-60034 with an aggregate are of 51.5445 hectares located at Brgys. Bilaran, Lumbangan, Cogonan and Reparo, Nasugbu, Batangas, is hereby GRANTED, subject to the following conditions:

1. The farmer-occupants within subject parcels of land shall be maintained in their peaceful possession and cultivation of their respective areas of tillage until a final determination by the concerned Provincial Agrarian Reform Adjudicator has been made on the amount of disturbance compensation due and entitlement of such farmer-occupants thereto;

2. No development shall be undertaken within the subject parcels of land until the appropriate disturbance compensation has been paid to the farmer-occupants. Proof of payment of disturbance compensation shall be submitted to this Office within ten (10) days from such payment; and

3. The cancellation of the CLOA issued to the farmer-beneficiaries shall be subject to a separate proceeding before the Provincial Agrarian Reform Adjudicator of Batangas.

The Order dated 19 January 2001 issued by this Office, in so far as the installation of the farmers-beneficiaries in the areas or portions of subject landholdings, is hereby lifted.[28]

When its Motion for Reconsideration was denied by the DAR Secretary in an Order dated 12 December 2003, DAMBA-NFSW filed with the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Rules of Court, which was docketed **CA-G.R. SP No. 82225**.

The Court of Appeals, in its Decision[29] dated 31 October 2006, adjudged that DAMBA-NFSW availed itself of the wrong

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[28] *Id.* at 130-131.

[29] Penned by Associate Justce Portia Alino-Hormachuelos with Associate Justices Amelita G. Tolentino and Arcangelita Romilla-Lontok, concurring. *Id.* at 399-413.

mode of appeal. It is already settled that judicial review of decisions, orders, or resolutions of the DAR Secretary is governed by Rule 43 of the Rules of Court. By pursuing a special civil action for *certiorari* under Rule 65, rather than the mandatory petition for review under Rule 43, DAMBA-NFSW rendered its case dismissible on the ground of wrong mode of appeal, pursuant to the fourth paragraph of Supreme Court Circular No. 2-90.

Even on the merits, the Court of Appeals found the Petition of DAMBA-NFSW dismissible.

The Court of Appeals agreed with the DAR Secretary that Roxas & Co. did not commit forum-shopping in filing two applications for exemptions: (1) DAR Administrative Case No. A-9999-142-97, involving the seven lots in Hacienda Palico; and (2) DAR Administrative Case No. A-9999-084-00, involving the entire Haciendas Caylaway, Banilad, and Palico, since the two cases were based on different sets of facts and laws.

The appellate court further held that DAMBA-NFSW was not denied due process when DAR heard DAR Administrative Case No. A-9999-142-97, the application of Roxas & Co. for exemption of the seven lots in Hacienda Palico, without notice to DAMBA-NFSW. The procedural defect, if any, was cured by the filing by DAMBA-NFSW of numerous pleadings after the issuance by the DAR Secretary of his Order dated 6 January 2003, granting the application for exemption of Roxas & Co. In particular, DAMBA-NFSW filed a Motion for Reconsideration, Reply to Applicant's Opposition to Oppositor's Motion for Reconsideration, and Sur-Rejoinder. Denial of due process cannot be successfully invoked where a party was given the chance to be heard on his motion for reconsideration.

The Court of Appeals refused to disturb the findings of the DAR Secretary that the seven lots were already non-agricultural prior to the effectivity of the CARL on 15 June 1988 and, thus, exempted from CARP coverage. The grant of exemption from coverage is a matter involving the administrative implementation of the CARP, a matter which is within the exclusive jurisdiction of the DAR Secretary. It behooves the courts to exercise great

caution in substituting their own determination of the issue, unless there is grave abuse of discretion committed by the administrative agency. Under the circumstances of the instant case, the appellate court finds no such abuse on the part of the DAR Secretary.

Given the foregoing premises, the Court of Appeals dismissed the Petition of DAMBA-NFSW.

The appellate court subsequently denied the Motion for Reconsideration of DAMBA-NFSW in a Resolution dated 16 August 2007.

Now DAMBA-NFSW comes before this Court via a Petition for Review under Rule 45 of the Rules of Court, docketed as **G.R. No. 179650**. DAMBA-NFSW grounds its Petition on the following assignment of errors:

1. THE COURT OF APPEALS THIRD DIVISION COMMITTED A SERIOUS REVERSIBLE ERROR IN NOT FINDING RESPONDENT ROXAS & CO. INC. AS HAVING VIOLATED THE RULE AGAINST FORUM-SHOPPING IN FILING A PETITION FOR REVIEW WITH THE SUPREME COURT SECOND DIVISION [G.R. NO. 149548], AS WELL AS IN FILING A PETITION TO RE-OPEN ITS EARLIER PETITION FOR CARP EXEMPTION ON SUBJECT 51.54-HECTARE PROPERTY, ON THE BASIS OF THE SAME RESOLUTIONS OF THE COURT OF APPEALS IN CA-G.R. SP NO. 63146; And

2. THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR IN CONSIDERING MERE CERTIFICATIONS ISSUED BY THE CONCERNED GOVERNMENT AGENCIES AS SUBSTANTIAL COMPLIANCE WITH THE RULES ON GRANTING CARP EXEMPTION CLEARANCE ON SUBJECT PROPERTY, BASED (*sic*) DAR AO 06, S. 1994, PER DOJ OPINION, S. 1990, WITHOUT SUBMITTING THE MUNICIPAL COMPREHENSIVE LAND USE PLAN DELINEATING SUBJECT PROPERTY AS HAVING BEEN RECLASSIFIED INTO NON-AGRICULTURAL USE.[30]

DAMBA-NFSW prays for the Court to reverse and set aside the 31 October 2006 Decision and 16 August 2007 Resolution

[30] *Id.* at 29-30.

of the Court of Appeals in CA-G.R. SP No. 82225; as well as to summarily dismiss the Petition for Review of Roxas & Co. in G.R. No. 149548, pending before another division of the Court, on the ground of forum-shopping.

After Roxas & Co. had filed its Comment to the Petition, DAMBA-NFSW was directed to file its Reply.

G.R. No. 167505

On 29 September 1997, Roxas & Co. filed with the DAR an application for exemption from CARP coverage of nine lots, identified as Lots No. 20, No. 13 (portion), No. 37, No. 19-B, No. 45, No. 47, No. 48-1, No. 48-2, and No. 49, located in Brgys. Cogonan and Biliran, Nasugbu, Batangas, with an aggregate area of 45.977 hectares. All nine lots were part of Hacienda Palico, covered by TCT No. T-985. This application for exemption was docketed as **DAR Administrative Case No. A-9999-008-98**.

However, the DAR had previously placed Hacienda Palico, by compulsory acquisition, under the CARP, and as early as 1993, distributed CLOAs over the same to farmer-beneficiaries. About 15 hectares of the lots subject of DAR Administrative Case No. A-9999-008-98 is covered by CLOA No. 6654 issued collectively to members of DAMBA-NFSW; while the rest is covered by individual CLOAs issued to members of KAMAHARI.

In support of its application for exemption in DAR Administrative Case No. A-9999-008-98, Roxas & Co. submitted the following documents:

1. Letter-application dated 29 September 1997 signed by Elino SJ. Napigkit, for and on behalf of Roxas & Company, Inc., seeking exemption from CARP coverage of subject landholdings;
2. Secretary's Certificate dated September 2002 executed by Mariano M. Ampil III, Corporate Secretary of Roxas & Company, Inc., indicating a Board Resolution authorizing him to represent the corporation in its applications for exemption with the DAR. The same Board Resolution revoked the authorization previously granted to the Sierra

Management & Resources Corporation to represent the applicant corporation;

3. Photocopy of TCT No. 985 and its corresponding Tax Declaration No. 0401;

4. Location and vicinity maps of subject landholdings;

5. Certification dated 10 July 1997 issued by Reynaldo Garcia, Municipal Planning and Development Coordinator (MPDC) and Zoning Administrator of Nasugbu, Batangas, stating that the subject parcels of land are within the Urban Core Zone as specified in Zone A. VII of Municipal Zoning Ordinance No. 4, Series of 1982, approved by the Human Settlements Regulatory Commission (HSRC), now the Housing and Land Use Regulatory Board (HLURB), under Resolution No. 123, Series of 1983, dated 4 May 1983;

6. Two (2) Certifications both dated 31 August 1998, issued by Alfredo Tan II, Director, HLURB, Region IV, stating that the subject parcels of land appear to be within the Residential Cluster Area as specified in Zone VII of Municipal Zoning Ordinance No. 4, Series of 1982, approved under HSRC Resolution No. 123, Series of 1983, dated 4 May 1983;

7. Letter dated 11 November 1994 sent by Alfredo M. Tan II, Director of HLURB, Region IV, addressed to then DAR Regional Director Percival Dalugdug, clarifying the classification of subject parcels of land, the pertinent portion of which reads as follows:

x x x x x x x x x

Art. V. Sec. 3, paragraph A VII or Zone Boundaries of the Zoning Ordinance of Nasugbu describes Neighborhood Units as settlements clusters/areas in the different *barangays* outside of the Poblacion specifically Brgys. Lu(m)bangan, Wawa, Lo(oc), Aga and Bilaran.

In the formulation of the Comprehensive Development Plan, the abovementioned *barangays* emerged as Nodal Growth Barangays, thus, they were highlighted in the Land Use Plan and Zoning Ordinance. **They were classified under Urban Core Zone but categorized further as settlement clusters outside of the Poblacion**. The urban core zone proper is the Poblacion and its expansion areas while the neighborhood

residential areas will be the urbanized areas in the *barangays* by the end of the planning period which is year 2000.

x x x" (Emphasis and underscoring supplied)

8. Two (2) Certifications both dated 8 September 1997 issued by Rolando T. Bonrostro, Regional Irrigation Manager, National Irrigation Administration (NIA), Region IV, stating that the subject parcels of land are not irrigated, not irrigable and not covered by an irrigation project with firm funding commitment;

9. Certification dated 18 January 1999 issued by Manuel J. Limjoco, Jr., Municipal Agrarian Reform Officer (MARO) of Nasugbu, Batangas, stating that the subject parcels of land are not covered by Operation Land Transfer but are covered by Collective Certificates of Land Ownership Award (CLOAs) issued to twenty-three (23) farmer-beneficiaries, more or less;

10. Certification dated 10 September 2001, issued by Manuel J. Limjoco, Jr., MARO of Nasugbu, Batangas, stating that there was failure to reach an amicable settlement on the amount of disturbance compensation to be paid by Roxas & Company, Inc., to the CLOA holders of subject landholdings; and

11. Photocopy of a Petition to fix disturbance compensation filed by Roxas & Company, Inc., duly received on 28 September 2001 by the Provincial Agrarian Reform Adjudicator (PARAD) of Batangas.[31]

The CLUPPI-2 OCI Team submitted its Investigation Report, stating that:

a. Lot Nos. 20, 13 portion, 37 and 19-B with an aggregate area of 30.9025 hectares located at Brgy. Cogonan are mostly planted to sugarcane. Irrigation canals were noted adjacent to said lots. However, said irrigation canals serve the adjoining OLT-covered areas and not the subject parcels of land;

b. Lot Nos. 45, 47, 49, 48-1 and 48-2 with an aggregate area of 15.0746 hectares located at Brgy. Bilaran are also planted to sugarcane and are situated along the Provincial Road. No irrigation system was noted in the area; and

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[31] *Rollo* (G.R. No. 167505), pp. 155-157.

c. The dominant uses of the adjacent areas are residential, institutional and agricultural.[32]

After consideration of the evidence submitted by Roxas & Co. and the Investigation Report of the CLUPPI-2 OCI Team, the DAR Secretary issued an Order dated 6 November 2002, finding substantial compliance by Roxas & Co. with the requirements for exemption clearance under DAR Administrative Order No. 6, series of 1994. The DAR Secretary opined that pursuant to DOJ Opinion No 44, series of 1990, lands already reclassified by a valid zoning ordinance for commercial, industrial, or residential use, which ordinance was approved by the HLURB prior to the effectivity of the CARL on 15 June 1988, no longer needed any conversion clearance. The DAR Secretary thus disposed:

WHEREFORE, premises considered, the Application of Exemption Clearance from CARP coverage filed by Roxas & Company, Inc., involving nine (9) parcels of land identified as Lots Nos. 20, 13 (portion), 37, 19-B, 45, 47, 49, 48-1 and 48-2, which are portions of a landholding covered by Transfer Certificate of Title (TCT) No. 985, with an aggregate area of 45.9771 hectares located at Barangays Cogonan and Bilaran, Nasugbu, Batangas, is hereby **GRANTED**, subject to the following conditions:

1. The farmer-occupants within subject parcels of land shall be maintained in their peaceful possession and cultivation of their respective areas of tillage until a final determination has been made on the amount of disturbance compensation due and entitlement of such farmer-occupants thereto by the PARAD of Batangas;

2. No development shall be undertaken within the subject parcels of land until the appropriate disturbance compensation has been paid to the farmer-occupants who are determined by the PARAD to be entitled thereto. Proof of payment of disturbance compensation shall be submitted to this Office within ten (10) days from such payment; and

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[32] *Id.* at 158.

3. The cancellation of the CLOA issued to the farmer-beneficiaries shall be subject of a separate proceeding before the PARAD of Batangas.

DAMBA-NFSW filed with the DAR Secretary a Motion for Reconsideration of the 6 November 2002 Order, based on the following assertions: (1) the lack of notice to DAMBA-NFSW was in violation of its right to due process, thereby rendering the assailed Order null and void; (2) the application for exemption of Roxas & Co. was in violation of the anti-forum shopping rule considering its pending application for exemption of the entire Hacienda Palico and two other *haciendas*; and (3) the grant of the application for CARP exemption of the nine lots were contrary to law and jurisprudence.

In an Order dated 12 December 2003, the DAR Secretary denied the Motion for Reconsideration of DAMBA-NFSW. He ruled that an application for CARP exemption pursuant to DOJ Opinion No. 44, series of 1994, was non-adversarial or non-litigious in nature. There was nothing in the DARAB Rules that required the giving of notice to occupants of a landholding subject of an application for CARP exemption. There was also no basis to declare that Roxas & Co. violated the rule on forum-shopping since DAMBA-NFSW did not submit evidence showing that the nine lots subject of the present application were identical to those subject of the other application for exemption of Roxas & Co. Moreover, there was a difference in the bases for the two applications for exemption: the present one was based on a DOJ Opinion, while the other was based on a Presidential Proclamation.

DAMBA-NFSW received on 17 December 2003 a copy of the Order dated 12 December 2003 of the DAR Secretary, wherein the latter denied the former's Motion for Reconsideration. Sixty-one days thereafter, on 16 February 2004, DAMBA-NFSW filed with the Court of Appeals a Motion for Extension of Time (To File Petition Under Rule 65), requesting an additional period ending on 1 March 2003 within which to file said Petition. Yet, DAMBA-NFSW filed its Petition for *Certiorari*, docketed as **CA-G.R. SP No. 82226**, only on 3 March 2004.

The Court of Appeals promulgated its Decision[33] on 20 December 2004, dismissing the Petition for *Certiorari* of DAMBA-NFSW. The appellate court held that any decision, order, award, or ruling of the DAR on any agrarian dispute or on any matter pertaining to the implementation of agrarian reform laws may be brought to the Court of Appeals within 15 days from receipt thereof by filing an appeal by *certiorari* under Rule 43 of the Rules of Court, and not by special civil action of *certiorari* under Rule 65. The right of DAMBA-NFSW to file an appeal by *certiorari* under Rule 45 expired on 2 January 2004. *Certiorari* under Rule 65 cannot serve as a substitute for a lost appeal.

The Court of Appeals also pointed out that assuming *arguendo* that *certiorari* under Rule 65 was the proper procedural remedy for the case at bar, DAMBA-NFSW still lost the said remedy due to the delayed filing of its Petition. In its Motion for Extension of Time, DAMBA-NFSW requested for 15 more days or until 1 March 2004 within which to file its Petition for *Certiorari*; but it only did so on 3 March 2004. As a result, the assailed Orders of the DAR Secretary attained finality on 2 March 2004. The power of the appellate court to review under Rule 65 does not carry with it the authority to alter final and, therefore, immutable judgments; nor to restore remedies lost.

Even if the Court of Appeals was to brush aside the procedural infirmities of the Petition, it found that the Orders dated 6 November 2002 and 12 December 2003 of the DAR Secretary in DAR Administrative Case No. A-9999-008-98 were in accord with the facts on record, as well as jurisprudence on the matter, and hence, no abuse of discretion, much more of such a grave nature, could be spoken of in the present case.

The Motion for Reconsideration of DAMBA-NFSW was denied by the Court of Appeals in a Resolution dated 7 March 2005. DAMBA-NSFW received a copy of said Resolution on 11 March 2005.

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[33] Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Roberto A. Barrios and Amelita G. Tolentino, concurring. *Id.* at 67-90.

DAMBA-NFSW twice moved for extension of time within which to file its Petition for Review under Rule 45 of the Rules of Court: first, for 15 days; and second, for another 10 days.

DAMBA-NFSW filed its Petition for Review with this Court, docketed as **G.R. No. 167505**, on 21 April 2005. DAMBA-NFSW alleged that the Court of Appeals committed reversible error in (1) denying the Petition for *Certiorari* of Roxas & Co. in CA-G.R. SP No. 82226 for having been filed two days late; (2) failing to nullify for grave abuse of discretion the Orders of the DAR Secretary issued in violation of the right to due process of DAMBA-NFSW, the rule against forum-shopping, and the doctrine of *res judicata*; and (3) ruling that the DAR Secretary did not commit grave abuse of discretion when he granted the application of Roxas & Co. for exemption of the nine lots despite the latter's failure to present the Comprehensive Land Use Plan of Nasugbu, Batangas.

DAMBA-NFSW prayed in its Petition that the Court render judgment that (1) nullifies, reverses, and sets aside the Decision dated 20 December 2004 and Resolution dated 7 March 2005 of the Court of Appeals in CA-G.R. SP No. 82226, as well as the Orders dated 6 November 2002 and 12 December 2003 of the DAR Secretary in DAR Administrative Case No. A-9999-008-98; and (2) declares the nine lots in dispute to be within CARP coverage and denies the application for CARP exemption of Roxas & Co. for the same properties.

However, in a Resolution dated 29 June 2005, the Court denied the Petition for Review of DAMBA-NFSW for late filing since it was filed beyond the extended period. Also, DAMBA-NFSW failed to show that the Court of Appeals committed any reversible error in the challenged decision and resolution as to warrant the exercise by the Court of its discretionary appellate jurisdiction.

DAMBA-NFSW filed a Motion for Reconsideration of the 29 June 2005 Resolution of this Court. It maintained that difficulty in reproducing the voluminous documents to be attached to the Petition and a computer virus that destroyed its counsel's case files compelled DAMBA-NFSW to seek the additional time for

the filing of its Petition. In meritorious instances, extension is allowed up to a maximum of 30 days. DAMBA-NFSW was able to file its Petition for Review herein without reaching the maximum extended period of 30 days. Most importantly, DAMBA-NFSW asseverated that it has a meritorious case which deserves full ventilation of issues in order to protect the substantive rights of the parties, and dispense real justice and prevent the miscarriage thereof.

In its Comment to the Motion for Reconsideration of DAMBA-NFSW, Roxas & Co. asserted that the former's Petition for Review was indeed filed late and was properly denied by the Court in its 29 June 2005 Resolution. Roxas & Co. invoked A.M. No. 00-2-14-SC which provided that any extension of time to file the required pleading should be counted from the expiration of the period regardless of the fact that said due date is a Saturday, Sunday, or legal holiday. The original 15-day period for DAMBA-NFSW to file its Petition for Review expired on 26 March 2005, a Saturday. The 15-day extension requested for by DAMBA-NFSW should commence immediately upon expiration of the original period on 26 March 2005, ending on 10 April 2005, a Sunday. When DAMBA-NFSW sought another 10-day extension, the same should be counted from 10 April 2005. Hence, DAMBA-NFSW only had until 20 April 2005 within which to file its Petition for Review. When DAMBA-NFSW filed its Petition on 21 April 2005, it was already one day late.

Meanwhile, in its Comment to the Petition of DAMBA-NFSW, Roxas & Co. reiterated its argument that the said Petition was filed late. Additionally, Roxas & Co. argued that the Petition was an unverified pleading that should be dismissed. The Verification attached to the Petition was fatally defective for it did not refer to the contents of said Petition, but to those of a motion for reconsideration. Roxas & Co. further maintained that it did not commit a violation of the rule against forum-shopping; and that the Court of Appeals did not commit any error warranting the reversal of its Decision dated 20 December 2004 and Resolution dated 7 March 2005 in CA-G.R. SP No. 82226.

In both of its Comments, Roxas & Co. prayed for the denial of the Motion for Reconsideration of DAMBA-NSFW of the 29 June 2005 Resolution of this Court, which earlier denied the Petition for Review of DAMBA-NFSW.

C. Petitions for Partial and Complete Cancellation of CLOA No. 6654

G.R. No. 167845

As previously recounted herein, CLOA No. 6654 was issued by the DAR on 15 October 1993 in the collective names of farmer-beneficiaries, who are mostly members of DAMBA-NFSW. It covered an area of 513.9863 hectares of Hacienda Palico, including the following three parcels of land, with an aggregate area of 103.1436 hectares:

Lot No.	TCT No.	Location	Area (hectares)
125-K	TCT No. T-60028	Brgy. Biliran	27.414
125-M	TCT No. T-60032	Sitio Sagbat, Brgy. Lumbangan	37.8648
125-L	TCT No. T-60033	Sitio Lumang Bayan, Brgy. Lumbangan	37.8648
		Total	103.1436

In separate letters dated 14 January 1994 to the MARO, Roxas & Co. protested the inclusion of the afore-mentioned three lots in CLOA No. 6654, and demanded that CLOA No. 6654 be cancelled insofar as the three lots were concerned. Roxas & Co. maintained that by virtue of Nasugbu Municipal Zoning Ordinance No. 4, series of 1982, the three lots were already reclassified to residential and industrial use. The protest of Roxas & Co. was later elevated to the Office of the DAR Regional Director, Region IV, for further proceedings; and then to the Office of the DAR Secretary for final disposition.

In a letter-decision dated 13 July 1994, the DAR Secretary denied the protest of Roxas & Co. and the latter's request for cancellation of CLOA No. 6654 pertaining to the three lots in

Brgys. Biliran and Lumbangan. The DAR Secretary ruled that "only those residential clusters/areas, AFP Camp, Administration building and motor pool, church, schools and cemetery in Bgy. Lumbangan (Sitios Sagbat and Lumang Bayan) and Biliran are exempt from CARP coverage[;]" adding that "actual survey should be done to establish the boundaries of the areas that are deemed exempted from CARP *vis-à-vis* areas that are not."

Roxas & Co. sought reconsideration of the foregoing letter-decision of the DAR Secretary in a letter dated 2 August 1994; but the DAR Secretary denied the Motion in an Order dated 20 December 1994.

Roxas & Co. then filed with the Court of Appeals on 27 January 1995 a Petition for Review under Rule 43 of the Rules of Court, docketed as **CA-G.R. SP No. 36299**.

The Court of Appeals rendered its Decision[34] in CA-G.R. SP No. 36299 on 2 April 1996, favoring Roxas & Co. The appellate court found that the three lots had already been reclassified as residential by Nasugbu Municipal Zoning Ordinance No. 4, enacted in 1982; while the municipal town plan based on said zoning ordinance had been approved by the HRSC, now HLURB, as early as 1983. Therefore, the three lots had long been residential when the CARL took effect on 15 June 1988. The very same lands were also designated by Nasugbu Municipal Ordinance No. 4, series of 1982, as "Medium and Heavy Industrial Zone," which were definitely non-agricultural.

The Court of Appeals brushed aside the argument of the DAR Secretary and officials that certain portions of the three lots in dispute were still being used for agricultural purposes. What mattered was that the three lots had already been reclassified as non-agricultural prior to the effectivity of the CARL.

The Court of Appeals further found merit in the contention of Roxas & Co. that the latter was deprived of due process

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[34] Penned by Associate Justice Arturo B. Buena with Associate Justices Angelina S. Gutierrez and Conrado M. Vasquez, Jr., concurring. *Rollo* (G.R. No. 167845), pp. 60-80.

because; (1) the DAR failed to identify with certainty the land subject of the compulsory acquisition, thereby preventing Roxas & Co. from disputing the issuance of CLOA No. 6654 and from determining the valuation of the land covered by said certificate; and (2) the DAR violated its own procedural guidelines by distributing the land covered by CLOA No. 6654 even before Roxas & Co. received payment of compensation for its property.

The *fallo* of the 2 April 1996 Decision of the Court of Appeals in CA-G.R. SP No. 36299 reads:

> WHEREFORE, the instant petition for review is hereby **GRANTED** and the challenged letter-decision dated July 13, 1994, and the order dated December 20, 1994 of the respondent Secretary of Agrarian Reform, as well as the collective Certificate of Land Ownership Award (CLOA) No. 6654 issued by the same respondent on October 15, 1993 over the three (3) parcels of land herein involved, are hereby **NULLIFIED**, **VACATED** and **SET ASIDE**. No pronouncement as to costs.[35]

The foregoing Decision became final and executory, and entry of judgment was made on 11 April 1997.

Subsequently, relying on the Decision dated 2 April 1996 of the Court of Appeals in CA-G.R. SP No. 36299, Roxas & Co. filed before the PARAD on 26 January 2001 a Petition, docketed as **DARAB Cases No. R-401-003-2001 to No. R-401-005-2001**, praying for the cancellation of CLOA No. 6654 insofar as it covered the same three parcels of land.

It must be noted though that the Decision dated 2 April 1996 of the Court of Appeals in CA-G.R. SP No. 36299 stated that the land area of Lot No. 125-L, covered by TCT No. T-60033, was 37.8648 hectares; while the Petition in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 alleged that the land area of the same lot was slightly smaller at 36.9796 hectares. Consequently, the total land area of the three lots subject of DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 was averred to be 102.2614 hectares.

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[35] *Id.* at 80.

DAMBA-NFSW, on one hand, and the MARO and Provincial Agrarian Reform Officer (PARO), on the other, separately sought the dismissal of DARAB Cases No. R-401-003-2001 to No. R-401-005-2001. They argued that the applications for partial cancellation of CLOA No. 6654 contravened the Decision dated 17 December 1999 of this Court in *Roxas & Co. v. Court of Appeals*, nullifying the acquisition proceedings of DAR over the three *haciendas* of Roxas & Co. for failure of DAR to observe due process therein, and remanding the case to the DAR for proper acquisition proceedings and determination of the application of Roxas and Co. for conversion of the three *haciendas*. They emphasized that this Court refrained from nullifying the CLOAs issued by the DAR, which included CLOA No. 6654, to give DAR the chance to correct itself.

DAMBA-NFSW and the MARO and PARO also invited the attention of the PARAD to DAR Administrative Case No. A-9999-142-97 (G.R. No. 149548 and No. 179650), the application for CARP exemption filed by Roxas & Co. with the DAR, covering Lots No. 21, No. 24, No. 26, No. 31, No. 32, and No. 34, located in Brgys. Cogonan and Lumbangan, Nasugbu, Batangas, with an aggregate area of 51.5472 hectares. They claimed that these six lots are superimposed over Lot No. 125-K, Lot No. 125-M, and Lot No. 125-L, subject of DARAB Cases No. R-401-003-2001 to No. R-401-005-2001, because of a defective subdivision survey. The DAR Secretary denied the application for CARP exemption of Roxas & Co. in DAR Administrative Case No. A-9999-142-97, precisely because the latter was unable to establish with certainty the identity of the six lots subject of said application. The appeal of Roxas & Co. of the denial of its application for exemption of the six lots in DAR Administrative Case No. A-9999-142-97 was then pending before the Court of Appeals, and docketed as CA-G.R. SP No. 63146.[36]

On 21 May 2001, the PARAD issued a Joint Order in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001, granting

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[36] Subsequent events concerning CA-G.R. SP No. 63146 were already recounted in the factual background of G.R. No. 149548 and No. 179650.

the partial cancellation of CLOA No. 6654, insofar as it pertains to Lots No. 125-K, No. 125-M, and No. 125-L.

The PARAD differentiated between *Roxas & Co. v. Court of Appeals* from DARAB Cases No. R-401-003-2001 to No. R-401-005-2001; and explained why the Decision dated 17 December 1999 of this Court in the former case did not bar the applications for partial cancellation of CLOA No. 6654 in the latter, to wit:

> Admittedly, while both cases have but one common essential which is the irregularly generated collective CLOAs, one among which is CLOA No. 6654, however, the causes of action pursued by the suitor and the subject matter, albeit referred to generally as Hacienda Palico, are totally different, separate and distinct when taken in particular. [Roxas & Co.] in the instant petitions is not seeking the cancellation of CLOA 6654 on the ground of lack of due process but on the basis of a previous finding by the appellate Court, being a competent authority, that three parcels of land which were included in CLOA 6654 are actually outside the scope of CARP and on its judicial pronouncement declaring them exempt/excluded therefrom for which very reason, the appellate Court ordered CLOA 6654 "nullified, set aside and vacated" in respect of the said lots. The Supreme Court decision, upon the other hand, ruled for the nullification of the acquisition proceedings for lack of due process and remanding the matter in controversy to the DAR for proper acquisition proceedings and determination of [Roxas & Co.]'s application for conversion in strict accord with the law and its implementing guidelines and procedures but sustaining the CLOAs already issued in order to give DAR the chance or opportunity to correct itself and for the meantime maintaining the subject properties under the stewardship of the actual tillers or cultivators who shall hold the same in trust for the true landowner. By unmistakable implication, what is contemplated by the Supreme Court decision are those lands devoted to or suitable for agriculture (Sec. 4, R.A. 6657) and such lands although devoted to agricultural activity are negotiable for conversion (DAR Adm. No. 07, Series of 1997) by reason of their natural features and/or characteristics but not lands which have already been previously classified for non-agricultural uses (DOJ Opinion No. 44, Series of 1990 in relation to Sec. 3, (c) (*sic*) and judicially declared excluded or exempt from CARP coverage as in the case of the three lots in question. Moreover, the subject parcels of land are not and have

never been in the actual possession, much less under the cultivation, of any member of [DAMBA-NFSW], hence, not being held by any of them in trust for the lawful landowner. Conversely, in any event that there be found any occupant on the exempted premises under claim of any right under existing agrarian laws — the same laws shall warrant his dispossession thereof. In fine, the parcels of land in question being beyond the scope of the CARP are outside the contemplation of the Supreme Court decision. Hence, the said decision should not be made to operate against the cancellation of CLOA 6654 in so far as the three parcels of land in question are concerned which have previously been authorized by competent authority in a judgment that is final and executory.[37]

Under DAR Administrative Order No. 2, series of 1994, CLOAs, whether distributed or not, may be cancelled by order of the PARAD or Regional Agrarian Reform Adjudicator (RARAD) having jurisdiction over the property in accordance with DARAB rules and procedures. Among the recognized grounds for cancellation of CLOAs is that the land covered by the same has been found exempt/excluded from CARP coverage by the DAR Secretary or his authorized representative. Given the final and executory Decision dated 2 April 1996 of the Court of Appeals in CA-G.R. SP No. 36299, declaring Lots No. 125-K, No. 125-M, and No. 125-L exempt from CARP coverage, the PARAD wrote "there is nothing more left to be done by this Adjudicator than the ministerial duty to enforce the Court of Appeals judgment x x x by way of a final order of implementation or execution."[38]

Even though not a party in CA-G.R. SP No. 36299, the PARAD still deemed DAMBA-NFSW bound by the final and executory judgment of the Court of Appeals in said case for the following reasons:

x x x As to the parties bound by the decision sought to be enforced, while [DAMBA-NFSW] and its members appear not to be parties in the Court of Appeals case and that as a general rule, the decision in said case shall only issued against the DAR, by its Secretary, being

[37] *Id.* at 103-105.

[38] *Id.* at 105.

the direct party to the action, nonetheless, said judgment shall extend to them being privies to the [DAR] which is the source or origin of whatever rights or entitlements they now claim under CLOA 6654 insofar as the three (3) parcels of land are concerned and against whom the decision is deemed binding although they are not literally parties to the said action (*St. Dominic Corporation vs. IAC*, 151 SCRA 577, *Cabreros v. Tiro*, 66 SCRA 400).[39]

Lastly, the PARAD addressed the possibility that the three lots held to be exempt from CARP coverage by the Court of Appeals in CA-G.R. SP No. 36299 may include portions of lots subject of other applications for exemption:

In this respect, the Board takes into view [Roxas & Co.]'s pending application for exemption of certain lots covered by the same CLOA portions of which are said to be overlapping the lots already declared exempt considering the fact that the Board had issued a status quo order *pendente lite* over the exempted area which might indeed include portions of the lots treated in the pending application for exemption. It must be recalled, however, that the legal duty of defining the true identity and delineating the metes and bounds of the lots, other than those specifically identified and declared as the ones excluded from CARP coverage by virtue of the Court of Appeals decision, as well as competence to determine whether the same are similarly exempt from CARP coverage belong to the exclusive prerogative of the DAR Secretary and his duly authorized representatives. Nonetheless, for purposes of obtaining the desired results, it is considered judicious that a relocation survey be recommended at the instance of any interested party to be plotted on the approved subdivision survey Psd-04-046912. L.R.C. Record No. 102. Meanwhile, as an ancillary relief to be included in the order of cancellation, the status quo order shall continue to operate with full force and effect over the area encompassed by Lots 125-K, 125-L and 125-M as delineated by their respective technical descriptions as appearing in the approved subdivision survey plan, Psd-04-04-046912, L.R.C. Record No. 102 and as contained and stated in Transfer Certificates of Title Nos. T-60028, T-60033 and T-60032, respectively, in order to protect the said premises from undue invasions by illegal entrees.[40]

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[39] *Id.* at 107.

[40] *Id.* at 108.

The PARAD decreed at the end of the Joint Order dated 21 May 2001:

WHEREFORE, in view of the foregoing considerations, let Order hereby jointly issue:

1. Directing the Register of Deeds [of] Batangas, Nasugbu Office, to effect the partial cancellation of Transfer Certificate of Title No. CLOA-6654, CLOA No. 00158566 of the Registry of Deeds [of] Batangas (Nasugbu) insofar as the same covers Lot 125-K with an area of 27.4170 hectares situated at Brgy. Bilaran, Nasugbu, Batangas; Lot 125-L with an area of 36.9796 hectares located in Brgy. Lumbangan, Nasugbu, Batangas, and Lot 125-M with an area of 37.8648 hectares also located in Brgy. Lumbangan, Nasugbu, Batangas, all of Psd-04046912, L.R.C. Record No. 102 as, respectively, described in and covered by Transfer Certificates of Title Nos. T-60028, T-60033 and T-60032 of the same Registry of Property and which titles are hereby declared subsisting and in full force and effect;

2. Making the status quo order permanent over the area/lots described in Transfer Certificates of Title Nos. T-60028, T-60033 and T-60032 without prejudice, however, to [Roxas & Co.]'s lawful exercise of its right of absolute ownership and its incidents over the parcels of land in question.

No pronouncement as to other relief.[41]

DAMBA-NFSW alleged that on 13 June 2001, it received a copy of the 21 May 2001 Joint Order of the PARAD in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001; that on 28 June 2001, the last of the 15-day reglementary period, it filed via registered mail its Motion for Reconsideration; and that the next day, on 29 June 2001, it filed by personal delivery to the Office of the PARAD an *Ex-Parte* Motion to Admit Attached Additional Copies of Motion for Reconsideration.

On 10 July 2001, the PARAD issued a Joint Resolution in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 (Petition for partial cancellation of CLOA No. 6654, insofar as it concerns the three lots with an aggregate area of 102.2614

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[41] *Id.* at 109.

hectares) **and** DARAB Case No. 401-239-2001 (Petition for total or complete cancellation of CLOA No. 6654, involving the rest of the landholding covered by said certification).[42] The PARAD dismissed for lack of merit the Motions for Reconsideration filed by DAMBA-NFSW in both cases.

DAMBA-NFSW received on 21 August 2001 a copy of the 10 July 2001 Joint Resolution of the PARAD denying its Motions for Reconsideration in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 and DARAB Case No. 401-239-2001. DAMBA-NFSW, intending to seek recourse from DARAB, filed with the PARAD on 5 September 2001 a joint Notice of Appeal for DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 and DARAB Case No. 401-239-2001. Receiving no word from PARAD, DAMBA-NFSW filed four months later, on 2 January 2002 an Urgent *Ex-Parte* Motion to Give Due Course to Appellant's Notice of Appeal and to Admit Attached Joint Memorandum on Appeal.

In an Order dated 19 February 2002 in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001, the PARAD declared that the Motion for Reconsideration and Notice of Appeal of DAMBA-NFSW were filed beyond the 15-day reglementary period based on the following facts:

1) The decision dated May 21, 2001 was received by [DAMBA-NFSW] counsel on June 13, 2001.

2) The motion for reconsideration was filed on June 29, 2001.

3) The denial of the motion for reconsideration was received by [DAMBA-NFSW] counsel on August 21, 2001.

4) The notice of appeal was filed by [DAMBA-NFSW] counsel on September 5, 2001.[43]

The PARAD, thus, dismissed the Notice of Appeal of DAMBA-NFSW.

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[42] The circumstances pertaining to DARAB Case No. 401-239-2001 are presented in more detail under G.R. No. 169163.

[43] *Id.* at 131-132.

DAMBA-NFSW filed a Motion for Reconsideration of the dismissal of its Notice of Appeal, but the PARAD denied the same in an Order dated 22 May 2002, stating that the lack of knowledge of DARAB rules "cannot be considered excusable neglect nor as compelling reason to reconsider the order of dismissal of the appeal."[44]

DAMBA-NFSW then filed with the Court of Appeals a Petition for *Certiorari* and *Mandamus* under Rule 65 of the Rules of Court, docketed as **CA-G.R. SP No. 72198**.

DAMBA-NFSW attributed grave abuse of discretion, amounting to lack or excess of jurisdiction, on the part of the PARAD, in not giving due course to the former's Notice of Appeal. DAMBA-NFSW maintained that it had filed its Motion for Reconsideration on 28 June 2001, and not 29 June 2001. DAMBA-NFSW further questioned the deduction of the days it took to file its Motion for Reconsideration from the 15-day reglementary period for filing an appeal. It averred that the DARAB should not be bound by technical rules, which would result in depriving the hundreds of farmers' family members of substantial justice. Most importantly, DAMBA-NFSW asserted that it had a meritorious case for DARAB to resolve on appeal, particularly:

A) WHETHER OR NOT THE PUBLIC RESPONDENT PARAD OF BATANGAS HAS JURISDICTION TO GIVE DUE COURSE TO [ROXAS & CO.]'S PETITION TO CANCEL CLOA NO. 6654 THE SAME ISSUE HAVING BEEN THOROUGHLY PASSED UPON AND SPECIFICALLY RESOLVED BY THE SUPREME COURT *EN BANC* IN A CASE INVOLVING THE SAME PARTIES AND INVOLVING THE ENTIRE LANDHOLDINGS OF [ROXAS & CO.] INCLUDING THE LANDHOLDINGS SUBJECT MATTER OF THE INSTANT PETITION, ORDERING THAT THE SAME SHOULD NOT BE CANCELLED;

B) WHETHER OR NOT [ROXAS & CO.] IS NOT ENGAGED IN FORUM SHOPPING IN BRINGING THE PETITION FOR CANCELLATION OF CLOA 6654 WITH PUBLIC RESPONDENT PARAD OF BATANGAS WHEN THE

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[44] *Id.* at 133.

PRAYER IS THE SAME AS ITS PETITION EARLIER FILED ON MAY 15, 2000 WITH THE OFFICE OF THE DAR SECRETARY SEEKING TO EXEMPT FROM CARP COVERAGE SUBJECT LANDHOLDINGS, AND THAT IF GRANTED TO EFFECT A CANCELLATON OF CLOA No. 6654 AND OTHER CLOA'S COVERING ITS OTHER LANDHOLDINGS IN NASUGBU, BATANGAS. IN FACT, THE OFFICE OF THE DAR SECRETARY HAS RULED WITH FINALITY ON [ROXAS & CO.]'S PETITION FOR CARP EXEMPTION, DENYING THE SAME FOR LACK OF MERIT AND ORDERS THE ACQUISITION PROCEEDINGS OR NOTICE OF COVERAGE TO PROCEED. HOW THEN CAN THE CLOA'S OF SUBJECT LANDHOLDINGS BE CANCELLED, EXCEPT THROUGH [ROXAS & CO.]'S PENCHANT OF BRINGING SUITS IN VIOLATION OF ANTI-FORUM SHOPPING RULE AS IN THE INSTANT CASE; AND

C) WHETHER OR NOT [ROXAS & CO.] CAN CAUSE FOR THE CANCELLATION OF CLOA NO. 6654 COVERING THE THREE PARCELS OF LANDHOLDINGS (103.1436 HECTARES) ON THE BASIS OF ALLEGED DECISION COURT OF APPEALS THIRD DIVISION EARLIER ISSUED BETWEEEN THE SAME PARTIES AND SAME ISSUES WHICH RESULTED FROM A VOID PROCEEDINGS FOR VIOLATING THE ANTI-FORUM SHOPPING RULE AND THE ILLEGAL ACT OF DAR LITIGATION OFFICER IN CONNIVANCE WITH [ROXAS & CO.] IN NOT APPEALING THE CASE TO THE SUPREME COURT, AND PRIMARILY IN THE LIGHT OF THE SUPREME COURT *EN BANC* DECISION WHICH DECLARED THAT CLOA NO. 6654 CANNOT BE CANCELLED AS THE CASE HAS YET TO BE REMANDED TO THE DAR FOR PROPER ACQUISITION PROCEEDINGS, AND THE FACT THAT THE OFFICE OF THE DAR SECRETARY HAS ALREADY ORDERED FOR THE ISSUANCE OF NOTICE OF COVERAGE ON ALL PRIVATE RESPONDENT'S LANDHOLDINGS IN NASUGBU, BATANGAS.[45]

DAMBA-NFSW prayed that: (1) a temporary restraining order (TRO) be immediately issued to enjoin the PARAD from

[45] *Id.* at 166-168.

implementing the Orders dated 19 February 2002 and 22 May 2002; and (2) after due proceedings, the assailed PARAD Orders be annulled and a new Order be issued commanding the PARAD to transmit the records in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 to the DARAB for the appeal of DAMBA-NFSW.

In its Decision[46] dated 10 September 2004, the Court of Appeals favored DAMBA-NFSW.

The Court of Appeals conceded that under Section 12 of the 1994 DARAB Rules of Procedure, DAMBA-NFSW belatedly filed its Notice of Appeal:

> x x x Hence, assuming that [DAMBA-NFSW] timely filed its motion for reconsideration, the period to file an appeal had already lapsed considering that the filing of a motion for reconsideration only suspends the running of the period within which the appeal must be perfected, and in case of denial of the motion for reconsideration, the movant only has the remainder of the period for appeal, reckoned from receipt of the resolution of denial. In this case, [DAMBA-NFSW] had already exhausted the fifteen day period for appeal when it filed its motion for reconsideration, on the last day of the prescribed period. At the most, [DAMBA-NFSW] only had one (1) day from receipt of a copy of the order denying the motion for reconsideration, within which to perfect its appeal, *i.e.*, excluding the day of receipt and including the next day.[47]

While it is also true that the perfection of appeal within the statutory or reglementary period is not only mandatory, but also jurisdictional, and failure to do so renders the questioned judgment final and executory; the Court of Appeals recounted jurisprudence where the rules on the period of appeal were relaxed in favor of the disposition of cases on the merits. The appellate court ratiocinated that:

> x x x [t]o deny [DAMBA-NFSW]'s appeal with the PARAD will not only affect their right over the parcel of land subject of this petition

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[46] Penned by Associate Justice Rosmari D. Carandang with Associate Justices Andres B. Reyes and Monina Arevalo-Zenarosa, concurring.

[47] *Id.* at 51.

with an area of 103.1436 hectares, but also that of the whole area covered by CLOA No. 6654 since the PARAD rendered a Joint Resolution of the Motion for Reconsideration filed by the [DAMBA-NFSW] with regard to [Roxas & Co.]'s application for partial and total cancellation of the CLOA in DARAB Cases No. R-0401-003 to 005-2001 and R-0401-239-2001. There is a pressing need for an extensive discussion of the issues as raised by both parties as the matter of canceling CLOA No. 6654 is of utmost importance, involving as it does the probable displacement of hundreds of farmer-beneficiaries and their families. This certainly justifies the relaxation of the rules on the period for appeal in order to afford herein petitioners their remedy of appeal, lest it be forgotten that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. The merits of [DAMBA-NFSW]'s appeal before the PARAD deserve[s] a full ventilation of the issues involved, to serve the ends of justice and prevent a grave misconduct thereof.[48]

The dispositive portion of the 10 September 2004 Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the instant petition is GRANTED. The Order of the Provincial Agrarian Reform Adjudicator (PARAD) of Batangas dated 19 February 2002, dismissing [DAMBA-NFSW]'s Notice of Appeal and the Order [dated] 22 May 2002, denying [DAMBA-NFSW]'s Motion for Reconsideration of the earlier order are hereby REVERSED and SET ASIDE. The PARAD of Batangas is ORDERED to give due course to [DAMBA-NFSW]'s appeal in DARAB Case No. R-0401-003 up to 005-2001.[49]

The Court of Appeals denied the Motion for Reconsideration of Roxas & Co. in a Resolution dated 14 April 2005.

Thereafter, Roxas & Co. filed with this Court a Petition for Review under Rule 45 of the Rules of Court, docketed as **G.R. No. 167845**. According to Roxas & Co., the Court of Appeals committed reversible error in granting the Petition for *Certiorari* and *Mandamus* of DAMBA-NFSW, notwithstanding that:

I. THE PARAD'S DENIAL OF DAMBA'S NOTICE OF APPEAL WAS IN ACCORDANCE WITH THE 1994 DARAB RULES.

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[48] *Id.* at 53.

[49] Note from the Publisher: Footnote text not found in the official copy.

II. *CERTIORARI* UNDER RULE 65 IS NOT A SUBSTITUTE FOR A LOST APPEAL. THE REMEDY OF APPEAL WAS AVAILABLE BUT WAS LOST THROUGH DAMBA'S OWN FAULT.

III. THE ALLOWANCE OF THE NOTICE OF APPEAL, WHICH WAS FILED OUT OF TIME, IS NOT A MINISTERIAL DUTY. HENCE, THE WRIT OF *MANDAMUS* DOES NOT LIE.

IV. DAMBA FAILED TO ADVANCE JUSTIFIABLE REASONS WHY MANDATORY AND JURISDICTIONAL RULES ON APPEAL SHOULD BE DISREGARDED.

V. THE FINAL AND EXECUTORY DECISION OF THE COURT OF APPEALS IN CA GR SP NO. 36299, WHICH ANNULLED CLOA NO. 6654 INSOFAR AS IT COVERS THE SUBJECT PROPERTIES, SHOWS THAT DAMBA'S APPEAL IS UNMERITORIOUS.

Roxas & Co. is asking the Court to reverse and set aside the Decision dated 10 September 2004 and Resolution dated 14 April 2005 of the Court of Appeals in CA-G.R. SP No. 72198; and to affirm the Orders dated 19 February 2002 and 22 May 2002 of the PARAD in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001.

The Petition was given due course and the parties have already submitted their Memoranda.

G.R. No. 169163

On 26 January 2001, Roxas & Co. filed before the PARAD a Petition for Cancellation of CLOA No. 6654, docketed as **DARAB Case No. 401-239-2001**. To recall, CLOA No. 6654 covered a total land area of 513.9863 hectares, all located in Hacienda Palico. Roxas & Co. was seeking the cancellation of CLOA No. 6654 as to the rest of the parcels of land still covered thereby after excluding the 102.2614 hectares, which corresponded to the three lots already subject of DARAB Cases No. R-401-003-2001 to No. R-401-005-2001. In other words, Roxas & Co. was petitioning for the total or complete cancellation of CLOA No. 6654.

Roxas & Co. basically grounded its Petition for the total or complete cancellation of CLOA No. 6654 on the alleged nullity of the subdivision survey of the lots covered by CLOA No. 6654, due to technical defects in the conduct of said survey, which only surfaced after the Court of Appeals, in CA-G.R. SP No. 36299, ordered the exemption from CARP coverage of the three lots included in CLOA No. 6654. When Hacienda Palico was compulsorily placed under the CARP, a segregation and subdivision survey was conducted by Engr. Miguel V. Pangilinan (Pangilinan) on 22 April to 24 June 1993. Engr. Pangilinan incorrectly plotted his survey using the old subdivision plan, Psd-04-016141 (OLT), which was already cancelled and superseded on 10 July 1991 by subdivision plan Psd-04-6912, LRC Record 102. And, based on the result of Engr. Pangilinan's defective survey, a new subdivision plan, Bsd-041019-003090 (AR), was approved on 6 October 1993, segregating the 513.9863 hectares subsequently awarded to the farmer-beneficiaries under CLOA No. 6654.

In its Decision dated 27 May 2001, the PARAD found that:

> By and large, the assailed CLOA falls squarely within contemplation of DAR Adm. Order No. 02, Series of 1994. The same was issued on October 15, 1993 and is well within the ten year restrictive period; that just compensation for the properties thereby covered has not as yet been paid the landowner, that the same was generated on the basis of an erroneous survey where the lots therein described are not capable of physical distinction and accurate delineation having been plotted with reference to an already extinct survey plan, thusly, depriving the said CLOA of any tangible basis or material content; hence, devoid of legal existence. In fact, the Supreme Court even found the property being acquired not properly segregated and delineated and non-compliant with the statutory requirement under Sec. 16 of RA 6657 that the property/ies acquired shall be identified.
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> This Board, with due respect to the Supreme Court's ruling to save the CLOAs is of the humble opinion that their preservation will only serve a purpose if and when their contents and efficacy are confirmed with exactitude by the results of the new acquisition proceedings to be undertaken by the DAR in respect of the proper delineation and/or description of the landholdings and the propriety

of their coverage under the CARP. However, in the case of CLOA 6654, based on the evidence on record the lands that would eventually be found proper for final coverage under the CARP will not be as described in the said title: Firstly, by reason of the exclusion of the exempted area; Secondly, due to technical errors in the identification and plotting of the lots resulting in a false subdivision survey. CLOA 6654, for these reasons, now, serves no legal purpose.

Furthermore, considering that the remaining 410.8327-hectares of land covered by CLOA 6654 have yet to pass under the proper acquisition and/or conversion proceedings as ordered by the Supreme Court then no title has as yet been acquired by the DAR over the said properties and, consequently, no proprietary rights to extend to the [DAMBA-NFSW members] under the CLOA which, as yet does not evidence any title, or create any right in favor of the [DAMBA-NFSW members], hence, is devoid of any legal efficacy and effectively non-existing. For practical reasons, to cancel CLOA 6654 will pave the way for a smooth, unobstructed and expeditious re-processing of the compulsory acquisition by erasing all traces of past irregularities, technical errors and lapses of procedure and taking off from a fresh start. Moreover, the cancellation of the subject CLOA shall be without adverse effect to the continuous possession and cultivation of the tillers in place who shall hold the landholdings meanwhile in trust for [Roxas & Co.] as the true landowner in complete accord with the ruling of the Supreme Court.

The decretal portion of the 27 May 2001 Decision of the PARAD in DARAB Case No. 401-239-2001 is reproduced in full below:

WHEREFORE, premises considered, Judgment is hereby rendered:

1. Finding and declaring the issuance of CLOA 6654 not in accordance with the mandate of Sec. 16, RA 6657 thereby effectively circumventing the implementation of the CARP;

2. Finding CLOA 6654 to be fictitious/null and void having been generated on the basis of a subdivision survey which was plotted on a survey plan which has already been previously cancelled, superseded and extinct, accordingly,

3. Ordering the cancellation of CLOA 6654, as prayed for by [Roxas & Co.], without prejudice, however, to the execution of the proper subdivision survey for purposes of delineating accurately

the boundaries of the properties subject of acquisition proceedings for purposes of determining their coverage under the CARP or their negotiability for conversion and/or exclusion from the Program.

No pronouncement as to other relief.

After receiving a copy of the foregoing PARAD judgment on 13 June 2001, DAMBA-NFSW alleged that it filed its Motion for Reconsideration by registered mail on 28 June 2001. It then filed personally before the PARAD additional copies of the same Motion for Reconsideration the next day, 29 June 2001.

DAMBA-NFSW contended in its Motion for Reconsideration that: (1) Roxas & Co. violated the rule against forum-shopping in filing before the PARAD the instant Petition for cancellation of CLOA No. 6654, even when Roxas & Co. already made a similar request, which was denied by the Court *en banc*, in *Roxas & Co. v. Court of Appeals*, despite the procedural lapses committed by the DAR in the acquisition proceedings; (2) the PARAD committed grave abuse of discretion amounting to lack or excess of jurisdiction in arrogating to herself the exclusive jurisdiction of the DAR Secretary over applications for CARP exemption or land conversion; and (3) even assuming for the sake of argument that the subdivision plan, used as basis for CLOA No. 6654, was erroneous, the parties had relied on the same in good faith, and the farmer-beneficiaries should not be made to suffer for the procedural lapse of the DAR.

As has been previously narrated under G.R. No. 167845, the PARAD issued on 10 July 2001 a Joint Resolution dismissing the Motions for Reconsideration of DAMBA-NFSW in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 (Petition for partial cancellation of CLOA No. 6654) and DARAB Case No. 401-239-2001 (Petition for total or complete cancellation of CLOA No. 6654). After receipt of said Joint Resolution on 21 August 2001, DAMBA-NFSW, wanting to appeal its cases to the DARAB, filed with the PARAD on 5 September 2001 a joint Notice of Appeal. When PARAD failed to act on its Notice of Appeal for four months, DAMBA-NFSW filed with the PARAD on 2 January 2001 an Urgent *Ex-Parte* Motion to Give Due

Course to Appellant's Notice of Appeal and to Admit Attached Joint Memorandum on Appeal.

The PARAD, in an Order dated 27 February 2002, in DARAB Case No. 401-239-2001, refused to give due course to the Notice of Appeal of DAMBA-NFSW since it was filed beyond the 15-day reglementary period, considering that:

1) The decision dated May 27, 2001 was received by [DAMBA-NFSW] counsel on June 29, 2001.

2) The motion for reconsideration was filed on June 29, 2001.

3) The denial of the motion for reconsideration was received by appellant counsel on August 21, 2001.

4) The notice of appeal was filed by appellant counsel on January 9, 2002.

Consequently, the PARAD dismissed the Notice of Appeal of DAMBA-NFSW. DAMBA-NFSW filed a Motion for Reconsideration of the dismissal of its Notice of Appeal, but said Motion was denied by the PARAD in an Order dated 26 July 2002.

DAMBA-NFSW subsequently filed with the Court of Appeals a Petition for *Certiorari* and *Mandamus* under Rule 65 of the Rules of Court, docketed as **CA-G.R. SP No. 75952**. DAMBA-NFSW presented in this Petition substantially the same averments and arguments as those in its Petition in CA-G.R. SP No. 72198, with a closely identical prayer that sought: (1) the immediate issuance of a TRO to enjoin the PARAD from implementing the Orders dated 27 February 2002 and 26 July 2002; and (2) after due proceedings, the nullification of the assailed PARAD Orders and the issuance of a new Order commanding the PARAD to transmit the records in DARAB Case No. 401-239-2001 to the DARAB for the appeal of DAMBA-NFSW.

The Court of Appeals, in its Decision[50] dated 23 February 2005, withheld its judgment on the merits as it dismissed the

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[50] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo, concurring.

Petition of DAMBA-NFSW for having been prematurely filed. The proper recourse of DAMBA-NFSW was to first elevate its appeal of the assailed PARAD Orders to the DARAB, because as can be gleaned from Section 1, Rule XIV of the DARAB Rules of Procedure, judicial review by way of *certiorari* to the Court of Appeals may only be made on decisions, orders, or rulings on any agrarian dispute, rendered by the DARAB, not the RARAD or PARAD.

In a Resolution dated 3 August 2005, the appellate court denied the Motion for Reconsideration of DAMBA-NFSW.

In this Petition for Review under Rule 45 of the Rules of Court, docketed as **G.R. No. 169163**, DAMBA-NFSW asserts that it had no other plain, speedy, and adequate remedy from the PARAD Orders dated 27 February 2002 and 26 July 2002, except the filing before the Court of Appeals of a Petition for *Certiorari* under Rule 65 of the Rules of Court. Grave abuse of discretion on the part of the PARAD is not one of the grounds recognized in the 1994 DARAB Rules of Procedure for filing an appeal before the DARAB. Granting *arguendo* that the Petition in CA-G.R. SP No. 75952 was prematurely filed, still, the Court of Appeals should have relaxed the application of procedural rules in view of the exceptional circumstances of the case.

DAMBA-NFSW prays that the Court reverse, annul, and set aside the 28 February 2005 Decision and 3 August 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 75952; and direct the PARAD to give due course to the Notice of Appeal and Memorandum of Appeal of DAMBA-NFSW.

In a Resolution dated 19 October 2005, the Court denied the instant Petition for absence of reversible error committed by the appellate court. DAMBA-NFSW moved for reconsideration of the denial of its Petition, with prayer to submit its case to the Court *en banc* and to set the same for oral argument. In another Resolution dated 14 August 2006, the Court held in abeyance its action on the Motion for Reconsideration of DAMBA-NFSW, pending resolution of the other pending cases involving the CARP exemption of the properties of Roxas & Co. in Nasugbu.

All seven Petitions, *i.e.*, G.R. No. 167540, No. 167543, No. 149548, No. 179650, No. 167505, No. 167845, and No. 169163, being related, were eventually consolidated for uniformity and consistency of rulings. They were referred to the Court *en banc* and set for oral arguments on 7 July 2009. After the oral arguments, the parties submitted their Memoranda.

Other than filing their Petitions for Intervention, the Sangguniang Bayan and ABC of Nasugbu, no longer participated in the proceedings before this Court, despite due notice. They did not appear during the oral arguments or submitted their Memoranda. The Court, in the exercise of its discretion to allow or disallow the intervention of a third party to the suit, should choose the latter, it being evident in the non-participation of the Sangguniang Bayan and ABC of Nasugbu that they are no longer interested to pursue their Petitions-in-Intervention in G.R. No. 167540 and No. 167543.

II

ISSUES FOR RESOLUTION

The fundamental issues to be resolved by this Court are the following:

(1) Whether all parcels of land located in the municipality of Nasugbu, Batangas, had been reclassified for non-agricultural uses by virtue of Presidential Proclamation No. 1520, thus, exempting the same, including Haciendas Caylaway, Banilad, and Palico, owned by Roxas & Co., from CARP coverage;

(2) Whether certain parcels of land located in Hacienda Palico, Nasugbu, Batangas, owned by Roxas & Co., had been reclassified for non-agricultural uses by virtue of the Nasugbu Municipal Zoning Ordinance No. 4, series of 1982, thus, exempting the same from CARP coverage;

(3) Whether Roxas & Co. can seek the cancellation of CLOA No. 6654 despite the 17 December 1999 Decision of this Court in G.R. No. 127873, *Roxas & Co. v. Court of Appeals*; and if said issue is answered in the affirmative, whether the appeal to the DARAB by DAMBA-NFSW of the partial and complete

cancellations of CLOA No. 6654 ordered by the PARAD should be given due course; and

(4) Whether Roxas & Co. had committed forum-shopping and/or splitting of causes of action.

III

THE RULING OF THIS COURT

A. CARP Exemption of the Three *Haciendas* based on Presidential Proclamation No. 1520 (G.R. No. 167540 and No. 167543)

In DAR Administrative Case No. A-9999-084-00, Roxas & Co. applied for the exemption of Haciendas Caylaway, Banilad, and Palico, under DAR Administrative Order No. 6, series of 1994. Said administrative order provides for the guidelines for the issuance of exemption clearances based on Section 3(c) of the CARL and DOJ Opinion No. 44, series of 1990.

CARL, in general, covers all public and private agricultural lands. Section 3(c) of the CARL defines an agricultural land as land devoted to agricultural activity[51] and not classified as mineral, forest, residential, commercial, or industrial land.

The approval or disapproval of the conversion of agricultural lands for non-agricultural uses shall be subject to the exclusive authority of the DAR.[52] However, according to DOJ Opinion No. 44, series of 1990, the DAR may only exercise its authority to approve conversion of agricultural lands to non-agricultural uses from the date of effectivity of the CARL on 15 June 1988. Necessarily, lands already classified as commercial, industrial,

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[51] Agriculture, agricultural exercise, or agricultural activity is defined, in turn, by Section 3(b) of the CARL as the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry or fish, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical.

[52] Section 5(l) of Executive Order No. 129-A, "Modifying Executive Order No. 129 Reorganizing and Strengthening the Department of Agrarian Reform and for Other Purposes."

or residential, before 15 June 1988, no longer need a conversion clearance[53] from the DAR. Instead of a conversion clearance, such land shall be issued an exemption clearance by the DAR.

Roxas & Co. claims that their three *haciendas*, located in Nasugbu, Batangas, are exempt from CARP coverage because prior to the effectivity of the CARL on 15 June 1988, the whole Municipality of Nasugbu, Batangas, together with the Municipalities of Maragondon and Ternate in Cavite, were declared a tourist zone and, thus, reclassified for non-agricultural uses by virtue of Presidential Proclamation No. 1520, issued on 28 November 1975. In other words, Roxas & Co. asserts that Presidential Proclamation No. 1520 automatically reclassified all the lands in the three Municipalities for non-agricultural uses, with the only exception of military reservations within the zone.

On the other hand, KAMAHARI and DAMBA-NFSW, together with the DAR, aver that there has been no automatic reclassification of the entire Nasugbu by Presidential Proclamation No. 1520. The PTA still needs to identify the specific areas within the municipalities that will be developed for tourism purposes.

I agree with Roxas & Co.

A careful scrutiny of Presidential Proclamation No. 1520 reveals that the declaration of the three Municipalities as a tourist zone consequentially translates to the classification of all lands therein to tourism and, therefore, non-agricultural uses.

The full text of Presidential Proclamation No. 1520 is presented below:

PRESIDENTIAL PROCLAMATION NO. 1520

DECLARING THE MUNICIPALITIES OF MARAGONDON AND TERNATE IN CAVITE PROVINCE AND THE MUNICIPALITY OF NASUGBU IN BATANGAS AS A TOURIST ZONE, AND FOR OTHER PURPOSES

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[53] Rules of procedure governing the processing and approval of applications for land use conversion were laid down by DAR Administrative Order No. 2, series of 1990.

WHEREAS, certain areas in the sector comprising the Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas have potential tourism value after being developed into resort complexes for the foreign and domestic market; and

WHEREAS, it is necessary to conduct the necessary studies and to segregate specific geographic areas for concentrated efforts of both the government and private sectors in developing their tourism potential;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby **declare the area comprising the Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas Province as a tourist zone under the administration and control of the Philippine Tourism Authority (PTA) pursuant to Section 5 (D) of P.D. 564**.

The PTA shall identify **well-defined geographic areas** within the zone with potential tourism value, wherein **optimum use of natural assets and attractions, as well as existing facilities and concentration of efforts and limited resources** of both government and private sector may be affected and realized in order to generate foreign exchange as well as other tourist receipts.

Any **duly established military reservation** existing within the zone shall be **excluded** from this proclamation.

All proclamation, decrees or executive orders inconsistent herewith are hereby revoked or modified accordingly.

Right after the enacting clause[54] is the very purpose of Presidential Proclamation No. 1520, as it is also stated in its title: the declaration by former President Marcos of "the area comprising the Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas Province as a tourist zone under the administration and control of the Philippine Tourism Authority (PTA)."

There is no mistaking the plain and clear intent of Presidential Proclamation No. 1520. It declares the whole of the Municipalities

[54] The enacting clause is that part of a statute which states the authority by which it is enacted. (Ruben E. Agpalo, *STATUTORY CONSTRUCTION* [5th edition, 2003], p. 14)

of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas Province as a tourist zone. The presidential issuance, without qualification, refers to the "area comprising" the three Municipalities as "a tourist zone," which can only mean that the contiguous Municipalities are to form a single tourist zone.

There is nothing in Presidential Proclamation No. 1520 to support the position of KAMAHARI, DAMBA-NFSW, and DAR, that the tourist zone should be limited to the specific areas within the three Municipalities identified by the PTA to have potential tourism value. In such a case, there could not just be one tourism zone, but several tourism zones. Even a cursory reading of Presidential Proclamation No. 1520 readily reveals that it never used the plural term "tourism zones." Notice should also be given to the fact that according to Presidential Proclamation No. 1520, PTA is to identify "well-defined geographic areas **within** the zone;" which connotes that the well-defined geographic areas, which PTA must identify, is different from, and are actually smaller areas that are supposed to be part of, the tourist zone. What is the sense of first declaring the larger area as a tourist zone, and only thereafter identifying certain well-defined areas with potential tourism value within the zone?

The only rationale behind the directive in the fourth paragraph of Presidential Proclamation No. 1520, for PTA to identify such well-defined geographic areas with potential tourism value, is explained in the very same paragraph. It is so that the "optimum use of natural assets and attractions, as well as existing facilities and concentration of efforts and limited resources of both government and private sector may be affected and realized in order to generate foreign exchange as well as other tourist receipts." Otherwise and more simply stated, PTA is to identify the well-defined geographic areas where the facilities, efforts, and limited resources of the Government and the private sector may be concentrated, focused, and optimized, so as to generate profit from tourism. These areas will only enjoy priority, but it does not mean that all other areas in Maragondon, Ternate, and Nasugbu, will no longer be developed for tourism purposes. Going back to the chief intent of Presidential Proclamation No.

1520, it is to make all three Municipalities a tourist zone, not just certain areas thereof.

Basic is the rule of statutory construction that when the law is clear and unambiguous, the Court is left with no alternative but to apply the same according to its clear language. There cannot be any room for interpretation or construction in the clear and unambiguous language of the law. This Court had steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms, interpretation being called for only when such literal application is impossible. No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application. Where a requirement or condition is made in explicit and unambiguous terms, no discretion is left to the judiciary. It must see to it that its mandate is obeyed.[55]

The reference of KAMAHARI, DAMBA-NFSW, and DAR to the "Whereas clauses" or the preamble of Presidential Proclamation No. 1520 does little to support their case. *First*, the preamble is not an essential part of a statute. Hence, where the meaning of a statute is clear and unambiguous, the preamble can neither expand nor restrict its operation, much less prevail over its text. Nor can a preamble be used as basis for giving a statute a meaning not apparent on its face.[56] It neither enlarges nor confers powers.[57] *Second*, the preamble is not really inconsistent with the body of Presidential Proclamation No. 1520. The certain geographic areas with potential tourism value which needed to be segregated, according to the preamble; are the same well-defined geographic areas with potential tourism value that the PTA must identify, per the directive in the body

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[55] *Security Bank and Trust Company v. Regional Trial Court of Makati*, Branch 61, G.R. No. 113926, 23 October 1996, citing *Quijano v. Development Bank of the Philippines*, G.R. No. L-26419, 16 October 1970.

[56] Ruben E. Agpalo, *STATUTORY CONSTRUCTION* [5th edition, 2003], p. 80, citing *People v. Garcia*, 85 Phil. 663 (1950).

[57] See *Kuwait Airways Corporation v. Philippine Airlines, Inc.*, G.R. No. 156087, 8 May 2009.

of Presidential Proclamation No. 1520. And, there is still nothing in the preamble to establish that the intent of Presidential Proclamation No. 1520 is to make only such geographic areas, rather than the whole of the three Municipalities, the tourist zone.

Furthermore, Presidential Proclamation No. 1520 has only one express exclusion from its coverage, *i.e.*, duly established military reservation existing within the zone. Such a military reservation is to remain as such and not to be developed for tourism purposes. This also means that the rest of the lands in Maragondon, Ternate, and Nasugbu, other than an established military reservation, are subject to tourism development. A maxim of recognized practicality is the rule that the expressed exception or exemption excludes others. *Exceptio firmat regulim in casibus non exceptis*. The express mention of exceptions operates to exclude other exceptions; conversely, those which are not within the enumerated exceptions are deemed included in the general rule.[58]

A closer scrutiny of the Letter of Instructions No. 352, issued by former President Marcos on 23 December 1975, divulges an intent that is quite opposite what Associate Justice Aliño-Hormachuelos ascertained in her dissent in CA-G.R. SP No. 72131. Letter of Instructions No. 352, in actuality, confirms that the entire three Municipalities of Maragondon, Ternate, and Nasugbu are to be devoted, as a tourist zone, to tourism development, not just certain areas thereof.

Letter of Instructions No. 352 fully reads:

TO: All Concerned

The Director of Lands shall survey and prepare a technical description of the **tourist zone**, which survey and technical description shall be considered an integral part of Proclamation No. 1520 dated November 28, 1975 declaring the **Maragondon-Ternate-Nasugbu Tourist Zone**.

The Philippine Tourism Authority shall formulate a development plan, in coordination with the Department of Tourism and other

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[58] *Spouses Tibay v. Court of Appeals*, G.R. No. 119655, 24 May 1996.

government agencies and the local governments exercising political jurisdiction, or preparing sectoral plans, over the area; formulate and implement zoning regulations, including building codes and other restrictions as may be necessary within a **tourist zone** to control its orderly development; and enforce adherence to the approved zone development plan, subject to the penalties provided in Sec. 39 of P.D. 564.

The Philippine Tourism Authority shall submit the zone development plan through the Department of Tourism and the National Economic & Development Authority to the President for review and approval before the same is enforced and/or implemented.

Department Heads and heads of Government-owned and controlled corporations, Government agencies and instrumentalities directed to **cooperate with and assist** the Philippine Tourism Authority in making comprehensive technical, financial, market, socio-economic, regional development and other studies of the Tourist Zone within the limits of their capability and authority. (Emphases ours.)

The very first sentence of the first paragraph of Letter of Instructions No. 352 mandates the Director of Lands to survey and prepare a technical description of the tourist zone, which it specifically identified as the Maragondon-Ternate-Nasugbu Tourist Zone. It must be stressed that the directive here is addressed to the Director of Lands, not the PTA; and it is to survey and prepare a technical description of the whole zone, not just well-defined geographical areas within the zone with potential tourism value.

What the second and third paragraphs of Letter of Instructions No. 352 essentially require the PTA to do is to formulate and submit a zone development plan. The zone, which such development plan shall cover, is none other than the Maragondon-Ternate-Nasugbu Tourist Zone, consistent with the first paragraph of the said letter of instructions.

The fourth paragraph of Letter of Instructions No. 352 affirms the authority and control of the PTA over the entire tourist zone, explicitly directing "Department Heads and heads of Government-owned and controlled corporations, Government

agencies and instrumentalities" to cooperate with and assist the PTA in the development of the zone.

Letter of Instructions No. 352 is obviously concerned with the development of the whole Maragondon-Ternate-Nasugbu Tourist Zone, there being no mention at all of well-defined geographic areas with potential tourism value. The identification and segregation of such geographic areas — which shall be the priority, but not the only, areas for tourism development — can already be included by the PTA in the zone development plan which it is required by Letter of Instructions No. 352 to prepare and submit to the President, through the DOT.

The clear and unambiguous words of Presidential Proclamation No. 1520, establish that the entire Municipalities of Maragondon, Ternate, and Nasugubu, have been declared a tourist zone; and all lands within the tourist zone, excluding only established military reservation, are to be developed for tourism purposes. This consequently means that even agricultural lands — which are not expressly exempted by Presidential Proclamation No. 1520 — are to be devoted to tourism, hence, non-agricultural uses.

Closely similar to the circumstances of the present Petitions are the cases of *Natalia Realty, Inc. v. DAR*[59] and *NHA v. Allarde*.[60] In *Natalia Realty, Inc. v. DAR*, Presidential Proclamation No. 1637, which was issued on 18 April 1977, identified parcels of land that were added to a townsite reservation in the Municipalities of Antipolo and San Mateo in Rizal Province, established for the purpose of providing additional housing to the burgeoning population of Metro Manila. In *NHA v. Allarde*, Presidential Proclamation No. 843, which was issued on 26 April 1971, reserved parcels of land in the Tala Estate for the housing and resettlement program of the NHA. In both *Natalia Realty, Inc. v. DAR* and *NHA v. Allarde*, the Court deemed the erstwhile agricultural lands to have been reclassified to non-agricultural uses by the mere issuance of the foregoing presidential proclamations. Since said parcels of land were already reclassified

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[59] *Supra* note 4.

[60] *Supra* note 5.

as non-agricultural prior to the effectivity of the CARL on 15 June 1988, then they were exempt from CARP coverage.

KAMAHARI, DAMBA-NFSW and DAR attempt to bring the Petitions at bar out of the ambit of *Natalia Realty, Inc. v. DAR* and *NHA v. Allarde* by arguing that Presidential Proclamations No. 1637 and No. 843 identified the parcels of land in *Natalia Realty, Inc. v. DAR* and *NHA v. Allarde*, respectively, by their technical descriptions; and in contrast, Presidential Proclamation No. 1520 generally declares the Municipalities of Maragondon, Ternate, and Cavite, as a tourist zone, leaving it to the PTA to identify and delineate the specific areas with potential tourism value.

The foregoing argument is hardly persuasive.

Yet again, a more thorough review of the two judicial precedents will disclose that only Presidential Proclamation No. 1637 in *Natalia Realty, Inc. v. DAR* strictly provided a technical description of the parcels of land it added to the townsite reservation. The technical description in Presidential Proclamation No. 843 in *NHA v. Allarde* covers the entire Tala Estate, but the parcels of land subject matter of the case, which were reserved for housing and resettlement sites, were described no more particularly than the "remaining five hundred ninety eight (598) hectares" after prior allocation of the other areas of the Estate for the leprosarium and settlement site of the hansenites and their families, National Housing Corporation plant, civic center, and welfare projects of the Department of Social Welfare. Indeed, Presidential Proclamation No. 843 includes a statement that the "[m]ore precise identities of the parcels of land allocated above will be made after a final survey shall have been completed, x x x"

More importantly, Letter of Instructions No. 352, in furtherance of Presidential Proclamation No. 1520, mandates the Director of Lands to survey and prepare the technical description of the Maragondon-Ternate-Nasugbu Tourist Zone, "which survey and technical description shall be **considered an integral part** of Proclamation No. 1520 dated November 28, 1975." Hence, just like Presidential Proclamation No. 843 in *NHA v. Allarde*, the technical description of the tourist zone declared by the

Presidential Proclamation No. 1520 is still to follow. It does not detract or prevent though the reclassification of the agricultural lands undeniably located within the tourist zone to non-agricultural uses.

Failure of the Director of Lands to provide the technical description of the Maragondon-Ternate-Nasugbu Tourist Zone should not affect the effectivity of Presidential Proclamation No. 1520. Letter of Instructions No. 352 only said that the technical description of the Tourist Zone shall form part of Presidential Proclamation No. 1520, but it did not say that the lack of the former shall suspend the effectivity of the latter. And even absent the technical description of the tourist zone, it is undisputed that it includes the whole Municipality of Nasugbu, and that the three *haciendas* of Roxas & Co. are located within Nasugbu; *ergo*, the three *haciendas* are part of the tourist zone.

KAMAHARI, DAMBA-NFSW, and DAR, in addition, call attention to the definition of reclassification as the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, or commercial.[61] They contend that the lands involved in *Natalia Realty, Inc. v. DAR* and *NHA v. Allarde* were reserved for specific non-agricultural uses, unlike in Presidential Proclamation No. 1520 which merely declared the three Municipalities a tourist zone.

KAMAHARI, DAMBA-NFSW, and DAR fail to understand that the essential point in reclassification is that agricultural lands are henceforth to be specifically utilized **for non-agricultural uses**, regardless of whether such uses be residential, industrial, or commercial. When parcels of land are declared to be in a tourist zone, they are already specially devoted to tourism purposes, which unmistakably constitute non-agricultural, rather than agricultural, uses.

Lands devoted to agricultural uses are subject to CARP, and owners of such lands need to consider the rights of tenants, farmers, and farmworkers. These are burdens not imposed upon owners of lands devoted to non-agricultural uses. As these cases

[61] *Alarcon v. Court of Appeals*, G.R. No. 152085, 8 July 2003.

demonstrate, the existence of agricultural lands are incompatible with tourism development, for it limits and delays the latter, which may ultimately discourage investors; thus, defeating the purpose for establishing a tourist zone.

Now as to whether particular parcels of land within the tourist zone are to be used as residential, industrial, or commercial (but still in furtherance of tourism purposes), it can be subsequently determined under the zone development plan which, according to Letter of Instructions No. 352, the PTA must formulate in coordination with the DOT, LGUs, and other government agencies.

While *Natalia Realty, Inc. v. DAR* and *NHA v. Allarde* may be applied as judicial precedents in this case, the same cannot be said for *DAR v. Franco.*[62]

DAR v. Franco involved Presidential Proclamation No. 2052 that declares as a tourist zone the Barangays of Sibugay, Malubog, Babag and Sirao, including the proposed Lusaran Dam in the City of Cebu, and the Municipalities of Argao and Dalaguete in the Province of Cebu. Franco, the landowner, protested the MARO and PARO orders fixing provisional leasehold rentals for his 36.8-hectare land in Babag, Cebu City. Franco argued that by virtue of Presidential Proclamation No. 2052, issued on 30 January 1981, his land was already reclassified as non-agricultural, prior to the effectivity of the CARL on 15 June 1988, thus, exempting said property from CARP coverage. The DARAB ruled in Franco's favor, but one DARAB member made a handwritten note under his signature stating that Franco would still have to apply for conversion and if granted, the occupants of his land would be entitled to disturbance compensation. Franco appealed to the Court of Appeals questioning the handwritten note of the DARAB member. The Court of Appeals ruled that Franco did not have to apply for conversion of his land, but should still apply for exemption clearance from the DAR. On the matter of compensation, the appellate court held that the occupants of the land are not entitled to disturbance compensation

[62] G.R. No. 147479, 26 September 2005, 471 SCRA 74.

absent any proof that they are tenants, farmers, or *bona fide* occupants thereof. The DAR then brought the case on appeal to this Court.

The Court pronounced in *DAR v. Franco* that:

A separate opinion cannot be a proper subject of an appeal. More so in this case where what was appealed in the appellate court was a one-sentence handwritten note of a DARAB member. It is not even the opinion of the DARAB but is merely the personal view of a DARAB member. The appellate court should have dismissed the petition which appealed not the DARAB decision itself but a mere note of a DARAB member which is not part of the DARAB decision. As held in *Bernas v. Court of Appeals*, "courts of justice have no jurisdiction or power to decide a question not in issue and that a judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid."

Indeed, the ruling of the appellate court that private petitioners have no right to disturbance compensation because they have not proven that they are tenants of Franco's land went beyond the DARAB decision being appealed. The determination of entitlement to disturbance compensation is still premature at this stage since this case originally involved only the issue of nullity of the Provisional Lease Rental Orders. Further, it is the DAR that can best determine and identify the legitimate tenants who have a right to disturbance compensation.

The Court then proceeded to mention that the DAR Secretary issued an Order on 30 August 1994, finding that "the specific intent of Proclamation No. 2052 is the identification of areas for tourism with the implication that the other areas within the proclamation but no longer necessary for tourism development as determined by the PTA, in this case, could be transferred for agrarian reform purposes to the DAR." After mention of the DAR Secretary's Order, the Court wrote:

Thus, **the DAR Regional Office VII, in coordination with the Philippine Tourism Authority, has to determine precisely which areas are for tourism development and excluded from the Operation Land Transfer and the Comprehensive Agrarian Reform Program.** And suffice it to state here that the Court has

repeatedly ruled that lands already classified as non-agricultural before the enactment of RA 6657 on 15 June 1988 do not need any conversion clearance. (Emphasis ours.)

Apparently, the Court, in the first sentence in the afore-quoted paragraph from *Franco*, was not making a ruling, but only taking note of the contents of the 30 August 1994 Order of the DAR Secretary. Even if the Court was making a judicial determination with said statement, it must be remembered that Franco's appeal to the Court of Appeals raised the sole issue of the handwritten note of the DARAB member, and it was the only issue which the Court can take cognizance of on appeal in *DAR v. Franco*. Any declaration by the Court in said case, unrelated to the issue raised on appeal, is but *obiter dictum*.

An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause, "by the way," that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. Such are not binding as precedent.[63]

The DAR objects to the mention by Roxas & Co. of the neighboring *hacienda* in Nasugbu, owned by the Group Developers and Financiers, Inc. (GDFI), which has not been subjected to CARP and is already being developed into a resort complex. The DAR explains that Roxas & Co. cannot claim unequal protection of the law since it is not similarly situated as GDFI. The *hacienda* of GDFI was covered by an application for conversion, not exemption, and it was approved by the DAR Secretary way back on 27 March 1975, even before the issuance of Presidential Proclamation No. 1520 on 28 November 1975. The approval of the conversion was based on the finding that the *hacienda* of GDFI was not suitable for agricultural purposes.

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[63] *Delta Motors Corporation v. Court of Appeals*, G.R. No. 121075, 24 July 1997.

Although the succeeding Order dated 22 January 1991 of the DAR Secretary, denying the Motion for Reconsideration therein, did mention Presidential Proclamation No. 1520, the more important thing is that the original disposition granting the conversion, rendered more than 16 years earlier, did not rely at all on said proclamation.

Still, the case of GDFI was not only brought up to support the argument that Presidential Proclamation No. 1520 already reclassified all agricultural lands in Nasugbu to non-agricultural uses; but also to hold the DAR to its finding that the *hacienda* of GDFI is unsuitable for agricultural purposes because of soil and topographical characteristics.[64] If such is the condition of the *hacienda* of GDFI, then how far different can it be from those of the adjoining Haciendas Caylaway, Banilad, and Palico of Roxas & Co.? Nevertheless, the actual condition of the three *haciendas* is already immaterial in light of Presidential Proclamation No. 1520, which declared the whole of Nasugbu part of a tourist zone, consequently, reclassifying all agricultural lands therein, whether actually suited for agriculture or not, to non-agricultural uses.

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[64] Associate Justice Consuelo Ynares-Santiago, in her concurring and dissenting opinion in *Roxas & Co. v. Court of Appeals* (G.R. No. 127876, 17 December 1999), quoted the following findings made by former DAR Secretary, Benjamin T. Leong, in his DAR Order dated 22 January 1991, as regards the state of the GDFI property:

1. Is, as contended by the petitioner GDFI "hilly, mountainous, and characterized by poor soil condition and nomadic method of cultivation, hence not suitable to agriculture."
2. *Has as contiguous properties two haciendas of Roxas y Cia* and found by Agrarian Reform Team Leader Benito Viray to be "generally rolling, hilly and mountainous and strudded (*sic*) with long and narrow ridges and deep gorges. Ravines are steep grade ending in low dry creeks."
3. Is found in an area where "it is quite difficult to provide statistics on rice and corn yields because there are no permanent sites planted. Cultivation is by *Kaingin* Method."
4. Is contiguous to Roxas Properties in the same area where "the people entered the property surreptitiously and were difficult to stop because of the wide area of the two *haciendas* and that the principal crop of the area is sugar . . .."

There is no dispute that Presidential Proclamation No. 1520 has the force and effect of law, since "all proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the former President (Ferdinand E. Marcos) are part of the law of the land, and shall remain valid, legal, binding, and effective, unless modified, revoked or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the President."[65]

It cannot be said that the CARL repealed Presidential Proclamation No. 1520, whether expressly or impliedly.

Presidential Proclamation No. 1520 is not among the laws expressly repealed by the CARL in the latter's Section 76:

> Section 76. *Repealing Clause*. — Section 35 of Republic Act No. 3844, Presidential Decree No. 316, the last two paragraphs of Section 12 of Presidential Decree No. 946, Presidential Decree No. 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.

Neither can it be said that the CARL impliedly repealed Presidential Proclamation No. 1520. As a rule, repeal by implication is frowned upon, unless there is clear showing that the later statute is so inconsistent and repugnant to the existing law that they cannot be reconciled and made to stand together.[66] The CARL is not inconsistent with or repugnant to Presidential Proclamation No. 1520. In truth, there is no point at which the two laws pertain to the same thing for them to be in conflict with each other. Presidential Proclamation No. 1520 was issued on 28 November 1975 declaring the Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas Province as a tourist zone, thus, reclassifying all agricultural lands located therein to non-agricultural uses. When CARL took effect on 15 June 1988, its scope was limited to public and private agricultural

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[65] *Padua v. Ranada*, G.R. No. 141949, 14 October 2002.

[66] *PCI Leasing and Finance, Inc. v. UCPB General Insurance Company, Inc.*, G.R. No. 162267, 4 July 2008.

lands,[67] which no longer include the previously reclassified parcels of land in Maragondon, Ternate, and Nasugbu. It is this very reason that entitles Roxas & Co. to an exemption clearance for Haciendas Caylaway, Banilad, and Palico, under DAR Administrative Order No. 6, series of 1994.

Irrefragably, a finding that Presidential Proclamation No. 1520, in declaring the whole of Nasugbu part of a tourist zone, had also reclassified all of the agricultural lands therein to non-agricultural uses, will have significant impact on the resolution of the other five Petitions at bar.

B. CARP Exemption of Certain Lots in Hacienda Palico, based on Nasugbu Municipal Zoning Ordinance No. 4, series of 1982 (G.R. No. 149548, No. 179650, and No. 167505)

Prior to the filing of its application for exemption of the three *haciendas* from CARP Coverage based on Presidential Proclamation No. 1520, Roxas & Co. had already filed applications for exemption of certain lots, all located within Hacienda Palico: (1) DAR Administrative Case No. A-9999-142-97 covered six lots, with an aggregate area of 51.54 hectares, now the subject of both

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[67] Section 4 of the CARL describes the scope of said law:

Section 4. *Scope.* — The Comprehensive Agrarian Reform Law of 1988 shall cover, regardless of tenurial arrangement and commodity produced, 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.

More specifically, the following lands are covered by the Comprehensive Agrarian Reform Program:

(a) 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;

(b) All lands of the public domain in excess of specific limits as determined by Congress in the preceding paragraph;

(c) All other lands owned by the Government devoted to or suitable for agriculture;

(d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.

G.R. No. 149548 and No. 179650; and (2) DAR Administrative Case No. A-9999-008-98 covered nine lots, with an aggregate area of 45.977 hectares, now the subject of G.R. No. 167505. Roxas & Co. filed the applications under DAR Administrative Order No. 6, series of 1994, based on the claim that said lots have been reclassified to non-agricultural uses by virtue of Nasugbu Municipal Zoning Ordinance No. 4, enacted by the Sangguniang Bayan of Nasugbu on 18 April 1982, and approved by the HSRC, now HLURB, under Resolution No. 123, dated 4 May 1983.

The Petitions of DAMBA-NFSW in G.R. No. 179650 and No. 167505 separately assail the grant by the DAR Secretary of the applications for exemption of Roxas & Co. in DAR Administrative Cases No. A-9999-142-97 and No. A-9999-008-98, respectively, as affirmed by the Court of Appeals. Without directly challenging the validity of Nasugbu Municipal Zoning Ordinance, No. 4, series of 1982, which admittedly enjoys the presumption of validity, DAMBA-NFSW disputes instead the grant of the two applications for exemption on the ground that the provisions of said Municipal Zoning Ordinance were "too vague" to support the claim of Roxas & Co. that its lots are within the non-agricultural zones. DAMBA-NFSW also points out that since the Nasugbu Municipal Zoning Ordinance No. 4, series of 1982, failed to specify the area size covered by the residential, industrial, and commercial zones, it is difficult to determine whether the lots of Roxas & Co. could actually be found therein. DAMBA-NFSW finally questions the lack of notice to its members of the filing by Roxas & Co. of the applications for exemption in DAR Administrative Cases No. A-9999-142-97 and No. A-9999-008-98.

I reiterate my stance in G.R. No. 167540 and No. 167543 that Presidential Proclamation No. 1520, issued on 28 November 1975, had declared the whole Municipality of Nasugbu as part of a tourist zone, thereby devoting all lands therein to tourism development, and consequently reclassifying all agricultural lands therein to non-agricultural uses. This renders the Petitions of DAMBA-NFSW in G.R. No. 179650 and No. 167505 moot and academic, since the exemption of the whole necessarily includes the exemption of the parts constituting the same.

The lots involved in G.R. No. 179650 and No. 167505, being undisputedly located within Hacienda Palico in Nasugbu, were already reclassified to non-agricultural uses by **Presidential Proclamation No. 1520** upon its issuance on **28 November 1975**. The subsequent enactment of **Nasugbu Municipal Zoning Ordinance No. 4** by the Sangguniang Bayan of Nasugbu on **18 April 1982** no longer served to reclassify the lots in G.R. No. 179650 and No. 167505 from agricultural to non-agricultural, but merely identified the particular non-agricultural use (*i.e.*, residential, industrial, or commercial) for the same according to the zone or district in which they are located.

That a court will not sit for the purpose of trying moot cases and spend its time in deciding questions the resolution of which can not in any way affect the rights of the person or persons presenting them is well settled. Where the issues have become moot and academic, there is no justiciable controversy, thereby rendering the resolution of the same of no practical use or value.[68]

As for the Petition of Roxas & Co. in G.R. No. 149548, its resolution relies on the outcome of the Petitions in G.R. No. 167845 and No. 169163, involving the partial and complete cancellations of CLOA No. 6654.

To recall, the Court of Appeals, in its 30 May 2001 Decision in CA-G.R. SP No. 63146, did not divest Roxas & Co. of the latter's right to present additional evidence before the DAR in support of its claim in DAR Administrative Case No. A-9999-142-97, that the six lots in Hacienda Palico, with an aggregate area of 51.54 hectares, are exempt from CARP coverage pursuant to the Nasugbu Municipal Zoning Ordinance No. 4, series of 1982. At the same time, in view of the ruling of this Court in *Roxas & Co. v. Court of Appeals*, recognizing the rights of farmer-beneficiaries to possess and till the parcels of land awarded to them under CLOA No. 6654, the appellate court allowed the DAR to proceed with installing the farmer-beneficiaries on the six lots, without prejudice to the final determination of the right of Roxas & Co. over the said properties. Thus, in its Petition

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[68] *Delgado v. Court of Appeals*, G.R. No. 137881, 19 August 2005.

in G.R. No. 149548, Roxas & Co. is appealing the alleged premature installation of the farmer-beneficiaries on the six lots.

Vital herein is the ruling of the Court in *Roxas & Co. v. Court of Appeals*, wherein it refused to short-circuit the administrative process and did not nullify the CLOAs issued to the farmer-beneficiaries. It gave the DAR a chance to correct its procedural lapses in the acquisition proceedings. The Court took note that since 1993 until the present, the farmer-beneficiaries have been cultivating their lands; and it goes against the basic precepts of justice, fairness and equity to deprive these people, through no fault of their own, of the land they till. The Court, though, also stated that the farmer-beneficiaries should hold the property in trust for the rightful owner of the land.

Stated otherwise, the Court, in *Roxas & Co. v. Court of Appeals*, left the matter of cancellation of the CLOAs issued to farmer-beneficiaries to the determination by the DAR in the proper administrative proceedings. Unless and until such CLOAs are cancelled, the farmer-beneficiaries have a right to the possession of the parcels of land covered by said certificates.

The six lots subject of G.R. No. 149548 (as well as G.R. No. 179650) are covered by CLOA No. 6654. As a result, the question of the right of the farmer-beneficiaries to the possession of said six lots in G.R. No. 149548 is inextricably entwined with the issues on the partial and complete cancellations of CLOA No. 6654 raised in G.R. No. 167845 and No. 169163.

C. Petitions for Partial and Complete Cancellation of CLOA No. 6654 (G.R. No. 167845 and No. 169163)

DAMBA-NFSW maintains that the petitions of Roxas & Co. in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 and No. 401-239-2001, for the partial and complete cancellations, respectively, of CLOA No. 6654, are in violation of the ruling of the Court in *Roxas & Co. v. Court of Appeals* that the issued CLOAs "cannot and should not be cancelled." It anchors its argument on the penultimate paragraph in the 17 December 1999 Decision of the Court in said case, which reads:

Finally, we stress that the failure of respondent DAR to comply with the requisites of due process in the acquisition proceedings does not give this Court the power to nullify the CLOA's already issued to the farmer beneficiaries. To assume the power is to short-circuit the administrative process, which has yet to run its regular course. Respondent DAR must be given the chance to correct its procedural lapses in the acquisition proceedings. In Hacienda Palico alone, CLOA's were issued to 177 farmer beneficiaries in 1993.92 Since then until the present, these farmers have been cultivating their lands.93 It goes against the basic precepts of justice, fairness and equity to deprive these people, through no fault of their own, of the land they till. Anyhow, the farmer beneficiaries hold the property in trust for the rightful owner of the land.

DAMBA-NFSW evidently misunderstood the afore-quoted paragraph in *Roxas & Co. v. Court of Appeals*. There is nothing therein categorically prohibiting the cancellation of the CLOAs issued to the farmer-beneficiaries. What the Court plainly said was that despite its finding that the DAR failed to comply with due process in the acquisition proceedings, the Court still had no power to nullify the CLOAs because such matter lies within the primary jurisdiction of the DAR. Thus, the DARAB, which has exclusive original jurisdiction over petitions for cancellation of CLOAs, cannot be precluded from acting on and granting such petitions filed by Roxas & Co.

The farmer-beneficiaries did not acquire vested rights over the lands covered by their CLOAs, by virtue of *Roxas & Co. v. Court of Appeals*. The Court only recognized in said case their rights to continue to possess and till the parcels of land covered by their CLOAs until the DAR has undertaken proper acquisition proceedings. But the Court, in *Roxas & Co. v. Court of Appeals*, **did not** (1) guarantee the success of the acquisition proceedings over all the lands covered by the CLOAs; (2) affirm the validity of the CLOAs and the absolute right of the farmer-beneficiaries thereunder; nor (3) discount the possibility that in the course of the acquisition proceedings, the DAR would decide to exempt all or certain parcels of land from CARP coverage, cancel some or all of the CLOAs, or disqualify some or all of the farmer-beneficiaries. The Court merely left all of these matters

to the determination of the DAR, which has primary jurisdiction over the same.

In her 21 May 2001 Joint Order in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001, the PARAD granted the partial cancellation of CLOA No. 6654 insofar as it covered three lots, Lot 125-K, Lot-125-M, and Lot-125-L, located within Hacienda Palico, and with a total area of 103.1436 hectares. Similarly, in her 27 May 2001 Decision in DARAB Case No. 401-239-2001, the PARAD granted the complete cancellation of CLOA No. 6654. The PARAD denied the Motions for Reconsideration of DAMBA-NSFW for being filed one day beyond the 15-day reglementary period. The PARAD also refused to give due course to the Notice of Appeal of DAMBA-NFSW for again being filed beyond the reglementary period.

The reglementary periods for the filing of a motion for reconsideration and the succeeding appeal are governed by Section 12 of the 1994 DARAB Rules of Procedure, which stated:

> Section 12. *Motion for Reconsideration.* — Within fifteen (15) days from receipt of notice of the order, resolution or decision of the Board or Adjudicator, a party may file a motion for reconsideration of such order or decision , together with proof of service of one (1) copy thereof upon the adverse party. Only one (1) motion for reconsideration shall be allowed a party which shall be based on the ground that: (a) the findings of fact in the said decision, order or resolution was not supported by substantial evidence, or (b) the conclusions stated therein are against the law or jurisprudence.
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> **The filing of a motion for reconsideration shall suspend the running of the period within (which) the appeal must be perfected. If a motion for reconsideration is denied, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial.** If the decision is reversed on reconsideration, the aggrieved party shall have fifteen (15) days from receipt of the resolution of reversal within which to perfect his appeal.

DAMBA-NFSW received both the 21 May 2001 Joint Order in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 and 27 May 2001 Decision in DARAB Case No. 401-239-2001

on **13 June 2001**. It had until **28 June 2001** to file its Motions for Reconsideration. DAMBA-NFSW claims to have filed via registered mail on 28 June 2001 its Motions for Reconsideration, and filed by personal delivery on 29 June 2001 additional copies of said Motions. The PARAD, in her 10 July 2001 Joint Resolution, dismissed both Motions for Reconsideration, finding that they were filed one day late, on **29 June 2001**. Apparently working against the claim of DAMBA-NFSW was its failure to attach the actual registry receipt to prove that it sent its Motions for Reconsideration by registered mail on 28 June 2001, instead of a mere handwritten notation of the registry receipt number on the said Motions.

Even conceding that the said Motions for Reconsideration were filed on 28 June 2001, the Notice of Appeal of DAMBA-NFSW was unmistakably filed beyond the reglementary period for appeal. DAMBA-NFSW received a copy of the 10 July 2001 Resolution of the PARAD denying its Motions for Reconsideration on **21 August 2001**. Considering that DAMBA-NFSW filed its Motions for Reconsideration on the 15th day of the reglementary period, pursuant to Section 12 of the 1994 DARAB Rules of Procedure, it had only one more day from receipt of the denial of its Motions to file its appeal, which, in this case, would be on **22 August 2001**. This is in accord with the rule that says a motion for reconsideration only suspends the period within which the appeal should be perfected. In case of denial of the motion for reconsideration, as in these cases, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial. Erroneously believing it had a fresh 15-day reglementary period though, DAMBA-NFSW filed its Notice of Appeal on **5 September 2001**.

In *Advincula-Velasquez v. Court of Appeals*,[69] this Court declared that:

> The filing of a notice of appeal is no idle ceremony. Its office is to elevate the case on appeal to DARAB without which appellate jurisdiction is not conferred. Neither PARAD nor DARAB is permitted

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[69] G.R. No. 111387, 8 June 2004.

to enlarge the constricted manner by which an appeal is perfected. Liberal construction of DARAB rules is unavailable to produce the effect of a perfected appeal.

Perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional, and failure to perfect an appeal as required by the Rules had the effect of rendering the judgment final and executory. This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice (*Filcon Manufacturing Corp. v. NLRC*, 199 SCRA 814). And nothing is more settled in the law than that when a final judgment becomes executory, it thereby becomes immutable and unalterable (*Nuñal v. Court of Appeals*, 221 SCRA 26; Garbo v. Court of Appeals, 226 SCRA 250). Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal. This principle applies to judgments of courts and of quasi-judicial agencies (*Vega v. Workmen's Compensation Commission*, 89 SCRA 140).

Since the decision of the PARAD had become final and executory, the same could no longer be altered, much less, reversed by the DARAB. Hence, the DARAB had no appellate jurisdiction over the petitioner's appeal. A substantial modification of a decision of a quasi-judicial agency which had become final and executory is utterly void.

The counsel for DAMBA-NFSW admits that she had misread the rules on the reglementary period for filing a motion for reconsideration and/or appeal before the DARAB, but she pleads for the relaxation of technical rules so as to prevent the miscarriage of justice for the hundreds of farmer-beneficiaries of CLOA No. 6654 and their families.

While it may be acknowledged that there are exceptional circumstances warranting the acceptance of the appeal despite its late filing,[70] none exists at the case at bar. Quite beyond

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[70] In *Secretary of Agrarian Reform v. Tropical Homes, Inc.* (G.R. No. 136827, 31 July 2001), the Court held that:

> Not having perfected their appeal in the manner and within the period fixed by law, the decision of the Court of Appeals had become final and executory. Such a failure carries with it the result that no court

cavil, the delay incurred by the counsel of DAMBA-NFSW in filing the Notice of Appeal, totaling 14 days, was simply inexcusable. This Court had already held that "(a)n erroneous application of the law or rules is not excusable error."[71]

There is also little merit to the appeals of DAMBA-NFSW in both DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 (G.R. No. 167845) and DARAB Case No. 401-239-2001 (G.R. No. 169163) as to warrant being given due course, despite their belated filing.

DARAB Cases No. R-401-003-2001 to No. R-401-005-2001, in particular, involve the applications for partial cancellation of CLOA No. 6654 as regards three lots. The basis for said application is the **final and executory** Decision dated 2 April 1996 of the Court of Appeals in CA-G.R. SP No. 36299, which adjudged the three lots to be exempt from CARP coverage, having been reclassified by the Nasugbu Municipal Zoning Ordinance No. 4, series of 1982, to residential use, and which should have been excluded from CLOA No. 6654.

Nothing is more settled in law than that when a final judgment is executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even

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can exercise appellate jurisdiction to review the case. However, it is true that we have recognized certain exceptions to this rule. In *Ramos v. Bagasao*, we excused the delay of four (4) days in the filing of a notice of appeal because the questioned decision of the trial court was served upon appellant at a time when her counsel of record was already dead. Her new counsel could only file the appeal four (4) days after the prescribed reglementary period was over. In *Republic v. Court of Appeals*, we allowed the perfection of an appeal by the Republic despite the delay of six (6) days to prevent a gross miscarriage of justice since it stood to lose hundreds of hectares of land already titled in its name and had since then been devoted for educational purposes. In *Olacao v. National Labor Relations Commission*, we accepted a tardy appeal considering that the subject matter in issue had theretofore been judicially settled, with finality, in another case. The dismissal of the appeal would have had the effect of the appellant being ordered twice to make the same reparation to the appellee. x x x

[71] *Ditching v. Court of Appeals*, G.R. No. 109834, 18 October 1996.

if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.[72]

Litigation must at some time be terminated, even at the risk of occasional errors. Public policy dictates that once a judgment becomes final, executory and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality.[73]

Apparent from the foregoing are the two-fold purposes for the doctrine of the immutability and inalterability of a final judgment: *first*, to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and, *second*, to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Obviously, the first purpose is in line with the dictum that justice delayed is justice denied. But said dictum presupposes that the court properly appreciates the facts and the applicable law to arrive at a judicious decision. The end should always be the meting out of justice. As to the second purpose, controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time. It must be adjudicated properly and seasonably to better serve the ends of justice and to place everything in proper perspective. In the process, the possibility that errors may be committed in the rendition of a decision cannot be discounted.[74]

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[72] *Mayon Estate Corporation v. Altura*, G.R. No. 134462, 18 October 2004, 440 SCRA 377.

[73] *Huerta Alba Resort, Inc. v. Court of Appeals*, 394 Phil. 22 (2000).

[74] *Ginete, et al. v. Court of Appeals,* 357 Phil. 36 (1998).

The only recognized exceptions to the foregoing doctrine are the corrections of clerical errors or the making of the so-called *nunc pro tunc* entries, which cause no prejudice to any party, and, where the judgment is void.[75] Void judgments may be classified into two groups: those rendered by a court without jurisdiction to do so and those obtained by fraud or collusion.[76] None of these exceptions can be applied to the final and executory judgment of the Court of Appeals in CA-G.R. SP No. 36299.

It can be said herein that the questions relating to the exemption of the three lots from CARP coverage and their exclusion from CLOA No. 6654 had been settled with finality by the Court of Appeals in its 2 April 1996 Decision in CA-G.R. SP No. 36299. Therefore, the PARAD was correct in saying in her 21 May 2001 Joint Order in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 that it had become merely ministerial on her part to order the partial cancellation of CLOA No. 6654. The directive of the Court of Appeals in its 10 September 2004 Decision in CA-G.R. SP No. 72198 for DARAB to still give due course to the appeal of DAMBA-NFSW of the partial cancellation of CLOA No. 6654, no longer serves any practical purpose since the DARAB can no longer modify in any way the findings and conclusions made by the appellate court in CA-G.R. SP No. 36299, nor sidestep the inevitable consequences thereof, *i.e.*, partial cancellation of CLOA No. 6654.

On the other hand, in DARAB Case No. 401-239-2001, the PARAD ordered the complete cancellation of CLOA No. 6654 after finding technical defects in the subdivision survey used for the said certificate, which rendered the survey null. These technical defects became apparent only after the Court of Appeals, in CA-G.R. SP No. 36299, ordered the exemption from CARP coverage of the three lots and their exclusion from CLOA No. 6654.

When Hacienda Palico was compulsorily placed under the CARP, a segregation and subdivision survey was conducted by

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[75] *Mayon Estate Corporation v. Altura, supra* note 1.

[76] *Legarda v. Court of Appeals*, 345 Phil. 890 (1997).

Engr. Miguel V. Pangilinan (Pangilinan) on 22 April to 24 June 1993. Engr. Pangilinan incorrectly plotted his survey using the old subdivision plan, **Psd-04-016141** (OLT), which was already cancelled and superseded on 10 July 1991 by subdivision plan **Psd-04-6912**, LRC Record 102. And, based on the result of Engr. Pangilinan's defective survey, a new subdivision plan, Bsd-041019-003090 (AR), was approved on 6 October 1993, segregating the 513.9863 hectares subsequently awarded to the farmer-beneficiaries under CLOA No. 6654.

Moreover, my resolution of the Petitions in G.R. No. 167540 and No. 167543 already renders nugatory the giving of due course to the appeals of DAMBA-NFSW to the DARAB of the partial and complete cancellations of CLOA No. 6654 by the PARAD.

As previously established herein, Haciendas Caylaway, Banilad, and Palico are exempt from CARP coverage, under DAR Administrative Order No. 6, series of 1994, since Presidential Proclamation No. 1520 had already declared the whole of Nasugbu as part of a tourist zone and reclassified all agricultural lands therein to non-agricultural uses, long before the effectivity of the CARL. Being exempt from CARP coverage, no CLOAs could have been validly issued by the DAR to farmer-beneficiaries over the parcels of land in the three *haciendas*. Even if the appeals of DAMBA-NFSW in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 (G.R. No. 167845) and DARAB Case No. 401-239-2001 (G.R. No. 169163) are given due course before the DARAB, the inescapable fate of CLOA No. 6654 is its complete cancellation because the land it covers is actually exempt from CARP coverage.

With the complete cancellation of CLOA No. 6654, on the basis that the parcels of land covered thereby are exempt from CARP coverage, then there is no more legal obstacle to Roxas & Co., as the rightful owner, from recovering title and possession to the said properties, including the six lots subject of G.R. No. 149548, from the farmer-beneficiaries who have possessed and tilled the same only in trust (save only for the payment of appropriate disturbance compensation, as will be subsequently

discussed herein). Hence, the Petition of Roxas & Co. in G.R. No. 149548 — seeking an injunction against the installation by the DAR of the farmer-beneficiaries on the six lots until CLOA No. 6654 covering the said properties is cancelled — has been rendered moot and academic.

D. Forum Shopping

All throughout the seven Petitions presently before this Court, there is the repeated allegation by DAMBA-NFSW that Roxas & Co. committed forum-shopping by the institution of several cases before the DAR Secretary, DARAB, and the courts.

There is forum-shopping when as a result of an adverse decision in one forum or, it may be added, in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*, raising identical causes of action, subject matter, and issues. Forum-shopping exists when two or more actions involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues. Yet another indication is when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in the other case. The test is whether in the two or more pending cases there is an identity of (a) parties, (b) rights or causes of action, and (c) reliefs sought.

After a meticulous study of the all the instant Petitions, I find that there has been no forum-shopping on the part of Roxas & Co., there being substantial differences in the cases it instituted. For the sake of brevity, I have summed up, in table form, the various cases filed by Roxas & Co. as regards its landholdings in Nasugbu:

Case	Original Forum	Subject Matter	Nature
CA-G.R. SP No. 32484 (*Roxas & Co. v. Court of Appeals*)	Court of Appeals	Haciendas Caylaway, Banilad, Palico	Petition for Prohibition and *Mandamus*, seeking to prevent the DAR from further proceedings to acquire the three *haciendas* and compel the DAR to

			approve its application for conversion
DAR Admin. Case No. A-9999-084-00 (G.R. No. 167540)	DAR Regional Office	Haciendas Caylaway, Banilad, Palico	Application for exemption from CARP coverage based on Presidential Proclamation No. 1520
DAR Admin. Case No. A-9999-142-97 (G.R. No. 149548 and No. 179650)	DAR Regional Office	Six lots, measuring 51.5472 hectares, part of Hacienda Palico	Application for exemption from CARP coverage based on Nasugbu Municipal Zoning Ordinance No. 4, series of 1982
G.R. No. 149548	Supreme Court	Six lots, measuring 51.5472 hectares, part of Hacienda Palico	Petition for Review assailing the judgment of the Court of Appeals in CA-G.R. SP No. 63146 allowing DAR to install the farmer-beneficiaries on the six lots, while Roxas & Co. is presenting additional evidence in DAR Admin. Case No. A-9999-142-97
DAR Admin. Case No. A-9999-008-98. (G.R. No. 167505)	DAR Regional Office	Nine lots, measuring 45.977 hectares, part of Hacienda Palico	Application for exemption from CARP coverage based on Nasugbu Municipal Zoning Ordinance No. 4, series of 1982
Unable to determine docket no. from the records (CA-G.R. SP No. 36299)	DAR Regional Office	Three lots, measuring 103.1436, part of Hacienda Palico and covered by CLOA No. 6654	Protest seeking the exclusion of the three lots from CLOA No. 6654, citing the exemption thereof from CARP

			Coverage by virtue of Nasugbu Municipal Zoning Ordinance No. 4, series of 1982
DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 (G.R. No. 167845)	DARAB	Three lots, subject of CA-G.R. SP No. 36299, covered by CLOA No. 6654	Petition for partial cancellation of CLOA No. 6654, insofar as the three lots are concerned, given the final and executory judgment of the Court of appeals in CA-G.R. SP No. 36299 declaring said property exempt from CARP coverage
DARAB Case No. 401-239-2001(G.R. No. 169163)	DARAB	The remaining 410.8327 hectares, covered by CLOA No. 6654	Petition for total or complete cancellation of CLOA No. 6654 for being null and void given the technical defects in the survey plan on which said certificate was based

There is no basis then for the Court to dismiss any of the foregoing cases on the ground of forum-shopping by Roxas & Co.

It is worthy to note that the seemingly repetitive filing of administrative cases by Roxas & Co. may actually be due to its strict compliance with DAR rules. Even though they may involve the very same landholdings, applications for exemption from CARP coverage and petitions for cancellation of CLOAs fall within the jurisdictions of separate DAR offices: the Office of the DAR Secretary for the former, and the DARAB for the latter.

The DAR Secretary has exclusive jurisdiction over all matters involving the administrative implementation of the CARL and

other agrarian reform laws, and what would later be referred to as Agrarian Law Implementation (ALI) cases.[77] Applications for exemptions fall under such cases. According to DAR Administrative Order No. 6, series of 1994, applications for exemptions shall be filed with the DAR Regional Office where the subject parcel of land is located, but only the DAR Secretary shall sign the Order granting or denying the exemption.

On the other hand, petitions for cancellation of issued CLOAs are considered agrarian reform disputes,[78] since they relate to terms and conditions of transfer of ownership from landlord to agrarian reform beneficiaries, the exclusive original jurisdiction over which is vested with the DARAB.[79] DAR Administrative Order No. 2, series of 1994, provides that the land with issued CLOAs found to be exempt from CARP coverage may be cancelled only upon the application of the landowner with the DARAB.

The foregoing distinction was the reason why the DAR Secretary included in the dispositive of his Orders dated 6 November 2002 and 6 January 2003, granting the applications for exemption of Roxas & Co. in DAR Administrative Cases No. A-9999-008-98 (G.R. No. 167505) and No. A-9999-142-97 (G.R. No. 179650), respectively, the following statement: "The cancellation of the CLOA issued to the farmer-beneficiaries shall be subject of a separate proceeding before the PARAD of Batangas."

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[77] DAR Administrative Order No. 6, series of 2000.

[78] Under Section 3(d) of the CARL, "agrarian dispute" includes "any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise over lands devoted to agriculture, including disputes concerning farmworkers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee."

[79] *Philippine Veterans Bank v. Court of Appeals*, G.R. No. 132561, 30 June 2005.

E. Supervening Events

The DAR, in its Memorandum, brought to the attention of this Court the following supervening events which transpired during the pendency of the present Petitions:

First, the Sangguniang Bayan ng Nasugbu, Batangas has completed the formulation of its Comprehensive Land Use Plan and Municipal Zoning Ordinance of 2002 which was approved by the HLURB in 2005.

Based on the aforestated documents, the Office of the Municipal Planning and Development Coordinator/Zoning Administrator of Nasugbu, Batangas certified that Roxas' properties are within the "Inland Mixed-Use District" of the Comprehensive Land Use Plan.

Second, in Executive Order No. 647 dated August 3, 2007, President Arroyo proclaimed as Special Tourism Zone the areas included in the Nasugbu Tourism Development Plan as prepared by the *Municipality of Nasugbu* and validated by the *Philippine Tourism Authority* as tourist priority areas. Section 2 of Executive Order No. 647 states:

> Section 2. Creation of a Special Tourism Zone. — Areas included in the Nasugbu Tourism Development Plan prepared by the Municipality of Nasugbu and validated by the Philippine Tourism Authority as Tourism Priority Areas are hereby proclaimed Special Tourism Zone.

Third, the Sangguniang Bayan of Nasugbu caused the preparation and approved the Nasugbu Tourism Development Plan which covered thirty-one (31) out of the total forty-two (42) **barangays** in the municipality of Nasugbu, Batangas. In a Certification dated December 10, 2008, PTA informed the President that it had completed the validation of twenty-one (21) barangays in Nasugbu, Batangas as tourism priority areas pursuant to Executive Order No. 647.

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At present, Congress has enacted Republic Act No. 9593, otherwise known as "The Tourism Act of 2009." It provides that "tourism enterprise zones" shall only be designated after a development plan is approved by Tourism Infrastructure and Enterprise Zone Authority (TIEZA) formerly Philippine Tourism Authority and the local government unit concerned through a resolution. It likewise declared

that the lands identified as part of a tourism zone shall qualify for exemption from coverage of RA 6557 of the Agrarian Reform Law.

Now the Court is faced with the question of what is the effect of the afore-mentioned supervening events to the Petitions at bar?

I answer, **none**.

The Applications for Exemption of Roxas & Co. had been filed pursuant to DAR Administrative Order No. 6, series of 1994, which implements DOJ Opinion No. 44, series of 1990. According to said administrative order, the DAR may only exercise its authority to approve conversion of agricultural land to non-agricultural uses from the date of effectivity of the CARL on 15 June 1988. Thus, all lands that were already classified as commercial, industrial, or residential **prior to 15 June 1988** need no longer secure conversion clearance from the DAR. Instead, such lands shall be covered by an exemption clearance.

Since all the supervening events recited by the DAR in its Memorandum took place **after 15 June 1988**, they do not have any impact on how the applications of Roxas & Co. for exemption clearance under Administrative Order No. 6, series of 1994, should be resolved. The Nasugbu Comprehensive Land Use Plan and Municipal Zoning Ordinance of 2002; Executive Order No. 647, Nasugbu Tourism Development Plan; and the Tourism Act of 2009, can only be applied prospectively, for they do not provide for their retroactivity.[80] They could not be deemed to have the effect of retroactively reclassifying the landholdings of Roxas & Co. from agricultural to non-agricultural before 15 June 1988, or of reversing the same. Indeed, the construction and implementation of these new laws, development and land use plans, and zoning ordinances, involving Nasugbu, must take into consideration that as early as 28 November 1975, Presidential Proclamation No. 1520 had declared Nasugbu as part of a tourist zone and, resultantly, reclassified all the agricultural land therein to non-agricultural uses.

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[80] See *Remman Enterprises, Inc. v. Court of Appeals*, G.R. No. 132073, 27 September 2006.

F. Final Considerations

KAMAHARI and DAMBA-NFSW submits that for the Court to rule that Presidential Proclamation No. 1520, in declaring Maragondon, Ternate, and Nasugbu, as a tourist zone, also had the effect of reclassifying all agricultural lands in said Municipalities to non-agricultural uses, would be a huge setback to the CARP and its social justice goals. They provided a survey of several other presidential proclamations and statutes that were similarly worded as Presidential Proclamation No. 1520, and covering even wider expanse of land, such as provinces and whole islands, to wit:

(a) **Proclamation No. 1653 (issued July 13, 1977)** declared the whole province of **Ilocos Norte** as a tourist zone because "certain areas" particularly the shorelines in the Province of Ilocos Norte "have potential tourism value after being developed into resorts for its foreign and domestic market."

(b) **Proclamation No. 1801 (issued on November 10, 1070 [*sic*])** declared the whole islands, coves and peninsula — including **Camiguin, Puerto Princesa, Siquijor, Panglao Islan (sic) in Bohol** — as tourist zones because of these areas' natural beauty and potentials for aquatic spots (sic), tourism, and the interest of marine life preservation.

(c) **Proclamation No. 2052 (issued on January 30, 1981)**, declared four whole **barangay of Sibugay, Malubog, Babag and Sirao including the proposed Lusaran Dam in the City of Cebu and the municipalities of Argao and Dalaguete in the Province of Cebu** as tourist zones because "certain areas" within the zone have potential tourism value after being developed into resort complexes for the foreign and domestic market;

(d) **Proclamation No. 2067 (issued on March 11, 1981)**, declared the **whole province of Bataan** as a tourist zone because there is a need to establish an export processing zone in Mariveles, as one would find Dambanang Kagitingan therein, and because Bataan has "untapped scenic and beautiful spots with tourism potential"; and

(e) **Republic Act No. 8022 (May 25, 1995)** declared the **municipalities of Boac, Buenavist (*sic*) and Torrijos** in the province of Marinduque as tourist zones.

KAMAHARI and DAMBA-NFSW alleged that the DAR had already issued and distributed to farmer-beneficiaries thousands

of CLOAs covering parcels of land in the afore-mentioned tourist zones, which would have to be cancelled.

Firstly, while I am aware of the previously-issued CLOAs and the upheaval my position on Presidential Proclamation No. 1520 may cause on the CARP, these must not sway the Court to depart from the plain and obvious meaning of said presidential proclamation. As one authority on statutory construction so satisfactorily explained:

> Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed. Where the law is clear and free from doubt or ambiguity, there is no room for construction or interpretation. Thus, where what is not clearly provided in the law is read into the law by construction because it is more logical and wise, it would be to encroach upon legislative prerogative to define the wisdom of the law, which is judicial legislation. For whether a statute is wise or expedient is not for the courts to determine. Courts must administer the law, not as they think it ought to be but as they find it and without regard to consequences.[81]

Secondly, to be entitled to exemption from CARP coverage under DAR Administrative Order No. 6, series of 1994, the agricultural lands should have been reclassified to non-agricultural uses prior to the effectivity of the CARL on **15 June 1988**. Hence, the declaration of the Municipalities of Boac, Buenavista, and Torrijos in Marinduque Province as a tourist zone by Republic Act No. 8022, which lapsed into law on **25 May 1995** without the President's signature, will not qualify the parcels of land in said Municipalities to CARP exemption under DAR Administrative Order No. 6, series of 1994.

Thirdly, petitions for cancellation of CLOAs are governed by DAR Administrative Order No. 2, series of 1994. The scope of said administrative order is defined as follows:

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[81] Ruben E. Agpalo, *STATUTORY CONSTRUCTION* (5th edition, 2003), p. 125; citing *Rizal Commercial Banking Corp. v. Intermediate Appellate Court*, 116 SCAD 999, 320 SCRA 279 (1999) and *Director of Lands v. Abaya*, 63 Phil. 559 (1936).

II. Scope

These rules shall apply to the Registered CLOAs from the time and date of issuance thereof by the DAR up to the tenth year, when the legal restriction on its conveyance or alienation of the recipient ARB ends in accordance with Sec. 27, R.A. No. 6657. However, if the ARB concerned has not yet fully paid the cost of the land or his obligations pertaining to the land in the case of public lands, beyond the tenth year from the issuance of the CLOA, then these rules shall continue to apply.

However, if the land has been acquired under P.D. No. 27 or E.O. No. 228, ownership may be transferred after full payment of amortization by the ARB.

Insofar as they are applicable, these rules shall likewise cover patents, EPs and CLOAs issued to settlers in resettlement areas under the administration or disposition of the Department of Agrarian Reform.

Based on the foregoing, no petition for cancellation of CLOA may be filed anymore if **10 years** have already passed from the date of issuance of said certificate by the DAR, unless the beneficiary has not yet fully paid the cost of the land or the obligations pertaining to the land, in case of public land. The reason behind this rule is that the beneficiary may already legally convey or alienate the land to another person after the expiration of the 10-year period of restriction, reckoned from the date of issuance of the CLOA covering said property.

And *fourthly*, *bona fide* tenants of the parcels of land are not to be left empty-handed. According to Section 36(1) of Republic Act No. 3844,[82] as amended by Republic Act No. 6389:[83]

Section 36. *Possession of Landholding; Exceptions* — An agricultural lessee shall continue in the enjoyment and possession

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[82] An Act to Ordain the Agricultural Land Reform Code and to Institute Land Reforms in the Philippines, including the Abolition of Tenancy and the Channeling of Capital into Industry, Provide for the Necessary Implementing Agencies, Appropriate Funds Therefor and for Other Purposes.

[83] An Act Amending Republic Act Numbered Thirty-Eight Hundred and Forty-Four, as Amended, Otherwise Known as the Agricultural Land Reform Code, and for Other Purposes.

of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: Provided, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years.

The reliance of Roxas & Co. on *Bacaling v. Muya*[84] in support of its assertion that farmer-beneficiaries cannot claim disturbance compensation for lots that are not and have never been available for agrarian reform, is unavailing. In *Bacaling v. Muya*, there is an express finding by the Court that there was no valid agricultural leasehold relationship.[85] Respondents therein are not agricultural tenants, and are not entitled to the benefits accorded by agrarian law, among which, was disturbance compensation.

It is clear in *Alarcon v. Court of Appeals*[86] that agricultural tenants who are dispossessed because of the reclassification of the landholding is entitled to disturbance compensation. Also, in DAR Administrative Order No. 6, series of 1994, under which Roxas & Co. filed its application for CARP exemption, lists among the requirements "[p]roof of payment of disturbance compensation if the area is being occupied by farmers, x x x" Therefore, Roxas & Co. cannot escape payment of disturbance compensation to its agricultural tenants who shall be dispossessed by the reclassification of the three *haciendas* to non-agricultural uses; and it cannot claim that it is offering to pay said tenants disturbance compensation out of pure liberality.

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[84] G.R. Nos. 148404-05, 11 April 2002.

[85] The requisites for a valid agricultural leasehold relationship are: (1) The parties are the landowner and the tenant or agricultural lessee; (2) The subject matter of the relationship is agricultural land; (3) There is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) There is personal cultivation on the part of the tenant or agricultural lessee; and (6) The harvest is shared between the landowner and the tenant or agricultural lessee. (*Ibid.*)

[86] G.R. No. 152085, 8 July 2003.

The proposed compensation and accommodation packages of Roxas & Co. are presented below:

The "beneficiaries" will be grouped according to: **(A)** former tenants, shareholders and leaseholders of ROXAS; **(B)** Original CLOA holders/awardees who have no contractual relationship with ROXAS but were merely installed by the DAR in the ROXAS landholdings; and **(C)** illegal settlers and speculators who, without any CLOA, surreptitiously entered and occupied the subject landholdings and/or may have been assignees of the original CLOA awardees.

GROUP A

For **Group A**, disturbance compensation shall be paid to qualified beneficiaries in accordance with Section 36(1) of R.A. 3844, as amended by R.A. 6389. Group A members shall not be asked to surrender possession of their awarded lot until and unless disturbance compensation, in accordance with law, has been paid to them.

Moreover, those who have built improvements within the residential clusters shall be allowed to own the lot, not exceeding 100 square meters, upon which the improvement was built, **at no cost to them**. Any area in excess of 100 square meters shall be surrendered to ROXAS immediately, subject to the preceding paragraph. Group A members who are within the residential clusters are given an option to stay at the residential clusters or to relocate in the relocation areas.

For Group A members who have built improvements on areas outside the residential clusters, they shall be permitted to stay on their home lots (but not exceeding 100 square meters) until a relocation site chosen by ROXAS has been selected and utilities for basic services (right of way, water and electricity) are ready for their use and each shall be entitled to one lot, not exceeding 100 square meters, **at no cost to them**. Any area in excess of 100 square meters shall be surrendered to ROXAS immediately, subject to the payment of disturbance compensation as discussed above.

Each *barangay* where ROXAS has landholdings shall have one relocation site in proportion to the number of Group A members residing thereat. This is to minimize, as much as possible, dislocation on the part of the Group A members. Areas in the relocation site shall be uniform. ROXAS reserves the right to cluster the *barangay* relocation areas to contiguous and accessible sites according to the demands of the development in these areas.

Furthermore, the Roxas Gargollo Foundation, in cooperation with the Technical Skills and Development Authority, shall conduct a series of livelihood and training programs for the benefit of Group A members.

GROUP B

Group B members are not entitled to disturbance or whatever kind of compensation.

For Group B members who have built improvements within the residential clusters, they shall be allowed to buy in installment the lot upon which the improvement was built, but not exceeding 100 square meters, at prevailing market value. Any area in excess of 100 square meters shall be surrendered immediately to ROXAS.

For those who have built improvements on areas outside the residential clusters, they shall be permitted to stay on their home lots (but not exceeding 100 square meters) until a relocation site chosen by ROXAS has been selected and utilities for basic services (right of way, water and electricity) are ready for their use. Each shall be allowed to buy in installment one relocation lot, not exceeding 100 square meters, at prevailing market value. Any area in excess of their home lot shall be surrendered immediately to ROXAS.

Areas in the relocation site shall be uniform. Original CLOA holders/awardees have the option to choose which area to buy. Each barangay, over which ROXAS has landholdings, shall have one relocation site in proportion to the number of original CLOA holders residing thereat. Again, this is to minimize, as much as possible, dislocation on the part of the Group B members. ROXAS reserves the right to cluster the barangay relocation areas to contiguous and accessible sites according to the demands of the development in these areas. Furthermore, the Roxas Gargallo Foundation, in cooperation with the Technical Skills and Development Authority, shall conduct a series of livelihood and training programs for the benefit of the original CLOA holders/awardees.

GROUP C

For those who belong to **Group C**, they have to vacate immediately the premises and surrender possession of the subject properties, without any compensation. However, they shall be allowed to remove the improvements that they have introduced to the subject landholdings.

Since the afore-quoted proposed compensation and accommodation packages by Roxas & Co. are not only in accord, but even in excess of what the law requires, it is worthy of approval by this Court.

I am not cowed by accusations that my position on the instant Petitions is contrary to social justice, because it is substantially favors Roxas & Co., the landowners. Article XIII, Section 5 of the 1987 Constitution recognize the right of the landowners, alongside the farmers and farmworkers, in the implementation of the CARP. It has been declared, furthermore, that the duty of the Court to protect the weak and the underprivileged should not be carried out to such an extent as to deny justice to the landowner whenever truth and justice happen to be on his side.[87] As this Court unhesitatingly declared in *Agrarian Reform Beneficiaries Association (ARBA) v. Nicolas*:[88]

> This Court cannot sit idly and allow a government instrumentality to trample on the rights of *bona fide* landowners in the blind race for what it proclaims as social justice. As Justice Isagani Cruz succinctly held, social justice is to be afforded to all:
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> > x x x social justice — or any justice for that matter — is for the deserving whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in case of reasonable doubt, we are called upon to tilt the balance in favor of the poor simply because they are poor, to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to prefer the poor simply because they are poor, or to eject the rich simply because they are rich, for justice must always be served, for poor and rich alike, according to the mandate of the law.

IV
ALTERNATIVE SCENARIO

Even given the ruling of the majority that Presidential Proclamation No. 1520 did not convert all agricultural lands within the Municipality of Nasugbu to non-agricultural uses, I still submit that we should not sweepingly grant the Petitions

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[87] *Landbank v. Court of Appeals*, G.R. No. 118712, 6 October 1995.

[88] G.R. No. 168394, 6 October 2008.

and prayers of KAMAHARI and DAMBA-NFSW in the Petitions at bar. It must be remembered that particular properties of Roxas & Co. in **G.R. No. 149548, No. 179650, and No. 167505** were already determined in appropriate proceedings before the DAR Secretary, and affirmed by the Court of Appeals, to be exempt from CARP pursuant to the Nasugbu Municipal Zoning Ordinance No. 4, series of 1982.

Quoting from McQuillin,[89] the Court described zoning in *Pampanga Bus Company, Inc. v. Municipality of Tarlac*[90] as follows:

> Zoning is governmental regulation of the uses of land and buildings according to districts or zones. It is comprehensive where it is governed by a single plan for the entire municipality and prevails throughout the municipality in accordance with that plan. It is partial or limited where it is applicable only to a certain part of the municipality or to certain uses. Fire limits, height districts and building regulations are forms of partial or limited zoning or use regulation that are antecedents of modern comprehensive zoning. (pp. 11-12.)
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> The term "zoning," ordinarily used with the connotation of comprehensive or general zoning, refers to governmental regulation of the use of land and buildings according to districts or zones. This regulation must and does utilize classification of uses within districts as well as classification of districts, inasmuch as it manifestly is impossible to deal specifically with each of the innumerable uses made of land and buildings. Accordingly, zoning has been defined as the confining of certain classes of buildings and uses to certain localities, areas, districts or zones. It has been stated that zoning is the regulation by districts of building development and uses of property, and that the term "zoning" is not only capable of this definition but has acquired a technical and artificial meaning in accordance therewith. Zoning is the separation of the municipality into districts and the regulation of buildings and structures within the districts so created, in accordance with their construction, and nature and extent of their use. It is a dedication of districts delimited to particular uses designed to subserve the general welfare. Numerous

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[89] Treaties on Municipal Corporations, Volume 8, 3rd ed.

[90] G.R. No. L-15759, 30 December 1961.

other definitions of zoning more or less in accordance with these have been given in the cases. (pp. 27-28.)

In *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals*,[91] the Court affirmed the authority of the municipal council to issue a zoning classification and to reclassify a property from agricultural to residential, as approved by the HSRC (now the HLURB). Section 3 of Republic Act No. 2264, amending the Local Government Code, specifically empowered municipal and/or city councils, in consultation with the National Planning Commission, to adopt zoning and subdivision ordinances or regulations.

In its appeals from the grant by the DAR Secretary of the applications for exemptions in DAR Administrative Cases No. A-9999-142-97 (G.R. No. 149548 and No. 179650) and No. A-9999-008-98 (G.R. No. 167505), DAMBA-NSFW was, in effect, questioning the sufficiency of the evidence of Roxas & Co. Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact. Whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight — all these are issues of fact. Questions like these are not reviewable by this Court which, as a rule, confines its review of cases decided by the Court of Appeals only to questions of law raised in the petition and therein distinctly set forth.[92]

Well-settled in this jurisdiction is the doctrine that findings of fact of administrative agencies must be respected as long as

[91] G.R. No. 142359, 25 May 2004.

[92] *Paterno v. Paterno*, G.R. No. 63680, 23 March 1990.

they are supported by substantial evidence, even if such evidence is not overwhelming or preponderant.[93] If supported by substantial evidence, the factual finding of an administrative body, charged with a specific field of expertise, is conclusive and should not be disturbed.[94] Substantial evidence, which is the quantum of evidence required to establish a fact in cases before administrative or quasi-judicial bodies, is that level of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[95]

There is no reason to disturb the findings of the DAR Secretary that the lots subject of the applications for exemption, in both DAR Administrative Cases No. A-9999-142-97 and No. A-9999-008-98, are located within non-agricultural zones under the Nasugbu Municipal Zoning Ordinance No. 4, series of 1982; the said findings being supported by substantial evidence.

In both DAR Administrative Cases No. A-9999-142-97 and No. A-9999-008-98, Roxas & Co. was able to submit the documents in support of its applications for exemption, as required in DAR Administrative Order No. 6, series of 1994, including the certifications from the Deputized Zoning Administrator and the HLURB.[96] It was on the basis of said documents, together

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[93] *Lumiqued v. Exevea*, G.R. No. 117565, 18 November 1997.

[94] *National Power Corporation v. Philippine Electric Plant Owners Association (PEPOA), Inc.*, G.R. No. 159457, 7 April 2006.

[95] Rule 134, Section 5 of the Rules of Court.

[96] According to III(B) of DAR Administrative Order No. 6, series of 1994, the application for exemption should be duly signed by the landowner or his representative, and should be accompanied by the following documents:

1. Duly notarized Special Power of Attorney, if the applicant is not the landowner himself;
2. Certified true copies of the titles which is the subject of the application;
3. Current tax declaration(s) covering the property;
4. Location Map or Vicinity Map;
5. Certification from the Deputized Zoning Administrator that the land has been reclassified to residential, industrial or commercial use prior to June 15, 1988;

with ocular inspection reports, that the DAR Secretary based its findings that the lots subject of the two applications were indeed reclassified for non-agricultural uses[97] by Nasugbu Municipal Zoning Ordinance No. 4, series of 1982, prior to the effectivity of the CARL on 15 June 1988, thus, exempting the said properties from CARP coverage.

The Certifications, issued by the appropriate public officers, is *prima facie* evidence of the facts therein set out. To overcome the presumption of regularity of performance of official functions in favor of such Certifications, the evidence against them must be clear and convincing.[98] Belief, suspicion, and conjectures cannot overcome the presumption of regularity and legality which attaches to the disputed Certifications. The bare allegations of DAMBA-NFSW that the provisions of Nasugbu Municipal Zoning Ordinance No. 4, series of 1982, were too vague or inexact to be used as bases for determining the zoning classification of the lots of Roxas & Co., failed to defeat the Certifications issued by the Deputized Zoning Administrator and the HLURB — who are charged with the approval, interpretation, and implementation of said zoning ordinance — expressly confirming that the said lots are located in non-agricultural zones. There is also utter lack of basis for the insistence of DAMBA-NFSW that in addition to Nasugbu Municipal Zoning Ordinance No. 4,

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6. Certification from the HLURB that the pertinent zoning ordinance has been approved by the Board prior to June 15, 1988;
7. Certification from the National Irrigation Administration that the land is not covered by Administrative Order No. 20, s. 1992, *i.e.*, that the area is not irrigated, nor scheduled for irrigation rehabilitation nor irrigable with firm funding commitment;
8. Proof of payment of disturbance compensation, if the area is presently being occupied by farmers, or waiver/undertaking by the occupants that they will vacate the area whenever required.

[97] The six (eventually increase to seven) lots in DAR Administrative Case No. A-9999-142-97 were within the industrial zone, while the nine lots in DAR Administrative Case No. A-9999-008-98 were within settlement clusters outside the Poblacion.

[98] See *Spouses Madrigal v. Court of Appeals*, G.R. No. 129955, 26 November 1999; and *Lercana v. Jalandoni*, G.R. No. 132286, 1 February 2002.

series of 1982, Roxas & Co. should have also submitted a Land Use Plan approved prior to 15 June 1988. The validity and effectivity of the municipal ordinance is not, in any way, dependent on the existence of a land use plan.

Once more, it should be kept in mind that administrative bodies are given wide latitude in the evaluation of evidence, including the authority to take judicial notice of facts within their special competence. Absent any proof to the contrary, the presumption is that official duty has been regularly performed. Hence, the DAR Secretary is presumed to have performed his duty of studying the available evidence, prior to the grant of the applications for exemption of Roxas & Co.[99]

DAMBA-NFSW is also seeking the nullification of the proceedings in DAR Administrative Cases No. A-9999-142-97 and No. A-9999-008-98 for lack of notice to DAMBA-NFSW whose members hold CLOAs over the lots subject of said applications for exemption. DAMBA-NFSW invokes our ruling in *Roxas & Co. v. Court of Appeals*, nullifying the acquisition proceedings for lack of proper notice upon Roxas & Co.

This argument is without merit.

The decision in *Roxas & Co. v. Court of Appeals* painstakingly presented the specific provisions in the CARL; DAR Administrative Order No. 12, series of 1989; DAR Administrative Order No. 9, series of 1990; DAR Administrative Order No. 1, series of 1993; and the DARAB Revised Rules of Procedure, which explicitly require the service of notice upon the landowner in both voluntary and compulsory acquisition proceedings.

Other than a general averment of its right to due process, DAMBA-NFSW was not able to cite a rule expressly requiring the landowner who is applying for exemption from CARP coverage of his landholding based on Section 3(c) of the CARL and DAR Administrative Order No. 6, series of 1994, to give notices of the filing of said application and the subsequent proceedings as regards the same to the occupants of the subject property.

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[99] *National Power Corporation v. Philippine Electric Plant Owners Association (PEPOA), Inc.*, G.R. No. 159457, 7 April 2006.

It bears to point out that at the time Roxas & Co. filed its applications for exemption in DAR Administrative Cases No. A-9999-142-97 and No. A-9999-008-98 on 29 May 1997 and 29 September 1997, respectively, only DAR Administrative Order No. 6, series of 1994, governed such applications.[100] Said administrative order does not contain any provision on notices. Rights of farmers and other occupants of the land subject of the application for exemption could only be presumed to have been taken into consideration by the DAR officials mandated to conduct a joint investigation following the filing of the application for exemption. Part IV of DAR Administrative Order No. 6, series of 1994, prescribes that:

> A. Upon filing of the application, the Regional Office shall conduct a joint investigation with the duly authorized representatives of the Provincial and Municipal Offices of the DAR that have jurisdiction over the property. The investigation shall be undertaken and the report prepared within thirty (30) days from the filing of the completed application. x x x
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> B. The joint investigation report shall concentrate on the presence of potential beneficiaries in the area, the payment of disturbance compensation, the initial activities related to the coverage, and other pertinent information which may be relevant in the grant or denial of the application for exemption.
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> The joint investigation report shall also contain a certification from the MARO on whether or not the area has been placed under the coverage of Pres. Decree No. 27, or whether Certificates of

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[100] On 30 August 2000, the DAR issued DAR Administrative Order No. 6, series of 2000, which lays down the Rules of Procedure for Agrarian Law Implementation (ALI) Cases. According to Section 2(g) thereof, the rules govern application for exemption pursuant to DOJ Opinion No. 44, series of 1990, as implemented by DAR Administrative Order No. 6, series of 1994. Section 16(h) of DAR Administrative Rule No. 6, series of 2000, on Investigation Procedure, now requires the issuance of notice in the following manner:

> (h) Issuance of Notice. — The MARO or investigating officer shall issue a notice of summary investigation to the parties concerned within ten (10) days from termination of mediation/conciliation (if unsuccessful) or from receipt of application, protest or petition. The notice shall be sent by personal delivery with proof of service or by registered mail with return card.

Land Transfer or Emancipation Patents have been issued over said property.

x x x x x x x x x

Even granting that DAMBA-NFSW should have been given notices of the applications for exemption of Roxas & Co., the lack thereof does not necessarily mean that DAMBA-NFSW was deprived of due process that would render the proceedings in DAR Administrative Cases No. A-9999-142-97 and No. A-9999-008-98 void. The Court has consistently held that the essence of due process is simply the opportunity to be heard or, as applied to administrative proceedings, the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of; and any seeming defect in its observance is cured by the filing of a motion for reconsideration. Denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.[101] DAMBA-NFSW cannot deny that it was able to file Motions for Reconsideration of the Orders of the DAR Secretary granting the applications for exemption of Roxas & Co. in DAR Administrative Cases No. A-9999-142-97 and No. A-9999-008-98, except that both Motions were subsequently denied by the DAR Secretary for lack of merit.

After the DAR Secretary approved the applications for exemption of Roxas & Co., and denied the Motions for Reconsideration of DAMBA-NFSW in DAR Administrative Cases No. A-9999-142-97 and No. A-9999-008-98, DAMBA-NFSW then went before the Court of Appeals via Petitions for *Certiorari* under Rule 65 of the Rules of Court, the wrong remedy.

In *Sebastian v. Morales*,[102] the Court provided the following elucidation on the proper remedy from an order of the DAR Secretary and the consequence for availing one's self of the wrong mode of appeal:

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[101] *Samalio v. Court of Appeals*, G.R. No. 140079, 31 March 2005.

[102] G.R. No. 141116, 17 February 2003.

We agree with the appellate court that petitioners' reliance on Section 54 of R.A. No. 6657 "is not merely a mistake in the designation of the mode of appeal, but clearly an erroneous appeal from the assailed Orders." For in relying solely on Section 54, petitioners patently ignored or conveniently overlooked Section 60 of R.A. No. 6657, the pertinent portion of which provides that:

> An appeal from the decision of the Court of Appeals, or from any order, ruling or decision of the DAR, as the case may be, shall be by a petition for review with the Supreme Court, within a non-extendible period of fifteen (15) days from receipt of a copy of said decision.

Section 60 of R.A. No. 6657 should be read in relation to R.A. No. 7902 expanding the appellate jurisdiction of the Court of Appeals to include:

> Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions . . . except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.[21]

With the enactment of R.A. No. 7902, this Court issued Circular 1-95 dated May 16, 1995 governing appeals from all quasi-judicial bodies to the Court of Appeals by petition for review, regardless of the nature of the question raised. Said circular was incorporated in Rule 43 of the 1997 Rules of Civil Procedure.

Section 61 of R.A. No. 6657[22] clearly mandates that judicial review of DAR orders or decisions are governed by the Rules of Court. The Rules direct that it is Rule 43 that governs the procedure for judicial review of decisions, orders, or resolutions of the DAR Secretary. By pursuing a special civil action for *certiorari* under Rule 65 rather than the mandatory petition for review under Rule 43, petitioners opted for the wrong mode of appeal. Pursuant to the fourth paragraph of Supreme Court Circular No. 2-90, "an appeal taken to the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed." Therefore, we hold that

the Court of Appeals committed no reversible error in dismissing CA-G.R. SP No. 51288 for failure of petitioners to pursue the proper mode of appeal.

Even when there may be instances when the Court had chosen to relax its procedural rules in the name of substantive justice, the lack of merit in the opposition of DAMBA-NFSW to the applications for exemption of Roxas & Co. in DAR Administrative Cases No. A-9999-142-97 and No. A-9999-008-98, as discussed in the preceding paragraphs, does not justify the reversal of the dismissal by the appellate court of the Petitions for *Certiorari* of DAMBA-NFSW in CA-G.R. SP No. 82225 and CA-G.R. No. 82226 for being the wrong mode of appeal.

As for **G.R. No. 167845 and No. 169163**, proceedings have also been held before the PARAD regarding CLOA No. 6654 (DARAB Cases No. R-401-003-2001 to No. R-401-005-2001 and No. 401-239-2001, respectively), which resulted in the partial and complete cancellations of the said certificates. I accentuate once more that by reason of the special knowledge and expertise of administrative departments over matters falling under their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts.[103] The Court must also not forget that the 27 May 2001 Decision of the PARAD in DARAB Case No. 401-239-2001 already became final and executory by failure of DAMBA-NFSW to file an appeal within the reglementary period.

V
MY VOTE

WHEREFORE, premises considered, I concur in some part but dissent for the most part in the ruling of the majority, and vote as follows:

(1) In **G.R. No. 167540**, to **DENY** the Petition for Review of KAMAHARI and DAMBA-NFSW, and to **AFFIRM** the Decision dated 24 November 2003 and Resolution dated 18

[103] *Palele v. Court of Appeals*, G.R. No. 138289, 31 July 2001.

March 2005 of the Court of Appeals in CA-G.R. SP No. 72131, which declared the parcels of land comprising Haciendas Caylaway, Banilad, and Palico, all in the name of Roxas & Co. and located in Nasugbu, Batangas, to be exempt from CARP coverage pursuant to Presidential Proclamation No. 1520, making Nasugbu part of a tourist zone. I vote further to **DISMISS** the Petitions for Intervention of the Sangguniang Bayan and the ABC of Nasugbu for failure to prosecute;

(2) In **G.R. No. 167543**, to **DENY** the Motion for Reconsideration of DAR, and to **AFFIRM** the Resolution dated 20 June 2005 of this Court denying the Petition for Review of DAR for the latter's failure to show that a reversible error had been committed by the Court of Appeals in its Decision dated 24 November 2003 and Resolution dated 18 March 2005 in CA-G.R. SP No. 72131;

(3) In **G.R. No. 179650 and No. 167505**, to **DENIED** the Petitions for Review of DAMBA-NFSW for being moot and academic, consistent with my vote in G.R. No. 167540 and No. 167543. With the exemption from CARP coverage of the entire Hacienda Palico pursuant to Presidential Proclamation No. 1520, the resolution of the exemption from CARP coverage of smaller lots in the same Hacienda by virtue of the Nasugbu Municipal Zoning Ordinance No. 4, series of 1982, serves no practical purpose.

(4) In **G.R. No. 167845**, to **GRANT** the Petition for Review of Roxas & Co. Accordingly, I vote to **REVERSE** and **SET ASIDE** the Decision dated 10 September 2004 and Resolution dated 14 April 2005 of the Court of Appeals in CA-G.R. SP No. 72198; and to **REINSTATE** the Order dated 19 February 2002 of the PARAD in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001, denying due course to the Notice of Appeal of DAMBA-NFSW for having been filed beyond the reglementary period. I further vote to **DECLARE AS FINAL AND EXECUTORY**, with no appeal having been timely filed therefrom, the Joint Order dated 21 May 2001 of the PARAD in DARAB Cases No. R-401-003-2001 to No. R-401-005-2001, granting the partial cancellation of TCT No. CLOA-6654, insofar as it covers Lot 125-K with an area of 27.4170 hectares situated at

Brgy. Bilaran, Nasugbu, Batangas; Lot 125-L with an area of 36.9796 hectares located in Brgy. Lumbangan, Nasugbu, Batangas, and Lot 125-M with an area of 37.8648 hectares also located in Brgy. Lumbangan, Nasugbu, Batangas, covered by TCT No. T-60028, No. T-60033 and No. T-60032, respectively;

(5) In **G.R. No. 169163**, to **DENY** the Motion for Reconsideration of DAMBA-NFSW, and to **AFFIRM** the Resolution dated 19 October 2005 of this Court denying the Petition for Review of DAMBA-NFSW, in the absence of reversible error on the part of the Court of Appeals when it dismissed in its Decision dated 28 February 2005 and Resolution dated 3 August 2005 the Petition for *Certiorari* of DAMBA-NFSW in CA-G.R. SP No. 75952. I vote further to **DECLARE AS FINAL AND EXECUTORY**, with no appeal having been timely filed therefrom, the 27 May 2001 Decision of the PARAD in DARAB Case No. 401-239-2001, ordering the cancellation of CLOA No. 6654, insofar as the remaining 411.7249 hectares are concerned, after the partial cancellation effected in G.R. No. 167845;

(6) In **G.R. No. 149548**, to **DISMISS** for being moot and academic the Petition for Review of Roxas & Co. seeking an injunction against the installation by the DAR of the farmer-beneficiaries on Lots No. 21, No. 24, No. 28, No. 31, No. 32 and No. 34, comprising 51.5472 hectares, situated in Brgys. Cogunan and Lumbangan, Nasugbu, Batangas, until CLOA No. 6654, which covered the said lots, among other parcels of land, was cancelled. This is pursuant to my vote in G.R. No. 167845 and No. 169163, already affirming the partial and complete cancellations of CLOA No. 6654; and

7. To **APPROVE** the compensation and accommodation packages proposed by Roxas & Co. for *bona fide* tenants, shareholders, and leaseholders of Haciendas Caylaway, Banilad, and Palico (Group A beneficiaries), and for original CLOA holders/ awardees who had no previous contractual relationship with Roxas & Co. but were installed upon the latter's landholdings by DAR (Group B beneficiaries); with the corresponding directive to Roxas & Co. to faithfully comply with the said compensation and accommodation packages.

THIRD DIVISION

[G.R. No. 155125. December 4, 2009]

YSS EMPLOYEES UNION-PHILIPPINE TRANSPORT AND GENERAL WORKERS ORGANIZATION, *petitioner, vs.* **YSS LABORATORIES, INC.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; SECRETARY OF LABOR; CERTIFYING THE LABOR DISPUTE TO THE NLRC FOR COMPULSORY ARBITRATION, ENJOINING THE STRIKING UNION MEMBERS TO RETURN TO WORK AND THE EMPLOYER TO ADMIT THEM UNDER THE SAME TERMS AND CONDITIONS PREVAILING BEFORE THE STRIKE, PROPER. —** The Orders dated 11 May 2001 and 9 June 2001 of the Secretary of Labor, certifying the labor dispute involving the herein parties to the NLRC for compulsory arbitration, and enjoining YSSEU to return to work and YSS Laboratories to admit them under the same terms and conditions prevailing before the strike, were issued pursuant to Article 263(g) of the Labor Code. Said provision reads: Art. 263. *Strikes, picketing, and lockouts*. x x x (g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, **all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout.** The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same. After martial law was lifted

and democracy was restored, the assumption of jurisdiction in Art. 263(g) has now been viewed as an exercise of the police power of the State with the aim of promoting the common good. The grant of these plenary powers to the Secretary of Labor makes it incumbent upon him to bring about soonest, a fair and just solution to the differences between the employer and the employees, so that the damage such labor dispute might cause upon the national interest may be minimized as much as possible, if not totally averted, by avoiding stoppage of work or any lag in the activities of the industry or the possibility of those contingencies that might cause detriment to the national interest. In order to effectively achieve such end, the assumption or certification order shall have the effect of automatically enjoining the intended or impending strike or lockout. Moreover, if one has already taken place, all striking workers shall immediately return to work, and the employer shall immediately resume operations and **readmit all workers under the same terms and conditions prevailing before the strike or lockout.**

2. **ID.; ID.; ID.; NO GRAVE ABUSE OF DISCRETION AS THE END IN VIEW IS PRESERVING THE *STATUS QUO ANTE* WHILE THE MAIN ISSUES OF VALIDITY OF RETRENCHMENT AND LEGALITY OF STRIKE WERE BEING THRESHED OUT IN PROPER FORUM. —** YSS Laboratories' vigorous insistence on the exclusion of the retrenched employees from the coverage of the return-to-work order seriously impairs the authority of the Secretary of Labor to forestall a labor dispute that he deems inimical to the national economy. The Secretary of Labor is afforded plenary and broad powers, and is granted great breadth of discretion to adopt the most reasonable and expeditious way of writing *finis* to the labor dispute. Accordingly, when the Secretary of Labor directed YSS Laboratories to accept all the striking workers back to work, the Secretary did not exceed his jurisdiction, or gravely abuse the same. It is significant at this point to point out that grave abuse of discretion implies a capricious and whimsical exercise of judgment. Thus, an act may be considered as committed in grave abuse of discretion when the same is performed in a capricious or whimsical exercise of judgment, which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the

power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. In the case at bar, there is no showing that the assailed orders were issued in an arbitrary or despotic manner. The Orders dated 11 May 2001 and 9 June 2001 were issued by the Secretary of Labor, with the end in view of preserving the *status quo ante* while the main issues of the validity of the retrenchment and legality of the strike were being threshed out in the proper forum. This was done for the promotion of the common good, considering that a lingering strike could be inimical to the interest of both employer and employee. The Secretary of Labor acts to maintain industrial peace. Thus, his certification for compulsory arbitration is not intended to interfere with the management's rights but to obtain a speedy settlement of the dispute.

3. **ID.; ID.; ID.; RETURN TO WORK ORDER IS MANDATORY, NOT DISCRETIONARY TO THE EMPLOYER. —** By harping on the validity of the retrenchment and on the exclusion of the retrenched employees from the coverage of the return-to-work order, YSS Laboratories undermines the underlying principle embodied in Article 263(g) of the Labor Code on the settlement of labor disputes — that assumption and certification orders are executory in character and are to be strictly complied with by the parties, even during the pendency of any petition questioning their validity. Regardless therefore of its motives, or of the validity of its claims, YSS Laboratories must readmit all striking employees and give them back their respective jobs. Accepting back the workers in this case is not a matter of option, but of obligation mandated by law for YSS Laboratories to faithfully comply with. Its compulsory character is mandated, not to cater to a narrow segment of society, or to favor labor at the expense of management, but to serve the greater interest of society by maintaining the economic equilibrium. Instructive is the ruling of this Court in *Philippine Airlines Employees Association v. Philippine Airlines, Inc.*: The very nature of a return-to-work order issued in a certified case lends itself to no other construction. The certification attests to the urgency of the matter, affecting as it does an industry indispensable to the national interest. The order is issued in the exercise of the court's compulsory power of arbitration, and therefore must be obeyed until set aside. x x x. Certainly, the determination of who among the strikers could be admitted back to work cannot be made to depend upon

the discretion of employer, lest we strip the certification or assumption-of-jurisdiction orders of the coercive power that is necessary for attaining their laudable objective. The return-to-work order does not interfere with the management's prerogative, but merely regulates it when, in the exercise of such right, national interests will be affected. The rights granted by the Constitution are not absolute. They are still subject to control and limitation to ensure that they are not exercised arbitrarily. The interests of both the employers and employees are intended to be protected and not one of them is given undue preference.

APPEARANCES OF COUNSEL

Rogee Mayteen B. Espinosa-Datudacula and *Flores Flores and Associates* for petitioner.

Cadiz Tabayoyong for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* filed by petitioner YSS Employees Union (YSSEU) — Philippine Transport and General Workers Organization seeking to reverse and set aside the Decision[1] dated 26 November 2001 and the Resolution dated 29 August 2002 of the Court of Appeals in CA-G.R. SP No. 66095. The said Decision and Resolution nullified the Orders of the Secretary of the Department of Labor and Employment (DOLE) dated 11 May 2001[2] and 9 June 2001[3] which enjoined the strike staged by petitioner, and ordered respondent YSS Laboratories Inc. (YSS Laboratories) to accept the workers back to their work, including those who were retrenched from employment due to serious business losses.

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[1] Penned by Andres B. Reyes Jr. with Associate Justices Conrado M. Vasquez, Jr. and Amelita Tolentino, concurring; *rollo,* pp. 63-78.

[2] *Rollo,* pp. 198-201.

[3] *Id.* at 218-221.

The inclusion of the employees who were previously terminated from service to the return-to-work order is the hub of this controversy.

YSS Laboratories is a domestic corporation engaged in the pharmaceutical business. YSSEU is a duly registered labor organization and the sole and exclusive bargaining representative of the rank and file employees of YSS Laboratories.

In order to arrest escalating business losses, YSS Laboratories implemented a retrenchment program which affected 11 employees[4] purportedly chosen in accordance with the reasonable standards established by the company. Of the 11 employees sought to be retrenched, nine were officers and members of YSSEU.[5] Initially, these employees were given the option to avail themselves of the early retirement program of the company.[6] When no one opted to retire early, YSS Laboratories exercised its option to terminate the services of its employees as allegedly authorized under Article 283[7] of the Labor Code. Thus, copies of the Notices

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[4] Resie Santos, Edwin Perona, Rogelio Salmorin, Joselina Victoria, Dominador Monterola, Jacqueline Tubale, Loreto Esteves, Jetner Argamaso, Teofilo Pagaduan, Jr., Bernardita Mesias and Alexander Reig. (*Rollo,* pp. 107-128.)

[5] Joselina Victoria – Secretary, Edwin Perona – Auditor, Rogelio Salmorin –P.R.O., Teofilo Pagaduan Jr., – Board Member, Resie Santos, Dominador Monterola, Jacqueline Tubale, Loreto Esteves, Jetner Argamaso – Members.

[6] NLRC Records, Vol. I, p. 75.

[7] ART. 283. *Closure of establishment and reduction of personnel*. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the [Department] of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½)

of Termination were filed with DOLE on 19 March 2001 and were served to concerned employees on 20 March 2001.

Claiming that YSS Laboratories was guilty of discrimination and union-busting in carrying out the said retrenchment program, YSSEU decided to hold a strike. After the necessary strike vote was taken under the supervision of the National Conciliation Mediation Board — National Capital Region (NCMB-NCR), YSSEU staged a strike on 20 April 2001.[8]

In order to forge a compromise, a number of conciliation proceedings were conducted by the NCMB-NCR, but these efforts proved futile since the parties' stance was unbending.

This prompted the Secretary of Labor to finally intervene in order to put an end to a prolonged labor dispute. Underscoring the government's policy of preserving economic gains and employment levels, the Secretary of Labor deemed that the continuation of the labor dispute was inimical to national interest. Thus, in an Order dated 11 May 2001, the Secretary of Labor certified the labor dispute to the National Labor Relations Commission (NLRC) for compulsory arbitration. Accordingly, all striking workers were thereby directed to return to work within 24 hours from their receipt of the said Order, and YSS Laboratories to accept them under the terms and conditions prevailing before the strike. The Order was worded in this wise:

> CONSIDERING THESE PREMISES, this Office hereby certifies the labor dispute at [YSS Laboratories] to the [NLRC] for compulsory arbitration, pursuant to Article 263(g) of the Labor [Code], as amended.
>
> All striking workers are hereby directed to return to work within twenty four (24) hours from receipt of this Order and for the Company to accept them back under the same terms and conditions of employment prior to the strike.
>
> The parties are further directed to cease and desist from committing any act which might further worsen the situation.

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month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year."

[8] NLRC Records, Vol. I, pp. 1413-144.

Let the entire records of this case be forwarded to the NLRC for its appropriate action.[9]

YSS Laboratories, however, refused to fully comply with the directive of the Secretary of Labor. In its Urgent Motion for Reconsideration,[10] YSS Laboratories argued that nine union officers and members who were previously terminated from service pursuant to a valid retrenchment should be excluded from the operation of the return-to-work order. It also asserted that the union officers[11] who participated in the purported illegal strike should likewise not be allowed to be back to their employment for they were deemed to have already lost their employment status.

YSSEU, for its part, moved that YSS Laboratories be cited for contempt for refusing to admit the 18 workers back to work. In addition, YSSEU prayed for the award of backwages in favor of these employees who were not permitted by YSS Laboratories to return to their respective stations despite the Secretary of Labor's directive.[12]

Acting on the aforesaid motions, the Secretary of Labor, on 9 June 2001, granted the motion of YSSEU and thus issued an Order[13] directing YSS Laboratories to immediately accept back to work the nine retrenched employees and the nine union officers who initiated the alleged illegal strike pending determination of the validity of the retrenchment and illegal strike cases. Should actual physical reinstatement be no longer possible, YSS Laboratories was ordered to reinstate the striking workers in the company's payroll. The decretal portion of the Order reads:

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[9] *Rollo*, pp. 200-201.

[10] *Id.* at 202-216.

[11] Noel Gaelon – President, Mariozaldy Racelis – Vice-President, Perlina Cada – Treasurer, Enrique Perona, Gerson Niebla, Medardo Suaiso, Hernan Mecasero, Homer Rada and Prescilla Godoy – Board Members.

[12] *Rollo,* pp. 222-225.

[13] *Id.* at 218-221.

WHEREFORE, [YSS Laboratories] is directed to immediately accept back to work the nine (9) retrenched employees and the nine (9) union officers and members against whom an illegal strike case has been filed, by the NLRC, pending determination of the validity of the retrenchment and illegal strike cases. In case the actual and physical reinstatement is not feasible, [YSS Laboratories] is directed to effect payroll reinstatement with the workers' salaries payable every two (2) weeks effective from the [YSS Laboratories'] receipt of this Order.[14]

Unyielding, YSS Laboratories brought a Petition for *Certiorari*[15] under Rule 65 of the Rules of Court before the Court of Appeals, seeking to annul the certification order and the return-to-work order issued by the Secretary of Labor. While recognizing the wide latitude afforded by law to the Secretary of Labor to issue Assumption of Jurisdiction and Certification Orders, YSS Laboratories claimed that the issuance of the 11 May 2001 and 9 June 2001 Orders was tainted with utter grave abuse of discretion and patent bias in favor of YSSEU. Again, YSS Laboratories asseverated that the nine employees who were previously dismissed from employment should be excluded from the coverage of the return-to-work order since they were lawfully retrenched by the company.

On 26 November 2001, the Court of Appeals rendered a Decision granting the Petition and reversing the assailed Orders dated 11 May 2001 and 9 June 2001, as they were made with grave abuse of discretion amounting to lack or excess of jurisdiction. The appellate court found that YSS Laboratories validly carried out its retrenchment program, which effectively severed the concerned employees' employment with the company. For lack of factual and legal basis, the Court of Appeals struck down the strike staged by YSSEU for being illegal. The appellate court thus disposed:

WHEREFORE, premises considered, the Petition is **GRANTED**; and the two (2) assailed Orders of public respondent Secretary of

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[14] *Id.* at 221.

[15] CA *rollo*, pp. 1-69.

Labor in NCMB-NCR-NS-03-086-01/0S-AJ-0006-2001 are hereby **SET ASIDE** for being **NULL** and **VOID**.[16]

Similarly ill-fated was YSSEU's motion for reconsideration which was denied through the Court of Appeals' Resolution issued on 29 August 2002.[17]

YSSEU is now before this Court assailing the aforementioned decision and resolution of the Court of Appeals on the ground that the appellate court erred in reversing the Orders of the Secretary of Labor.

For our resolution are the following issues:

I.

WHETHER OR NOT THE SECRETARY OF LABOR GRAVELY ABUSED ITS DISCRETION IN CERTIFYING THE LABOR DISPUTE TO THE NLRC FOR COMPULSORY ARBITRATION.

II.

WHETHER OR NOT THE RETRENCHED EMPLOYEES SHOULD BE EXCLUDED FROM THE OPERATION OF THE RETURN TO WORK ORDER.

While this Court prefers to rule on the issue of the validity of the retrenchment program as well as on the questions on the legality or illegality of the strike, and on the individual liabilities of the strikers, if any, we cannot put an end to this protracted labor dispute, however, without preempting the NLRC in the disposition of these issues and thereby transgressing the elementary doctrine of primary jurisdiction.[18] The pivotal issue in this petition

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[16] *Rollo*, p. 78.

[17] *Id.* at 80.

[18] Doctrine of Primary Jurisdiction states when the courts cannot and will not resolve a controversy involving a question that is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact. (See *Ros v. Department of Agrarian Reform*, G.R. No. 132477, 31 August 2005, 468 SCRA 471, 483-484.)

centers on whether or not the retrenched employees should be excluded from the coverage of the return-to-work-order.

YSSEU maintains that once a labor dispute is certified to the NLRC for compulsory arbitration, the employer should readily admit **all striking employees** under the *status quo ante*. It argues that the primary reason why the strike was conducted in the first place was to protest the implementation of the retrenchment program, which clearly discriminated against union officers and members. It bears to stress that out of the 11 employees affected by retrenchment, four are union officers and five are union members.

YSS Laboratories, on the other hand, insists that those employees who were already separated from service due to a valid retrenchment should not be readmitted back to work anymore. It avers that the retrenched employees were chosen after a thorough evaluation of their work performance, including their frequencies of absence and tardiness, and their respective lengths of service, rendering YSSEU's claims of discrimination and union busting, preposterous.

The petition is impressed with merit.

The Orders dated 11 May 2001 and 9 June 2001 of the Secretary of Labor, certifying the labor dispute involving the herein parties to the NLRC for compulsory arbitration, and enjoining YSSEU to return to work and YSS Laboratories to admit them under the same terms and conditions prevailing before the strike, were issued pursuant to Article 263(g) of the Labor Code. Said provision reads:

Art. 263. *Strikes, picketing, and lockouts*.

x x x x x x x x x

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the

assumption or certification order. If one has already taken place at the time of assumption or certification, **all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout.** The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same. (Emphasis supplied.)

After martial law was lifted and democracy was restored, the assumption of jurisdiction in Art. 263(g) has now been viewed as an exercise of the police power of the State with the aim of promoting the common good:[19]

[I]t must be noted that Articles 263 (g) and 264 of the Labor Code have been enacted pursuant to the police power of the State, which has been defined as the power inherent in a government to enact laws, within constitutional limits, to promote the order, safety, health, morals and general welfare of society. The police power, together with the power of eminent domain and the power of taxation, is an inherent power of government and does not need to be expressly conferred by the Constitution. x x x.[20]

The grant of these plenary powers to the Secretary of Labor makes it incumbent upon him to bring about soonest, a fair and just solution to the differences between the employer and the employees, so that the damage such labor dispute might cause upon the national interest may be minimized as much as possible, if not totally averted, by avoiding stoppage of work or any lag in the activities of the industry or the possibility of those contingencies that might cause detriment to the national interest.[21]

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[19] *Phimco Industries, Inc. v. Acting Secretary of Labor Brillantes*, 364 Phil. 402, 409 (1999).

[20] *Philtread Workers Union (PTWU) v. Confesor*, 336 Phil. 375, 380 (1997); *Union of Filipro Employees v. Nestlé Philippines, Inc.*, G.R. Nos. 88710-13, 19 December 1990, 192 SCRA 396, 409.

[21] *Telefunken Semiconductors Employees Union v. Court of Appeals*, 401 Phil. 776, 802 (2000).

In order to effectively achieve such end, the assumption or certification order shall have the effect of automatically enjoining the intended or impending strike or lockout. Moreover, if one has already taken place, all striking workers shall immediately return to work, and the employer shall immediately resume operations and **readmit all workers under the same terms and conditions prevailing before the strike or lockout.**[22]

YSS Laboratories' vigorous insistence on the exclusion of the retrenched employees from the coverage of the return-to-work order seriously impairs the authority of the Secretary of Labor to forestall a labor dispute that he deems inimical to the national economy. The Secretary of Labor is afforded plenary and broad powers, and is granted great breadth of discretion to adopt the most reasonable and expeditious way of writing *finis* to the labor dispute.[23]

Accordingly, when the Secretary of Labor directed YSS Laboratories to accept all the striking workers back to work, the Secretary did not exceed his jurisdiction, or gravely abuse the same. It is significant at this point to point out that grave abuse of discretion implies a capricious and whimsical exercise of judgment. Thus, an act may be considered as committed in grave abuse of discretion when the same is performed in a capricious or whimsical exercise of judgment, which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[24] In the case at bar, there is no showing that the assailed orders were issued in an arbitrary or despotic manner. The

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[22] *Trans-Asia Shipping Lines, Inc.-Unlicensed Crews Employees Union-Associated Labor Unions (Tasli-Alu) v. Court of Appeals,* G.R. No. 145428, 7 July 2004, 433 SCRA 610, 618.

[23] *Telefunken Semiconductors Employees Union v. Court of Appeals*, *supra* note 21.

[24] *Philtread Workers Union (PTWU) v. Confesor*, *supra* note 20.

Orders dated 11 May 2001 and 9 June 2001 were issued by the Secretary of Labor, with the end in view of preserving the *status quo ante* while the main issues of the validity of the retrenchment and legality of the strike were being threshed out in the proper forum. This was done for the promotion of the common good, considering that a lingering strike could be inimical to the interest of both employer and employee. The Secretary of Labor acts to maintain industrial peace. Thus, his certification for compulsory arbitration is not intended to interfere with the management's rights but to obtain a speedy settlement of the dispute. This is well-articulated in *International Pharmaceuticals, Inc. v. Secretary of Labor,*[25] as follows:

> Plainly, Article 263 (g) of the Labor Code was meant to make both the Secretary (or the various regional directors) and the labor arbiters share jurisdiction, subject to certain conditions. Otherwise, the Secretary would not be able to effectively and efficiently dispose of the primary dispute. To hold the contrary may even lead to the absurd and undesirable result wherein the Secretary and the labor arbiter concerned may have diametrically opposed rulings. As we have said, "(i)t is fundamental that a statute is to be read in a manner that would breathe life into it, rather than defeat it.

By harping on the validity of the retrenchment and on the exclusion of the retrenched employees from the coverage of the return-to-work order, YSS Laboratories undermines the underlying principle embodied in Article 263(g) of the Labor Code on the settlement of labor disputes — that assumption and certification orders are executory in character and are to be strictly complied with by the parties, even during the pendency of any petition questioning their validity. Regardless therefore of its motives, or of the validity of its claims, YSS Laboratories must readmit all striking employees and give them back their respective jobs. Accepting back the workers in this case is not a matter of option, but of obligation mandated by law for YSS Laboratories to faithfully comply with. Its compulsory character is mandated, not to cater to a narrow segment of society, or to

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[25] G.R. Nos. 92981-83, 9 January 1992, 205 SCRA 59, 66.

favor labor at the expense of management, but to serve the greater interest of society by maintaining the economic equilibrium.

Instructive is the ruling of this Court in *Philippine Airlines Employees Association v. Philippine Airlines, Inc.*:[26]

> The very nature of a return-to-work order issued in a certified case lends itself to no other construction. The certification attests to the urgency of the matter, affecting as it does an industry indispensable to the national interest. The order is issued in the exercise of the court's compulsory power of arbitration, and therefore must be obeyed until set aside. x x x.

Certainly, the determination of who among the strikers could be admitted back to work cannot be made to depend upon the discretion of employer, lest we strip the certification or assumption-of-jurisdiction orders of the coercive power that is necessary for attaining their laudable objective. The return-to-work order does not interfere with the management's prerogative, but merely regulates it when, in the exercise of such right, national interests will be affected. The rights granted by the Constitution are not absolute. They are still subject to control and limitation to ensure that they are not exercised arbitrarily. The interests of both the employers and employees are intended to be protected and not one of them is given undue preference.

WHEREFORE, premises considered, the instant Petition is *GRANTED*. The Decision dated 26 November 2001 and Resolution dated 29 August 2002 of the Court of Appeals in CA-G.R. SP No. 66095 are *REVERSED* and *SET ASIDE*. The Orders dated 11 May 2001 and 9 June 2001 of the Secretary of the Department of Labor and Employment in NCMB-NCR-NS-03-086-01/08-AJ-0006-2001 are thereby *REINSTATED*. No costs.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[26] 148 Phil. 386, 392 (1971).

EN BANC

[G.R. No. 164195. December 4, 2009]

APO FRUITS CORPORATION and HIJO PLANTATION, INC., *petitioners, vs.* **THE HON. COURT OF APPEALS and LAND BANK OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; DOCTRINE OF IMMUTABILITY OF JUDGMENT; ELUCIDATED. —** The main role of the courts of justice is to assist in the enforcement of the law and in the maintenance of peace and order by putting an end to judiciable controversies with finality. Nothing better serves this role than the long established doctrine of immutability of judgments. It is never a small matter to maintain that litigation must end and terminate sometime and somewhere, even at the risk of occasional errors. A judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. The reason for the rule is that if, on the application of one party, the court could change its judgment to the prejudice of the other, it could thereafter, on application of the latter, again change the judgment and continue this practice indefinitely. The equity of a particular case must yield to the overmastering need of certainty and unalterability of judicial pronouncements. The doctrine of immutability and inalterability of a final judgment has a *two-fold* purpose: (1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business and (2) to put an end to judicial controversies, *at the risk of occasional errors*, which is precisely why courts exist. Controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time. The doctrine is not a mere technicality to be easily brushed aside, but a matter of public policy as well as a time-honored principle of procedural law.

2. **ID.; ID.; ID.; EXCEPTIONS; NOT APPLICABLE IN CASE AT BAR WHICH CONCERNS ONLY PRIVATE CLAIM FOR INTEREST AND ATTORNEY'S FEES. —** Although the immutability doctrine admits several exceptions, like: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries that cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable, none of the exceptions applies herein, simply because the matters involved herein are plainly different from those involved in the exceptional cases. x x x [T]he matter involved herein concerns only the petitioners' mere private claim for interest and attorney's fees, which cannot even be classified as unprecedented. Even worse is that the petitioners' private claim does not qualify either as a substantial or transcendental matter, or as an issue of paramount public interest, for no special or compelling circumstance has been present to warrant the relaxation of the doctrine of immutability in favor of the petitioners. That the Third Division *might have erred* in deleting the award of interest is neither a special nor a compelling reason to have the Court *en banc* favor the petitioners with a modification of the resolution dated December 19, 2007, after it became final and immutable on May 16, 2008.

3. **POLITICAL LAW; EMINENT DOMAIN; TAKING OF PROPERTY UNDER THE COMPREHENSIVE AGRARIAN REFORM LAW (CARL); JUST COMPENSATION; INTEREST THEREON PROPER ONLY IN CASE OF DELAY IN PAYMENT. —** The taking of property under CARL is an exercise by the State of the power of eminent domain. A basic limitation on the State's power of eminent domain is the constitutional directive that private property shall not be taken for public use without just compensation. *Just compensation* refers to the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition, or the fair value of the property as between one who receives and one who desires to sell. It is fixed at the time of the actual taking by the State. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value, to be computed from the time the property is taken up to the

time when compensation is actually paid or deposited with the court. In *Land Bank of the Philippines v. Wycoco,* the Court came to explicitly rule that interest is to be imposed on the just compensation only in case of delay in its payment, which fact must be sufficiently established. Significantly, *Wycoco* was moored on Article 2209, *Civil Code*, which provides: Article 2209. If the obligation consists in the payment 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 per cent per annum.

4. **ID.; ID.; ID.; ID.; ID.; ID.; DELAY IN CASE AT BAR CANNOT BE ATTRIBUTED TO LAND BANK, FOR ASSAILING AN ERRONEOUS ORDER BEFORE A HIGHER COURT. —** The history of this case proves that Land Bank did not incur delay in the payment of the just compensation. After the petitioners voluntarily offered to sell their lands on October 12, 1995, DAR referred their VOS applications to Land Bank for initial valuation. Land Bank initially fixed the just compensation at ₱165,484.47/hectare, *that is*, ₱86,900,925.88, for AFC, and ₱164,478,178.14, for HPI. However, both petitioners rejected Land Bank's initial valuation, prompting Land Bank to open deposit accounts in the petitioners' names, and to credit in said accounts the amounts equivalent to their valuations. Although AFC withdrew the amount of ₱26,409,549.86, while HPI withdrew ₱45,481,706.76, they still filed with DARAB separate complaints for determination of just compensation. When DARAB did not act upon their complaints for more than three years, AFC and HPI commenced their respective actions for determination of just compensation in the Tagum City RTC, which rendered its decision on September 25, 2001. It is true that Land Bank sought to appeal the RTC's decision to the CA, by filing a notice of appeal; and that Land Bank filed in March 2003 its petition for *certiorari* in the CA only because the RTC did not give due course to its appeal. Any intervening delay thereby entailed could not be attributed to Land Bank, however, considering that assailing an erroneous order before a higher court is a remedy afforded by law to every losing party, who cannot thus be considered to act in bad faith or in an unreasonable manner as to make such party guilty of unjustified delay.

CHICO-NAZARIO, ***J., dissenting opinion*****:**

1. **REMEDIAL LAW; CIVIL PROCEDURE; DOCTRINE OF IMMUTABILITY OF JUDGMENTS; BUT RECALL OF ENTRIES OF JUDGMENT STILL POSSIBLE IN THE INTEREST OF SUBSTANTIAL JUSTICE. —** Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. When judgments gain finality, they become inviolable and impervious to modification. They may no longer be reviewed or in any way modified directly or indirectly, even by this Court. Nonetheless, the recall of entries of judgment, albeit rare, is not a novelty. In *Tan Tiac Chiong v. Hon. Cosico*, this Court already denied with finality two successive motions for reconsideration of the judgment it earlier rendered; yet, it still recalled the Entry of Judgment in the interest of substantial justice. The Court had also sanctioned the recall of entries of judgment in cases such as *Manotok IV v. Barque* and *Barnes v. Padilla*, again, on the ground of substantial justice. Particularly, in *Barnes*, the Court justified the relaxation of the procedural rule on finality of judgment, thus: However, this Court has relaxed this rule in order to serve substantial justice considering **(a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules,** (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby. Invariably, rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflects this principle. **The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself had already declared to be final.** Indeed, the Court reserves the power to suspend procedural rules and technicalities when they tend to defeat, rather than serve, the interest of substantial justice.
2. **POLITICAL LAW; EMINENT DOMAIN; OBLIGATION OF THE STATE TO PAY JUST COMPENSATION,**

EMPHASIZED. — Public use and just compensation are the bedrock of eminent domain. *Republic v. Court of Appeals* very well enucleated the nature of expropriation proceedings: Expropriation proceedings are not adversarial in the conventional sense, for the condemning authority is not required to assert any conflicting interest in the property. Thus, by filing the action, the condemnor in effect merely serves notice that it is taking title and possession of the property, and the defendant asserts title or interest in the property, not to prove a right to possession, **but to prove a right to compensation for the taking.** Obviously, however, the power is not without its limits: first, the taking must be for public use, and second, that just compensation must be given to the private owner of the property. These twin proscriptions have their origin in the recognition of the necessity for achieving balance between the State interests, on the other hand, and private rights, upon the other hand, by effectively restraining the former and affording protection to the latter. x x x. When the state wields its power of eminent domain, there arises a correlative obligation on its part to pay the owner of the expropriated property just compensation. If it fails, there is a clear case of injustice that must be redressed. Though it is the duty of the court to protect the weak and the underprivileged, this duty shall not be carried out as to deny justice to the landowner. The Court was even more emphatic in *Barangay Sindalan, San Fernando Pampanga v. Court of Appeals* when it reiterated that the power of eminent domain can **only** be exercised for public use and with **just compensation**. It cautioned that taking an individual's private property is a deprivation which can only be justified by a higher good — which is public use — and can only be counterbalanced by just compensation. Without these safeguards, the taking of property would not only be unlawful, immoral and null and void, but would also constitute a gross and condemnable transgression of an individual's basic right to property as well. x x x While it is true that all private properties are subject to the need of the government, and the government may take them whenever the necessity or exigency of the occasion demands, however, the Constitution guarantees that when this governmental right of expropriation is exercised, it shall be attended by just compensation.

3. ID.; ID.; JUST COMPENSATION AND WHEN LEGAL INTEREST THEREIN IS IN ORDER; ELUCIDATED. — In our Decision, we have provided an elucidation on what constitutes just compensation, thus: **The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also the payment of the land within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is being made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.** Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It has been repeatedly stressed by this Court that the measure is not the taker's gain but the owner's loss. **The word "just" is used to intensify the meaning of the word "compensation" to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample.** *Republic v. Court of Appeals,* further broadened the concept of "just compensation" when it underscored that: The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, it fixed at the time of the actual taking by the government. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment**, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred. Just compensation, thus, must embrace not only the correct (real, substantial, full and ample) determination of the amount to be paid to the owners of the land but also its payment within a reasonable time from the taking of the land to enable the landowners to cope with the loss; otherwise, interest in**

the nature of damages from the time of the taking of the property up to the actual payment of just compensation, is in order. Verily, jurisprudence has justifiably, wisely and correctly regarded the transaction between the landowners and the government in expropriation proceedings, under the foregoing circumstances, as one of loan or forbearance of money, which carries payment of interest in case of delay in payment. The legal interest for loan or forbearance of money is 12% per annum, citing Central Bank Circular No. 416 dated 29 July 1974. However, Santos Ventura Hocorma Foundation, Inc. succinctly emphasized that the 12% per annum applies only to loans or forbearance of money. The Court further explained, in *Reyes v. National Housing Authority*, that between the taking of the property and the actual payment, legal interests accrue **in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred. The allowance of interest — computed at 12% per annum — on the amount found to be the value of the property as of the time of the taking, being an effective forbearance, should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time**. Such is the true role or nature of interest in expropriation cases. Said interest runs as a matter of law and follows as a matter of course from the right of the landowner, to be placed in as good a position as money can accomplish, as of the date of the taking. Under this view, the interest awarded is deemed part of the just compensation required to be paid to the owner.

4. **ID.; ID.; ID.; PROPER LEGAL INTEREST IN CASE AT BAR AND REDUCTION IN THE AMOUNT MADE, PROPER. —** Applying the 12% rate on the balance of just compensation due AFC and HPI, from the taking of their properties on 9 December 1996, until the full payment of said balance by the LBP on 9 May 2008, AFC and HPI claim interest in the total amount of **₱1,331,124,223.05**. x x x Law and jurisprudence empower courts to equitably reduce interest rates and penalty charges. Under Article 1229 of the Civil Code, "[t]he judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor." Article 1229 of the Civil Code provides that the court shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. And, even if there has been no performance, the penalty may also

be reduced if it is iniquitous or leonine. While there may be no more ceiling on interest rates on obligations, it does not mean that creditors have *carte blanche* authority to impose interest rates to levels which will either enslave the debtors or lead to a hemorrhaging of the latter's assets. x x x We recognize that we are not at liberty to overlook settled jurisprudence on the appropriate amount of legal interest to be awarded in just compensation which is due AFC and HPI, but for several reasons which we have taken stock of, it would be unconscionable to apply the full force of the law on LBP. We award on the basis of fairness and equity a reduced amount of legal interest x x x Thus, given the particular circumstances of the instant petition, legal interest should be awarded to AFC and HPI *pro hac vice,* in the amount of ₱400,000,000.00. To the Court, 30% more or less of the total amount of legal interest that the parties seek to recover is already a fair and just amount. In view of all the foregoing, LBP should be directed to pay AFC and HPI the legal interest due the latter upon finality of this resolution within a period of six (6) months.

APPEARANCES OF COUNSEL

Herrera Teehankee & Cabrera and *Sanidad & Villanueva Law Offices* for petitioners.

Government Corporate Counsel and *Noel B. Marquez* for respondents.

R E S O L U T I O N

BERSAMIN, *J*.:

This case originated from the Third Division, which rendered its decision on February 6, 2007 in favor of petitioners Apo Fruits Corporation (AFC) and Hijo Plantation, Inc. (HPI). On December 19, 2007, however, the Third Division modified its decision upon the *motion for reconsideration* of respondent Land Bank of the Philippines (Land Bank), deleting the award of interest and attorney's fees.

For consideration and resolution is the *second motion for reconsideration* (*with respect to the denial of the award of legal interest and attorney's fees*) filed by AFC and HPI.

Antecedents

On October 12, 1995, AFC and HPI voluntarily offered to sell the lands subject of this case pursuant to Republic Act No. 6657 (*Comprehensive Agrarian Reform Law,* or CARL). The Department of Agrarian Reform (DAR) referred their voluntary-offer-to-sell (VOS) applications to Land Bank for initial valuation. Land Bank fixed the just compensation at ₱165,484.47/hectare, *that is*, ₱86,900,925.88, for AFC, and ₱164,478,178.14, for HPI. The valuation was rejected, however, prompting Land Bank, upon the advice of DAR, to open deposit accounts in the names of the petitioners, and to credit in said accounts the sums of ₱26,409,549.86 (AFC) and ₱45,481,706.76 (HPI). Both petitioners withdrew the amounts in cash from the accounts, but afterwards, on February 14, 1997, they filed separate complaints for determination of just compensation with the DAR Adjudication Board (DARAB).

When DARAB did not act on their complaints for determination of just compensation after more than three years, the petitioners filed complaints for determination of just compensation with the Regional Trial Court (RTC) in Tagum City, Branch 2, acting as a special agrarian court (SAC), docketed as Agrarian Cases No. 54-2000 and No. 55-2000. Summonses were served on May 23, 2000 to Land Bank and DAR, which respectively filed their answers on July 26, 2000 and August 18, 2000. The RTC conducted a pre-trial, and appointed persons it considered competent, qualified and disinterested as commissioners to determine the proper valuation of the properties.

Ultimately, the RTC rendered its decision on September 25, 2001, disposing thus:

WHEREFORE, consistent with all the foregoing premises, judgment is hereby rendered by this Special Agrarian Court where it has determined judiciously and now hereby fixed the just compensation for the 1,388.6027 hectares of lands and its

improvements owned by the plaintiffs: APO FRUITS CORPORATION and HIJO PLANTATION, INC., as follows:

First — Hereby ordering after having determined and fixed the fair, reasonable and just compensation of the 1,338.6027 hectares of land and standing crops owned by plaintiffs – APO FRUITS CORPORATION and HIJO PLANTATION, INC., based at only ₱103.33 per sq. meter, ONE BILLION THREE HUNDRED EIGHTY-THREE MILLION ONE HUNDRED SEVENTY-NINE THOUSAND PESOS (₱1,383,179,000.00), Philippine Currency, under the current value of the Philippine Peso, to be paid jointly and severally to the herein PLAINTIFFS by the Defendants-Department of Agrarian Reform and its financial intermediary and co-defendant Land Bank of the Philippines, thru its Land Valuation Office;

Second — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay plaintiffs-APO FRUITS CORPORATION and HIJO PLANTATION, INC., interests on the above-fixed amount of fair, reasonable and just compensation equivalent to the market interest rates aligned with 91-day Treasury Bills, from the date of the taking in December 9, 1996, until fully paid, deducting the amount of the previous payment which plaintiffs received as/and from the initial valuation;

Third — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay jointly and severally the Commissioners' fees herein taxed as part of the costs pursuant to Section 12, Rule 67 of the 1997 Rules of Civil Procedure, equivalent to, and computed at Two and One-Half (2 ½) percent of the determined and fixed amount as the fair, reasonable and just compensation of plaintiffs' land and standing crops plus interest equivalent to the interest of the 91-Day Treasury Bills from date of taking until full payment;

Fourth — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay jointly and severally the attorney's fees to plaintiffs equivalent to,

and computed at ten (10%) Percent of the determined and fixed amount as the fair, reasonable and just compensation of plaintiffs' land and standing crops, plus interest equivalent to the 91-Day Treasury Bills from date of taking until the full amount is fully paid;

Fifth — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office to deduct from the total amount fixed as fair, reasonable and just compensation of plaintiffs' properties the initial payment paid to the plaintiffs;

Sixth — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay the costs of the suit; and

Seventh — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay all the aforementioned amounts thru The Clerk of Court of this Court, in order that said Court Officer could collect for payment any docket fee deficiency, should there be any, from the plaintiffs.

Upon Land Bank's motion for reconsideration, the RTC modified the decision by promulgating its decision dated December 5, 2001, holding:

WHEREFORE, premises considered, IT IS HEREBY ORDERED that the following modifications as they are hereby made on the dispositive portion of this Court's consolidated decision be made and entered in the following manner, to wit:

On the Second Paragraph of the Dispositive Portion which now reads as follows, as modified:

Second — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay plaintiffs-APO FRUITS CORPORATION and HIJO PLANTATION, INC., interest at the rate of Twelve (12%) Percent per annum on the above-fixed amount of fair, reasonable and just compensation computed from the time

the complaint was filed until the finality of this decision. After this decision becomes final and executory, the rate of TWELVE (12%) PERCENT per annum shall be additionally imposed on the total obligation until payment thereof is satisfied, deducting the amounts of the previous payments by Defendant-LBP received as initial valuation;

On the Third Paragraph of the Dispositive Portion which Now Reads As Follows, As Modified:

Third — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay jointly and severally the Commissioners' fees herein taxed as part of the costs pursuant to Section 12, Rule 67 of the 1997 Rules of Civil Procedure, equivalent to, and computed at Two and One-Half (2 ½) percent of the determined and fixed amount as the fair, reasonable and just compensation of plaintiffs' land and standing crops and improvements;

On the Fourth Paragraph of the Dispositive Portion which Now Reads As follows, As Modified:

Fourth —Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay jointly and severally the attorney's fees to plaintiffs equivalent to, and computed at ten (10%) Percent of the determined and fixed amount as the fair, reasonable and just compensation of plaintiffs' land and standing crops and improvements.

Except for the above-stated modifications, the consolidated decision stands and shall remain in full force and effect in all other respects thereof.

Land Bank appealed by notice of appeal. The RTC denied due course to the appeal, however, holding that such mode was not proper in view of the ruling in *Land Bank of the Philippines v. De Leon*,[1] which held that the correct mode of appeal from a decision of the RTC acting as SAC was by petition for review

[1] G.R. No. 143275, September 10, 2002, 388 SCRA 537.

(Rule 43). The RTC denied Land Bank's *motion for reconsideration*.

Land Bank was thus compelled to file in March 2003 a petition for *certiorari* in the Court of Appeals (CA) to assail the RTC's order denying due course to its appeal and denying its *motion for reconsideration*.

The CA granted the petition for *certiorari* on February 12, 2004, and nullified the assailed orders of the RTC.

Following the CA's denial of their *joint motion for reconsideration* on June 21, 2004, AFC and HPI appealed on *certiorari*, raising the following issues, to wit:

I.

WHETHER OR NOT THE QUESTIONED DECISION AND RESOLUTION ARE IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT?

II.

WHETHER OR NOT RESPONDENT LBP IS BOUND BY THE DECISION OF COURT OF APPEALS IN CA-G.R. SP NO. 74879 AND IS THEREFORE PRECLUDED FROM FILING CA-G.R. SP NO. 76222?

III.

WHETHER OR NOT THE FILING BY RESPONDENT LBP OF CA-G.R. SP NO. 76222 IS ALREADY BARRED BY *RES JUDICATA*?

IV.

WHETHER OR NOT THE RULING OF THE SUPREME COURT IN THE ARLENE DE LEON CASE, GIVING ONLY PROSPECTIVE EFFECT TO ITS EARLIER RESOLUTION AS TO THE PROPER MODE OF APPEAL FROM DECISIONS OF SPECIAL AGRARIAN COURTS IS APPLICABLE IN THE INSTANT CASE?

V.

WHETHER OR NOT RESPONDENT LBP WAS DEPRIVED OF DUE PROCESS AND/OR OF ITS RIGHT TO APPEAL?

VI.

WHETHER OR NOT THE SUBJECT PETITION (CA-G.R. SP NO. 76222) WAS MERELY INTERPOSED TO DELAY THE EXECUTION OF SPECIAL AGRARIAN COURT'S "DECISION" WHICH IS BASED ON EVIDENCE DULY PRESENTED AND PROVED?

AFC and HPI prayed that the decision and resolution of the CA be reversed and set aside, and that the RTC's decision dated September 25, 2001 rendered in Agrarian Cases No. 54-2000 and No. 55-2000 be declared final and executory.

In its decision dated February 6, 2007, the Third Division decreed as follows:

WHEREFORE, premises considered, the instant Petition is PARTIALLY GRANTED. While the Decision, dated 12 February 2004, and Resolution, dated 21 June 2004, of the Court of Appeals in CA-G.R. SP No. 76222, giving due course to LBP's appeal, are hereby AFFIRMED, this Court, nonetheless, RESOLVES, in consideration of public interest, the speedy administration of justice, and the peculiar circumstances of the case, to give DUE COURSE to the present Petition and decide the same on its merits. Thus, the Decision, dated 25 September 2001, as modified by the Decision, dated 5 December 2001, of the Regional Trial Court of Tagum City, Branch 2, in Agrarian Cases No. 54-2000 and No. 55-2000 is AFFIRMED. No costs.

SO ORDERED.

Land Bank sought reconsideration upon the following grounds, *viz*:

A. THE HONORABLE COURT RULED IN THE FAIRLY RECENT CASE OF *LAND BANK OF THE PHILIPPINES v. CELADA*, G.R. NO. 164876 THAT SPECIAL AGRARIAN COURTS ARE NOT AT LIBERTY TO DISREGARD THE FORMULA DEVISED TO IMPLEMENT SECTION 17 OF REPUBLIC ACT NO. 6657 OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988.

B. RESPONDENT LBP SATISFIED OR COMPLIED WITH THE CONSTITUTIONAL REQUIREMENT ON PROMPT AND FULL PAYMENT OF JUST COMPENSATION.

C. RESPONDENT LBP ENSURED THAT THE INTERESTS ALREADY EARNED ON THE BOND PORTION OF THE REVALUED AMOUNTS WERE ALIGNED WITH 91-DAY TREASURY BILL (T-BILL) RATES AND ON THE CASH PORTION THE NORMAL BANKING INTEREST RATES.

D. PETITIONERS ARE NOT ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COMMISSIONERS' FEES.

E. RESPONDENT LBP'S COUNSEL DID NOT UNNECESSARILY DELAY THE PROCEEDINGS.

F. THE IMMINENT MODIFICATION, IF NOT THE REVERSAL, OF THE SUPREME COURT RULINGS IN BANAL AND CELADA BY THE QUESTIONED DECISION NECESSITATES A REFERRAL OF THE INSTANT CASE TO THE HONORABLE COURT SITTING *EN BANC*.

On December 19, 2007, the Third Division partially granted Land Bank's *motion for reconsideration*, ruling thus:

WHEREFORE, premises considered, the Motion for Reconsideration is partially granted as follows:

(1) The award of 12% interest rate *per annum* in the total amount of just compensation is DELETED.

(2) This case is ordered remanded to the RTC for further hearing on the amount of Commissioners' Fees.

(3) The award of attorney's fees is DELETED.

(4) The Motion for Referral of the case to the Supreme Court sitting *En Banc* and the request or setting of the Omnibus Motion for Oral Arguments are all DENIED for lack of merit. In all other respects, our Decision dated 6 February 2007 is MAINTAINED.

SO ORDERED.

Dissatisfied, the parties filed their respective *motions for reconsideration*, but the Third Division denied their motions on December 19, 2007. Upon finality of the resolution, the entry of judgment was issued on May 16, 2008.

Notwithstanding the issuance of the entry of judgment, AFC and HPI still filed on May 28, 2008 several motions, namely:

(1) *motion for leave to file and admit second motion for reconsideration*; (2) *second motion for reconsideration* (*with respect to the denial of the award of legal interest and attorney's fees*); and (3) *motion to refer the second motion for reconsideration to the Honorable Court en banc*.

The case was thereafter referred by the Third Division to the Court *en banc*. Hence, this resolution.

Ruling

The *second motion for reconsideration* (*with respect to the denial of the award of legal interest and attorney's fees*) is denied, because, *firstly*, to grant it is to jettison the immutability of a final decision — a matter of public policy and public interest, as well as a time-honored principle of procedural law; and *secondly*, to award interest and attorney's fees despite the fact that Land Bank paid the just compensation without undue delay is legally and factually unwarranted.

Immutability of Judgment

The main role of the courts of justice is to assist in the enforcement of the law and in the maintenance of peace and order by putting an end to judiciable controversies with finality.[2] Nothing better serves this role than the long established doctrine of immutability of judgments.

It is never a small matter to maintain that litigation must end and terminate sometime and somewhere, even at the risk of occasional errors.[3] A judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of

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[2] *Fariscal Vda. De Emnas v. Emnas*, L-26095, January 28, 1980, 95 SCRA 470.

[3] *Gallardo-Corro v. Gallardo,* G.R. No. 136228, January 30, 2001, 350 SCRA 568, 578; *Gomez v. Presiding Judge, RTC Br. 15, Ozamis City*, 249 SCRA 432, 438-439.

the land.[4] The reason for the rule is that if, on the application of one party, the court could change its judgment to the prejudice of the other, it could thereafter, on application of the latter, again change the judgment and continue this practice indefinitely.[5] The equity of a particular case must yield to the overmastering need of certainty and unalterability of judicial pronouncements.[6]

The doctrine of immutability and inalterability of a final judgment has a *two-fold* purpose: (1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business and (2) to put an end to judicial controversies, *at the risk of occasional errors*, which is precisely why courts exist. Controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[7] The doctrine is not a mere technicality to be easily brushed aside, but a matter of public policy as well as a time-honored principle of procedural law.

The foregoing considerations show that granting the *second motion for reconsideration* (*with respect to the denial of the award of legal interest and attorney's fees*) absolutely risks the trivialization of the doctrine of immutability of a final and executory judgment, and, therefore, the motion should be rejected.

Although the immutability doctrine admits several exceptions, like: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries that cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable,[8] none

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[4] *Siy v. National Labor Relations Commission*, G.R. No. 158971, August 25, 2005, 468 SCRA 154, 161-162.

[5] *Kline v. Murray*, 257 P. 465, 79 Mont. 530.

[6] *Flores v. Court of Appeals*, G.R. No. 97556 & 101152, July 29, 1996.

[7] *Land Bank of the Philippines v. Arceo,* G.R. No. 158270, July 21, 2008, 559 SCRA 85.

[8] *Temic Semiconductors, Inc. Employees Union (TSIEU)-FFW v. Federation of Free Workers (FFW),* G.R. No. 160993, May 20, 2008, 554 SCRA 122, 134.

of the exceptions applies herein, simply because the matters involved herein are plainly different from those involved in the exceptional cases.

A sampling of decided cases that illustrate what the Court has heretofore recognized as exceptional circumstances warranting the reopening of final and immutable judgments is proper to be made.

In *Tan Tiac Chiong v. Cosico*,[9] the Court, in dismissing the administrative complaint filed against CA Justice Rodrigo Cosico, necessarily sustained the recall of the entry of judgment made by Justice Cosico, as *ponente*, in a criminal case appealed to the CA. The Court explained that the recall of entry of judgment might have been an error of judgment, for which no judge should be administratively charged, in the absence of showing of any bad faith, malice, or corrupt purpose. It noted that Justice Cosico had recalled the entry of judgment to afford due process to the accused, because the CA decision had been sent to the house of the counsel of the accused but had been returned with the notation "*Moved Out*." The CA was thus prompted to resend the decision to the counsel's new address, thereby allowing the accused to file a *motion for reconsideration*.

In *De Guzman v. Sandiganbayan,*[10] the Court had previously denied *with finality* the petitioner's *motion for reconsideration* of its decision affirming his conviction by the Sandiganbayan of a violation of Section 3 (e) of Republic Act No. 3019. The petitioner nonetheless took a novel recourse by filing a so-called *omnibus motion for leave to vacate first motion for reconsideration in the light of the present developments and to consider evidence presented herein and to set aside conviction*. Citing a transcendental reason, that the accused was then about to lose his liberty simply because his former lawyers had pursued a "carelessly contrived procedural strategy of insisting on what has already become an imprudent remedy" that had forbade him from offering his evidence although all

[9] A.M. No. CA-02-33, July 31, 2002, 385 SCRA 509.

[10] G.R. No. 103276, April 11, 1996, 256 SCRA 171.

the while available for presentation, the Court used its pervasive and encompassing power to alter even that which it had already declared final, and directed the remand of the case to the Sandiganbayan, to allow the evidence of the accused to be received and appreciated, holding that:

> x x x To cling to the general rule in this case is only to condone rather than rectify a serious injustice to petitioner whose only fault was to repose his faith and entrust his innocence to his previous lawyers. x x x

In *Barnes v. Padilla,*[11] the Court reinstated the petition despite the judgment having become final and executory due to the counsel's filing in the CA of a *motion for extension of time to file motion for reconsideration* (which was not allowed under the internal rules of the CA), instead of a timely *motion for reconsideration*. Aside from observing that the petitioner, although bound by the mistakes or neglect of his counsel, should not be allowed to suffer serious injustice from such mistakes or neglect of counsel, the Court decided to rescind the assailed decision of the CA, and to direct the Regional Trial Court to proceed with the hearing of the action for specific performance that had been erroneously dismissed on the ground of forum-shopping in view of a previously filed case for ejectment, considering that the ejectment action did not bar the action for specific performance.

In *Manotok IV v. Heirs of Homer L. Barque*,[12] the Court set aside the entry of judgment to reopen the case on the merits, because "the militating concern for the Court *en banc* in accepting these cases is not so much the particular fate of the parties, but the stability of the Torrens system of registration by ensuring clarity of jurisprudence on the field."

In contrast, the matter involved herein concerns only the petitioners' mere private claim for interest and attorney's fees, which cannot even be classified as unprecedented. Even worse

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[11] G.R. No. 160753, September 30, 2004, 439 SCRA 675.

[12] G.R. Nos. 162335 & 162605, December 18, 2008, 574 SCRA 468.

is that the petitioners' private claim does not qualify either as a substantial or transcendental matter, or as an issue of paramount public interest, for no special or compelling circumstance has been present to warrant the relaxation of the doctrine of immutability in favor of the petitioners. That the Third Division *might have erred* in deleting the award of interest is neither a special nor a compelling reason to have the Court *en banc* favor the petitioners with a modification of the resolution dated December 19, 2007, after it became final and immutable on May 16, 2008.

No Interest is Due Unless There is Delay In Payment of Just Compensation

Even assuming, for the sake of argument, that the Court allows the reopening of a final judgment, AFC and HPI are still not entitled to recover interest on the just compensation and attorney's fees.

The taking of property under CARL is an exercise by the State of the power of eminent domain. A basic limitation on the State's power of eminent domain is the constitutional directive that private property shall not be taken for public use without just compensation.[13] *Just compensation* refers to the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition, or the fair value of the property as between one who receives and one who desires to sell. It is fixed at the time of the actual taking by the State. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value, to be computed from the time the property is taken up to the time when compensation is actually paid or deposited with the court.[14]

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[13] Article III, Section 9 of the 1987 *Constitution*.

[14] *Republic v. Court of Appeals*, G.R. No. 146587, July 2, 2002, 383 SCRA 611, 622-623.

In *Philippine Railway Company v. Solon,*[15] decided in 1909, the Court treated interest as part of just compensation when the payment to the owner was *delayed*. There, the Court, relying heavily on American jurisprudence, declared:

Our attention has not been called to any Act of the Commission relating to the matter of interest. But that the owner is entitled to interest from the time when the company took possession of the property on the second day of February, 1907, until the decision of the court on the 16th day of June, 1908, we think is clear. The statute requires just compensation to be made to the owner for his property taken, and Section 246 above cited requires the court to make such final order and judgment as shall secure to the plaintiff the property essential to the exercise of his rights under the law, and to the defendant just compensation for the land so taken. The defendant, the owner, was deprived of the use of his property from the 2d day of February, 1907, until the 19th day of July, 1908. He lost the use of it for this time, and it cannot be said that he has received just compensation for it if he is not allowed interest upon the value of the property during that time. In the case of *The Pennsylvania Railroad Co. vs. Cooper* (58 Penn. St., 408), the court said at page 409:

> It can hardly be made a question that the plaintiff below was entitled to recover interest upon the value of his property taken by the company defendants and appropriated for the purposes of their road, from the time that it was taken. He is in the position of a vendor of land, who has always been held to have a right to interest on the purchase-money where possession has been delivered to the vendee.

In the case of *Warren vs. First Division of the St. Paul & Pacific Railroad Co*. (21 Minn., 424), the court said at page 427:

> If, therefore, the allowance of interest upon the amount of the assessment shall be necessary to make the compensation just, we have no doubt of authority in the court to make it; and we think that, generally, it is necessary to allow interest from the date of the award to give to the owner just compensation. **While the assessed value, if paid at the date taken for the assessment, might be just compensation, it certainly would not be, if payment be delayed, as might happen in many**

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[15] 13 Phil. 34.

> **cases, and as did happen in this case, till several years after that time. The difference is the same as between as between a sale for cash in hand and sale on time.**

In the case of *Philipps vs. The South Park Commissioners* (119 Ill. 626), the court said at page 645:

> The court allowed interest on the amount decreed Mrs. Philipps, from the 27th day of August, 1870, the time when the commissioners took possession of the land, and this is relied upon as error. Lands cannot be taken and appropriated to public use without just compensation is made to the owner; and we think our law of eminent domain requires the payment of the compensation, or a tender, or deposit of the same with the county treasurer, before possession of the land shall be taken. This seems manifest from section 10 of the Eminent Domain Act, which, in substance, provides that, when the report of the jury is brought in, the court or judge shall make such order as to right and justice shall pertain, ordering that petitioner enter upon such property, and the use of the same, upon payment of full compensation, as ascertained as aforesaid. The payment of the compensation, or the deposit of the same, seems to be a condition precedent to the taking of possession. When, therefore, the possession of the land is taken, the compensation is due; and if due and payable, it, in justice, ought to draw interest from that time.

But it is said that when the company took possession on the 2d day of February, 1907, it deposited with the Insular Treasurer the value of the land and therefore ought not to pay interest on that amount.

The order made on that date was at the request of the company and in accordance with the provisions of section of Act No. 1592, which is as follows:

> When condemnation proceedings are brought by any railway corporation, in any court of competent jurisdiction in the Philippine Islands, for the purpose of the expropriation of land for the proper corporate use of such railway corporation, said corporation shall have the right to enter immediately upon the possession of the land involved, after and upon the deposit by ascertained and fixed by the court having jurisdiction of the proceedings, said sum to be held by the Treasurer subject to

> the orders and final disposition of the court: *Provided, however,* That the court may authorize the deposit with the Insular Treasurer of a certificate of deposit of any depository of the Government of the Philippine Islands in lieu of cash, such certificate to be payable to the Insular Treasurer on demand in the amount directed by the court to be deposited. The certificate and the moneys represented thereby shall be subject to the orders and final disposition of the court. And in case suit has already been commenced on any land and the money deposited with the Insular Treasurer at the date of the passage of this Act, the said money may, upon proper order of the court, be withdrawn from the Treasury by the railway corporation which deposited the same, and a certificate of deposit, as above described may be deposited in lieu thereof. And the court is empowered and directed, by appropriate order and writ if necessary, to place the railway corporation in possession of the land, upon the making of the deposit.

The defendant having claimed that his damages would amount to ₱19,398.42, the company deposited this sum, but it is very evident from the terms of the Act that this deposit was in no sense a payment nor an offer of payment by the company for the land. It simply guaranteed that the plaintiff would pay whatever sum might eventually be awarded to the defendant. The defendant had no right to withdraw this money on the 3d (sic) day of February, 1907, nor did he acted upon the report of the commissioners and entered its judgment, which it did on the 16th day of June, 1908. We therefore hold that the defendant would not secure just compensation for the property taken unless he received interest on its value from the 2d (sic) day of February, 1907, until the 16th day of June, 1908.

Solon soon became the basis for the award of interest in expropriation cases, until the payment of interest became an established part of every case in which the taking and payment were not contemporaneously made.[16]

In *Land Bank of the Philippines v. Wycoco,*[17] however, the Court came to explicitly rule that interest is to be imposed on

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[16] *Republic v. Juan*, 92 SCRA 26, 57-58, G.R. No. L-24740, July 30, 1979.

[17] G.R. No. 140160, January 13, 2004, 419 SCRA 67.

the just compensation only in case of delay in its payment, which fact must be sufficiently established. Significantly, *Wycoco* was moored on Article 2209, *Civil Code*, which provides:

> Article 2209. If the obligation consists in the payment 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 per cent per annum. (1108)

The history of this case proves that Land Bank did not incur delay in the payment of the just compensation. As earlier mentioned, after the petitioners voluntarily offered to sell their lands on October 12, 1995, DAR referred their VOS applications to Land Bank for initial valuation. Land Bank initially fixed the just compensation at ₱165,484.47/hectare, *that is*, ₱86,900,925.88, for AFC, and ₱164,478,178.14, for HPI. However, both petitioners rejected Land Bank's initial valuation, prompting Land Bank to open deposit accounts in the petitioners' names, and to credit in said accounts the amounts equivalent to their valuations. Although AFC withdrew the amount of ₱26,409,549.86, while HPI withdrew ₱45,481,706.76, they still filed with DARAB separate complaints for determination of just compensation. When DARAB did not act upon their complaints for more than three years, AFC and HPI commenced their respective actions for determination of just compensation in the Tagum City RTC, which rendered its decision on September 25, 2001.

It is true that Land Bank sought to appeal the RTC's decision to the CA, by filing a notice of appeal; and that Land Bank filed in March 2003 its petition for *certiorari* in the CA only because the RTC did not give due course to its appeal. Any intervening delay thereby entailed could not be attributed to Land Bank, however, considering that assailing an erroneous order before a higher court is a remedy afforded by law to every losing party, who cannot thus be considered to act in bad faith or in an unreasonable manner as to make such party guilty of unjustified delay. As stated in *Land Bank of the Philippines v. Kumassie Plantation:*[18]

[18] G.R. No. 177404, June 25, 2009.

The mere fact that LBP appealed the decisions of the RTC and the Court of Appeals does not mean that it deliberately delayed the payment of just compensation to KPCI. x x x It may disagree with DAR and the landowner as to the amount of just compensation to be paid to the latter and may also disagree with them and bring the matter to court for judicial determination. This makes LBP an indispensable party in cases involving just compensation for lands taken under the Agrarian Reform Program, with a right to appeal decisions in such cases that are unfavorable to it. Having only exercised its right to appeal in this case, LBP cannot be penalized by making it pay for interest.

The Third Division justified its deletion of the award of interest thuswise:

AFC and HPI now blame LBP for allegedly incurring delay in the determination and payment of just compensation. However, the same is without basis as AFC and HPI's proper recourse after rejecting the initial valuations of respondent LBP was to bring the matter to the RTC acting as a SAC, and not to file two complaints for determination of just compensation with the DAR, which was just circuitous as it had already determined the just compensation of the subject properties taken with the aid of LBP.

In *Land Bank of the Philippines v. Wycoco*, citing *Reyes v. National Housing Authority* and *Republic v. Court of Appeals,* this Court held that the interest of 12% *per annum* on the just compensation is due the landowner in case of delay in payment, which will in effect make the obligation on the part of the government one of forbearance. **On the other hand, interest in the form of damages cannot be applied, where there was prompt and valid payment of just compensation**. Thus:

> The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, it being fixed at the time of the actual taking by the government. **Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case,**

the final compensation must include interests on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.

x x x This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% *per annum* should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time. Article 1250 of the Civil Code, providing that, in case of extraordinary inflation or deflation, the value of the currency at the time of the establishment of the obligation shall be the basis for the payment when no agreement to the contrary is stipulated, has strict application only to contractual obligations. In other words, a contractual agreement is needed for the effects of extraordinary inflation to be taken into account to alter the value of the currency.

It is explicit from *LBP v. Wycoco* that interest on the just compensation is imposed only in case of delay in the payment thereof which must be sufficiently established. Given the foregoing, we find that the imposition of interest on the award of just compensation is not justified and should therefore be deleted.

It must be emphasized that "pertinent amounts were deposited in favor of AFC and HPI within fourteen months after the filing by the latter of the Complaint for determination of just compensation before the RTC." It is likewise true that AFC and HPI already collected ₱149.6 and ₱262 million, respectively, representing just compensation for the subject properties. Clearly, there is no unreasonable delay in the payment of just compensation which should warrant the award of 12% interest per annum in AFC and HPI's favor.

The foregoing justification remains correct, and is reiterated herein.

Lastly, approving the *second motion for reconsideration* will surely produce more harm than good. In addition to the costly sacrifice of the long-standing doctrine of immutability, we will

thereby be sending the wrong impression that a private claim had primacy over public interest. There are many other landowners already paid their just compensation by virtue of final judgments, but who may believe themselves still entitled also to claim interest based on the supposed difference between the desired valuations of their properties and the amounts of just compensation already paid to them. To reopen their final judgments will definitely open the floodgates to petitions for the resurrection of litigations long ago settled. This Court cannot allow such scenario to happen.

WHEREFORE, the Court denies the petitioners' *second motion for reconsideration* (*with respect to the denial of the award of legal interest and attorney's fees*), and reiterates the decision dated February 6, 2007 and the resolution dated December 19, 2007 of the Third Division.

SO ORDERED.

Corona, Velasco, Jr., Nachura, Peralta, and *Villarama, Jr., JJ.,* concur.

Abad, J., see separate concurring opinion.

Chico-Nazario, J., Please see dissenting opinion.

Puno, C.J., Carpio Morales, Leonardo-de Castro, Brion, and *Del Castillo, JJ.,* join the Dissent of *J.* Nazario.

Carpio, J., no part — prior inhibition.

CONCURRING OPINION

ABAD, *J.*:

I fully concur with Justice Lucas P. Bersamin's *ponencia* but wish to add a few of my own thoughts.

First. The Third Division of the Court that originally decided the case purposely deleted the lower court's award of interest because of a finding that respondent Land Bank of the Philippines (Land Bank) was not guilty of delay in trying to come to a settlement with petitioners Apo Fruits Corp. and Huo Plantation, Inc. on the compensation due the latter. Courts have invariably

adjusted or deleted the interest on the judgment debt as the circumstances and equity dictates.

Here, the Third Division consciously deleted the award of interest for a stated reason. The delay in payment, the Third Division found, was not Land Bank's fault. It would, therefore, be unreasonable to restore such award of interest in a second motion for reconsideration, after entry of judgment had been made, when there is no showing that the Third Division's factual findings are incorrect.

Second. Not only has the judgment of this Court become final and executory and an entry of judgment made, Land Bank already complied with the same by paying the judgment amounts. Of course, on occasions, the Court has resorted to the extreme measure of reopening final and executory judgments. But those are extreme cases where the issues have a telling impact on jurisprudence or the public interest. The one before the Court is not an extreme case. It involves no life or liberty, only the respondent companies' pockets. What is more, the farmers will ultimately shoulder this huge and fantastic additional cost. Yet, like Land Bank, they did nothing to delay payment.

DISSENTING OPINION

CHICO-NAZARIO, *J*.:

For resolution by the Court *En Banc* are the (1) the Motion for Leave to File and Admit Second Motion for Reconsideration, and (2) Second Motion for Reconsideration filed by Apo Fruits Corporation (AFC) and Hijo Plantation, Inc. (HPI).

To recall, the present Petition for Review on *Certiorari* originated from Agrarian Cases No. 54-2000 and No. 55-2000, instituted by AFC and HPI, respectively, before the Regional Trial Court (RTC), Branch 2, Tagum City (acting as a Special Agrarian Court), praying for the determination and payment of just compensation for their land, taken and distributed by the Government under the Comprehensive Agrarian Reform Program (CARP).

On 25 September 2001, the RTC rendered its Decision, substantially adopting the appraisal made by the court-appointed commissioners, thus, decreeing:

WHEREFORE, consistent with all the foregoing premises, judgment is hereby rendered by this Special Agrarian Court where it has determined judiciously and now hereby fixed the just compensation for the 1,388.6027 hectares of lands and its improvements owned by the plaintiffs: APO FRUITS CORPORATION and HIJO PLANTATION, INC., as follows:

First — Hereby ordering after having determined and fixed the fair, reasonable and just compensation of the 1,338.6027 hectares of land and standing crops owned by plaintiffs — APO FRUITS CORPORATION and HIJO PLANTATION, INC., based at only P103.33 per sq. meter, **ONE BILLION THREE HUNDRED EIGHTY-THREE MILLION ONE HUNDRED SEVENTY-NINE THOUSAND PESOS (₱1,383,179,000.00), Philippine Currency**, under the current value of the Philippine Peso, to be paid jointly and severally to the herein PLAINTIFFS by the Defendants-Department of Agrarian Reform and its financial intermediary and co-defendant Land Bank of the Philippines, thru its Land Valuation Office;

Second — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay plaintiffs-APO FRUITS CORPORATION and HIJO PLANTATION, INC., interests on the above-fixed amount of fair, reasonable and just compensation equivalent to the market interest rates aligned with 91-day Treasury Bills, from the date of the taking in December 9, 1996, until fully paid, deducting the amount of the previous payment which plaintiffs received as/and from the initial valuation;

Third — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay jointly and severally the Commissioners' fees herein taxed as part of the costs pursuant to Section 12, Rule 67 of the 1997 Rules of Civil Procedure, equivalent to, and computed at Two and One-Half (2 ½) percent of the determined and fixed amount as the fair, reasonable and just compensation of

plaintiffs' land and standing crops plus interest equivalent to the interest of the 91-Day Treasury Bills from date of taking until full payment;

Fourth — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay jointly and severally the attorney's fees to plaintiffs equivalent to, and computed at ten (10%) Percent of the determined and fixed amount as the fair, reasonable and just compensation of plaintiffs' land and standing crops, plus interest equivalent to the 91-Day Treasury Bills from date of taking until the full amount is fully paid;

Fifth — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office to deduct from the total amount fixed as fair, reasonable and just compensation of plaintiffs' properties the initial payment paid to the plaintiffs;

Sixth — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay the costs of the suit; and

Seventh — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay all the aforementioned amounts thru the Clerk of Court of this Court, in order that said Court Officer could collect for payment any docket fee deficiency, should there be any, from the plaintiffs.[1]

Acting on the Motion for Reconsideration of the Land Bank of the Philippines (LBP), the RTC issued an Order dated 5 December 2001, modifying its earlier Decision, as follows:

WHEREFORE, premises considered, IT IS HEREBY ORDERED that the following modifications as they are hereby made on the dispositive portion of this Court's consolidated decision be made and entered in the following manner, to wit:

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[1] CA *rollo*, pp. 131-133.

On the Second Paragraph of the Dispositive Portion which now reads as follows, as modified:

Second — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay plaintiffs-APO FRUITS CORPORATION and HIJO PLANTATION, INC., interest at the rate of Twelve (12%) Percent per annum on the above-fixed amount of fair, reasonable and just compensation computed from the time the complaint was filed until the finality of this decision. After this decision becomes final and executory, the rate of TWELVE (12%) PERCENT per annum shall be additionally imposed on the total obligation until payment thereof is satisfied, deducting the amounts of the previous payments by Defendant-LBP received as initial valuation;

On the Third Paragraph of the Dispositive Portion which Now Reads As Follows, As Modified:

Third — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay jointly and severally the Commissioners' fees herein taxed as part of the costs pursuant to Section 12, Rule 67 of the 1997 Rules of Civil Procedure, equivalent to, and computed at Two and One-Half (2 ½) percent of the determined and fixed amount as the fair, reasonable and just compensation of plaintiffs' land and standing crops and improvements;

On the Fourth Paragraph of the Dispositive Portion which Now Reads As follows, As Modified:

Fourth — Hereby ordering Defendants — DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay jointly and severally the attorney's fees to plaintiffs equivalent to, and computed at ten (10%) Percent of the determined and fixed amount as the fair, reasonable and just compensation of plaintiffs' land and standing crops and improvements.

Except for the above-stated modifications, the consolidated decision stands and shall remain in full force and effect in all other respects thereof.[2]

LBP filed its Notice of Appeal with the RTC. In an Order dated 4 November 2002, the RTC refused to give due course to the Notice of Appeal of LBP since ordinary appeal was not the proper remedy from a decision on the determination of just compensation, rendered by a special agrarian court, based on *Land Bank of the Philippines v. De Leon*.[3] The RTC, instead, ordered LBP to file a Petition for Review within the reglementary period.

This prompted LBP to file a Petition for *Certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 76222. In its Decision[4] dated 12 February 2004, the appellate court granted the Petition of LBP, finding that the RTC committed grave abuse of discretion in refusing to give due course to the Notice of Appeal of LBP. It ratiocinated that *De Leon* should not be given retroactive effect so as to prejudice the remedy still available to LBP under the law at the time it filed its appeal.

AFC and HPI then sought recourse from this Court by filing the instant Petition for Review on *Certiorari*. On 6 February 2007, the Third Division of this Court promulgated its Decision, partially granting the Petition for Review of AFC and HPI, at the same time, resolving the case on the merits by affirming the Decision dated 12 February 2004 and Resolution dated 21 June 2004 of the RTC. According to the dispositive portion of the Decision of the Third Division of this Court:

WHEREFORE, premises considered, the instant Petition is **PARTIALLY GRANTED**. While the Decision, dated 12 February 2004, and Resolution, dated 21 June 2004, of the Court of Appeals in CA-G.R. SP No. 76222, giving due course to LBP's appeal, are hereby **AFFIRMED**, this Court, nonetheless, **RESOLVES**, in

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[2] *Id.* at 158-160.

[3] 437 Phil. 347 (2002).

[4] *Rollo*, p. 51.

consideration of public interest, the speedy administration of justice, and the peculiar circumstances of the case, to give **DUE COURSE** to the present Petition and decide the same on its merits. Thus, the Decision, dated 25 September 2001, as modified by the Decision, dated 5 December 2001, of the Regional Trial Court of Tagum City, Branch 2, in Agrarian Cases No. 54-2000 and No. 55-2000 is **AFFIRMED**. No costs.[5]

From the foregoing Decision, LBP filed an Omnibus Motion for (a) reconsideration of the said decision; (b) referral of the case to the Supreme Court sitting *En Banc*; and (c) setting of its motion for oral argument.[6]

In its Resolution dated 19 December 2007, the Third Division of the Court partially granted the Motion for Reconsideration of LBP and accordingly made the following modifications of its previous Decision:

WHEREFORE, premises considered, the Motion for Reconsideration is **partially granted** as follows:

(1) The award of 12% interest rate per annum in the total amount of just compensation is **DELETED**.

(2) This case is ordered **remanded** to the RTC for further hearing on the amount of Commissioners' Fees.

(3) The award of attorney's fees is **DELETED**.

(4) The Motion for Referral of the case to the Supreme Court sitting *En Banc* and the request or setting of the Omnibus Motion for Oral Arguments are all **DENIED** for lack of merit. In all other respects, our Decision dated 6 February 2007 is **MAINTAINED**.[7]

The Third Division of this Court deleted the award for interest on the just compensation due AFC and HP, based on the finding that petitioners were not entitled to interest because there was no delay on the part of LBP.

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[5] *Id.* at 440.

[6] *Id.* at 442-488.

[7] *Id.* at 621.

The Third Division likewise deleted the award for attorney's fees, holding that:

Contracts for attorney's services in this jurisdiction stand upon an entirely different footing from contracts for the payment of compensation for any other service.

> x x x [A]n attorney is not entitled in the absence of express contract to recover more than a reasonable compensation for his services; and even when an express contract is made, the court can ignore it and limit the recovery to reasonable compensation if the amount of the stipulated fee is found by the court to be reasonable.

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification. A perusal of Article 2208 of the Revised Civil Code will reveal that the award of attorney's fees in the form of damages is the exception rather than the rule for it is predicated upon the existence of exceptional circumstances.

In all cases, it must be reasonable, just and equitable if the same is to be granted. It is necessary for the court to make findings of fact and law to justify the grant of such award. The matter of attorney's fees must be clearly explained and justified by the trial court in the body of its decision.

In this case, the RTC failed to substantiate its award of attorney's fees which amounts to ten percent (10%) of the award of ₱1,383,179,000 and is equivalent to ₱138,317,900.00.[8]

Dissatisfied with the aforementioned Resolution, all the parties filed their respective Motions for Reconsideration.

In its Resolution dated 30 April 2008, the Third Division of the Court refused to reconsider its earlier Resolution of 19 December 2007.

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[8] *Apo Fruits Corporation v. Court of Appeals,* G.R. No. 164195, 19 December 2007, 541 SCRA 117, 145-146.

Entry of Judgment was made in this case on 16 May 2008.[9]

Despite the entry of judgment, AFC and HPI submitted the following pleadings on 28 May 2008: (1) Motion for Leave to File and Admit Second Motion for Reconsideration; (2) Second Motion for Reconsideration, with respect to the denial of the award of legal interest and attorney's fees; and (3) Motion to Refer the Second Motion for Reconsideration to the Honorable Court *En Banc*.[10]

AFC and HPI maintained that there were meritorious and compelling reasons to grant all three of their Motions. AFC and HPI basically argued in their Second Motion for Reconsideration that:

I

WITH ALL DUE RESPECT, THE HONORABLE COURT SHOULD RECONSIDER AND SET ASIDE ITS RESOLUTION DATED 30 APRIL 2008 INSOFAR AS IT DELETED THE AWARD OF LEGAL INTEREST AT THE RATE OF TWELVE PERCENT (12%) PER ANNUM ON THE UNPAID PORTION OF THE AMOUNT DETERMINED BY THE HONORABLE COURT TO BE THE FAIR, REASONABLE AND JUST COMPENSATION FOR MOVANTS AFC AND HPI'S PROPERTIES TO BE CONSISTENT WITH THE RULINGS OF THE HONORABLE COURT IN A NUMBER OF CASES THAT IF THERE IS DELAY IN THE PAYMENT OF JUST COMPENSATION, IT WILL RESULT IN THE IMPOSITION OF TWELVE PERCENT (12%) LEGAL INTEREST PER ANNUM.

II

WITH ALL DUE RESPECT, MOVANTS AFC AND HPI WERE NOT THE REASON FOR THE DELAY IN THE DETERMINATIION OF THE JUST COMPENSATION FOR ITS PROPERTIES BECAUSE WHEN THEY FILED THE CASE BEFORE THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD ("DARAB") IN 1997, THEY WERE MERELY AVAILING OF THE ADMINISTRATIVE REMEDIES UNDER THE COMPREHENSIVE AGRARIAN REFORM LAW ("CARL"). AT ANY RATE, EVEN IF ASSUMING THAT

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[9] *Rollo,* p. 1362.

[10] *Id.* at 1322, 1329.

MOVANTS AFC AND HPI WERE WRONG IN RESORTING TO THE DARAB AND SHOULD HAVE GONE DIRECTLY TO THE REGIONAL TRIAL COURT ACTING AS A SPECIAL AGRARIAN COURT FOR THE DETERMINATION OF JUST COMPENSATION, THEN LEGAL INTEREST IS STILL DUE FROM THE DATE OF THE FILING BY THE MOVANTS AFC AND HPI OF THE COMPLAINT BEFORE THE REGIONAL TRIAL COURT IN TAGUM CITY, DAVAO DEL NORTE ON 17 MAY 2000.

III

WITH ALL DUE RESPECT, THE HONORABLE COURT SHOULD RECONSIDER ITS RESOLUTION DATED 30 APRIL 2008 INSOFAR AS IT REMOVED THE AWARD OF ATTORNEY'S FEES NOTWITHSTANDING THE FACT THAT MOVANTS AFC AND HPI HAVE SUFFICIENTLY SHOWN THAT THEY ARE ENTITLED TO THE SAID AWARD.[11]

AFC and HPI vigorously protested the deletion by the Third Division of the Court, in the Resolution dated 19 December 2007, of the award for interest, contending that in doing so, the Third Division departed from the well-settled ruling in *Philippine Railway Company v. Solon,*[12] *Republic v. Court of Appeals,*[13] *Land Bank of the Philippines v. Wycoco,*[14] and *Land Bank of the Philippines v. Imperial*,[15] which clearly recognized the

[11] *Id.* at 1339-1331.

[12] 13 Phil. 34 (1909). The Supreme Court held in this case that the defendant, the owner, was deprived of the use of his property from the 2nd day of February 1907, until the 19th day of July 1908. He lost the use of it for this time, and it cannot be said that he received just compensation for it if he was not allowed interest upon the value of the property during that time.

[13] 433 Phil. 106 (2002). This Court held:

If property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interest on its just value, to be computed from the time property is taken to the time when compensation is actually paid or deposited with the court.

[14] 464 Phil. 83 (2004). In this case the Supreme Court held that the imposition of interest is in the nature of damages for delay in payment, which in effect makes the obligation on the part of the government one of forbearance.

[15] G.R. No. 157753, 12 February 2007, 515 SCRA 449. The Supreme Court held in this case that just compensation embraces not only the correct determination

entitlement of the landowner to legal interest of twelve percent (12%) in cases of just compensation.[16] Even assuming that AFC and HPI were mistaken in resorting to the Department of Agrarian Reform Adjudication Board instead of raising the issue of just compensation directly before the RTC, acting as Special Agrarian Court, they should, at the very least, be awarded legal interest from the filing of the Complaint on 17 May 2000 until full payment on 16 May 2008.[17]

AFC and HPI asserted that the Third Division of the Court also gravely erred in deleting the award for attorney's fees, insisting that they were able to establish their entitlement to the same. Thus, AFC and HPI prayed in their Second Motion for Reconsideration that the Court *En Banc*:

> (1) Award legal interest at the rate of twelve percent (12%) per annum from the time of the taking on 09 December 1996 until respondent LBP's payment on 09 May 2008 or alternatively, from the time of judicial demand on 17 May 2000 until respondent LBP's payment on 09 May 2008; and
>
> (2) Award attorney's fees of ten percent (10%) or such amount as the Honorable Court may deem justified, reasonable and appropriate.[18]

In a Resolution[19] dated 2 June 2008, the Third Division of the Court noted without action the three Motions of AFC and HPI in view of its earlier Resolution dated 19 December 2007, denying with finality the Motion for Partial Reconsideration of all parties.

Extremely assiduous, AFC and HPI still filed on 2 February 2009 an Urgent Motion to Resolve,[20] prodding anew the Third

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of the amount to be paid to the owner, but also its payment within a reasonable time from taking. Legal interest of 12% per annum in the nature of damages is proper.

[16] *Rollo*, p. 1326.

[17] *Id.* at 1350.

[18] *Id.* at 1354-1355.

[19] *Id.* at 1360.

[20] *Id.* at 1398.

Division of this Court to reconsider its deletion of the awards for legal interest and attorney's fees.

For its part, LBP filed a Manifestation[21] with the following contents:

> RESPONDENT LAND BANK OF THE PHILIPPINES (LBP, for brevity), by counsel and to this Honorable Court, respectfully manifests that on 22 July 2008, it received a copy of the Entry of Judgment in the above-captioned case, stating *inter alia* that the Decision dated 06 February 2007 and the Resolution dated 19 February 2007 became final and executory on 16 May 2008.
>
> In view of the foregoing, no further action can be taken on the Urgent Motion to Resolve dated 19 January 2009 which movants Apo Fruits Corporation and Hijo Plantation, Inc. filed with the Honorable Court.
>
> WHEREFORE, it is respectfully prayed of this Honorable Court that this Manifestation be duly NOTED.

Upon closer scrutiny, the Third Division of the Court found ample basis for the motion of AFC and HPI to have their Motion for Leave to File and Admit Second Motion for Reconsideration and Second Motion for Reconsideration referred to the Court *En Banc*. Subsequently, the Court *En Banc* accepted the referral on 8 September 2009.

MAJORITY OPINION

The Majority opinion raised the following arguments for the denial of the second motion for reconsideration of AFC and HPI, to wit:

1) immutability of judgments, and
2) absence of delay does not entitle AFC and HPI to be awarded legal interest.

As to immutability of judgment, the majority opinion insists that although the immutability doctrine admits several exceptions, like: (1) the correction of clerical errors; (2) the so-called *nunc*

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[21] *Id.* at 1411.

pro tunc entries that cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable,[22] none of the exceptions applies herein, simply because the matters involved herein are plainly different from those involved in the exceptional cases.

The matter involved herein concerns only AFC and HPI's mere private claim for interest, which cannot even be classified even be classified as unprecedented. Even worse is that AFC and HPI's private claim does not qualify either as a substantial or transcendental matter, or as an issue of paramount public interest, for no special or compelling circumstance has been present to warrant the relaxation of the doctrine of immutability in their favor.

The majority next argue that AFC and HPI are not entitled to interest on the ground that no interest is due unless there is delay in payment of just compensation. They underscored that AFC and HPI were paid about the time of the taking of the properties. Any delay in the resolution of the case is attributable to them. The fixing of just compensation could have been speeded up had AFC and HPI immediately brought the complaints for that purpose to the proper RTC, acting as SAC. Nonetheless, AFC and HPI have not assailed the RTC's handling of their action for judicial determination of just compensation.

In all, the majority stress that LBP could not be held responsible for any delay in the payment of just compensation due to AFC and HPI which would justify the payment of legal interest to the latter.

DISSENTING OPINION

On the propriety of reopening this case, the Court is well aware of the fact that the Decision dated 6 February 2007 of the Third Division already became final and executory with the entry of judgment on 16 May 2008.[23] Public policy and sound

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[22] *Temic Semiconductories, Inc., Employees Union v. Federation of Free Workers*, G.R. No. 160993, 20 May 2008, 554 SCRA 122, 134.

[23] *Rollo,* p. 1362.

practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. When judgments gain finality, they become inviolable and impervious to modification. They may no longer be reviewed or in any way modified directly or indirectly, even by this Court.[24]

Nonetheless, the recall of entries of judgment, albeit rare, is not a novelty.[25] In *Tan Tiac Chiong v. Hon. Cosico*,[26] this Court already denied with finality two successive motions for reconsideration of the judgment it earlier rendered; yet, it still recalled the Entry of Judgment in the interest of substantial justice. The Court had also sanctioned the recall of entries of judgment in cases such as *Manotok IV v. Barque*[27] and *Barnes v. Padilla*,[28] again, on the ground of substantial justice. Particularly, in *Barnes*, the Court justified the relaxation of the procedural rule on finality of judgment, thus:

> However, this Court has relaxed this rule in order to serve substantial justice considering **(a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules,** (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.
>
> Invariably, rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflects this principle. **The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself had already declared to be final.** (Emphases ours.)

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[24] *Ang v. Republic,* G.R. No. 175788, 30 June 2009; *Vios v. Pantangco, Jr.,* G.R. No. 163103, 6 February 2009.

[25] *Tan Tiac Chiong v. Hon. Cosico*, 434 Phil. 753, 762 (2002).

[26] *Id.*, citing *Muñoz v. Court of Appeals,* 379 Phil. 809 (2000).

[27] G.R. No. 162335 and No. 162605, 18 December 2008, 574 SCRA 468.

[28] 482 Phil. 903, 915 (2004).

Indeed, the Court reserves the power to suspend procedural rules and technicalities when they tend to defeat, rather than serve, the interest of substantial justice. In *Ginete v. Court of Appeals*,[29] the Court expounded:

For when the operation of the Rules will lead to an injustice we have, in justifiable instances, resorted to this extraordinary remedy to prevent it. The rules have been drafted with the primary objective of enhancing fair trials and expediting justice. As a corollary, if their application and operation tend to subvert and defeat, instead of promote and enhance it, their suspension is justified. In the words of Justice Antonio P. Barredo in his concurring opinion in *Estrada v. Sto Domingo*, "[T]his Court, through the revered and eminent Mr. Justice Abad Santos, found occasion in the case of *C. Viuda de Ordoveza v. Raymundo*, to lay down for recognition in this jurisdiction, the sound rule in the administration of justice holding that `it is always in the power of the court (Supreme Court) to suspend its own rules or to except a particular case from its operation, whenever the purposes of justice require it x x x."

The Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts, in rendering justice have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around. As applied to instant case, in the language of Justice Makalintal, technicalities "should give way to the realities of the situation."

There are special circumstances in this case which convince the Court to recall the Entry of Judgment made herein, take a second hard look at the positions espoused by AFC and HPI in their Second Motion for Reconsideration[30] and act accordingly.

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[29] 357 Phil. 36, 52 (1998).

[30] The grant of a second or further motion for reconsideration by this court in meritorious cases is not without precedents. The Court reversed its judgment on a second motion for reconsideration in *San Miguel Corporation v. National Labor Relations Commission*, G.R. No. 82467, 29 June 1989, 174 SCRA 510; *Galman v. Sandiganbayan*, 228 Phil. 42 (1986); *Philippine*

AFC and HPI are entitled to interest in the payment of just compensation.

Nature of expropriation proceedings

Public use and just compensation are the bedrock of eminent domain.

Republic v. Court of Appeals[31] very well enucleated the nature of expropriation proceedings:

> Expropriation proceedings are not adversarial in the conventional sense, for the condemning authority is not required to assert any conflicting interest in the property. Thus, by filing the action, the condemnor in effect merely serves notice that it is taking title and possession of the property, and the defendant asserts title or interest in the property, not to prove a right to possession, **but to prove a right to compensation for the taking**. (citing *US vs. Certain Lands in Highlands* (DY NY) 48 F Supp 306; *San Bernardino Valley Municipal Water District vs. Gage Canal Co*. (4th Dist.), 226 Cal App 2d 206, 37 Cal Rptr 856.)
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> Obviously, however, the power is not without its limits: first, the taking must be for public use, and second, that just compensation must be given to the private owner of the property. These twin proscriptions have their origin in the recognition of the necessity for achieving balance between the State interests, on the other hand, and private rights, upon the other hand, by effectively restraining the former and affording protection to the latter. x x x.

When the state wields its power of eminent domain, there arises a correlative obligation on its part to pay the owner of the expropriated property just compensation. If it fails, there is a clear case of injustice that must be redressed.[32] Though it is the duty of

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Consumers Foundation, Inc. v. National Telecommunications Commission, 216 Phil. 185 (1984); *Republic v. De Los Angeles*, 148-B Phil. 902 (1971) and on a third motion for reconsideration in *Vir-Jen Shipping and Marine Services, Inc. vs. National Labor Relations Commission*, 210 Phil. 482 (1983), the Court modified or amended on a second motion for reconsideration its ruling in *Cathay Pacific Airways, Ltd. v. Romillo, Jr.*, G.R. No. 64276, 12 August 1986, 143 SCRA 396; C*osio v. Palilio*, G.R. No. L-18452, 20 May 1966, 17 SCRA 207.

[31] *Supra* note 13 at 118-119.

[32] *Republic v. Lim,* G.R. No. 161656, 29 June 2005, 462 SCRA 271, 278.

the court to protect the weak and the underprivileged, this duty shall not be carried out as to deny justice to the landowner.[33]

The Court was even more emphatic in *Barangay Sindalan, San Fernando Pampanga v. Court of Appeals*[34] when it reiterated that the power of eminent domain can **only** be exercised for public use and with **just compensation**. It cautioned that taking an individual's private property is a deprivation which can only be justified by a higher good — which is public use — and can only be counterbalanced by just compensation. Without these safeguards, the taking of property would not only be unlawful, immoral and null and void, but would also constitute a gross and condemnable transgression of an individual's basic right to property as well.

Stated otherwise, the immediate taking of the property of the landowner, which immediately deprives him of the possession of the same and its use, highlights the exercise of the state's power of eminent domain.

In this case, AFC and HPI voluntarily offered to sell their properties to the DAR on 12 October 1995. Titles over the properties of AFC and HPI were cancelled not very long after, and in their place a new certificate of title was issued in the name of the Republic of the Philippines on 9 December 1996. After the issuance of the Certificate of Title in the name of the Republic, the Register of Deeds of Davao, upon the request of the DAR, issued transfer certificates of title and Certificate of Land Ownership Awards to qualified farmer-beneficiaries. The farmer-beneficiaries took possession of the properties on 2 January 1997.[35] By this time, AFC and HPI had already been deprived of the use and fruits of their property.[36] They also lost control of the property as of that date.[37]

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[33] *Land Bank of the Philippines v. Heirs of Angel T. Domingo,* G.R. No. 168533, 4 February 2008, 543 SCRA 627, 640.

[34] G.R. No. 150640, 22 March 2007, 518 SCRA 649, 666.

[35] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, 6 February 2007, 514 SCRA 537, 542.

[36] *Land Bank of the Philippines v. Chico,* 13 March 2009.

[37] *Republic v. Gonzales*, 94 Phil. 956, 963 (1954).

JUST COMPENSATION; ACCRUAL OF LEGAL INTEREST

While it is true that all private properties are subject to the need of the government, and the government may take them whenever the necessity or exigency of the occasion demands, however, the Constitution guarantees that when this governmental right of expropriation is exercised, it shall be attended by just compensation.[38]

From the taking of private property by the government under the power of eminent domain, there arises an implied promise to compensate the owner for his loss.

Significantly, the above-mentioned provision of Section 9, Article III of the Constitution is not a grant but a limitation of power. This limiting function is in keeping with the philosophy of the Bill of Rights against the arbitrary exercise of governmental powers to the detriment of the individual's rights. Given this function, the provision should therefore be strictly interpreted against the expropriator, the government, and liberally in favor of the property owner.[39]

In our Decision, we have provided an elucidation on what constitutes just compensation, thus:

The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also the payment of the land within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is being made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.[40] Just compensation is defined as the full and fair

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[38] *Republic v. Lim, supra* note 32.

[39] *Id.* at 280.

[40] *Estate of Salud Jimenez v. Philippine Export Processing Zone,* 402 Phil. 271 (2001); *Land Bank of the Philippines v. Court of Appeals*, 327 Phil. 1047, 1054 (1996), quoting *Municipality of Makati v. Court of Appeals*, G.R. Nos. 89898-99, 1 October 1990, 190 SCRA 207, 213.

equivalent of the property taken from its owner by the expropriator.[41] It has been repeatedly stressed by this Court that the measure is not the taker's gain but the owner's loss.[42] **The word "just" is used to intensify the meaning of the word "compensation" to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample**.[43] (Emphases supplied.)

Republic v. Court of Appeals,[44] further broadened the concept of "just compensation" when it underscored that:

The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, it fixed at the time of the actual taking by the government. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, **legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred**. (Emphasis supplied.)

Just compensation, thus, must embrace not only the correct (real, substantial, full and ample) determination of the amount to be paid to the owners of the land but also its payment within a reasonable time from the taking of the land to enable the landowners to cope with the loss; otherwise, interest in the nature of damages from the time of the taking

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[41] *Manila Railroad Co. v. Velasquez*, 32 Phil. 286, 313 (1915).

[42] *Province of Tayabas v. Perez*, 66 Phil. 467, 469 (1938); *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, G.R. No. L-21064, 18 February 1970, 31 SCRA 413, 432; *Manotok v. National Housing Authority*, G.R. Nos. L-55166-67, 21 May 1987, 150 SCRA 89.

[43] *Apo Fruits Corporation v. Court of Appeals, supra* note 35 at 557-558.

[44] *Supra* note 13 at 122-123.

of the property up to the actual payment of just compensation, is in order.[45]

Verily, jurisprudence has justifiably, wisely and correctly regarded the transaction between the landowners and the government in expropriation proceedings, under the foregoing circumstances, as one of loan or forbearance of money,[46] which carries payment of interest in case of delay in payment.

The legal interest for loan or forbearance of money is 12% per annum, citing Central Bank Circular No. 416 dated 29 July 1974.[47] However, *Santos Ventura Hocorma Foundation, Inc.* succinctly emphasized that the 12% per annum applies **ONLY** to loans or forbearance of money.[48]

The Court further explained, in *Reyes v. National Housing Authority*,[49] that between the taking of the property and the actual payment, legal interests accrue **in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred. The allowance of interest — computed at 12% per annum — on the amount found to be the value of the property as of the time of the taking,**

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[45] *Estate of Salud Jimenez v. Philippine Export Processing Zone,* G.R. No. 137285, 16 January 2001, 349 SCRA 240; *Land Bank of the Philippines v. Imperial, supra* note 15; *Barangay Sindalan, San Fernando, Pampanga v. Court of Appeals, supra* note 33; *Republic v. Court of Appeals, supra* note 13; *Land Bank of the Philippines v. Lim,* G.R. No. 171941, 2 August 2007, 529 SCRA 129, 136.

[46] *Santos Ventura Hocorma Foundation, Inc. v. Santos,* 484 Phil. 447, 456 (2004); *Land Bank of the Philippines v. Wycoco, supra* note 14; *Reyes v. National Housing Authority,* 443 Phil. 603 (2003).

[47] *Santos Ventura Hocorma Foundation, Inc. v. Santos*, *id.*; *Land Bank of the Philippines v. Imperial, supra* note 15.

[48] In *Sigaan v. Villanueva,* G.R. No. 173227, 20 January 2009, citing *Eastern Shipping Lines v. Court of Appeals*, G.R. No. 97412, 12 July 1994, 234 SCRA 78, 96-97, this Court declared that when the judgment of the court awarding a sum of money becomes final executory, the rate of legal interest, whether it is a loan/forbearance of money or not shall be 12% per annum from such finality until its satisfaction, this interim period being deemed equivalent to a forbearance of credit.

[49] *Supra* note 46.

being an effective forbearance, should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time. Such is the true role or nature of interest in expropriation cases.

Said interest runs as a matter of law and follows as a matter of course from the right of the landowner, to be placed in as good a position as money can accomplish, as of the date of the taking.[50] Under this view, the interest awarded is deemed part of the just compensation required to be paid to the owner.[51]

Republic v. Juan,[52] very succinctly synthesized our adherence to the prevailing view when it expostulated:

> In this jurisdiction, a study of the cases decided by this Court with respect to the award of interest to the condemnee where there is a gap of time between the taking and the payment, shows that We tend to follow the view just discussed. The first case — it would appear — where the question of interest arose in this jurisdiction was the *Philippine Railway Co. vs. Solon*, February 20, 1909, 13 Phil. 35-45. The two issues taken there in connection with interest were: (1) From what time should interest be reckoned, from time of the taking possession of the property by the government or from judgment of the trial court; and (2) whether on appeal, appellant-condemnee is entitled to interest during the pendency of the appeal. In disposing of the issues, the Court, relying heavily on American jurisprudence, appears to treat interest as part of just compensation and as an additional amount sufficient to place the owner "in as good a position as money can accomplish, as of the date of the taking." Thus, the Court declared:
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> > "It remains to consider what interest the defendant is entitled to from the last named date. It appears from the record that the company opposed the confirmation of the award. Its objections were so far successful that the court reduced the

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[50] 30 CJS 230, cited in *Benguet Consolidated, Inc. v. Republic,* 227 Phil. 422, 436 (1986), citing *Republic v. Juan,* 180 Phil. 398 (1979).

[51] 27 Am Jur. 112; *National Housing Authority v. Heirs of Isidro Guivelondo,* G.R. No. 166518, 16 June 2009, *Urtula v. Republic,* 130 Phil. 449, 458 (1968).

[52] *Supra* note 50 at 426-427.

amount awarded by the commissioners. *The owner was compelled to appeal and in his appeal has been so far successful as to reverse the action of the court below. Under these circumstances we think he is entitled to interest on the award until the final determination of this proceeding*. What the result would be if he had failed in his appeal, we do not decide. *The interest thus allowed will be interest upon the amount awarded by the commissioners from the 2nd day of February 1907, until payment*" (13 Phil. 40-44, italics supplied.)

The Solon case thereafter became the basis of award of interest on expropriation cases like *Philippine Railway v. Duran*, 33 Phil. 159 [1916]; *Manila Railroad Co. v. Alano*, 36 Phil. 501 [1917]; *Manila Railroad Co. v. Attorney General*, 41 Phil. 177 [1920]; *Alejo v. Provincial Government of Cavite*, 54 Phil. 304 [1930]; *Tayabas v. Perez*, 66 Phil. 470 [1938]; *Republic v. Gonzales*, 94 Phil. 957 [1954]; *Republic v. Lara*, 96 Phil. 172 [1954]; *Phil. Executive Commission v. Estacio*, 98 Phil. 219 [1956]; *Republic of the Philippines v. Deleste*, 99 Phil. 1035 [1956]; *Republic v. Garcellano*, 103 Phil. 237 [1958]; Yaptinchay, 108 Phil. 1053 [1960]; *Republic v. Tayengco*, 19 SCRA 900 [1967], and many others, until the matter of payment of interest became an established part of every case where taking and payment were not contemporaneously made.

Hence, in *Republic v. Court of Appeals,*[53] the Court simply imposed legal interest of 12% per annum in the just compensation.

In *Land Bank of the Philippines v. Imperial*,[54] 12% legal interest was awarded in favor of the landowner as damages for the delay in the payment of the just compensation.

Nepomuceno v. City of Surigao[55] and *Ansaldo v. Tantuico, Jr.*[56] invoked by AFC/HPI contain the declaration that "the value of the property expropriated shall earn interest at the legal rate until full payment is effected."

All given, it now becomes clear that the Court has consistently awarded the landowner legal interest of 12% per annum **from the**

[53] *Supra* note 13.

[54] *Supra* note 15.

[55] G.R. No. 146091, 28 July 2008, 560 SCRA 41.

[56] G.R. No. 50147, 2 August 1990, 188 SCRA 300.

time of the taking of the property until fully paid of his just compensation which must be "real, substantial, full and ample."[57] We have constantly accentuated that the property owner is made to suffer the consequences of being immediately deprived of his land. Worse still, he is being made to wait before actually receiving the just amount extremely necessary to cope with his loss.

Applying the 12% rate on the balance of just compensation due AFC and HPI, from the taking of their properties on 9 December 1996, until the full payment of said balance by the LBP on 9 May 2008, AFC and HPI claim interest in the total amount of **₱1,331,124,223.05**, computed as follows:

Just Compensation			₱971,409,831.68
Legal Interest from 12/09/1996 To 05/09/2008 @ 12% per annum			
12/09/1996 to 12/31/1996	23 days	7,345,455.17	
01/01/1997 to 12/31/2007	11 years	1,282,260,977.82	
01/01/2008 to 05/09/2008	30 days	41,517,790.07	1,331,124,223.05[58]

Law and jurisprudence empower courts to equitably reduce interest rates[59] and penalty charges. Under Article 1229 of the Civil Code, "[t]he judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor." Article 1229 of the Civil Code provides that the court shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. And, even if there has been no performance, the penalty may also be reduced if it is iniquitous or leonine. While there may be no more ceiling on interest rates on obligations, it does not mean that creditors have *carte blanche* authority to impose interest rates to levels which will either enslave the debtors or lead to a hemorrhaging of the latter's assets.[60]

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[57] *Id.*

[58] *Rollo,* p. 1337.

[59] *Land Bank of the Philippines v. David*, G.R. No. 176344, 22 August 2008, 563 SCRA 172, 178.

[60] See *Spouses Solangon v. Salazar*, 412 Phil. 816, 822 (2001).

In the following cases, the court saw it fit to reduce interest charges.

In *Palmares v. Court of Appeals,*[61] the Court found that the penalty charge of 3% per month and attorney's fees equivalent to 25% of the total amount due are highly inequitable and unreasonable, considering that from the principal loan of ₱30,000.00, the amount of ₱16,300.00 had already been paid even before the filing of the case.

Similarly, in *Asia Trust Development v. Concept Trading Corporation*,[62] the Court, given that the principal obligation had been partially complied with by the respondent, affirmed the reduction of the penalty charges from 36% to 3% per annum. The Court, in *Filinvest v. Court of Appeals*,[63] deemed that the penalty of ₱15,000.00 per day, resulting in the aggregate amount of ₱3,990,000.00, was steep and excessive, and reduced it to ₱1,881,867.66, considering that there had been substantial compliance in good faith on the part of the party obliged to pay penalty.

The Court decreased the 3% monthly or 36% annual interest penalty in *Segovia Development Corporation v. J.L. Dumatol,*[64] to 12% interest per annum, consistent with fairness and equity, taking into account that J.L. Dumatol had already substantially complied with its contractual obligation.

In *Patron v. Union Bank of the Philippines,*[65] the Court found the 2% monthly or 24% annual penalty charge unconscionable under the circumstances attendant to the case; *i.e.*, the spouses Patron had made partial payments on their loan and had requested the restructuring of the same. Consequently, the Court fixed the interest rate in the case at 12% per annum.

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[61] G.R. No. 126490, 31 March 1998, 288 SCRA 422, 445.

[62] G.R. No. 130759, 20 June 2003, 404 SCRA 449, 461.

[63] *Filinvest v. Court of Appeals,* G.R. No. 138980, 20 September 2005, 470 SCRA 260, 274.

[64] 416 Phil. 528, 541 (2001).

[65] G.R. No. 177348, 17 October 2008, 569 SCRA 738, 746.

In *Diño v. Jardines*,[66] the Court found that 9% and 10% monthly interest rates (or 108% and 120% annual interest rates) on the principal loan of ₱165,000.00 are void for being clearly excessive, iniquitous, unconscionable and exorbitant. The Court brushed aside the fact that Jardines agreed to the said rates, although she knew the same to be exorbitant, and considered that she was constrained to do so, as she was badly in need of money at that time. The Court reduced the exorbitant rates to the 12% legal interest rate.

In the exercise of its sound discretion, this Court, in *Florentino v. Supervalue, Inc.*,[67] tempered the penalty for the breaches committed by Florentino to 50% of the amount of the security deposits. The forfeiture of all the security deposits, in the sum of ₱192,000.00, was clearly a usurious and iniquitous penalty for the transgressions committed by petitioner therein. Supervalue, Inc. was, therefore, obligated to return 50% of ₱192,000.00 to the petitioner.

The Court likewise equitably reduced, in *Bulos, Jr. v. Yasuma*,[68] the excessive and unconscionable interest rate of 48% per annum to 12% per annum.[69]

In *Barons Marketing Corporation v. Court of Appeals*,[70] the 12% annual interest alone amounted to ₱4,500,000.00, exceeding the principal debt of ₱2,000,000.00. On top of the interest, Barons Marketing Corp. was also held liable by the Court of Appeals for attorney's fees and collection fees equivalent to 25% of the total amount due, which included interest. Finding

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[66] G.R. No. 145871, 31 January 2006, 481 SCRA 226, 238.

[67] G.R. No. 172384, 12 September 2007, 533 SCRA 156, 167-168.

[68] G.R. No. 164159, 17 July 2007, 527 SCRA 727, 742.

[69] *Ruiz v. Court of Appeals,* 449 Phil. 419, 433-434 (2003), which, in turn, cited *Medel v. Court of Appeals,* 359 Phil. 820, 829-830 (1998); *Garcia v. Court of Appeals,* G.R. Nos. 82282-83, 24 November 1988, 167 SCRA 815, 830-831; *Spouses Bautista v. Pilar Development Corporation,* 371 Phil. 533, 543-544 (1999); *Spouses Solangon v. Salazar, supra* note 59 at 822-823.

[70] 349 Phil. 769, 779 (1998).

the attorney's fees and collection fees manifestly exorbitant, the Court reduced the same to 10% of the principal. The same situation was extant in *Development Bank of the Philippines v. Court of Appeals*.[71] The Court noted therein that the interests paid by debtor spouses De la Peña, which amounted to ₱233,361.50,30 inclusive of the regular interest, additional interest, penalty charges, and interest on advances, were already more than their principal obligation in the amount of ₱207,000.00. The additional interest of 18% alone amounted to ₱106,853.45,31 which was almost half of what was already paid by the spouses De la Peña. Thus, the Court reduced the additional interest of 18% per annum to 10% per annum.

In *Lo v. Court of Appeals,*[72] the stipulated penalty in the lease agreement for failure by the lessee National Onion Growers Cooperative Marketing Association, Inc. (NOGCMAI) to pay the rent on the leased property was ₱5,000.00 for each day of delay or ₱150,000.00 per month, an amount five times the monthly rent. This penalty was not only exorbitant but also unconscionable, since NOGCMAI was delayed in surrendering the leased property because of its well-founded belief that its right of preemption to purchase the said property had been violated. Considering further that NOGCMAI was an agricultural cooperative, collectively owned by farmers with limited resources, ordering it to pay a penalty of ₱150,000.00 per month on top of the monthly rent of ₱30,000.00 would seriously deplete its income and drive it to bankruptcy. Consequently, the Court reduced the reward of penalty damages from ₱5,000.00 to ₱1,000.00 for each day of delay.

Of the same tenor is *Rizal Commercial Banking Corporation v. Court of Appeals*.[73] The factory of therein debtor, Goyu & Sons, Inc. (GSI), was gutted in a fire. Its creditors, including the Rizal Banking Insurance Corporation (RCBC), filed their respective claims upon the proceeds of the insurance policies

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[71] 398 Phil. 413 (2000).

[72] 458 Phil. 414 (2003).

[73] 352 Phil. 101 (1998).

of GSI. Taking into account the pitiful financial condition of GSI, the Court ruled the surcharge rate ranging anywhere from 9% to 27%, plus the penalty charge of 36%, to be definitely iniquitous and unconscionable. The Court tempered these rates to 2% and 3%, respectively.

In all the aforementioned, the Court, in the exercise of its equity jurisdiction, reduced interest rates on penalty charges with due regard to the particular circumstances of each case.

We recognize that we are not at liberty to overlook settled jurisprudence on the appropriate amount of legal interest to be awarded in just compensation which is due AFC and HPI, but for several reasons which we have taken stock of, it would be unconscionable to apply the full force of the law on LBP.

We award on the basis of fairness and equity a reduced amount of legal interest, considering the following circumstances:

(1) Given that the LBP already fully paid a considerable amount of just compensation to AFC and HPI, even prior to the finality of the judgment against it, a reduced amount of legal interest would be consistent with fairness and equity.[74] *Jus respicit acquitatem.* Law regards equity. In this case, LBP already made a full payment of just compensation to AFC and HPI on 9 May 2008 in the amount of **₱1,383,179,00** even before the decision of this court became final and executory on 16 May 2008.

(2) Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable. Whether an interest rate is reasonable or iniquitous is addressed to the sound discretion of the Court, depending on the circumstances of each case. Given that the legal interest which AFC and HPI seek to recover amounts to **₱1,331,124,223.05, which amount is almost equal to the cost of just compensation**,[75]

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[74] *Spouses Jose T. Valenzuela and Gloria Valenzuela v. Kalayaan Development and Industrial Corporation,* G.R. No. 163244, 22 June 2009.

[75] Total amount of just compensation is ₱1,383,179,00.

legal interest may be reduced on this ground, as the Court has previously reduced interest rates in cases where these were equal to or exceeded the principal amount of the debt.[76]

(3) Iniquitous and unconscionable interest rates are contrary to morals.[77]

(4) Interest rates should not be leonine or result in a hemorrhaging of assets of the LBP.[78]

Thus, given the particular circumstances of the instant petition, legal interest should be awarded to AFC and HPI *pro hac vice,*[79] in the amount of ₱400,000,000.00. To the Court, 30% more or less of the total amount of legal interest that the parties seek to recover is already a fair and just amount.

In view of all the foregoing, LBP should be directed to pay AFC and HPI the legal interest due the latter upon finality of this resolution within a period of six (6) months.

As to the issue of attorney's fees, the minority finds no reason to reverse its findings as stated in the Resolution dated 19 December 2007, that AFC and HPI failed to substantiate their entitlement to such an award.

The foregoing considered, I dissent from the view of the majority.

I therefore vote to *PARTIALLY GRANT* the Second Motion for Reconsideration of AFC and HPI, on the resolution of this Court dated 19 December 2007 in that Land Bank of the Philippines be *ORDERED* to pay AFC and HPI the amount of ₱400,000,000.00 as interest to the principal amount of ₱971,409,831.68 due the latter upon finality of this Resolution within a period of six (6) months.

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[76] *Barons Marketing Corporation v. Court of Appeals*, *supra* note 70; *Development Bank of the Philippines v. Court of Appeals*, *supra* note 71.

[77] *Dino v. Jardines,* G.R. No. 145871, 31 January 2006, 481 SCRA 226, 238.

[78] *Spouses Solangon v. Salazar*, *supra* note 60.

[79] *Republic v. Hidalgo*, G.R. No. 161657, 4 October 2007, 534 SCRA 619; *Land Bank of the Philippines v. Chico, supra* note 36.

SPECIAL THIRD DIVISION

[G.R. No. 170447. December 4, 2009]

BIENVENIDO DIÑO and RENATO COMPARATIVO, *petitioners, vs.* **PABLO OLIVAREZ,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; COMMISSION ON ELECTIONS (COMELEC); POWER TO INVESTIGATE AND PROSECUTE ELECTION CASES. —** The Constitution, particularly Article IX, Section 20, empowers the COMELEC to investigate and, when appropriate, prosecute election cases. Under Section 265 of the Omnibus Election Code, the COMELEC, through its duly authorized legal officers has the exclusive power to conduct a preliminary investigation of all election offenses punishable under the Omnibus Election Code, and to prosecute the same. The COMELEC may avail of the assistance of other prosecuting arms of the government. Section 265 reads: Section 265. *Prosecution*. — The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: *Provided*, however, That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.
2. **ID.; ID.; COMELEC RULES OF PROCEDURE; CONTINUING DELEGATION OF AUTHORITY TO OTHER PROSECUTING ARMS OF THE GOVERNMENT (SEC. 2, RULE 34) AND APPEALS FROM THE ACTION OF THE STATE PROSECUTOR, PROVINCIAL OR CITY FISCAL (SEC. 10); COMELEC HAS POWER TO REVOKE DELEGATED AUTHORITY, OR MODIFY AND REVERSE THE RESOLUTION OF THE CHIEF STATE PROSECUTOR, *ET AL.* —** Section 2, Rule 34 of the COMELEC Rules of Procedure details the continuing delegation of authority to other prosecuting arms of the government, which

authority the COMELEC may revoke or withdraw anytime in the proper exercise of its judgment. It provides: Section 2. *Continuing Delegation of Authority to Other Prosecution Arms of the Government*. — The Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants are hereby given continuing authority, as deputies of the Commission, to conduct preliminary investigation of complaints involving election offenses under the election laws which may be filed directly with them, or which may be indorsed to them by the Commission or its duly authorized representative and to prosecute the same. Such authority may be revoked or withdrawn any time by the Commission whenever in its judgment such revocation or withdrawal is necessary to protect the integrity of the Commission, promote the common good, or when it believes that successful prosecution of the case can be done by the Commission. Furthermore, Section 10 of the COMELEC Rules of Procedure gives the COMELEC the power to *motu proprio* revise, modify and reverse the resolution of the Chief State Prosecutor and/or provincial/city prosecutors. Said section reads: Section 10. *Appeals from the Action of the State Prosecutor, Provincial or City Fiscal*. — Appeals from the resolution of the State Prosecutor or Provincial or City Fiscal on the recommendation or resolution of investigating officers may be made only to the Commission within ten (10) days from receipt of the resolution of said officials, provided, however that this shall not divest the Commission of its power to *motu proprio* review, revise, modify or reverse the resolution of the chief state prosecutor and/or provincial/city prosecutors. The decision of the Commission on said appeals shall be immediately executory and final. From the foregoing, it is clear that the Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants have been given continuing authority, as deputies of the Commission, to conduct a preliminary investigation of complaints involving election offenses under the election laws and to prosecute the same. Such authority may be revoked or withdrawn any time by the COMELEC, either expressly or impliedly, when in its judgment such revocation or withdrawal is necessary to protect the integrity of the process to promote the common good, or where it believes that successful prosecution of the case can be done by the COMELEC. Moreover, being mere deputies or agents of the COMELEC, provincial or city prosecutors deputized by

the COMELEC are expected to act in accord with and not contrary to or in derogation of its resolutions, directives or orders in relation to election cases such prosecutors are deputized to investigate and prosecute. Being mere deputies, provincial and city prosecutors, acting on behalf of the COMELEC, must proceed within the lawful scope of their delegated authority.

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; GRAVE ABUSE OF DISCRETION; COMMITTED IN CASE AT BAR WHEN TRIAL COURT JUDGE ADMITTED THE AMENDED INFORMATIONS DESPITE FULL KNOWLEDGE THAT THE COMELEC ORDERED THE CITY PROSECUTOR TO SUSPEND FURTHER IMPLEMENTATION OF THE QUESTIONED RESOLUTION UNTIL FINAL RESOLUTION OF THE APPEAL BEFORE IT. —** Did the trial court judge commit grave abuse of discretion amounting to lack or excess of jurisdiction when he admitted the amended informations despite full knowledge that the COMELEC ordered the City Prosecutor of Parañaque to suspend further implementation of the questioned resolution until final resolution of the appeal before it? We rule that he did. All actions of the City Prosecutor of Parañaque after the COMELEC's issuance of the order to transmit the entire records and to suspend all further proceedings until it has finally resolved the appeal before it, are void and of no effect. Consequently, the amended informations filed before the trial court are nothing but mere scraps of paper that have no value for the same were filed sans lawful authority. As early as 14 December 2004, through respondent's "Opposition to the Admission of the Amended Informations," the trial court judge had known that the COMELEC had directed the City Prosecutor of Parañaque to transmit the entire records of the case to the COMELEC by the fastest means available and to suspend further implementation of the questioned resolution until final resolution of respondent's appeal. He knew that the City Prosecutor no longer had any authority to amend the original informations. Despite this, the trial court judge still admitted the amended informations. In doing so, the trial court judge committed grave abuse of discretion amounting to lack of excess of jurisdiction. We are not unmindful of the settled jurisprudence that once a complaint or information is filed in court, any disposition of the case as to its dismissal, or conviction or acquittal of the accused, rests on the sound

discretion of the said court, as it is the best and sole judge of what to do with the case before it. Under the circumstances obtaining in this case, we hold that this settled jurisprudence does not apply in this case. The trial court's knowledge that the filing of the amended informations was done by the public prosecutor in excess of his delegated authority no longer gives him the discretion as to whether or not accept the amended informations. The only option the trial court had was not to admit the amended informations as a sign of deference and respect to the COMELEC which already had taken cognizance of respondent's appeal. This, the trial court did not choose. It insisted on admitting the amended informations which were patent nullities for being filed contrary to the directives of the COMELEC. Necessarily, all actions and rulings of the trial court arising from these amended informations must likewise be invalid and of no effect.

APPEARANCES OF COUNSEL

Law Firm of Maronilla & Partners for petitioners.
Mendoza Arzaga Mendoza Law Firm for respondent.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

Before Us is a Motion for Reconsideration[1] of Our Decision[2] filed by respondent Pablo Olivarez

In Our decision dated 23 June 2009, We found that the public prosecutor, in filing the Amended Informations, did not exceed the authority delegated by the Commission on Elections (COMELEC). We likewise ruled that no abuse of discretion could be attributed to Judge Fortunito L. Madrona (Madrona) when he issued the Orders dated 9 March 2005 and 31 March 2005 for the arrest of respondent due to his failure to be present for his arraignment and for the confiscation of his cash bond.

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[1] *Rollo*, pp. 150-164.

[2] *Id*. at 135-149.

We disposed of the case as follows:

WHEREFORE, the instant appeal is GRANTED. The Decision of the Court of Appeals dated 28 September 2005 in CA-G.R. SP No. 89230 is REVEERSED (sic). This Court orders the continuation of the proceedings in Criminal Cases No. 04-1104 and No. 04-1105 before the RTC, the prosecution of which shall be under the direction of the Law Department of the COMELEC. No. costs.[3]

In order to fully understand our resolution of the instant motion, we quote the factual antecedents as narrated in our decision:

Petitioners instituted a complaint for vote buying against respondent Pablo Olivarez. Based on the finding of probable cause in the Joint Resolution issued by Assistant City Prosecutor Antonietta Pablo-Medina, with the approval of the city prosecutor of Parañaque, two Informations were filed before the RTC on 29 September 2004 charging respondent Pablo Olivarez with Violation of Section 261, paragraphs a, b and k of Article XXII of the Omnibus Election Code x x x.

x x x x x x x x x

The arraignment of the respondent was initially set on 18 October 2004.

On 7 October 2004, respondent filed before the Law Department of the Commission on Elections (COMELEC) an "[a]ppeal of [the] Joint Resolution of the City Prosecutor of Parañaque City with Motion to Revoke Continuing Authority" pursuant to Section 10, Rule 34 of the 1993 COMELEC Rules of Procedure. Respondent argued that the pendency of the appeal of the Joint Resolution before the COMELEC should prevent the filing of the Informations before the RTC as there could be no final finding of probable cause until the COMELEC had resolved the appeal. Moreover, he argued that the charges made against him were groundless.

In a letter dated 11 October 2004, the Law Department of the COMELEC directed the city prosecutor to transmit or elevate the entire records of the case and to suspend further implementation of the Joint Resolution dated 20 September 2004 until final resolution of the said appeal before the COMELEC *en banc*.

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[3] *Id*. at 147-148.

On 11 October 2004, respondent filed a Motion to Quash the two criminal informations on the ground that more than one offense was charged therein, in violation of Section 3(f), Rule 117 of the Rules of Court, in relation to Section 13, Rule 110 of the Rules of Court. This caused the resetting of the scheduled arraignment on 18 October 2004 to 13 December 2004.

Before Judge Madrona could act on the motion to quash, Assistant Prosecutor Pablo-Medina, with the approval of the city prosecutor, filed on 28 October 2004 its "Opposition to the Motion to Quash and Motion to Admit Amended Informations." The Amended Informations sought to be admitted charged respondent with violation of only paragraph a, in relation to paragraph b, of Section 261, Article XXII of the Omnibus Election Code.

On 1 December 2004, Judge Madrona issued an Order resetting the hearing scheduled on 13 December 2004 to 1 February 2005 on account of the pending Motion to Quash of the respondent and the Amended Informations of the public prosecutor.

On 14 December 2004, respondent filed an "Opposition to the Admission of the Amended Informations," arguing that no resolution was issued to explain the changes therein, particularly the deletion of paragraph k, Section 261, Article XXII of the Omnibus Election Code. Moreover, he averred that the city prosecutor was no longer empowered to amend the informations, since the COMELEC had already directed it to transmit the entire records of the case and suspend the hearing of the cases before the RTC until the resolution of the appeal before the COMELEC *en banc*.

On 12 January 2005, Judge Madrona issued an order denying respondent's Motion to Quash dated 11 October 2004, and admitted the Amended Informations dated 25 October 2004. Respondent filed an Urgent Motion for Reconsideration dated 20 January 2005 thereon.

On 1 February 2005, Judge Madrona reset the arraignment to 9 March 2005, with a warning that the arraignment would proceed without any more delay, unless the Supreme Court would issue an injunctive writ.

On 9 March 2005, respondent failed to appear before the RTC. Thereupon, Judge Madrona, in open court, denied the Motion for Reconsideration of the Order denying the Motion to Quash and admitting the Amended Informations, and ordered the arrest of respondent and the confiscation of the cash bond.

On 11 March 2005, respondent filed an "Urgent Motion for Reconsideration and/or to Lift the Order of Arrest of Accused Dr. Pablo Olivarez," which was denied in an Order dated 31 March 2005. The Order directed that a bench warrant be issued for the arrest of respondent to ensure his presence at his arraignment.

On 5 April 2005, the Law Department of the COMELEC filed before the RTC a Manifestation and Motion wherein it alleged that pursuant to the COMELEC's powers to investigate and prosecute election offense cases, it had the power to revoke the delegation of its authority to the city prosecutor. Pursuant to these powers, the COMELEC promulgated Resolution No. 7457 dated 4 April 2005. The dispositive portion of Resolution No. 7457 states:

> Considering the foregoing, the Commission **RESOLVED**, as it hereby **RESOLVES**, to **APPROVE** and **ADOPT** the recommendation of the Law Department as follows:
>
> 1. To revoke the deputation of the Office of the City Prosecutor of Parañaque to investigate and prosecute election offense cases insofar as I.S. Nos. 04-2608 and 04-2774, entitled "*Renato Comparativo vs. Remedios Malabiran and Pablo Olivarez*" and "*Bienvenido, et al. vs. Sally Rose Saraos, et al*.," respectively, are concerned; and
>
> 2. To direct the Law Department to handle the prosecution of these cases and file the appropriate Motion and Manifestation before the Regional Trial Court of Parañaque, Branch 274, to hold in abeyance further proceedings on Criminal Case Nos. 1104 and 1105 until the Commission has acted on the appeal of respondents.
>
> Let the Law Department implement this Resolution.

Thus, the Law Department of the COMELEC moved (1) that the RTC hold in abeyance further proceedings in Criminal Cases No. 04-1104 and No. 04-1105 until the COMELEC has acted on respondent's appeal; and (2) to revoke the authority of the city prosecutor of Parañaque to prosecute the case, designating therein the lawyers from the Law Department of the COMELEC to prosecute Criminal Cases No. 04-1104 and No. 04-1105.

On 8 April 2005, respondent filed a Special Civil Action for *Certiorari* before the Court of Appeals docketed as CA-G.R. SP No. 89230, assailing the Orders, dated 12 January 2005, 9 March

2005 and 31 March 2005 of the RTC. The appellate court granted the appeal in a Decision dated 28 September 2005 declaring that the COMELEC had the authority to conduct the preliminary investigation of election offenses and to prosecute the same. As such, the COMELEC may delegate such authority to the Chief State Prosecutor, provincial prosecutors, and city prosecutors. The COMELEC, however, has the corresponding power, too, to revoke such authority to delegate. Thus, the categorical order of the COMELEC to suspend the prosecution of the case before the RTC effectively deprived the city prosecutor of the authority to amend the two informations. The appellate court also pronounced that Judge Madrona erred in admitting the amended informations, since they were made in excess of the delegated authority of the public prosecutor, and his orders to arrest the respondent and to confiscate the latter's cash bond were devoid of legal basis. The *fallo* of the Decision reads:

> **UPON THE VIEW WE TAKE OF THIS CASE, THUS**, the petition at bench must be, as it hereby is, **GRANTED**. The impugned Orders of the public respondent Judge Fortunito L. Madrona of Branch 274, Regional Trial Court of Parañaque City dated 12 January 2005, 9 March 2005, and 31 March 2005 are hereby **VACATED** and **NULLIFIED**. The Temporary Restraining Order issued in the instant petition is made **PERMANENT**. Without costs in this instance.[4]

In finding that the public prosecutor of Parañaque, in filing the Amended Informations, did not exceed the authority delegated by the Commission on Elections (COMELEC), we said that the public prosecutor's delegated authority to prosecute the case was not yet revoked when said amended informations were filed on 28 October 2004, since the authority was revoked only on 4 April 2005 when COMELEC Resolution No. 7457 was issued. We explained that the letter from the COMELEC Law Department dated 11 October 2004, which directed the public prosecutor to transmit the entire records of the case by the fastest means available and to suspend further implementation of the questioned resolution (finding of probable cause to charge respondent with Violation of Section 261, paragraphs a, b and

[4] *Id*. at 136-141.

k of Article XXII of the Omnibus Election Code) until final resolution of respondent's appeal therefrom by the COMELEC *En Banc* did not revoke said delegated authority. We added that the filing of the amended informations was not made in defiance of the instructions dated 11 October 2004, but was rather "an act necessitated by the developments of the case." We said that the instructions were intended not to have the public prosecutor abandon the prosecution of the case and negligently allow its dismissal by not filing the Amended Informations. By filing the amended informations, the public prosecutor avoided the undesirable situation that would have forced the COMELEC to re-file the cases, waste government resources and delay the administration of justice.

As regards Judge Madrona, we ruled he did not abuse his discretion when he issued the Orders dated 9 March 2005 and 31 March 2005 for the arrest of respondent due to his failure to be present for his arraignment and for the confiscation of his cash bond. Having acquired jurisdiction over the cases and the persons of the accused, the disposition thereof, regardless of what the fiscal may have felt was the proper course of action, was within the exclusive jurisdiction, competence and discretion of the court.

We further ruled that pursuant to Section 11 of Rule 116 of the 2000 Rules on Criminal Procedure, the arraignment of respondent cannot be suspended indefinitely, for the reviewing authority has at most 60 days within which to decide the appeal. The arraignment of respondent was initially scheduled on 18 October 2004, but the same was reset three times. A motion to quash the two informations was filed on 11 October 2004. On 12 January 2005, Judge Madrona denied the Motion to Quash and admitted the Amended Informations. Respondent sought the reconsideration of said order. On the scheduled arraignment on 9 March 2005, respondent failed to appear, resulting in the denial of his motion for reconsideration of the order denying the motion to quash and admitting the amended informations, the order for his arrest, and the confiscation of his cash bond. We said that five months was more than the sixty days allowed by the rules for the suspension of the arraignment and was

ample time to obtain from COMELEC a reversal of the Joint Resolution finding probable cause.

Respondent anchors his motion for reconsideration on two grounds, to wit:

a. The Honorable Court, with due respect, is incorrect in finding that the public prosecutor (of Paranaque City) did not exceed the authority delegated by the COMELEC when they filed the subject Amended Informations against herein Respondent; and

x x x x x x x x x

b. The Honorable Court, with due respect, incorrectly ruled that Judge Madrona of the Regional Trial Court of Paranaque City, acted, in accordance with law when he admitted the two (2) Amended Informations and dismissed the Respondent's Motion to Quash, as the ground stated therein — the informations charged more than one offense — could no longer be sustained, and ordered the arrest of the Respondent due to his alleged failure to be present for his arraignment and for the confiscation of his cash bond (at page 11 of the Assailed Decision).[5]

On the first ground, respondent argues that this Court erred in not construing the directive of the COMELEC to the public prosecutor of Parañaque City — to transmit the entire records of the case to the COMELEC Law Department by the fastest means available and to suspend further implementation of the questioned resolution until final resolution of the appeal by the COMELEC *En Banc* — as not a revocation of the public prosecutor's delegated authority. He further argues that the intention to revoke the delegated authority given to the public prosecutor is crystal clear. The order directing the transmission of the entire records deprives the public prosecutor of the means and bases to prosecute the criminal cases. He adds that the directive to suspend further implementation of the questioned resolution until final resolution of the appeal by the COMELEC *En Banc* is an express or, at the very least, an implied indication of revocation of the delegated authority inasmuch as the public prosecutor has been prevented, warned and stripped of any

[5] *Id*. at 151-158.

authority and control over the prosecution of the criminal cases. In not construing the mandatory directive as a revocation of the delegated authority, respondent argues that this Court violated the *Pro Reo Doctrine*[6] and the Rule of Lenity.[7] Since the COMELEC directive is capable of two interpretations, respondent argues that we should have adopted the interpretation that is favorable to him.

Moreover, respondent maintains that since the Court liberally applied the rules when it did not dismiss petitioners' defective petition, it should likewise apply the liberal and relaxed interpretation of the COMELEC directive in favor of respondent by finding that the COMELEC directive revoked the delegated authority of the public prosecutor. By filing the amended informations, despite receipt of the COMELEC directive issued on 13 October 2004 which was confirmed by COMELEC Resolution No. 7457, the public prosecutor defied the entity from which it derived its authority and power to prosecute the election cases involved. It being made in defiance of the COMELEC directive, all acts of the public prosecutor are void and of no effect.

On the second ground, respondent argues that we erred in ruling that the court *a quo* acted in accordance with law when he admitted the two amended informations and dismissed his motion to quash and ordered his arrest and confiscation of his cash bond. In support thereof, he contends that since the trial court had knowledge of the COMELEC directive dated 11 October 2004, stripping the public prosecutor of his delegated authority to prosecute the criminal cases, the trial court should have rejected the amended information, as there was no right that could be invoked from a defective/illegal source.

Moreover, respondent contends that Section 11, Rule 116 of the 2000 Rules of Criminal Procedure does not apply to this

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[6] *In Dubio Pro Reo*. When in doubt, rule for the accused.

[7] A court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment.

case, because the application thereof presupposes a resolution issued by a public prosecutor who has the authority to prosecute. Since the public prosecutor has been deprived of its delegated authority by virtue of the 11 October 2004 directive, such directive has retroactive application, it being favorable to him. This being the case, there is no Joint Resolution of the City Prosecutor to speak of, because the same was issued without authority.

The resolution of the instant motion boils down to whether the city prosecutor defied the order or directive of the COMELEC when it filed the amended informations.

After giving the records of the case and the arguments adduced by respondent a second hard look, we **grant** the motion.

The Constitution, particularly Article IX, Section 20, empowers the COMELEC to investigate and, when appropriate, prosecute election cases.[8]

Under Section 265 of the Omnibus Election Code, the COMELEC, through its duly authorized legal officers, has the exclusive power to conduct a preliminary investigation of all election offenses punishable under the Omnibus Election Code, and to prosecute the same. The COMELEC may avail itself of the assistance of other prosecuting arms of the government. Section 265 reads:

> Section 265. *Prosecution*. — The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: *Provided*, however, That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.

Section 2, Rule 34 of the COMELEC Rules of Procedure details the continuing delegation of authority to other prosecuting

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[8] *Commission on Elections v. Español*, 463 Phil. 240, 252-253 (2003).

arms of the government, which authority the COMELEC may revoke or withdraw anytime in the proper exercise of its judgment. It provides:

Section 2. *Continuing Delegation of Authority to Other Prosecution Arms of the Government*. — The Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants are hereby given continuing authority, as deputies of the Commission, to conduct preliminary investigation of complaints involving election offenses under the election laws which may be filed directly with them, or which may be indorsed to them by the Commission or its duly authorized representative and to prosecute the same. Such authority may be revoked or withdrawn any time by the Commission whenever in its judgment such revocation or withdrawal is necessary to protect the integrity of the Commission, promote the common good, or when it believes that successful prosecution of the case can be done by the Commission.

Furthermore, Section 10 of the COMELEC Rules of Procedure gives the COMELEC the power to *motu proprio* revise, modify and reverse the resolution of the Chief State Prosecutor and/or provincial/city prosecutors. Said section reads:

Section 10. *Appeals from the Action of the State Prosecutor, Provincial or City Fiscal*. — Appeals from the resolution of the State Prosecutor or Provincial or City Fiscal on the recommendation or resolution of investigating officers may be made only to the Commission within ten (10) days from receipt of the resolution of said officials, provided, however that this shall not divest the Commission of its power to *motu proprio* review, revise, modify or reverse the resolution of the chief state prosecutor and/or provincial/city prosecutors. The decision of the Commission on said appeals shall be immediately executory and final.

From the foregoing, it is clear that the Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants have been given continuing authority, as deputies of the Commission, to conduct a preliminary investigation of complaints involving election offenses under the election laws and to prosecute the same. Such authority may be revoked or withdrawn anytime by the COMELEC, either expressly or impliedly, when in its judgment such revocation or withdrawal is necessary to protect

the integrity of the process to promote the common good, or where it believes that successful prosecution of the case can be done by the COMELEC. Moreover, being mere deputies or agents of the COMELEC, provincial or city prosecutors deputized by it are expected to act in accord with and not contrary to or in derogation of its resolutions, directives or orders in relation to election cases that such prosecutors are deputized to investigate and prosecute.[9] Being mere deputies, provincial and city prosecutors, acting on behalf of the COMELEC, must proceed within the lawful scope of their delegated authority.

In our assailed decision, we ruled that the letter dated 11 October 2004 of Director Alioden D. Dalaig of the COMELEC Law Department, which reads in part:

> In this connection, you are hereby directed to transmit the entire records of the case to the Law Department, Commission on Elections, Intramuros, Manila by the fastest means available. You are further directed to suspend further implementation of the questioned resolution until final resolution of said appeal by the Comelec *En Banc*.

did not revoke the continuing authority granted to the City Prosecutor of Parañaque, for it was COMELEC Resolution No. 7457 issued on 4 April 2005 that effectively revoked the deputation of the Office of the City Prosecutor of Parañaque.

We stand by our ruling that it was COMELEC Resolution No. 7457 that revoked the deputation of the City Prosecutor of Parañaque. However, when the COMELEC Law Department directed the City Prosecutor of Parañaque to transmit the entire records of the case to the Law Department, Commission on Elections, Intramuros, Manila, by the fastest means available and to suspend further implementation of the questioned resolution until final resolution of said appeal by the Comelec *En Banc*, **it had the effect of SUSPENDING THE AUTHORITY** of the City Prosecutor to prosecute the case. This was what we did not consider in our decision. **We overlooked the fact that the order issued by the COMELEC Law Department was with**

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[9] *Id*. at 253.

the authority of the COMELEC *En Banc*. In other words, it was as if the COMELEC *En Banc* was the one that ordered the public prosecutor to transmit the entire records and to suspend further implementation of the questioned resolution until it finally resolves the appeal. As contained in the letter of the COMELEC Law Department, an appeal has been filed before the COMELEC and has yet to be resolved. Since the COMELEC has **already taken cognizance of the appeal,** and the public prosecutor has been directed to suspend further implementation of the questioned resolution until final resolution of said appeal, it was but proper for the City Prosecutor of Parañaque to have held in abeyance any action until after the resolution of the appeal by the COMELEC *En Banc*. This **suspension of delegated authority was made permanent and this delegated authority was revoked** upon issuance of COMELEC Resolution No. 7457 because of the City Prosecutor's willful disobedience of the order of the COMELEC *En Banc*, through the COMELEC Law Department, to suspend further implementation of the questioned resolution until final resolution of said appeal by the COMELEC *En Banc*.

It cannot also be disputed that the COMELEC Law Department has the authority to direct, nay, order the public prosecutor to suspend further implementation of the questioned resolution until final resolution of said appeal, for it is speaking on behalf of the COMELEC. The COMELEC Law Department, without any doubt, is authorized to do this as shown by the pleadings it has filed before the trial court. If the COMELEC Law Department is not authorized to issue any directive/order or to file the pleadings on behalf of the COMELEC, the COMELEC *En Banc* itself would have said so. This, the COMELEC *En Banc* did not do.

The records are likewise bereft of any evidence showing that the City Prosecutor of Parañaque doubted such authority. It knew that the COMELEC Law Department could make such an order, but the public prosecutor opted to disregard the same and still filed the Amended Informations contrary to the order to hold the proceedings in abeyance until a final resolution of said appeal was made by the COMELEC *En Banc*.

The abuse of authority by the City Prosecutor of Parañaque was aptly explained by the Court of Appeals:

> In the case at bench, public respondent city prosecutor clearly exceeded his authority as a COMELEC-designated prosecutor when he amended the two informations. For there is hardly any doubt or question that public respondent city prosecutor had already been duly advised and informed of the directive of the COMELEC days before he filed the amended informations. But instead of filing a motion to suspend proceedings and hold abeyance the issuance of warrants of arrest against petitioner and to defer the latter's arraignment until after the appeal shall have been resolved, public respondent city prosecutor took it upon himself to substitute his own judgment or discretion for that of the COMELEC, by proceeding with the prosecution of the criminal cases. Such act was a clear defiance of a direct and explicit order of the COMELEC, which was to suspend further implementation of the questioned resolution until the final resolution of said appeal by the COMELEC *En Banc.* Indubitably, there was, on the part of the public respondent city prosecutor, inordinate, if not indecent, haste in the filing of the amended informations, thereby depriving petitioner of due process.
>
> x x x However, despite the clear and categorical directive of the COMELEC to transmit or elevate the records of the case by the 'fastest means available,' the public respondent city prosecutor took his time to forward the records of the case. In fact, it was only on December 11, 2004 that he forwarded the records, — and these were not even the original copies, but mere photocopies.
>
> Quite irremissibly, his defiance of the order of the COMELEC, by itself, more than sufficed to warrant the revocation of the authority delegated to him.
>
> Considering that it was patently beyond his powers or authority to do such act, the amended informations are deemed scraps of papers, which have been stripped bare of their legal effect whatsoever.[10]

In filing the Amended Informations despite the order to hold the proceedings in abeyance until final resolution of said appeal, the City Prosecutor of Parañaque clearly exceeded the legal limit of its delegated authority. As a deputy of the COMELEC,

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[10] *Rollo*, pp. 24-25.

the public prosecutor acted on its own and wantonly defied the COMELEC's directives/orders. For that reason, we rule that **any action made by the City Prosecutor of Parañaque** in relation to the two criminal cases **subsequent to the issuance of the COMELEC order dated 11 October 2004, like the filing of the amended informations and the amended informations themselves, is declared VOID and of NO EFFECT.**

The next query to be answered is: Did the trial court judge commit grave abuse of discretion amounting to lack or excess of jurisdiction when he admitted the amended informations despite full knowledge that the COMELEC had ordered the City Prosecutor of Parañaque to suspend further implementation of the questioned resolution until final resolution of the appeal before it?

We rule that he did.

As ruled above, all actions of the City Prosecutor of Parañaque after the COMELEC's issuance of the order to transmit the entire records and to suspend all further proceedings until it has finally resolved the appeal before it, are void and of no effect. Consequently, the amended informations filed before the trial court are nothing but mere scraps of paper that have no value, for the same were filed sans lawful authority.

As early as 14 December 2004, through respondent's "Opposition to the Admission of the Amended Informations," the trial court judge knew that the COMELEC had directed the City Prosecutor of Parañaque to transmit the entire records of the case to the COMELEC by the fastest means available and to suspend further implementation of the questioned resolution until final resolution of respondent's appeal. He knew that the City Prosecutor no longer had any authority to amend the original informations. Despite this, the trial court judge still admitted the amended informations. In doing so, the judge committed grave abuse of discretion amounting to lack of excess of jurisdiction.

We are not unmindful of the settled jurisprudence that once a complaint or information is filed in court, any disposition of

the case as to its dismissal, or conviction or acquittal of the accused, rests on the sound discretion of the said court, as it is the best and sole judge of what to do with the case before it.[11] Under the circumstances obtaining in this case, we hold that this settled jurisprudence does not apply in this case. The trial court's knowledge that the filing of the amended informations was done by the public prosecutor in excess of his delegated authority no longer gives him the discretion as to whether or not accept the amended informations. The only option the trial court had was not to admit the amended informations as a sign of deference and respect to the COMELEC, which already had taken cognizance of respondent's appeal. This, the trial court did not choose. It insisted on admitting the amended informations, which were patent nullities for being filed contrary to the directives of the COMELEC. Necessarily, all actions and rulings of the trial court arising from these amended informations must likewise be invalid and of no effect.

As it stands, since there are no amended informations to speak of, the trial court has no basis for denying respondent's motion to quash. Consequently, there can be no arraignment on the amended informations. In view of this, there can be no basis for ordering the arrest of respondent and the confiscation of his cash bond.

For having been issued with grave abuse of discretion, amounting to lack or excess of jurisdiction, the trial court's *orders — dated 12 January 2005* denying the Motion to Quash and admitting the amended information; *9 March 2005* denying the Motion for Reconsideration of the Order denying the Motion to Quash, admitting the amended informations, and ordering the arrest of the respondent and the confiscation of his cash bond; and *31 March 2005* denying respondent's Urgent Motion for Reconsideration and/or to lift the Order of Arrest — are declared void and of no effect.

WHEREFORE, the instant motion for reconsideration filed by respondent Pablo Olivarez is *GRANTED*, and our assailed

[11] *Viudez II v. Court of Appeals*, G.R. No. 152889, 5 June 2009.

decision dated 23 June 2009 is *RECONSIDERED* and *SET ASIDE*. The Decision of the Court of Appeals dated 28 September 2005 in CA-G.R. SP No. 89230 is *REINSTATED*. The amended informations filed by the City Prosecutor of Parañaque on 28 October 2004 are declared *VOID* and of *NO EFFECT*.

SO ORDERED.

Velasco, Jr., Nachura, Peralta, and *Villarama, Jr.,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 170661. December 4, 2009]

RAMON B. FORMANTES, *petitioner, vs.* **DUNCAN PHARMACEUTICALS, PHILS., INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DUE PROCESS; AFFORDED IN CASE AT BAR. — In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, this Court held that: There is no question that the "essence of due process is a hearing before conviction and before an impartial and disinterested tribunal" but due process as a constitutional precept does not, always and in all situations, require a trial-type proceeding. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. **"To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process. x x x** Although petitioner, during some parts of

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[*] In lieu of Associate Justice Consuelo Ynares-Santiago.

the trial proceedings before the LA was not represented by a member of the bar, he was given reasonable opportunity to be heard and submit evidence to support his arguments, through the medium of pleadings filed in the labor tribunals. He was also able to present his version of the Magat incident during his direct examination conducted by his lawyer Atty. Jannette Inez. Thus, he cannot claim that he was denied due process.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; FAILURE TO GIVE FORMAL NOTICE OF THE JUST CAUSE WILL NOT ERADICATE THE SAME IF IT ACTUALLY EXISTS AND ESTABLISHED DURING THE PROCEEDINGS. —** In *Rubberworld (Phils.), Inc. v. NLRC,* we held that: It is now axiomatic that if just cause for termination of employment actually exists and is established by substantial evidence in the course of the proceedings before the Labor Arbiter, the fact that the employer failed, prior to such termination, to accord to the discharged employee the right of formal notice of the charge or charges against him and a right to ventilate his side with respect thereto, will not operate to eradicate said just cause so as to impose on the employer the obligation of reinstating the employee and otherwise granting him such other concomitant relief as is appropriate in the premises. x x x Although petitioner was dismissed from work by the respondent on the ground of insubordination, this Court cannot close its eyes to the fact that the ground of sexual abuse committed against petitioner's subordinate actually exists and was established by substantial evidence before the LA.

3. **ID.; LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION (NLRC); FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES, SUPPORTED BY SUBSTANTIAL EVIDENCE, RESPECTED. —** The findings of facts of quasi-judicial agencies, which have acquired expertise in the specific matters entrusted to their jurisdiction, are accorded by this Court not only respect but even finality if they are supported by substantial evidence. Only substantial, not preponderance, of evidence is necessary. Section 5, Rule 133 of the Rules of Court, provides that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might

accept as adequate to justify a conclusion. It may be trite to point out that the findings of a trial court on the credibility of witnesses deserve great weight, given the clear advantage of a trial judge over an appellate justice in the appreciation of testimonial evidence. The LA, being in the position to observe the demeanor of both the petitioner and Ms. Magat during their testimony, gave more credence to the testimony of Ms. Magat. On the other hand, aside from his self-serving testimony, petitioner was not able to sufficiently contradict the charge of sexual abuse against him.

4. **ID.; TERMINATION OF EMPLOYMENT; MANAGERIAL EMPLOYEE; GROUNDS FOR TERMINATION; SEXUAL HARASSMENT COMMITTED AGAINST A SUBORDINATE. —** The courts usually give credence to the testimony of a woman who is a victim of sexual assault, because normally no woman would be willing to undergo the humiliation of a public trial and testify on the details of her ordeal if it be not to condemn an injustice. In *Villarama v. National Labor Relations Commission*, wherein a managerial employee committed sexual harassment against his subordinate, the Court held that sexual harassment is a valid cause for separation from service. As a managerial employee, petitioner is bound by a more exacting work ethic. He failed to live up to this higher standard of responsibility when he succumbed to his moral perversity. And when such moral perversity is perpetrated against his subordinate, he provides a justifiable ground for his dismissal for lack of trust and confidence. It is the right, nay, the duty of every employer to protect its employees from over sexed superiors. As a manager, petitioner enjoyed the full trust and confidence of respondent and his subordinates. By committing sexual abuse against his subordinate, he clearly demonstrated his lack of fitness to continue working as a managerial employee and deserves the punishment of dismissal from the service.

5. **ID.; ID.; CONSTRUCTIVE DISMISSAL; PRESENT IN CASE AT BAR. —** Constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment. In the case at bar, petitioner, while still employed with the respondent, was compelled to resign and forced to go on leave. He was not

allowed to participate in the activities of the company. His salary was no longer remitted to him. His subordinates were directed not to report to him and the company directed one of its district managers to take over his position and do his functions without prior notice to him. These discriminatory acts were calculated to make petitioner feel that he is no longer welcome nor needed in respondent company " short of sending him an actual notice of termination. We, therefore, hold that respondent constructively dismissed petitioner from the service.

6. **ID.; ID.; TWIN REQUIREMENTS OF NOTICE AND HEARING; NOT COMPLIED WITH IN CASE AT BAR. —** Well settled is the *dictum* that the twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees. It is a cardinal rule in our jurisdiction that the employer must furnish the employee with two written notices before the termination of employment can be affected: (a) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (b) the second informs the employee of the employer's decision to dismiss him. The barrage of letters sent to petitioner, starting from a letter dated April 22, 1994 until his termination on May 19, 1994, was belatedly made and apparently done in an effort to show that petitioner was accorded the notices required by law in dismissing an employee. As observed by the LA in her decision, prior to those letters, petitioner was already constructively dismissed.

7. **ID.; ID.; DISMISSAL WITH VALID CAUSE BUT WITHOUT DUE PROCESS OF LAW; NOMINAL DAMAGES, PROPER. —** Since the dismissal, although for a valid cause, was done without due process of law, the employer should indemnify the employee with nominal damages. In *Agabon v. National Labor Relations Commission,* we found that the dismissal of the employees therein was for valid and just cause because their abandonment of their work was firmly established. Nonetheless, the employer therein was held liable, because it was proven that it did not comply with the twin procedural requirements of notice and hearing for a legal dismissal. However, in lieu of payment of backwages, we ordered the employer to pay indemnity to the dismissed employees in the form of nominal damages, thus: The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages.

The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. x x x. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules. Nominal damages are adjudicated in order that a right of the plaintiff that 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. Thus, for respondent's violation of petitioner's statutory rights, respondent is sanctioned to pay petitioner nominal damages in the amount of ₱30,000.00.

APPEARANCES OF COUNSEL

Ague Law Firm for petitioner.
Castillo Laman Tan Pantaleon & San Jose for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1] and the Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 57528, which affirmed with modification the Resolutions rendered by the National Labor Relations Commission (NLRC), Second Division, dated October 19, 1999[3] and December 21, 1999,[4] respectively, in NLRC NCR CA 010480-96.

Petitioner Ramon B. Formantes was employed as a medical representative by respondent Duncan Pharmaceuticals, Phils.,

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[1] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Jose L. Sabio, Jr. and Edgardo P. Cruz., concurring; *rollo,* pp. 66-82.

[2] *Id.* at 83-87.

[3] *Rollo*, pp. 169-176.

[4] *Id.* at 205.

Inc. on September 1, 1990. He later became the Acting District Manager of respondent for the Ilocos District.

On March 18, 1994, petitioner received a long distance call from Rey Biscaro, Regional Sales Manager of respondent, asking him to report at the head office on March 21, 1994. Thereafter, petitioner went to the head office and was confronted by said Mr. Biscaro and Emeterio Shinyo, Marketing and Sales Director, due to his attempt to sexually force himself upon his subordinate Cynthia Magat, one of the medical representatives of respondent company. Petitioner and Ms. Magat separately related their sides of the incident to the respondent company's officers. Petitioner was then compelled by respondent to take a leave of absence.

Thereafter, Biscaro tried to induce petitioner to resign, which the latter refused. Petitioner's salary was then withheld from him. He was not allowed to attend the meetings and activities of the company. His subordinates no longer reported to him and the company directed one of its district managers to take over his position and functions without prior notice to him. Due to the foregoing, petitioner was constrained to file a case for illegal suspension, constructive dismissal, payment of salaries, allowances, moral and exemplary damages on April 13, 1994 before the NLRC, Regional Arbitration Branch No. I, San Fernando, La Union.

On April 19, 1994, petitioner received a telegram from Lelet Fernando of the Human Resources Department (HRD), advising him to report to the respondents' head office. Petitioner advised her and Biscaro that he has not received his salary and reimbursements for incurred expenses. He also informed them that he had already filed a case for constructive dismissal against the respondent company.

On April 25, 1994, petitioner received a telegram[5] dated April 22, 1994 from respondent, advising him that his reasons for not reporting were unacceptable, and ordering him to report to the office in the morning of April 25, 1994. Petitioner was not

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[5] *Id.* at 464.

able to report due to time constraints, as it was physically impossible for him to report on the very same day that he received the telegram ordering him to do so. Thereafter, respondent sent several letters to petitioner. These letters, among others, include the following: letter[6] charging him of grave misconduct on the attempted sexual abuse upon the person of Ms. Cynthia Magat, and directing him to submit his written explanation thereon; letter[7] recalling the company car issued to him; letter[8] informing him of violation of Rule IV.5.a of the respondent's company rules by failing to turn over the company car, and directing him to explain in writing why no further disciplinary action should be given to him; letter[9] suspending him for one day for failure to carry out instructions, and ordering him to report to the company's head office; letter[10] placing him under suspension without pay for eight days for failure to return the company car without explanation.

On May 19, 2004, petitioner received a letter[11] dated May 18, 1994, terminating his employment with respondent company due to insubordination; for failure to report to the respondent company; for failure to submit the required operations report; and for failure to turn over the company car.

In the meantime, Executive Labor Arbiter (LA) Norma C. Olegario rendered a decision[12] dated November 10, 1995, dismissing the complaint, finding that Formantes was validly dismissed for an attempt to sexually abuse Cynthia Magat, but imposing a penalty on respondent for its failure to give formal notice and conduct the necessary investigation before dismissing petitioner. The LA found that when the first written notice was sent to petitioner on April 25, 1994, regarding the incident with

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[6] *Id.* at 466.

[7] *Id.* at 468.

[8] *Id.* at 470.

[9] *Id.* at 469.

[10] *Id.* at 471.

[11] *Id.* at 472.

[12] *Id.* at 118-139.

Cynthia Magat, petitioner had already been dismissed, or at least, constructively dismissed, because as early as March 23, 1994, he was no longer allowed to participate in the activities of the company and his salary was withheld from him. The LA directed the respondent to pay petitioner the amount of ₱1,000.00.

Dissatisfied with the Labor Arbiter's finding, petitioner appealed to the NLRC, on grounds of grave abuse of discretion; serious errors of law; and serious errors in the findings of facts, which, if not corrected, would cause irreparable damage to petitioner. Petitioner alleged that the LA erred in ruling that he was legally dismissed for sexual abuse, when the charge against him stated in the termination letter was insubordination.

The NLRC, Second Division, in its Resolution[13] dated October 19, 1999 affirmed the findings of the LA. Petitioner filed a motion for reconsideration, which the NLRC denied in a Resolution[14] dated December 21, 1999.

Undaunted, petitioner filed a petition for *certiorari* under Rule 65 with the CA, alleging that the NLRC gravely abused its discretion and acted in excess of its jurisdiction in affirming the decision of the Labor Arbiter that petitioner's dismissal from employment was justified on a ground not alleged in the notice of termination and not established by substantial evidence. Petitioner further alleged that the NLRC erred in not holding that petitioner was constructively dismissed by the respondent.

The CA, in its Decision dated July 18, 2005, affirmed the resolutions of the NLRC, but with the modification that the sanction imposed on respondent company for non-observance of due process be increased from ₱1,000.00 to ₱5,000.00.

Petitioner filed a Motion for Reconsideration, which the CA denied in a Resolution dated November 23, 2005. Hence, the instant petition assigning the following errors:

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[13] Penned by Commissioner Victoriano R. Calaycay, with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring, *id.* at 169-176.

[14] *Rollo*, p. 205.

THE JUDGMENT RENDERED [BY] THE NLRC [IS] NULL AND VOID ON THE GROUND OF LACK OF DUE PROCESS TAKING INTO ACCOUNT THAT PETITIONER-APPELLANT WAS UNKNOWINGLY DEPRIVED OF COMPETENT LEGAL ASSISTANCE OF COUNSEL AS IT TURNED OUT THAT THE "COUNSEL" WHO REPRESENTED HIM WAS LATER FOUND NOT TO BE A MEMBER OF THE BAR AS [HE REPRESENTED HIMSELF TO BE].

THE COURT *A QUO* GROSSLY ERRED AND DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT AND HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS IN NOT HOLDING THAT THE PETITIONER WAS CONSTRUCTIVELY DISMISSED BY THE RESPONDENT COMPANY.

THE COURT *A QUO* GROSSLY ERRED AND DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT AND HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT AFFIRMED THE DECISION OF THE NLRC THAT PETITIONER'S DISMISSAL FROM EMPLOYMENT WAS JUSTIFIED ON ANOTHER GROUND NOT ALLEGED IN THE NOTICE OF TERMINATION AND WAS NOT ESTABLISHED BY SUBSTANTIAL EVIDENCE.[15]

On the alleged deprivation of due process, petitioner alleged that he was not duly represented by a competent counsel, as Rogelio Bacolor, who represented him in the proceedings before the NLRC, was not a member of the bar, thereby depriving him of his right to due process. Hence, he prayed that the case be remanded to the LA for further proceedings.

We are not persuaded.

Records will show that aside from Mr. Bacolor, petitioner was represented by other lawyers at the commencement of the action before the NLRC and during the proceedings before the NLRC and the Court of Appeals.

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[15] *Id.* at 26-27.

Petitioner was duly represented by Atty. Jannette B. Ines in the filing of the Complaint,[16] the Position Paper,[17] and the Reply[18] before the LA. He was also represented by the same Atty. Ines during the initial stage of the hearing before the NLRC.[19] Further, although Mr. Bacolor appeared in the several stages of the hearing before the LA and filed petitioner's memorandum of appeal, he also retained the services of Guererro and Turgano Law Office, as collaborating counsel. Atty. Arnel Alambra of said law office filed a Supplemental Memorandum of Appeal[20] and Reply[21] to the respondent's answer to the Supplemental Memorandum of Appeal in petitioner's behalf. Thereafter, upon denial of the appeal by the NLRC, petitioner's motion for reconsideration[22] was filed by Arnold V. Guerrero Law Offices, together with its battery of lawyers, which includes Atty. Arnold V. Guerrero, Atty. Ma. Josefa C. Pinza, Atty. Carmencita M. Chua and Atty. Ma. Loralie C. Cruz. Petitioner was also represented by said law office in the proceedings before the CA, more particularly during the filing of the Petition for *Certiorari*[23] under Rule 65, the Reply[24] and the Memorandum.[25] Upon denial of the petition before the CA, petitioner was also represented by another law office in the name of Argue Law Office, which filed the petitioner's motion for reconsideration and the present petition before this court.

In fine, petitioner was fully represented by a barrage of competent lawyers. Thus, he cannot claim that he was deprived of due process of law.

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[16] Records, pp. 1-4.

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

[18] *Id.* at 48-54.

[19] TSN, October 18, 1994.

[20] *Rollo*, pp. 151-162.

[21] *Id.* at 163-165.

[22] *Id.* at 177-197.

[23] *Id.* at 206-246.

[24] *Id.* at 277-291.

[25] *Id.* at 293-322.

In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,[26] this Court held that:

> There is no question that the "essence of due process is a hearing before conviction and before an impartial and disinterested tribunal" but due process as a constitutional precept does not, always and in all situations, require a trial-type proceeding. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. "**To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.** (Emphasis supplied.)

Further, in *Fernandez v. National Labor Relations Commission*,[27] respondents failed to attend the hearing on the scheduled cross examination of the petitioner's witness. Due to the foregoing, the LA deemed the case submitted for resolution. Respondents claimed denial of due process due to non-reception of its evidence. On appeal, the NLRC vacated the LA's Order and remanded the case for further proceedings. The issue is whether the failure to attend hearings before the LA is a waiver of the right to present evidence. This court held that:

> Private respondents were able to file their respective position papers and the documents in support thereof, and all these were duly considered by the labor arbiter. Indeed, the requirements of due process are satisfied where the parties are given the opportunity to submit position papers. In any event, **Respondent NLRC and the labor arbiter are authorized under the Labor Code to decide a case on the basis of the position papers and documents submitted. The holding of an adversarial trial depends on the discretion of the labor arbiter, and the parties cannot demand it as a matter of right**. **In other words, the filing of position papers and supporting documents fulfilled the requirements of due process**. Therefore, there was no denial of this right because private respondents were given the opportunity to present their side.

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[26] G.R. No. 168498, June 16, 2006, 491 SCRA 213, 218, citing *Batongbakal v. Zafra*, 448 SCRA 399, 410 (2005). (Emphasis supplied.)

[27] 349 Phil. 65, 88-89 (1998). (Emphasis ours.)

Taken altogether, although petitioner, during some parts of the trial proceedings before the LA was not represented by a member of the bar, he was given reasonable opportunity to be heard and submit evidence to support his arguments, through the medium of pleadings filed in the labor tribunals. He was also able to present his version of the Magat incident during his direct examination conducted by his lawyer Atty. Jannette Inez.[28] Thus, he cannot claim that he was denied due process.

On the issue of petitioner's dismissal on another ground not alleged in the notice of termination, petitioner argued that the LA's justification for his dismissal on the ground of sexual abuse is not proper, as said ground is not alleged in the notice of termination. The notice of termination stated that petitioner was dismissed due to failure to report to the office; failure to submit reports; and failure to file written explanations despite repeated instructions and notices.

The argument is not meritorious.

In *Rubberworld (Phils.), Inc. v. NLRC,*[29] we held that:

It is now axiomatic that if just cause for termination of employment actually exists and is established by substantial evidence in the course of the proceedings before the Labor Arbiter, the fact that the employer failed, prior to such termination, to accord to the discharged employee the right of formal notice of the charge or charges against him and a right to ventilate his side with respect thereto, will not operate to eradicate said just cause so as to impose on the employer the obligation of reinstating the employee and otherwise granting him such other concomitant relief as is appropriate in the premises. x x x

Although petitioner was dismissed from work by the respondent on the ground of insubordination, this Court cannot close its eyes to the fact that the ground of sexual abuse committed against petitioner's subordinate actually exists and was established by substantial evidence before the LA.

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[28] TSN, October 18, 1994, pp. 34-71.

[29] G.R. No. 72779, March 21, 1990, 183 SCRA 421, 424.

When petitioner filed the complaint for constructive dismissal on April 13, 1994, he was still unsure of the actual ground for his suspension and constructive dismissal. The very reason why he sought refuge in the labor tribunals was to ascertain the ground for his termination. In keeping with its duties, the LA, in order to ascertain the petitioner's cause for constructive dismissal, required the parties to submit their respective position papers and their respective replies thereto. After analyzing the pleadings submitted before her and the proceedings taken thereon, the LA made a finding that petitioner was validly dismissed due to the sexual abuse committed against his subordinate. However, the LA imposed a monetary penalty upon respondent for its failure to observe procedural due process.

The LA would be rendered inutile if she would just seal her lips after finding that a just cause for dismissal exists merely because the said ground was not stated in the notice of termination.

Contrary to petitioner's allegation, We hold that there exists substantial evidence to support the ground for his dismissal.

The findings of facts of quasi-judicial agencies, which have acquired expertise in the specific matters entrusted to their jurisdiction, are accorded by this Court not only respect but even finality if they are supported by substantial evidence. Only substantial, not preponderance, of evidence is necessary. Section 5, Rule 133 of the Rules of Court, provides that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[30]

After a meticulous review of the records, We find that the Decision of the LA, as affirmed by the NLRC and the CA, is supported by substantial evidence. The LA arrived at her decision after a careful consideration of all the facts and evidence on record.

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[30] *Manuel B. Japzon v. Commission on Elections and Jaime S. Ty*, G.R. No. 180088, January 19, 2009.

The LA anchored her decision upon the Sworn Statement[31] given by Cynthia Magat to the Mangaldan Police Station, dated April 14, 1994, to wit:

x x x x x x x x x

06.Q. – You have stated that you were attempted (sic) by you boss, MR. RAMON B. FORMANTES, to sexually abuse you, will you relate briefly how the incident took place?

A. – That we have a meeting at about 10:30 o'clock in the morning of March 9, 1994 at the Maraman Office at Caranglaan, Dagupan City. After the meeting, we proceeded to my apartment at Anolid, Mangaldan, Pangasinan to get the data he (Mr. Formantes) was asking.

07.Q. – Upon reaching you apartment at Anolid, Mangaldan, what happened, if any?

A. – We entered the apartment and then while I was looking for the papers needed, he asked permission to see the apartment and so I showed him the lower portion. And then he asked again and wished to go upstairs, so I consented since he is [an] outstanding friend and my boss without any malice to him and we went upstairs.

08.Q. – Then, what happened, if any, when you were already upstairs of the apartment?

A. – That he went inside my room looking at my things. When I told him we better go downstairs since it is not proper got (sic) us to stay there because I am alone, he suddenly opened my closet without my permission. I closed the closet and as I persuading (sic) him to go downstairs, he started teasing me and holding my hands saying "*Cheng, na-e-excite yata ako sa iyo*." I resisted his touch and told him not to tease me that way. Then finally, we went downstairs and I started again to look for the papers I needed. As I was looking at my things, he suddenly went upstairs so I ran after him. I caught up with him at the door of my room. Then, he said, "*Cheng, galing ako sa La Union pagod ako, pwede bang magpahinga*? Since I trusted him and he is like

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[31] Records, pp. 96-99.

a brother to me, I said yes. I turned on the electric fan and TV set and I went downstairs. Since it was hot, I decided to buy coke, after which I went upstairs with the coke and my MBS reports. When I entered the room, he was already wearing only his "*kamiseta*" since he said it was hot. I was trying to give him a shirt but he said he was comfortable that way. I gave him the coke and I asked him how to do my MBS reports. He taught me and after that when I decided to do my reports downstairs, he stopped and suddenly embraced me from behind and pulled me down to the bed.

09.Q. – And when you fell down on the bed, what did Mr. Ramon Formantes do, if any?

A. – Then, he said "*Cheng, na-mimiss lang kita at ang barkada natin, palambing naman*." I said that was not my idea of "*lambing*" and I resisted him. As I was getting up, he then pulled me again to the bed, this time he pinned me to the bed, he went on top of me and was asking for a kiss. He said, "*Cheng isang kiss lang titigil na ako*." I was shocked. And then he was trying to get in between my legs, but I kept on kicking him with my left leg. He was trying to get my mouth, but I kept on banging my face on the bed. By then, my face was full of his saliva, as he started kissing the right side of my face down to the neck. He then held my left buttock and held my lower jaw with his left hand. He squeezed my left buttock and started to put his tongue in my mouth. By now, I could not shout since he was kissing my mouth, but before he got my mouth I told him, "Monching, don't do this to me, you are my friend." He said "I'm also your boss." Since I was kicking him and pushing him, I was finally able to get away from him. When I stood up, I asked him "*Bakit mo nagawa ito sa akin, kaibigan kita*." He said, "Cheng, I'm sorry. *Nadala lang ako*." He told me not to tell this to Art, my counterpart in Baguio. Since I really wanted to get out of the house as fast as I could, so I just said, just don't do it again. We went out and he went to La Union."

The same Sworn Statement further provides that:

10.Q. – Was there any more incident that transpired after the one you have just related?

A. – Yes, sir. On March 11, 1994, Friday, about 7:15 o'clock in the morning, Mr. Ramon Formantes arrived at my apartment saying he came from Manila. He asked me if he could sit down. I let him in and left the door open. Then he said, "*May tao ba sa taas*?" I told him there was none though my fiancee was upstairs. Then he started to hold my inner thigh saying, *Cheng, maligo ka na hihintayin kita*. I told him I'll just meet him at Nipa or Maraman. I was resisting his touch, but he kept on touching me and holding me at the back. Without my knowledge, my fiancee was seeing what was happening downstairs so he started to make noise and Monching heard this and he got scared and left. Then on March 18, 1994, Friday, Monching went to my apartment again at around 7:20 o'clock in the morning, but this time I did not let him in, I just opened the door a little. He got irritated with my defensiveness and left my place.

The evidence on record sufficiently supports the finding of sexual abuse against petitioner. In addition to her sworn statement to the police, she sufficiently narrated petitioner's attempt to sexually abuse her in her handwritten letter[32] dated March 23, 1994 addressed to Reynaldo Biscaro. She also narrated the same incident in another letter[33] addressed to the president of the union, Joel Soco.

It may be trite to point out that the findings of a trial court on the credibility of witnesses deserve great weight, given the clear advantage of a trial judge over an appellate justice in the appreciation of testimonial evidence.[34] The LA, being in the position to observe the demeanor of both the petitioner and Ms. Magat during their testimony, gave more credence to the testimony[35] of Ms. Magat. On the other hand, aside from his

[32] Records, pp. 90-95.

[33] *Id.* at 96-97.

[34] *People v. Gomez*, 345 Phil. 195, 203 (1997).

[35] TSN, September 14, 1995.

self-serving testimony, petitioner was not able to sufficiently contradict the charge of sexual abuse against him. Moreover, the courts usually give credence to the testimony of a woman who is a victim of sexual assault, because normally no woman would be willing to undergo the humiliation of a public trial and testify on the details of her ordeal if it be not to condemn an injustice.[36]

In *Villarama v. National Labor Relations Commission*,[37] wherein a managerial employee committed sexual harassment against his subordinate, the Court held that sexual harassment is a valid cause for separation from service.

> As a managerial employee, petitioner is bound by a more exacting work ethic. He failed to live up to this higher standard of responsibility when he succumbed to his moral perversity. And when such moral perversity is perpetrated against his subordinate, he provides a justifiable ground for his dismissal for lack of trust and confidence. It is the right, nay, the duty of every employer to protect its employees from over sexed superiors.

As a manager, petitioner enjoyed the full trust and confidence of respondent and his subordinates. By committing sexual abuse against his subordinate, he clearly demonstrated his lack of fitness to continue working as a managerial employee and deserves the punishment of dismissal from the service.

Aside from the findings of sexual abuse, petitioner is also guilty of insubordination. Records show that after filing a case for constructive dismissal on April 13, 1994 against the respondent, petitioner continued working and performing his functions with the respondent company until his termination on May 19, 1994.[38] However, despite receipt of the various notices sent by respondent to him to report to the office and to submit written explanations relative to his failure to follow instructions, the records of the case are bereft of showing that he filed any written explanation

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[36] *Supra* note 34, at 204.

[37] G.R. No. 106341, September 2, 1994, 236 SCRA 280, 289.

[38] TSN, October 18, 1994, p. 77.

to any of these notices. His continued failure to carry out the reasonable oral or written instructions of his supervisor is punishable by insubordination, which is provided under Rule IV.5.a of the Operational Instruction OI-A-AP25, Work Rules.[39] While petitioner cannot be faulted in believing that respondent constructively dismissed him from work, he was still, strictly speaking, respondent's employee when he received the written notices. As an employee, he should have at least responded thereto, as instructed.

We now come to the issue of constructive dismissal.

Constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.[40]

In the case at bar, petitioner, while still employed with the respondent, was compelled to resign and forced to go on leave. He was not allowed to participate in the activities of the company. His salary was no longer remitted to him. His subordinates were directed not to report to him and the company directed one of its district managers to take over his position and do his functions without prior notice to him.

These discriminatory acts were calculated to make petitioner feel that he is no longer welcome nor needed in respondent company " short of sending him an actual notice of termination. We, therefore, hold that respondent constructively dismissed petitioner from the service.

Despite this, however, it is impractical and unjust to reinstate petitioner, as there was a just cause for his dismissal from the service.

Thus, we hold the dismissal as valid, but we find that there was non-compliance with the twin procedural requirements of notice and hearing for a lawful dismissal.

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[39] Records, p. 100.

[40] *Arnulfo O. Endico v. Quantum Foods Distribution Center*, G.R. No. 161615, January 30, 2009.

Well settled is the *dictum* that the twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees. It is a cardinal rule in our jurisdiction that the employer must furnish the employee with two written notices before the termination of employment can be affected: (a) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (b) the second informs the employee of the employer's decision to dismiss him.[41]

The barrage of letters[42] sent to petitioner, starting from a letter dated April 22, 1994 until his termination on May 19, 1994, was belatedly made and apparently done in an effort to show that petitioner was accorded the notices required by law in dismissing an employee. As observed by the LA in her decision, prior to those letters, petitioner was already constructively dismissed.

Since the dismissal, although for a valid cause, was done without due process of law, the employer should indemnify the employee with nominal damages. In *Agabon v. National Labor Relations Commission,*[43] we found that the dismissal of the employees therein was for valid and just cause because their abandonment of their work was firmly established. Nonetheless, the employer therein was held liable, because it was proven that it did not comply with the twin procedural requirements of notice and hearing for a legal dismissal. However, in lieu of payment of backwages, we ordered the employer to pay indemnity to the dismissed employees in the form of nominal damages, thus:

> The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed

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[41] *Pono v. National Labor Relations Commission*, G.R. No. 118860, July 17, 1997, 275 SCRA 611, 618.

[42] *Rollo*, pp. 463-471.

[43] 485 Phil. 248 (2004).

to the sound discretion of the court, taking into account the relevant circumstances. x x x. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.[44]

Nominal damages are adjudicated in order that a right of the plaintiff that 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.[45] Thus, for respondent's violation of petitioner's statutory rights, respondent is sanctioned to pay petitioner nominal damages in the amount of ₱30,000.00.

WHEREFORE, the petition is *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 57528 are *AFFIRMED* with the *MODIFICATION* that the sanction imposed on respondent for non-compliance with statutory due process is increased from ₱5,000.00 to ₱30,000.00.

SO ORDERED.

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

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[44] *Id.* at 288.

[45] *Celebes Japan Foods Corporation, represented by Kanemitsu Yamaoka and Cesar Romero, v. Susan Yermo, et al., Orson Mamalis, Bai Annie Alano, Michie Alfanta, Ginalyn Panilagao, Annalie Ayag, Jocelyn Agton, Jose Jurie Surigao, Gilda Serrano, Joy Remarga, Erick Tac-An and Jenne Carlos*, G.R. No. 175855, October 2, 2009.

THIRD DIVISION

[G.R. No. 171916. December 4, 2009]

CONSTANTINO A. PASCUAL, substituted by his heirs, represented by ZENAIDA PASCUAL, *petitioner, vs.* **LOURDES S. PASCUAL,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; SUMMONS; SERVICE OF SUMMONS WHERE ACTION IS *IN PERSONAM*; PERSONAL SERVICE OF SUMMONS SHOULD AND ALWAYS BE THE FIRST OPTION. —** In a case where the action is *in personam* and the defendant is in the Philippines, the service of summons may be done by personal or substituted service as laid out in Sections 6 and 7 of Rule 14 of the Revised Rules of Court. The provisions state: Section 6. *Service in person on defendant*. — Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him. Section 7. *Substituted service*. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof. A plain and simple reading of the above provisions indicates that personal service of summons should and always be the first option, and it is only when the said summons cannot be served within a reasonable time can the process server resort to substituted service.

2. **ID.; ID.; ID.; ID.; ID.; WHEN SUBSTITUTED SERVICE MAY BE AVAILED OF; REQUIREMENTS, DISCUSSED. —** This Court gave an in-depth discussion as to the nature and requisites of substituted service in *Manotoc v. Court of Appeals, et al.*: We can break down this section into the following requirements to effect a valid substituted service: (1) Impossibility of Prompt Personal Service. **The party relying on substituted service**

or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service. Section 8, Rule 14 provides that the plaintiff or the sheriff is given a "reasonable time" to serve the summons to the defendant in person, but no specific time frame is mentioned. "Reasonable time" is defined as "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any, to the other party." Under the Rules, the service of summons has no set period. However, when the court, clerk of court, or the plaintiff asks the sheriff to make the return of the summons and the latter submits the return of summons, then the validity of the summons lapses. The plaintiff may then ask for an *alias* summons if the service of summons has failed. What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriff's Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first ten (10) days of the succeeding month. Thus, one month from the issuance of summons can be considered "reasonable time" with regard to personal service on the defendant. Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably

on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted. (2) Specific Details in the Return **The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return.** The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. The form on Sheriff's Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure. Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that "impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts," which should be made in the proof of service. (3) A Person of Suitable Age and Discretion. **If the substituted service will be effected at defendant's house or residence, it should be left with a person of "suitable age and discretion then residing therein."** A person of suitable age and discretion is one who has attained the age of full legal capacity (18 years old) and is considered to have enough discernment to understand the importance of a summons. "Discretion" is defined as "the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed." Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, the person must have the "relation of confidence" to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said

person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons. (4) A Competent Person in Charge If the substituted service will be done at defendant's office or regular place of business, then it should be served on a competent person in charge of the place. Thus, the person on whom the substituted service will be made must be the one managing the office or business of defendant, such as the president or manager; and such individual must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons. Again, these details must be contained in the Return.

3. ID.; ID.; ID.; JURISDICTION; WHEN ACQUIRED. — Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, "any judgment of the court which has no jurisdiction over the person of the defendant is null and void."

4. ID.; ID.; ID.; JUDGMENTS; DOCTRINE OF FINALITY OF JUDGMENT; IMPORTANCE THEREOF, EXPLAINED. — The importance of the doctrine of the finality of judgment has always been emphasized by this Court. In *Pasiona, Jr. v. Court of Appeals*, this Court has expounded on the said doctrine, thus: The Court re-emphasizes the doctrine of finality of judgment. In *Alcantara v. Ponce*, the Court, citing its much earlier ruling in *Arnedo v. Llorente*, stressed the importance of said doctrine, to wit: It is true that it is the purpose and intention of the law that courts should decide all questions submitted to them "as truth and justice require," and that it is greatly to be desired that all judgments should be so decided; but controlling and irresistible reasons of public policy and of sound practice in the courts demand that at the risk of occasional error, judgments of courts determining controversies submitted to them should become final at some definite time fixed by law, or by a rule of practice recognized by law, so as to be thereafter beyond the control even of the court which rendered them for the purpose of correcting errors of fact or

of law, into which, in the opinion of the court it may have fallen. The very purpose for which the courts are organized is to put an end to controversy, to decide the questions submitted to the litigants, and to determine the respective rights of the parties. With the full knowledge that courts are not infallible, the litigants submit their respective claims for judgment, and they have a right at some time or other to have final judgment on which they can rely as a final disposition of the issue submitted, and to know that there is an end to the litigation. Then, in *Juani v. Alarcon*, it was held, thus: This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice. In fact, nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Again, in *Dinglasan v. Court of Appeals*, the Court declared that: After the judgment or final resolution is entered in the entries of judgment, the case shall be laid to rest. x x x The finality of decision is a jurisdictional event which cannot be made to depend on the convenience of the party. To rule otherwise would completely negate the purpose of the rule on completeness of service, which is to place the date of receipt of pleadings, judgment and processes beyond the power of the party being served to determine at his pleasure. The said doctrine, however, is applicable only when the judgment or decision is valid.

5. **ID.; ID.; ID.; ID.; VOID JUDGMENT CAN NEVER BECOME FINAL; SUSTAINED. —** It is a well-entrenched principle that a void judgment can never become final. As ruled by this Court in *Metropolitan Bank & Trust Company v. Alejo*: In *Leonor v. Court of Appeals* and *Arcelona v. Court of Appeals*, we held thus: **A void judgment for want of jurisdiction is no judgment at all.** It cannot be the source of any right nor the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final and any writ of execution based on it is void: "x x x it may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head." Thus, from the above

discussion, the Decision of the RTC, not having attained its finality due to its being void, the Petition for *Certiorari* under Rule 65, filed by the respondent with the CA, was proper.

APPEARANCES OF COUNSEL

Jeffrey C. Cruz for petitioner.
Ramon L. Quino for respondent.

D E C I S I O N

PERALTA, *J.*:

Due process dictates that jurisdiction over the person of a defendant can only be acquired by the courts after a strict compliance with the rules on the proper service of summons.

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction, seeking to annul the Decision[1] dated June 29, 2005 and the Resolution[2] dated March 14, 2006 of the Court of Appeals (CA) nullifying and vacating the Decision[3] dated December 3, 2002 and Order[4] dated April 4, 2003 of the Regional Trial Court (RTC), Branch 12, Malolos, Bulacan.

The facts, as found in the records, are the following:

Petitioner filed a Complaint for Specific Performance with Prayer for Issuance of Preliminary Mandatory Injunction with Damages before the RTC of Malolos, Bulacan against respondent. The process server, in his Return of Service[5] dated May 21, 2002, reported, among others that:

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[1] Penned by Associate Justice Roberto A. Barrios, with Associate Justices Amelita G. Tolentino and Vicente S. E. Veloso, concurring; *rollo,* pp. 28-37.

[2] *Id.* at 39.

[3] *Id.* at 194-200.

[4] *Id.* at 187-193.

[5] *Id.* at 43.

The undersigned Process Server of this Honorable Court went at defendant's given address at No. 4 Manikling St., Talayan Village, Quezon City on May 20, 2002 to serve the summons and copy of the Complaint together with the annexes thereto in connection with the above-entitled case.

At the time of the service of the said summons, the defendant was not at her home and only her maid was there who refused to receive the said summons [in spite] of the insistence of the undersigned.

The undersigned, upon his request with the Brgy. Clerk at the said place, was given a certification that he really exerted effort to effect the service of the said summons but failed due to the above reason. (Annex "A").

The following day, May 21, 2002, the undersigned went back at defendant's residence to have her receive the subject summons but again the above defendant was not at her house.

WHEREFORE, the original summons and copy of the complaint is hereby returned to the Honorable Court NOT SERVED.

Malolos, Bulacan, May 21, 2002.

Thereafter, an *alias* summons was issued by the RTC and, on May 29, 2002, the following report was submitted:

The undersigned, on May 29, 2002, made a 3rd attempt to serve the alias summons issued by the Hon. Court relative with the above-entitled case at the given address of the defendant.

The undersigned, accompanied by the *barangay* officials of the said place, proceeded at defendant's residence but the undersigned was not permitted to go inside her house and was given information by her maid that the defendant was not there.

The defendant's car was parked inside her house and inquiries/ verification made on her neighbors revealed that the defendant was inside her house at the time of service of said summons and probably did not want to show-up when her maid informed her of undersigned's presence.

WHEREFORE, the undersigned court process server respectfully returned the *alias* summons dated May 29, 2002 issued by the Hon. Court "UNSERVED" for its information and guidance.

Malolos, Bulacan, May 30, 2002.[6]

Subsequently, on August 14, 2002, the process server returned with the following report,[7] stating that a substituted service was effected:

> This is to certify that on the 14th day of August, 2002, I personally went at Dr. Lourdes Pascual's residence at #4 Manikling Street, Talayan Village, Quezon City, to serve the copy of the Summons dated August 12, 2002, together with a copy of the Complaint and its annexes thereto.
>
> Defendant Dr. Lourdes Pascual was out during the time of service of the said summons and only her housemaid was present. The undersigned left a copy of the same to the latter who is at the age of reason but refused to sign the same.
>
> WHEREFORE, the undersigned respectfully return the service of summons duly served for information and guidance of the Honorable Court.
>
> Malolos, Bulacan, August 14, 2002.

For failure of the respondent to file a responsive pleading, petitioner, on September 17, 2002, filed a Motion to Declare Defendant in Default[8] to which the petitioner filed an Opposition/ Comment to Plaintiff's Motion to Declare Defendant in Default[9] dated October 1, 2002, claiming that she was not able to receive any summons and copy of the complaint. The RTC, in its Order[10] dated October 30, 2002, declared respondent in default and allowed petitioner to file his evidence *ex-parte*.

Respondent filed a Motion for Reconsideration[11] dated November 18, 2002 seeking to set aside the above-mentioned

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[6] *Id.* at 44.

[7] *Id.* at 46.

[8] *Id.* at 171-172.

[9] *Id.* at 173-174.

[10] *Id.* at 47-48.

[11] *Id.* at 177-179.

Order dated October 30, 2002. However, the said motion was denied by the RTC in its Order[12] dated November 27, 2002.

Consequently, on December 3, 2002, the RTC, in its Decision,[13] found in favor of the petitioner. The dispositive portion of the said Decision reads:

WHEREFORE, in light of all the foregoing, judgment is hereby rendered in favor of the plaintiff, Constantino A. Pascual, and against Lourdes S. Pascual, ordering the latter as follows:

a. to CEASE AND DESIST from further intervening with the corporate and internal affairs of Rosemoor Mining Corporation, consisting of acts and omissions prejudicial and detrimental to the interest of the said corporation resulting to irreparable injury to herein plaintiff;

b. to pay plaintiff the sum of One Hundred Thousand Pesos (₱100,000.00), for and by way of moral damages;

c. to pay the sum of Thirty Thousand Pesos (₱30,000.00) for and by way of Attorney's fees; and

d. to pay the costs of this suit.

SO ORDERED.

Respondent then filed a Motion to Set Aside Order of Default[14] dated December 13, 2002, with the argument of non-service of summons upon her. This was denied by the RTC in its Order[15] dated April 4, 2003; and on the same day, a Certificate of Finality and Entry of Judgment was issued. Eventually, respondent, on April 28, 2003, filed a Motion for Reconsideration[16] of the Order dated April 4, 2003, which was denied by the RTC in its Order[17] dated June 23, 2003. Finally, on June 26,

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

[13] *Id.* at 194-200.

[14] *Id.* at 182.

[15] *Id.* at 187.

[16] *Id.* at 201-208.

[17] *Id.* at 210-211.

2003, a Writ of Execution was issued to enforce the Decision dated December 3, 2002 of the RTC.

Aggrieved, respondent filed with the CA a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court which was granted by the same Court in its Decision[18] dated June 29, 2005, the dispositive portion of which reads:

> WHEREFORE, the petition is GIVEN DUE COURSE and GRANTED. The said Decision, as well as the Orders and the processes on which this is premised, are NULLIFIED and VACATED.
>
> SO ORDERED.

Petitioner comes now to this Court through a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction, on the following grounds:

I

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS AN INVALID SERVICE OF SUMMONS UPON THE RESPONDENT AND, HENCE, THE COURT (REGIONAL TRIAL COURT) DID NOT ACQUIRE JURISDICTION OVER THE RESPONDENT.

II

THE HONORABLE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO THE PETITION WHEN FROM THE UNDISPUTED FACTS, THE RESPONDENT'S FAILURE TO INTERPOSE AN APPEAL OR TO FILE A MOTION FOR RECONSIDERATION OR A PETITION FOR RELIEF FROM JUDGMENT CLEARLY BARS THE INSTITUTION OF THE SPECIAL CIVIL ACTION FOR *CERTIORARI* UNDER RULE 65, 1997 RULES OF CIVIL PROCEDURE.

Petitioner insists that there was a valid substituted service of summons and that there should be a presumption of regularity in the performance of official functions. He also avers that

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[18] *Id.* at 28-37.

certiorari, which was filed by the respondent with the CA, does not lie when the remedy of appeal has been lost.

In her Comment with Motion to Cite for Contempt[19] dated August 29, 2006, respondent raises the following issues:

1. SHOULD THE PETITION BE DISMISSED FOR HAVING BEEN FILED IN VIOLATION REPUBLIC ACT NO. 6713 IN RELATION TO ART. 5 OF THE CIVIL CODE?

2. ARE THE PETITIONER AND HIS COUNSEL PUNISHABLE FOR CONTEMPT OF COURT FOR KNOWINGLY MISLEADING THIS HONORABLE COURT?

3. WAS THE ALLEGED SERVICE OF SUMMONS ON THE ILLITERATE MAID EFFECTIVE TO CONFER JURISDICTION OVER THE DEFENDANT BEFORE THE RTC OF MALOLOS, BULACAN?

4. ASSUMING FOR THE SAKE OF ARGUMENT THAT THE SERVICE OF SUMMONS WAS VALID, WAS THE ORDER DECLARING THE DEFENDANT IN DEFAULT RENDERED WITH GRAVE ABUSE OF DISCRETION?

5. WAS THE ORDER DENYING THE MOTION TO LIFT AND SET ASIDE THE ORDER OF DEFAULT RENDERED WITH GRAVE ABUSE OF DISCRETION?

6. IS THE PETITIONER GUILTY OF FORUM SHOPPING?

7. WILL THIS HONORABLE COURT ALLOW THE NULL AND VOID DECEMBER 3, 2002 DECISION OF THE RTC TO BECOME FINAL AND EXECUTORY AND OBLITERATE THE CRIMINAL ACT OF FALSIFICATION, THEREBY REWARDING THE AUTHOR OF THE CRIMINAL OFFENSE?

In addressing the above issues, the respondent argues that the CA decision became final by operation of law because the present petition is null and void for being a violation of the provisions of Republic Act No. 6712, in relation to Article 5 of the Civil Code, the counsel for petitioner having filed a Motion for Extension of Time to File Petition for Review and, thereafter, the Petition for Review itself. She also claims that there was no

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[19] *Id.* at 95.

proper service of summons as the maid who was purportedly served a copy thereof was illiterate and has denied being served in a sworn statement executed before a notary public and, thus, the RTC never acquired jurisdiction over her person. According to her, assuming that the summons were indeed served, the RTC was guilty of grave abuse of discretion for declaring her in default and for refusing to lift the order of default because it deprived her of her right to present evidence in support of her defense. She further disputes the argument of the petitioner that the Decision dated December 3, 2002 became final because it did not become the subject of appeal by stating that the said principle can only be applied to valid judgments that were rendered in accordance with law and not to void judgments rendered without jurisdiction or in excess thereof. In addition, she avers that petitioner made a deliberate and malicious concealment of the fact that at the time he filed the case for specific performance, as well as during the time it was being heard, he was already being investigated in administrative proceedings before the National Bureau of Investigation, the Department of Justice and the Municipal Trial Court of Malolos, Bulacan, Branch 2, involving the same subject matter, issues and parties; hence, he violated the law against forum shopping. Lastly, respondent points out that the CA Decision dated June 29, 2005 is a permanent injunction against the implementation of the contested Orders and Decisions of the RTC; therefore, there is an urgent necessity to enforce the said judgment.

On June 30, 2008, this Court granted[20] the substitution of the respondent by his heirs as represented by his wife Zenaida Pascual, after the Manifestation[21] dated June 12, 2008 was filed informing this Court of the demise of the same respondent.

After a careful study of the records of this case, this Court finds the petition bereft of any merit.

Clearly, the main, if not the only issue that needs to be resolved is whether or not there was a proper and valid substituted service

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[20] *Id.* at 377.

[21] *Id.* at 373-374.

of summons, the resolution of which, will determine whether jurisdiction was indeed acquired by the trial court over the person of the petitioner.

In a case where the action is *in personam* and the defendant is in the Philippines, the service of summons may be done by personal or substituted service as laid out in Sections 6 and 7 of Rule 14 of the Revised Rules of Court. The provisions state:

Section 6. *Service in person on defendant*. — Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

Section 7. *Substituted service*. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

A plain and simple reading of the above provisions indicates that personal service of summons should and always be the first option, and it is only when the said summons cannot be served within a reasonable time can the process server resort to substituted service.

This Court gave an in-depth discussion as to the nature and requisites of substituted service in *Manotoc v. Court of Appeals, et al.*:[22]

We can break down this section into the following requirements to effect a valid substituted service:

(1) Impossibility of Prompt Personal Service

The party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service.[23] Section 8, Rule 14 provides

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[22] G.R. No. 130974, August 16, 2006, 499 SCRA 21, 34-37.

[23] *Arevalo v. Quilatan*, 202 Phil. 256, 262 (1982).

that the plaintiff or the sheriff is given a "reasonable time" to serve the summons to the defendant in person, but no specific time frame is mentioned. "Reasonable time" is defined as "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any, to the other party."[24] Under the Rules, the service of summons has no set period. However, when the court, clerk of court, or the plaintiff asks the sheriff to make the return of the summons and the latter submits the return of summons, then the validity of the summons lapses. The plaintiff may then ask for an alias summons if the service of summons has failed.[25] What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriff's Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first ten (10) days of the succeeding month. Thus, one month from the issuance of summons can be considered "reasonable time" with regard to personal service on the defendant.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at

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[24] *Far East Realty Investment, Inc. v. Court of Appeals,* 248 Phil. 497, 503-504 (1988).

[25] *Supra* note 21, Sec. 5.

least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

(2) Specific Details in the Return

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service.[26] **The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return.** The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. The form on Sheriff's Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure.[27] Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that "impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts," which should be made in the proof of service.

(3) A Person of Suitable Age and Discretion

If the substituted service will be effected at defendant's house or residence, it should be left with a person of "suitable age and discretion then residing therein."[28] A person of suitable age and discretion is one who has attained the age of full legal capacity (18 years old) and is considered to have enough discernment to understand the importance of a summons. "Discretion" is defined as "the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed."[29] Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the

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[26] *Domagas v. Jensen*, G.R. No. 158407, January 17, 2005, 448 SCRA 633.

[27] A Handbook for Sheriffs (October 2003), p. 116.

[28] Revised Rules of Court, Rule 14, Sec. 8.

[29] Webster's Third New International Dictionary, p. 647 (1993).

summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, the person must have the "relation of confidence" to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons.

(4) A Competent Person in Charge

If the substituted service will be done at defendant's office or regular place of business, then it should be served on a competent person in charge of the place. Thus, the person on whom the substituted service will be made must be the one managing the office or business of defendant, such as the president or manager; and such individual must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons. Again, these details must be contained in the Return.

Petitioner contends that there was a valid substituted service of summons as shown in not one, but three Officer's Return. He points out that the absence in the officer's return of a statement about the impossibility of personal service does not conclusively prove that the service was invalid. He adds that proof of prior attempts to serve personally can be deduced from the other returns when there are several in a series of officer's returns all tending to establish the impossibility of personal service upon the respondent. However, the said argument of the petitioner is merely a plain deduction that veers away from the well-established requisite that the officer must show that the defendant cannot be served promptly, or that there was an impossibility of prompt service. A cursory reading of the three Officer's Returns does not show any compliance with the said requisite. The Return of Service dated May 21, 2002 inadequately states that:

x x x x x x x x x

At the time of service of the said summons, the defendant was not at her home and only her maid was there who refused to receive the said summons [in spite] of the insistence of the undersigned.

The undersigned, upon his request with the Brgy. Clerk at the said place, was given a certification that he really exerted effort to effect the service of the said summons but failed due to the above reason. (Annex "A").

The following day, May 21, 2002, the undersigned went back at defendant's residence to have her receive the subject summons but again the above defendant was not at her house.

x x x x x x x x x

Similarly, in the Return of Service dated May 30, 2002, pertinent details were wanting, as it reads:

x x x x x x x x x

The undersigned accompanied by the *barangay* officials of the said place proceeded at defendant's residence but the undersigned was not permitted to go inside her house and was given information by her maid that the defendant was not there.

The defendant's car was parked inside her house and inquiries/ verification made on her neighbors revealed that the defendant was inside her house at the time of service of said summons and probably did not want to show-up when her maid informed her of undersigned's presence.

x x x x x x x x x

Lastly, the Return of Service dated August 14, 2002 was no different. It reads:

x x x x x x x x x

Defendant Dr. Lourdes Pascual was out during the time of service of the said summons and only her housemaid was present. The undersigned left a copy of the same to the latter who is at the age of reason but refused to sign the same.

x x x x x x x x x

The above Return of Summons does not show or indicate the actual exertion or any positive steps taken by the officer or

process server in serving the summons personally to the defendant. As in *Jose v. Boyon*,[30] this Court ruled that:

> The Return of Summons shows no effort was actually exerted and no positive step taken by either the process server or petitioners to locate and serve the summons personally on respondents. At best, the Return merely states the alleged whereabouts of respondents without indicating that such information was verified from a person who had knowledge thereof. Certainly, without specifying the details of the attendant circumstances or of the efforts exerted to serve the summons, a general statement that such efforts were made will not suffice for purposes of complying with the rules of substituted service of summons.
>
> The necessity of stating in the process server's Return or Proof of Service the material facts and circumstances sustaining the validity of substituted service was explained by this Court in *Hamilton v. Levy*,[31] from which we quote:
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>> x x x The pertinent facts and circumstances attendant to the service of summons must be stated in the proof of service or Officer's Return; otherwise, any substituted service made in lieu of personal service cannot be upheld. This is necessary because substituted service is in derogation of the usual method of service. It is a method extraordinary in character and, hence, may be used only as prescribed and in the circumstances authorized by statute. Here, no such explanation was made. Failure to faithfully, strictly, and fully comply with the requirements of substituted service renders said service ineffective.[32]

Petitioner further states that the presumption of regularity in the performance of official functions must be applied to the present case. He expounds on the fact that as between the process server's return of substituted service, which carries with it the presumption of regularity and the respondent's self-serving assertion that she only came to know of the case against her when she received a copy of the petitioner's motion to declare

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[30] G.R. No. 147369, October 23, 2003, 414 SCRA 216, 223-224.

[31] G.R. No. 139283, November 15, 2000, 344 SCRA 821.

[32] *Id.* at 829.

her in default, the process server's return is undoubtedly more deserving of credit. The said argument, however, is only meritorious, provided that there was a strict compliance with the procedure for serving a summons. In the absence of even the barest compliance with the procedure for a substituted service of summons outlined in the Rules of Court, the presumption of regularity in the performance of public functions does not apply.[33]

Applying the above disquisitions, the jurisdiction over the person of the respondent was never vested with the RTC, because the manner of substituted service by the process server was apparently invalid and ineffective. As such, there was a violation of due process. Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, "any judgment of the court which has no jurisdiction over the person of the defendant is null and void."[34]

Petitioner also raises the issue of the impropriety of the remedy resorted to by the respondent which is the filing of a Petition for *Certiorari* under Rule 65 of the Rules of Court, claiming that the said remedy is inappropriate because there are still other plain, speedy and adequate remedies available, such as an ordinary appeal, the Decision of the RTC having attained its finality. The question, however, is whether the said Decision has indeed attained finality. The importance of the doctrine of the finality of judgment has always been emphasized by this Court. In *Pasiona, Jr. v. Court of Appeals*,[35] this Court has expounded on the said doctrine, thus:

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[33] *Sandoval II v. HRET, et al.,* 433 Phil. 290, 309 (2002), citing *Hamilton v. Levy*, *supra* note 31; *Spouses Venturanza v. Court of Appeals*, 240 Phil. 306 (1987); *Arevalo v. Quilatan*, *supra* note 23.

[34] *Manotoc v. Court of Appeals, et al., supra* note 22, citing *Domagas v. Jensen*, *supra* note 26, at 677, which cited *Lam v. Rosillosa*, 86 Phil. 447 (1950).

[35] G.R. No. 165471, July 21, 2008, 559 SCRA 137, 145-146.

The Court re-emphasizes the doctrine of finality of judgment. In *Alcantara v. Ponce*,[36] the Court, citing its much earlier ruling in *Arnedo v. Llorente*,[37] stressed the importance of said doctrine, to wit:

> It is true that it is the purpose and intention of the law that courts should decide all questions submitted to them "as truth and justice require," and that it is greatly to be desired that all judgments should be so decided; but controlling and irresistible reasons of public policy and of sound practice in the courts demand that at the risk of occasional error, judgments of courts determining controversies submitted to them should become final at some definite time fixed by law, or by a rule of practice recognized by law, so as to be thereafter beyond the control even of the court which rendered them for the purpose of correcting errors of fact or of law, into which, in the opinion of the court it may have fallen. The very purpose for which the courts are organized is to put an end to controversy, to decide the questions submitted to the litigants, and to determine the respective rights of the parties. With the full knowledge that courts are not infallible, the litigants submit their respective claims for judgment, and they have a right at some time or other to have final judgment on which they can rely as a final disposition of the issue submitted, and to know that there is an end to the litigation.[38]

Then, in *Juani v. Alarcon*,[39] it was held, thus:

> This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice. In fact, nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether

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[36] G.R. No. 131547, December 15, 2005, 478 SCRA 27.

[37] 18 Phil. 257 (1911).

[38] *Alcantara v. Ponce*, *supra* note 36, at 49-50; *Arnedo v. Llorente*, *supra* note 37, at 262-263.

[39] G.R. No. 166849, September 5, 2006, 501 SCRA 135.

> the modification is attempted to be made by the court rendering it or by the highest court of the land.[40]

Again, in *Dinglasan v. Court of Appeals*,[41] the Court declared that:

> After the judgment or final resolution is entered in the entries of judgment, the case shall be laid to rest. x x x
>
> x x x x x x x x x
>
> The finality of decision is a jurisdictional event which cannot be made to depend on the convenience of the party. To rule otherwise would completely negate the purpose of the rule on completeness of service, which is to place the date of receipt of pleadings, judgment and processes beyond the power of the party being served to determine at his pleasure.[42]

The said doctrine, however, is applicable only when the judgment or decision is valid. In the present case, as earlier pronounced, and as ruled by the CA, the judgment in question is void, the RTC not having acquired jurisdiction over the person of the respondent. It is a well-entrenched principle that a void judgment can never become final. As ruled by this Court in *Metropolitan Bank & Trust Company v. Alejo*:[43]

In *Leonor v. Court of Appeals*[44] and *Arcelona v. Court of Appeals*,[45] we held thus:

> **A void judgment for want of jurisdiction is no judgment at all**. It cannot be the source of any right nor the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final and any writ of execution based on it is void: "x x x it may be said to be a lawless thing which can be treated

[40] *Id.* at 155.

[41] G.R. No. 145420, September 19, 2006, 502 SCRA 253.

[42] *Id.* at 266.

[43] G.R. No. 141970, September 10, 2001, 364 SCRA 812, 823.

[44] 326 Phil. 74, 88 (1996). (Emphasis ours.)

[45] 345 Phil. 250, 287. (Emphasis ours.)

as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head."

Thus, from the above discussion, the Decision of the RTC, not having attained its finality due to its being void, the Petition for *Certiorari* under Rule 65, filed by the respondent with the CA, was proper.

WHEREFORE, the Petition dated May 3, 2006 is hereby *DENIED* and the Decision dated June 29, 2005 of the Court of Appeals in CA-G.R. SP No. 77789 is hereby *AFFIRMED in toto*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172372. December 4, 2009]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMAR TEODORO *y* VALLEJO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIMS WHO ARE YOUNG AND IMMATURE DESERVE FULL CREDENCE; RATIONALE. — We have held time and again that the testimonies of rape victims who are young and immature, as in this case, deserve full credence considering that no woman, especially one of tender age, would concoct a story of defloration, allow the examination of her private parts, concoct a story of defloration, allow the examination of her private parts, and subject herself

to a public trial if she had not been motivated by the desire to obtain justice for the wrong committed against her.

2. **ID.; ID.; ID.; DENIAL CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED BY THE RAPE VICTIM. —** It is settled that denial is an inherently weak defense. It cannot prevail over positive identification, unless supported by strong evidence of lack of guilt. In the context of this case, the appellant's mere denial, unsupported by any other evidence, cannot overcome the child-victim's positive declaration on the identity and involvement of the appellant in the crime attributed to him.

3. **ID.; CRIMINAL PROCEDURE; COMPLAINT OR INFORMATION; IT IS NOT NECESSARY TO STATE THEREIN THE PRECISE DATE WHEN THE OFFENSE WAS COMMITTED; EXCEPTION. —** An information, under Section 6, Rule 110 of the 2000 Revised Rules on Criminal Procedure, is deemed sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the *approximate date* of the commission of the offense; and the place where the offense was committed. Section 11 of the same Rule also provides that it is not necessary to state in the complaint or information the precise date the offense was committed, except when the date of commission is a material element of the offense. The offense may thus be alleged to have been committed on a date as near as possible to the actual date of its commission. At the minimum, an indictment must contain all the essential elements of the offense charged to enable the accused to properly meet the charge and duly prepare for his defense.

4. **CRIMINAL LAW; RAPE; ELEMENTS. —** Rape is defined and penalized under Article 335 of the Revised Penal Code, as amended, which provides: ARTICLE 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3**. When the woman is under twelve years of age** or is demented. x x x Rape under paragraph 3 of this article is termed *statutory rape* as it departs from the usual modes of committing rape. What the law punishes

in statutory rape is carnal knowledge of a woman *below twelve (12) years old*. Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil.

5. **ID.; ID.; PROPER PENALTY WHEN THE WOMAN VICTIM IS UNDER 12 YEARS OF AGE. —** The applicable provisions of the Revised Penal Code, as amended, covering the crime of rape is Article 335 which provides: ARTICLE 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances: x x x 3. **When the woman is under twelve years of age** or is demented. The crime of rape shall be punished by ***reclusion perpetua***. x x x The lower courts, therefore, are correct in imposing the penalty of *reclusion perpetua* on the appellant.

6. **ID.; ID.; CIVIL LIABILITY; PROPER INDEMNITY, EXPLAINED. —** The award of civil indemnity to the rape victim is mandatory when rape is found to have been committed. Thus, this Court affirms the award of ₱50,000.00 as civil indemnity based on prevailing jurisprudence. The award of moral damages also finds full justification in this case. Moral damages are awarded to rape victims without need of proof other than the fact of rape on the assumption that the victim suffered moral injuries from the experience she underwent. Pursuant to current rules, we award ₱50,000.00 as moral damages to AAA. In addition, we award exemplary damages in the amount of ₱30,000.00. The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example and serve as deterrent against elders who abuse and corrupt the youth.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BRION, *J*.:

We review in this appeal the January 19, 2006 decision of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 00752,[1] affirming *in toto* the February 19, 2001 decision of the Regional Trial Court (*RTC*), Branch 3, Batangas City.[2] The RTC decision found appellant Romar Teodoro (*appellant*) guilty beyond reasonable doubt of two (2) counts of statutory rape, and sentenced him to suffer the penalty of *reclusion perpetua* for each count.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC of the crime of rape under three separate Informations that read:

Criminal Case No. 8538

That on or about the 18th day of June, 1995, in the morning thereof, at Barangay Pook ni Banal, Municipality of San Pascual, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge with the said [*AAA*] who is below twelve (12) years old, against her will and consent.

Contrary to law.[3]

Criminal Case No. 8539

That sometime in the first week of July 1995, in the morning thereof, at Barangay Pook ni Banal, Municipality of San Pascual, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously

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[1] Penned by Associate Justice Vicente Q. Roxas (separated from the service), and concurred in by Associate Justice Godardo A. Jacinto (retired) and Associate Justice Juan Q. Enriquez, Jr.; *rollo*, pp. 3-12.

[2] Penned by Judge Romeo F. Barza; CA *rollo*, pp. 24-30.

[3] *Id.* at 7.

lie with and have carnal knowledge with the said [*AAA*], who is below twelve (12) years old, against her will and consent.

Contrary to law.[4]

Criminal Case No. 8540

That on or about the 30th day of March, 1996, at about 10:00 o'clock in the evening, at Barangay Pook ni Banal, Municipality of San Pascual, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge with the said [*AAA*], who is a twelve (12) year old minor, against her will and consent.

Contrary to law.[5]

The appellant pleaded not guilty to the charges laid.[6] The prosecution presented the following witnesses in the trial on the merits that followed: Dr. Rosalina Caraan-Mendoza (*Dr. Mendoza*); Donna Catapang (*Donna*); and AAA. The appellant took the witness stand for the defense.

Dr. Mendoza, the Municipal Health Officer of San Pascual, Batangas, testified that she conducted a medical examination of AAA on March 31, 1996,[7] and made the following findings:

MEDICO-LEGAL CERTIFICATE

x x x x x x x x x

– External genitalia – normal looking with 2 points of skin abrasions noted over the lower third of the (L) labia majora.

– Labia majora gaping

– (+) defloration of the hymen, with edges rounded noncoaptible hymenal border and edges retracted compatible with healed lacerations

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[4] *Id.* at 11.

[5] *Id.* at 13.

[6] Records, pp. 38-39.

[7] TSN, December 12, 1996, p. 9.

x x x x x x x x x

– Positive for presence of sperm cells[8]

Dr. Mendoza stated that she conducted a physical examination of AAA at the request of the police,[9] and that the healed laceration on AAA's private part was the result of previous sexual intercourse.[10]

Donna, a medical technologist at the Bauan Pathology Center, testified that Dr. Mendoza requested her to conduct a laboratory examination on the vaginal smear taken from AAA.[11] She found the vaginal smear positive for the presence of sperm cells.[12]

AAA declared on the witness stand that she was born on July 21, 1983. She knew the appellant since 1993 because the latter was an employee of her parents.[13] AAA recalled that on June 18, 1995, while her parents were at the sugarcane plantation, the appellant went to the bathroom and kissed her on the face and neck. The appellant then removed her clothes, pants and panty.[14] Thereafter, the appellant took off his pants and inserted his penis into her vagina. AAA struggled and pushed the appellant; the latter threatened to kill AAA if she told her parents about the incident. Afterwards, the appellant left.[15]

AAA likewise recalled that during the first week of July 1995, the appellant again "raped" her in the bathroom. According to AAA, the appellant first removed her shirt and pants, but she cried and pushed him. The appellant inserted his penis into her vagina after removing her panty.[16] The appellant threatened to

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[8] Records, p. 3.

[9] TSN, December 12, 1996, p. 11.

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

[11] TSN, May 27, 1997, p. 7.

[12] *Id.* at 9, 15-16.

[13] TSN, September 23, 1997, p. 4.

[14] *Id.* at 7-8.

[15] *Id.* at 8-11.

[16] TSN, November 6, 1997, pp. 2-5.

kill her if she reported the incident to her parents. Thereafter, the appellant went to the field.[17]

AAA further testified that at around 10:00 p.m. of March 30, 1996, while her parents were asleep, the appellant dragged her to the bathroom.[18] She repeatedly struck the appellant with her hand, but the appellant succeeded in bringing her to the bathroom. The appellant removed AAA's shorts and panty, and, while they were in a standing position, inserted his penis into her vagina.[19] AAA's brother saw the incident and reported it to their mother.[20]

On cross examination, AAA stated that she knew the appellant prior to March 30, 1996 because the latter had been staying in their house for three years.[21] AAA explained that their house had three bedrooms; and that the appellant slept with her (AAA's) brothers.[22] She maintained that one of her brothers saw the March 30, 1996 rape and reported this incident to their mother. AAA was confronted by her mother the next day.[23]

The appellant presented a different version of the events and claimed that AAA had been his sweetheart since June 22, 1996.[24] He denied using force on AAA and claimed that the sexual intercourse between them on March 30, 1996 was consensual. He recalled that on March 30, 1996, while he was lying beside AAA's brother at the *sala*, AAA gave him a signal to follow her to the bathroom. The appellant followed AAA to the bathroom, where they had sex.[25] After 20 minutes, he went

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[17] *Id.* at 6-8.

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

[19] *Id.* at 11-12.

[20] *Id.* at 13.

[21] TSN, July 30, 1998, pp. 5-6.

[22] *Id.* at 9-11.

[23] *Id.* at 13-14.

[24] TSN, December 6, 1999, p. 4.

[25] *Id.* at 4-7.

out of the bathroom and went back to his bed.[26] He likewise denied having raped AAA on June 18, 1995 and on the first week of July 1995.[27]

The RTC convicted the appellant of two (2) counts of statutory rape in its decision of February 19, 2001. The dispositive portion of this decision provides:

> WHEREFORE, in view of the foregoing, the court finds the accused Romar Teodoro *y* Vallejo in Criminal Case No. 8538 and Criminal Case No. 8539 guilty beyond reasonable doubt of the crime of rape and he is hereby sentenced to suffer the penalty, in each case, of *reclusion perpetua*, to indemnify the complainant [*AAA*] in the amount of ₱50,000.00 or a total of ₱100,000.00, and to pay the cost.
>
> The accused, however, is acquitted in Criminal Case No. 8540, as this Court finds him innocent of the crime charged.
>
> SO ORDERED.[28]

The records of this case were originally transmitted to this Court on appeal. Pursuant to our ruling in *People v. Mateo*,[29] we endorsed the case and the records to the CA for appropriate action and disposition.

The CA, in its decision dated January 19, 2006, affirmed the RTC decision *in toto*. The CA dismissed the appellant's argument that the Information in Criminal Case No. 8539 was vague and insufficient because the exact date of the crime was not stated. The CA reasoned out that Section 6, Rule 110 of the Rules on Criminal Procedure merely requires that the Information contain the approximate time, and not the exact time, of the commission of the offense.

The CA likewise believed AAA's testimony which it found credible. It held that the court may convict the accused based

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[26] *Id.* at 9.

[27] *Id.* at 10.

[28] CA *rollo*, p. 71.

[29] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

solely on the victim's testimony provided it is credible, natural and convincing.

In his brief,[30] the appellant argued that the lower courts erred in convicting him of two (2) counts of statutory rape despite the prosecution's failure to prove his guilt beyond reasonable doubt. He claimed that the victim's testimony was full of inconsistencies. He likewise contended that the Information in Criminal Case No. 8539 was defective for failure to state the exact date of the commission of the crime.

THE COURT'S RULING

We resolve to ***deny*** the appeal for lack of merit, but we modify the amount of the awarded indemnities.

Sufficiency of Prosecution Evidence

Rape is defined and penalized under Article 335[31] of the Revised Penal Code, as amended,[32] which provides:

> ARTICLE 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation;
> 2. When the woman is deprived of reason or otherwise unconscious; and
> 3. **When the woman is under twelve years of age** or is demented.
>
> x x x x x x x x x

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[30] CA *rollo*, pp. 44-64.

[31] The crimes subject of Criminal Case No. 8538 and Criminal Case No. 8539 were committed in 1995, or before Article 335 of the Revised Penal Code, as amended, was repealed by Republic Act No. 835 (the Anti-Rape Law of 1997).

[32] Amended by Republic Act No. 7659, entitled An Act to Impose the Death Penalty on Heinous Crimes Amending for that Purpose the Revised Penal Code, as Amended, Other Special Laws, and for Other Purposes, which took effect on December 31, 1993.

Rape under paragraph 3 of this article is termed *statutory rape* as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman *below twelve (12) years old*. Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place.[33] The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil.[34]

AAA, while recounting her unfortunate ordeal, positively identified the appellant as the perpetrator of the **June 18, 1995** rape; she never wavered in this identification. To directly quote from the records:

ATTY. EUGENIO MENDOZA:

Q: Do you know the accused in this case in the person of Romar Teodoro *y* Vallejo *alias* Boyet?

[*AAA*]:

A: Yes, sir.

Q: If he is present in court, will you be able to point to him?

A: Yes, sir.

Q: Please do so.

(**Witness pointing to a man and when asked of his name identified himself as Romar Teodoro**).

x x x x x x x x x

Q: On the 18th of June 1995 in the morning thereof, do you remember anything unusual?

A: Yes, sir.

Q: What was that?

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[33] *People v. Pancho*, 462 Phil. 193 (2003).

[34] *People v. Natan*, G.R. No. 181086, July 23, 2008, 559 SCRA 686.

A: I was abused, sir.

Q: By "*pinagsamantalahan*," what do you mean?

A: **I was raped, sir, by him.**

Q: When you refer to the pronoun him, to whom are you referring?

A: **Romar Teodoro**, sir.

Q: **Where in particular were you raped and/or abused by Romar Teodoro on the 18th day of June 1995 in the morning thereof?**

A: In our bathroom, sir.

x x x x x x x x x

Q: **According to you, you were abused and/or raped in your bathroom by Romar Teodoro, tell us how were you raped by Romar Teodoro?**

A: He kissed me and took off my clothes.

x x x x x x x x x

Q: Where did he kiss you?

A: On my face, sir.

Q: Where else?

A: On my neck, sir.

x x x x x x x x x

Q: According to you he removed your dress, was he able to remove your T-shirt?

A: No, sir.

Q: How about your pants?

A: Yes, sir.

Q: After the pants you were wearing then was removed, were you still wearing anything?

A: Yes, sir.

Q: What is it?

A: My panty, sir.

Q: How about that panty, was that likewise removed?

A: Yes, sir.

Q: After the pants and the panty were removed by Romar Teodoro, what did he do to you, if any?

A: He also took off his pants, sir.

Q: And after he took off his pants, what did he do, if any?

A: **He inserted his penis in my vagina, sir.**

Q: What were you doing when he was then to insert his penis into your vagina?

A: I was pushing him, sir.

Q: Did you tell him anything at that time?

A: None, sir.

Q: How about Romar Teodoro, did he tell you anything at that time?

A: Yes, sir.

Q: What did he tell you?

A: He told me not to tell it to my parents because he will kill me sir.

Q: Other than pushing him away, what else did you do, if you did any?

A: I was struggling, sir.

x x x x x x x x x

Q: **By the way, according to you he was able to insert his penis [in] your vagina, will you please tell us what did you feel, if any, at that time?**

A: **"*Masakit po*." It was painful, sir.**

x x x x x x x x x[35]

[*Emphasis supplied*]

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[35] TSN, September 23, 1997, pp. 6-10.

AAA likewise positively identified the appellant as the one who raped her during the **first week of July 1995**. Her testimony dated November 6, 1997 was clear and straightforward; she was consistent in her recollection of her defloration. To directly quote from the records:

ATTY. EUGENIO MENDOZA:

Q: x x x **My question to you is, if as testified to by you, you were raped on June 18, 1995, will you please tell us again as to when was the second time that you were raped by herein accused Romar Teodoro?**

[*AAA*]:

A: First week of July, sir.

Q: What year?

A: 1995, sir.

Q: Whereat?

A: Inside our house, sir.

Q: Which particular portion of your house?

A: Inside the bathroom, sir.

Q: What time was it on the first week of July, 1995 when you were raped by Romar Teodoro?

A: Ten o'clock in the morning, sir.

Q: And what was done to you by Romar Teodoro on that date and time?

A: **He raped me, sir.**

Q: **Will you please narrate before the Honorable Court how you were raped by Romar Teodoro on the first week of July, 1995 at around 10:00 o'clock in the morning in your bathroom?**

A: He removed my clothes, sir.

Q: What clothes were you then wearing at that time?

A: T-shirt, sir.

Q: What else?

A: Short pants, sir.

x x x x x x x x x

Q: While Romar Teodoro was then in the act of removing your short pants, what were you doing then?

A: I was pushing him, sir.

Q: Will you please tell us if other than pushing you did anything else?

A: I was crying, sir.

Q: Why were you crying at the time?

A: **Because he was raping me, sir.**

Q: Was he able to remove your short pants?

A: Yes, sir.

Q: After the short pants, was there anything else that you were wearing then at the time?

A: Yes, sir, my panties, sir.

Q: How about the panties, what happened to the same?

A: He also removed my panties, sir.

x x x x x x x x x

Q: After the removal of the same wearing apparel, what happened next?

A: **His penis was inserted to** [*sic*] **my vagina, sir.**

x x x x x x x x x[36]
[*Emphasis ours*]

We view this testimony to be clear, convincing and credible considering especially the corroboration it received from the medico-legal report and testimony of Dr. Mendoza. We additionally do not see from the records any indication that AAA's testimony should be seen in a suspicious light. We emphasize that the

[36] TSN, November 6, 1997, pp. 2-5.

appellant had been staying in the victim's house for more or less 3 years; he dined with AAA's family and slept with her brothers. There is no plausible reason why AAA would falsely testify against the appellant, imputing on him a crime as grave as rape if the sexual incident did not happen. We have held time and again that the testimonies of rape victims who are young and immature, as in this case, deserve full credence considering that no woman, especially one of tender age, would concoct a story of defloration, allow the examination of her private parts, and subject herself to a public trial if she had not been motivated by the desire to obtain justice for the wrong committed against her.[37]

The prosecution positively established the elements of rape required under Article 335. *First*, the appellant succeeded in having carnal knowledge with the victim on June 18, 1995 and during the first week of July 1995. AAA was steadfast in her assertion that the appellant raped her on both occasions; and that the appellant succeeded in inserting his penis into her private part, as a result of which she felt pain. As earlier stated, AAA's testimony was corroborated by the medical findings of Dr. Mendoza.

Second, the prosecution established AAA's minority during the trial through the presentation of her birth certificate showing that she was born on July 21, 1983. AAA herself, in fact, testified regarding her age. Hence, when the appellant raped AAA on June 18, 1995 and on the first week of July 1995, she was not yet 12 years old. As we stated above, when the victim is below 12 years of age, violence or intimidation is not an element to be considered; the only subject of inquiry is whether carnal knowledge took place. The law conclusively presumes the absence of consent when the victim is below the age of 12. Thus, we held in *People v. Valenzuela*:[38]

What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation, and physical evidence of injury are immaterial; the only subject of

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[37] *People v. Malones*, 469 Phil. 301 (2004).

[38] G.R. No. 182057, February 6, 2009, 578 SCRA 157.

inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.

The Appellant's Defenses

In his defense, the appellant invoked denial. He denied raping the victim on June 18, 1995 and on the first week of July 1995, but admitted having a consensual sexual intercourse with AAA on March 30, 1996. We shall only discuss the incidents of June 18, 1995 and of the first week of July 1995 (subject of Criminal Case Nos. 8538 and 8539), as the appellant had already been acquitted in Criminal Case No. 8540.

It is settled that denial is an inherently weak defense. It cannot prevail over positive identification, unless supported by strong evidence of lack of guilt. In the context of this case, the appellant's mere denial, unsupported by any other evidence, cannot overcome the child-victim's positive declaration on the identity and involvement of the appellant in the crime attributed to him.[39]

The appellant further argues that the Information in Criminal Case No. 8539 is defective because it failed to state the exact date of the commission of the crime.

The contention lacks merit.

An information, under Section 6, Rule 110 of the 2000 Revised Rules on Criminal Procedure, is deemed sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the *approximate date* of the commission of the offense; and the place where the offense was committed. Section 11 of the same Rule also provides that it is not necessary to state in the complaint or information the precise date the offense was committed, except when the date of commission is a material element of the offense. The offense may thus be alleged to have been committed on a date

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[39] *Supra* note 38.

as near as possible to the actual date of its commission. At the minimum, an indictment must contain all the essential elements of the offense charged to enable the accused to properly meet the charge and duly prepare for his defense.[40]

In the present case, the Information in Criminal Case No. 8539 states that the offense was committed "*in the first week of July 1995*"; it likewise alleged that the victim was "*below 12 years old*" at the time of the incident. These allegations sufficiently informed the appellant that he was being charged of rape of a child who was below 12 years of age. Afforded adequate opportunity to prepare his defense, he cannot now complain that he was deprived of his right to be informed of the nature of the accusation against him.

We have repeatedly held that the date of the commission of rape is not an essential element of the crime.[41] It is not necessary to state the precise time when the offense was committed except when time is a material ingredient of the offense. In statutory rape, time is not an essential element except to prove that the victim was a minor below twelve years of age at the time of the commission of the offense. Given the victim's established date of birth, she was definitely short of 12 years under the allegations of the Information and on the basis of the evidence adduced.

Moreover, objections relating to the form of the complaint or information cannot be made for the first time on appeal. If the appellant had found the Information insufficient, he should have moved before arraignment either for a bill of particulars, for him to be properly informed of the exact date of the alleged rape, or for the quashal of the Information, on the ground that it did not conform with the prescribed form. Failing to pursue either remedy, he is deemed to have waived objection to any formal defect in the Information.[42]

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[40] *People v. Canares*, G.R. No. 174065, February 18, 2009, 579 SCRA 588.

[41] *People v. Ching*, G.R. No. 177150, November 22, 2007, 538 SCRA 117; *People v. Jalbuena*, G.R. No. 171163, July 4, 2007, 526 SCRA 500; *People v. Invencion*, 446 Phil. 775 (2003).

[42] See *People v. Cachapero*, G.R. No. 153008, May 20, 2004, 428 SCRA 744.

The Proper Penalty

The applicable provisions of the Revised Penal Code, as amended, covering the crime of rape is Article 335 which provides:

> ARTICLE 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> x x x x x x x x x
>
> 3. **When the woman is under twelve years of age** or is demented.
>
> The crime of rape shall be punished by ***reclusion perpetua***.
>
> x x x x x x x x x

The lower courts, therefore, are correct in imposing the penalty of *reclusion perpetua* on the appellant.

Proper Indemnity

The award of civil indemnity to the rape victim is mandatory when rape is found to have been committed. Thus, this Court affirms the award of ₱50,000.00 as civil indemnity based on prevailing jurisprudence.[43]

The award of moral damages also finds full justification in this case. Moral damages are awarded to rape victims without need of proof other than the fact of rape on the assumption that the victim suffered moral injuries from the experience she underwent.[44] Pursuant to current rules, we award ₱50,000.00 as moral damages to AAA.[45]

In addition, we award exemplary damages in the amount of ₱30,000.00.[46] The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example

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[43] See *People v. Begino*, G.R. No. 181246, March 20, 2009, 582 SCRA 189.

[44] *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511.

[45] *Supra* note 38.

[46] See *People v. Sia*, G.R. No. 174059, February 27, 2009, 580 SCRA 364; *People v. Layco, Sr.*, G.R. No. 182191, May 8, 2009.

and serve as deterrent against elders who abuse and corrupt the youth.[47]

WHEREFORE, premises considered, we *AFFIRM* the January 19, 2006 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00752 with the *MODIFICATION* that the appellant is further *ORDERED* to *PAY* the victim the amounts of ₱50,000.00 and ₱30,000.00 as moral damages and exemplary damages, respectively, for each count of statutory rape.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Del Castillo, and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 173158. December 4, 2009]

ALEJANDRO B. TY and INTERNATIONAL REALTY CORPORATION, *petitioners, vs.* **QUEEN'S ROW SUBDIVISION, INC., NEW SAN JOSE BUILDERS, INC., GOVERNMENT SERVICE INSURANCE SYSTEM and REGISTER OF DEEDS OF CAVITE,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; PRESCRIPTION; PRINCIPLE OF LACHES; DEFINED; APPLICATION THEREOF EVEN AGAINST THE REGISTERED OWNER OF A PROPERTY, SUSTAINED. —** This Court has, on several occasions, already ruled that even a registered owner of a property may be barred from recovering possession of the same by virtue of laches.

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[47] See *People v. Tormis*, G.R. No. 183456, December 18, 2008, 574 SCRA 903.

Thus, in *Heirs of Panganiban v. Dayrit*, this Court discussed several cases wherein the principle of laches was applied against the registered owner: In our jurisdiction, it is an enshrined rule that **even a registered owner of property may be barred from recovering possession of property by virtue of laches.** Thus, in the case of *Lola v. Court of Appeals*, this Court held that petitioners acquired title to the land owned by respondent by virtue of the equitable principles of laches due to respondent's failure to assert her claims and ownership for thirty-two (32) years. In *Miguel v. Catalino*, this Court said that appellant's passivity and inaction for more than thirty-four (34) years (1928-1962) justifies the defendant-appellee in setting up the equitable defense of laches in his behalf. Likewise, in the case of *Mejia de Lucas v. Gamponia*, we stated that while the defendant may not be considered as having acquired title by virtue of his and his predecessor's long continued possession for thirty-seven (37) years, the original owner's right to recover possession of the property and the title thereto from the defendant has, by the latter's long period of possession and by patentee's inaction and neglect, been converted into a stale demand. Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exerting due diligence could or should have been done earlier. The law serves those who are vigilant and diligent, and not those who sleep when the law requires them to act.

2. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; EXECUTION MAY BE ACHIEVED BY MOTION OR BY INDEPENDENT ACTION; DISTINGUISHED. —** Section 6, Rule 39 of the Rules of Court provides that a motion for the execution of a final judgment or order may be filed within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action: Section 6. *Execution by motion or by independent action.* — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. The statute of limitations referred to in the above section is found in Article 1144 of the Civil Code, which

provides: Art. 1144. The following actions must be brought within ten years from the time the right of action accrues: (1) Upon a written contract; (2) Upon an obligation created by law; (3) Upon a judgment.

APPEARANCES OF COUNSEL

Macam Raro Ulep & Partners for petitioners.

Marcos Ochoa Serapio & Tan Law Firm for New San Jose Builders, Inc.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* seeking the reversal of the Decision[1] of the Court of Appeals dated 31 January 2005 in CA-G.R. CV No. 62610 and the Resolution of the same Court dated 29 July 2006 denying the Motion for Reconsideration. Said Decision affirmed the Joint Decision dated 18 November 1997 of the Regional Trial Court (RTC) of Imus, Cavite dismissing the separate Complaints for Declaratory Relief filed by petitioners Alejandro B. Ty and International Realty Corporation (IRC).

The facts of the case are as follows:

Petitioner Ty is the registered owner of a parcel of land situated in Molino, Bacoor, Cavite covered by Transfer Certificate of Title (TCT) No. T-3967. Petitioner IRC, on the other hand, is the registered owner of three parcels of land situated in the same *barangay* covered by TCTs No. T-1510, No. T-3617 and No. T-3618. The four titles were issued to petitioners sometime in 1960 and 1961.

In 1970, respondent Queen's Row Subdivision, Inc. (QRSI) was issued TCTs No. T-54188, No. T-54185, No. T-54186 and No. T-54187, covering exactly the same areas and containing

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[1] Penned by Associate Justice Aurora Santiago-Lagman with Associate Justices Portia Aliño-Hormachuelos and Rebecca de Guia-Salvador, concurring. *Rollo,* pp. 13-23.

the same technical descriptions as those embraced in the titles of petitioners.

On 29 June 1971, mortgages entered into by QRSI in favor of respondent Government Service Insurance System (GSIS) were annotated at the back of the four titles of QRSI.

In October 1973, petitioners Ty and IRC instituted with the then Court of First Instance (CFI) of Bacoor, Cavite four Complaints for the cancellation of the four aforementioned certificates of title of QRSI, impleading only the latter and the Register of Deeds. GSIS was not impleaded, despite the fact that the mortgage in its favor had already been annotated in the subject titles. The Complaints were docketed as Civil Cases No. B-44, No. B-45, No. B-48 and No. B-49. Petitioners did not move to have a notice of *lis pendens* annotated in the subject titles.

On 8 December 1980, the CFI of Bacoor, Cavite, rendered a Decision declaring that Ty's certificate of title, TCT No. 3967, was validly issued, and ordering the Register of Deeds to cancel QRSI's TCT No. 54188 for being void. On 20 December 1985, the same CFI rendered a Joint Decision ordering the Register of Deeds to cancel QRSI's TCTs No. T-54185, No. T-54186 and No. T-54187. Both Decisions were rendered for failure of respondent QRSI to appear at pre-trial despite filing an Answer to the Complaints.

QRSI defaulted in the payment of its mortgage indebtedness to GSIS, leading to the foreclosure of the mortgages. The properties were sold at public auction, with GSIS emerging as the highest bidder. On 10 April 1986, Certificates of Sale were issued in favor of GSIS.

QRSI failed to redeem the foreclosed properties within the one-year redemption period, allowing GSIS to consolidate its ownership thereof. TCTs No. T-230070, No. T-230071, No. T-230072 and No. T-225212 were, thus, issued in the name of GSIS.

Thereupon, GSIS entered into a joint venture agreement with respondent New San Jose Builders, Inc. (NSJBI) for the development of the properties. NSJBI subsequently commenced construction and development works thereon.

On 8 November 1993, petitioners' counsel, through a letter, demanded that GSIS and NSJBI vacate the subject properties.

On 7 August 1994, Ty and IRC each filed a *Petition for Declaratory Relief to Quiet Title/Remove Cloud from Real Property* against respondents with the RTC of Imus, Cavite, this time impleading all respondents, QRSI, GSIS, NSJBI, and the Register of Deeds of Cavite. The cases were docketed as Civil Case No. BSC 94-2 and Civil Case No. 94-3. The cases were consolidated under Branch 20 of said court.

On 18 November 1997, the RTC of Imus, Cavite, rendered its Joint Decision dismissing the complaints.

Petitioners appealed to the Court of Appeals. The appeal was docketed as CA-G.R. CV No. 62610 and was raffled to the Seventh Division. On 31 January 2005, the Court of Appeals rendered its Decision affirming the Joint Decision of the RTC. On 29 June 2006, the Court of Appeals denied the Motion for Reconsideration filed by Petitioners.

Hence, this Petition, wherein petitioners present the following issues for our consideration:

I.

PRIVATE RESPONDENT GSIS, BEING A FINANCIAL INSTITUTION, IS CHARGED WITH THE DUTY TO EXERCISE MORE CARE AND PRUDENCE IN DEALING WITH REGISTERED LANDS FOR ITS BUSINESS IS ONE AFFECTED WITH PUBLIC INTEREST KEEPING IN TRUST MONEY BELONGING TO ITS MEMBERS AND SHOULD GUARD AGAINST LOSSES AND, THEREFORE, CANNOT INVOKE THE PROTECTED MANTLE OF LAND REGISTRATION STATUTE (ACT 496).

II.

THE TITLE OF PETITIONERS BEING SUPERIOR TO THAT OF PRIVATE RESPONDENT QUEEN'S ROW, THE PRINCIPLE OF INDEFEASIBILITY OF TITLE REMAINED UNAFFECTED AND PETITIONERS COULD NOT HAVE BEEN GUILTY OF LACHES, ESTOPPEL, MUCH LESS PRESCRIPTION.[2]

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[2] *Rollo*, pp. 526-527.

Innocent Purchaser for Value

In the first issue raised by petitioners, they assail the finding of the Court of Appeals that GSIS was an innocent purchaser for value. The appellate court held:

> The records clearly show that the mortgages entered into by Queen's Row and GSIS were already inscribed on the former's titles on June 29, 1971 as shown by the entries appearing at the back of TCT Nos. T-54188, T-54185, T-54186 and T-54187, even before Civil Cases Nos. B-44, 45, 48 and 49 were instituted. In spite of this, petitioners-appellants (plaintiffs then) did not implead the GSIS as a party to the complaints. Moreso, no adverse claim or notice of lis pendens was annotated by petitioners-appellants on the titles of Queen's Row during the pendency of these cases. To make matters worse, as earlier stated, petitioners-appellants, after securing favorable decisions against Queen's Row, did not enforce the same for more than ten (10) years. By their inaction, the efficacy of the decisions was rendered at naught.
>
> Verily, a buyer in good faith is one who buys the property of another without notice that some other person has a right to or interest in such property. He is a buyer for value if he pays a full and fair price at the time of the purchase or before he has notice of the claim or interest of some other person in the property. In the instant case, the GSIS clearly had no notice of any defect, irregularity or encumbrance in the title of Queen's Row when the latter mortgaged the subject property. Neither did GSIS have any knowledge of facts and circumstances which should have put it on inquiry, requiring it to go [beyond] the certificate of title. Obviously, GSIS was an innocent purchaser for value and in good faith at the time it acquired the subject property.[3]

Petitioners claim that since GSIS is a financial institution, it is charged with the duty to exercise more care and prudence in dealing with registered lands. On this basis, petitioners conclude that GSIS cannot invoke the protection of land registration statutes insofar as they protect innocent purchasers for value.

While we agree with petitioners that GSIS, as a financial institution, is bound to exercise more than just ordinary diligence

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

in the conduct of its financial dealings, we nevertheless find no law or jurisprudence supporting petitioners' claim that financial institutions are not protected when they are innocent purchasers for value. When financial institutions exercise extraordinary diligence in determining the validity of the certificates of title to properties being sold or mortgaged to them and still fail to find any defect or encumbrance upon the subject properties after said inquiry, such financial institutions should be protected like any other innocent purchaser for value if they paid a full and fair price at the time of the purchase or before having notice of some other person's claim on or interest in the property.

On this note, petitioners insist that "GSIS was guilty of gross negligence in its failure to inquire and investigate the status and condition of the property when it approved the loan of private respondent Queen's Row."[4] This allegation has no leg to stand on. Respondents allege that GSIS ascertained to its satisfaction the existence and authenticity of the titles of its predecessor-in-interest, QRSI; and was, in fact, able to procure true copies of the latter's titles from the Registry of Deeds.[5] GSIS furthermore conducted an ocular inspection and found that the property was not in the possession of any person claiming an interest that was adverse to that of its predecessor-in-interest.[6] Respondents' allegations are much more convincing in light of the fact that NSJBI was able to enter the subject property by virtue of its joint venture agreement with GSIS, and was able to commence construction and development works thereon.

Petitioners have presented absolutely no evidence to prove their allegation of fraud on the part of QRSI and bad faith on the part of GSIS. They want us to merely conclude the same on the ground that they were able to secure the favorable decisions they obtained in Civil Cases No. B-44, No. B-45, No. B-48 and No. B-49. However, as shall be discussed later, these are already stale judgments, which cannot be executed anymore.

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[4] Petitioners' Memorandum; *id.* at 531.

[5] *Id.* at 482-483.

[6] *Id.* at 483.

Furthermore, these judgments were obtained *ex parte*, for failure of respondent QRSI to appear at the pre-trial despite filing an Answer to the Complaints. GSIS, on the other hand, was never impleaded in these four Complaints for cancellation filed in October 1973, despite the fact that the mortgages in GSIS's favor had been annotated on the subject titles since 29 June 1971. GSIS, therefore, never had any notice of these proceedings.

Petitioners cannot expect GSIS to check the technical descriptions of each and every title in the Registry of Deeds of Cavite in order to determine whether there is another title to the same property. There is no one to blame for the failure of GSIS to have notice of such fact other than petitioners themselves. As stated above, they did not implead GSIS in their actions for cancellation of title despite the fact that, at the time of the filing of the cases, the mortgages in GSIS's favor had already been annotated on the subject titles. Petitioners likewise neglected to have a notice of *lis pendens* of the cancellation cases annotated on the subject titles, fueling respondents' suspicions that the former wanted their actions for cancellation to be uncontested by GSIS, the party really interested in challenging the same.

Laches

Petitioners challenge the ruling of the Court of Appeals finding them guilty of laches for their failure to execute the favorable decisions they obtained in Civil Cases No. B-44, No. B-45, No. B-48 and No. B-49, arguing that laches "cannot be raised even as a valid defense for claiming ownership of registered land, more so, if titles are tainted with fraud in their issuances."[7] Their basis for this claim is the 1950 Court of Appeals case *Dela Cruz v. Dela Cruz.*[8]

We are not persuaded.

Firstly, as discussed above, while petitioners persistently harp on their allegation of fraud in the issuance of the title of GSIS, nevertheless, they have not presented any evidence to

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[7] *Id*. at 63-66.

[8] CA-G.R. No. 18060-R, 30 August 1950.

prove the alleged fraud on the part of either GSIS or even QRSI.

Secondly, it must be stressed that the Decisions of this Court are the only judicial decisions that form part of our legal system. While rulings of the Court of Appeals may serve as precedents for lower courts, they only apply to points of law not covered by any Supreme Court decision.[9]

Thirdly, this Court has, on several occasions, already ruled that even a registered owner of a property may be barred from recovering possession of the same by virtue of laches. Thus, in *Heirs of Panganiban v. Dayrit*,[10] this Court discussed several cases wherein the principle of laches was applied against the registered owner:

> In our jurisdiction, it is an enshrined rule that **even a registered owner of property may be barred from recovering possession of property by virtue of laches.** Thus, in the case of *Lola v. Court of Appeals*, this Court held that petitioners acquired title to the land owned by respondent by virtue of the equitable principles of laches due to respondent's failure to assert her claims and ownership for thirty-two (32) years. In *Miguel v. Catalino*, this Court said that appellant's passivity and inaction for more than thirty-four (34) years (1928-1962) justifies the defendant-appellee in setting up the equitable defense of laches in his behalf. Likewise, in the case of *Mejia de Lucas v. Gamponia*, we stated that while the defendant may not be considered as having acquired title by virtue of his and his predecessor's long continued possession for thirty-seven (37) years, the original owner's right to recover possession of the property and the title thereto from the defendant has, by the latter's long period of possession and by patentee's inaction and neglect, been converted into a stale demand.

Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exerting due diligence could or should have been done earlier.[11] The law

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[9] *Government Service Insurance System v. Cadiz*, 453 Phil. 384, 391 (2003).

[10] G.R. No. 151235, 28 July 2005, 464 SCRA 370, 379-380.

[11] *La Campana Food Products v. Court of Appeals*, G.R. No. 88246, 4 June 1993, 223 SCRA 151, 157-158.

serves those who are vigilant and diligent, and not those who sleep when the law requires them to act.[12]

The Court of Appeals based its finding of laches on the fact that petitioners Ty and IRC failed to move for the execution of the favorable *ex parte* judgments, which they obtained on 8 December 1980 and 20 December 1985, respectively. If we read Section 6, Rule 39 of the Rules of Court together with Article 1144 of the Civil Code, we would see that the winning party in litigation has a period of five years from the date of entry of judgment to execute said judgment by motion, and another five years to execute it by action. Section 6, Rule 39 of the Rules of Court provides that a motion for the execution of a final judgment or order may be filed within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action:

> Section 6. *Execution by motion or by independent action.* — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

The statute of limitations referred to in the above section is found in Article 1144 of the Civil Code, which provides:

> Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:
>
> (1) Upon a written contract;
>
> (2) Upon an obligation created by law;
>
> (3) Upon a judgment.

While indeed, the above provisions on extinctive prescription cannot be the basis for depriving a registered owner of its title to

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[12] *Marcelino v. Court of Appeals*, G.R No. 94422, 26 June 1992, 210 SCRA 444, 447.

a property, they nevertheless prohibit petitioners from enforcing the *ex parte* judgment in their favor, which can likewise be the basis of a pronouncement of laches. In *Villegas v. Court of Appeals*,[13] we held that:

> But even if Fortune had validly acquired the subject property, it would still be barred from asserting title because of laches. The failure or neglect, for an unreasonable length of time to do that which by exercising due diligence could or should have been done earlier constitutes laches. It is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it has either abandoned it or declined to assert it. **While it is by express provision of law that no title to registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession, it is likewise an enshrined rule that even a registered owner may be barred from recovering possession of property by virtue of laches.** (Emphasis supplied.)

Petitioners' neglect in asserting their rights is likewise manifested in their failure to implead GSIS in the four Complaints for cancellation, which they filed in October 1973, despite the fact that the mortgages in the GSIS's favor had been annotated on the subject titles since 29 June 1971. It even became more evident from the fact that petitioners failed to have a notice of *lis pendens* annotated on the subject titles of the said cancellation of title cases, leading GSIS to believe that there were no other certificates of title to the same properties when it proceeded to foreclose the subject properties in 1986. We, therefore, find no reason to overrule the finding of the Court of Appeals that petitioners were guilty of laches.

WHEREFORE, the instant Petition is *DENIED*. The Decision of the Court of Appeals dated 31 January 2005 in CA-G.R. CV No. 62610 and the Resolution of the same Court dated 29 July 2006 are hereby *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[13] 403 Phil. 791, 800-801 (2001).

FIRST DIVISION

[G.R. No. 173319. December 4, 2009]

FEDERICO MIGUEL OLBES, *petitioner, vs.* **HON. DANILO A. BUEMIO, in his capacity as pairing presiding judge of Branch 22 of the Metropolitan Trial Court of Manila, PEOPLE OF THE PHILIPPINES, SAMIR MUHSEN and ROWENA MUHSEN,** *respondents.*

SYLLABUS

POLITICAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY TRIAL; THE TIME LIMIT SET BY THE SPEEDY TRIAL ACT OF 1998 DOES NOT PRECLUDE JUSTIFIABLE POSTPONEMENTS AND DELAYS WHEN SO WARRANTED BY THE SITUATION; SUSTAINED. — In *Solar Team Entertainment, Inc. v. Judge How,* the Court stressed that the exceptions consisting of the time exclusions provided in the *Speedy Trial Act of 1998* reflect the fundamentally recognized principle that "speedy trial" is a relative term and necessarily involves a degree of flexibility. This was reiterated in *People v. Hernandez, viz*: The right of the accused to a speedy trial is guaranteed under Sections 14(2) and 16, Article III of the 1987 Constitution. In 1998, Congress enacted R.A. No. 8493, otherwise known as the "Speedy Trial Act of 1998." The law provided for time limits in order "to ensure a speedy trial of all criminal cases before the Sandiganbayan, [RTC], Metropolitan Trial Court, Municipal Trial Court, and Municipal Circuit Trial Court." On August 11, 1998, the Supreme Court issued Circular No. 38-98, the Rules Implementing R.A. No. 8493. The provisions of said circular were adopted in the 2000 Revised Rules of Criminal Procedure. As to the time limit within which trial must commence after arraignment, the 2000 Revised Rules of Criminal Procedure states: Sec. 6, Rule 119. Extended time limit. — Notwithstanding the provisions of Section 1(g), Rule 116 and the preceding Section 1, for the first twelve-calendar-month period following its effectivity on September 15, 1998, **the time limit with respect to the period from arraignment to trial imposed by said provision shall be** one hundred eighty (180) days. For the second twelve-month period, the

time limit shall be one hundred twenty (120) days, and for the third twelve-month period, the time limit shall be eighty **(80) days**. R.A. No. 8493 and its implementing rules and the Revised Rules of Criminal Procedure enumerate certain reasonable delays as exclusions in the computation of the prescribed time limits. They also provide that "no provision of law on speedy trial and no rule implementing the same shall be interpreted as a bar to any charge of denial of speedy trial as provided by Article III, Section 14(2), of the 1987 Constitution." **Thus, in spite of the prescribed time limits, jurisprudence continues to adopt the view that the concept of "speedy trial" is a relative term and must necessarily be a flexible concept.** In *Corpuz v. Sandiganbayan*, we held: The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. *Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays.* x x x While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent. **A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis. In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant.** The time limits set by the *Speedy Trial Act of 1998* do not thus preclude justifiable postponements and delays when so warranted by the situation.

APPEARANCES OF COUNSEL

The Solicitor General for public respondent.
Jara and Eduardo for private respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

On complaint of Samir and Rowena Muhsen, Federico Miguel Olbes (petitioner) was indicted for Grave Coercion before the Metropolitan Trial Court (MeTC) of Manila by Information[1] dated June 28, 2002 which was raffled to Branch 22 thereof. On October 28, 2002, petitioner posted bail and was released.

Denying petitioner's motion to defer or suspend his arraignment in light of his pending petition for review before the Department of Justice from the City Fiscal's Resolution finding probable cause to hale him into court, Judge Hipolito dela Vega proceeded with petitioner's arraignment on <u>February 12, 2003</u> in which he pleaded not guilty to the charge.[2] Pre-trial was thereupon set to <u>May 28, 2003</u> which was, however, declared a non-working day due to the occurrence of typhoon "Chedeng." The pre-trial was thus reset to <u>October 23, 2003</u>.[3]

At the scheduled pre-trial on October 23, 2003, petitioner failed to appear, prompting the trial court to issue a warrant for his arrest, which warrant was, however, later recalled on discovery that neither petitioner nor his counsel was notified of said schedule. Pre-trial was again reset to <u>January 21, 2004</u>.[4]

Before the scheduled pre-trial on January 21, 2004 or on November 3, 2003, petitioner filed a Motion to Dismiss[5] the

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[1] *Rollo*, p. 42.

[2] Records, p. 217.

[3] *Rollo*, p. 43.

[4] *Id.* at 56.

[5] *Id.* at 44-46.

Information on the ground of violation of his right to a speedy trial under Republic Act No. 8493[6] or the *Speedy Trial Act of 1998* and Supreme Court Circular (SCC) No. 38-98.[7] He argued that "considering that [he] was not — without any fault on his part — brought to trial within 80 days from the date he was arraigned, this case should be dismissed pursuant to Rule 119, Section 9[8] in relation to Rule 119, Section 6 of the Rules."[9]

The trial court, through pairing Judge Danilo A. Buemio (respondent judge), denied petitioner's Motion to Dismiss by Order[10] of December 5, 2003, holding that petitioner played a big part in the delay of the case, and that technical rules of procedure were meant to secure, not override, substantial justice.

Petitioner's Motion for Reconsideration of the December 5, 2003 Order was denied by Order[11] of March 3, 2004 after respondent judge noted that during petitioner's arraignment on February 12, 2003, he interposed no objection to the setting of the pre-trial to May 28, 2003. Besides, respondent judge held,

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[6] AN ACT TO ENSURE A SPEEDY TRIAL OF ALL CRIMINAL CASES BEFORE THE SANDIGANBAYAN, REGIONAL TRIAL COURT, METROPOLITAN TRIAL COURT, MUNICIPAL TRIAL COURT, AND MUNICIPAL CIRCUIT TRIAL COURT, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[7] IMPLEMENTING THE PROVISIONS OF REPUBLIC ACT NO. 8493 (effective September 15, 1998).

[8] Sec. 9. *Remedy where accused is not brought to trial within the time limit*. — If the accused is not brought to trial within the time limit required by Section 1 (g), Rule 116 and Section 1, as extended by Section 6 of this Rule, the information may be dismissed on motion of the accused on the ground of denial of his right to speedy trial. The accused shall have the burden of proving the motion but the prosecution shall have the burden of going forward with the evidence to establish the exclusion of time under Section 3 of this Rule. The dismissal shall be subject to the rules on double jeopardy.

Failure of the accused to move for dismissal prior to trial shall constitute a waiver of the right to dismiss under this section. (Sec. 14, cir. 38-98).

[9] <u>Vide</u> Motion to Dismiss, *rollo*, pp. 44-46.

[10] *Id.* at 55-56.

[11] *Id.* at 71-73.

strict compliance with the *Speedy Trial Act* was improbable, given the volume of cases being filed with the MeTC. Additionally respondent judge held that the term "speedy trial" as applied in criminal cases is a relative term such that the trial and disposition of cases depended on several factors including the availability of counsel, witnesses and prosecutor, and weather conditions.

Petitioner challenged respondent judge's orders via *certiorari* and prohibition before the Regional Trial Court (RTC) of Manila, alleging that not only was he (petitioner) not brought to trial within 80 days from the date of his arraignment as required under Section 6, Rule 119, but the prosecution had failed to establish the existence of any of the "time exclusions" provided under Section 3[12] of the same Rule to excuse its failure to bring him to trial within the 80-day period.

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[12] SEC. 3. *Exclusions*. — The following periods of delay shall be excluded in computing the time within which trial must commence:

(a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:

(1) Delay resulting from an examination of the physical and mental condition of the accused;

(2) Delay resulting from proceedings with respect to other criminal charges against the accused;

(3) Delay resulting from extraordinary remedies against interlocutory orders;

(4) Delay resulting from pre-trial proceedings; provided, that the delay does not exceed thirty (30) days;

(5) Delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;

(6) Delay resulting from a finding of the existence of a prejudicial question; and

(7) Delay reasonably attributable to any period, not to exceed thirty (30) days, during which any proceeding concerning the accused is actually under advisement.

(b) Any period of delay resulting from the absence or unavailability of an essential witness.

For purposes of this subparagraph, an essential witness shall be considered absent when his whereabouts are unknown or his whereabouts cannot be determined by due diligence. He shall be considered unavailable whenever

By Decision[13] of January 31, 2006, the RTC denied the petition, holding that Section 9 of Rule 119 of the Rules of Court does not call for the automatic dismissal of a case just because trial has not commenced within 80 days from arraignment; that the proceedings before the MeTC were not attended by vexatious, capricious and oppressive delays; and that the concept of a speedy trial is not a mere question of numbers that could be computed in terms of years, months or days but is understood according to the peculiar circumstances of each case, citing *SPO1 Sumbang, Jr. v. Gen. Court Martial PRO-Region 6.*[14]

The RTC further held that in "determining whether petitioner's right to speedy trial was violated,"[15] the circumstances that respondent judge was the pairing judge of Br. 22 of the MeTC who "may be assumed also [to] preside over his own regular court and devotes limited time to his pairing court" and that first level courts in Manila have an excessive load of cases should also be taken into consideration.

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his whereabouts are known but his presence for trial cannot be obtained by due diligence.

(c) Any period of delay resulting from the mental incompetence or physical inability of the accused to stand trial.

(d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or, as to whom the time for trial has not run and no motion for separate trial has been granted.

(f) Any period of delay resulting from a continuance granted by any court *motu proprio*, or on motion of either the accused or his counsel, or the prosecution, if the court granted the continuance on the basis of its findings set forth in the order that the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial.

[13] Rendered by Assisting RTC Judge Manuel M. Barrios; *rollo*, pp. 34-39.

[14] 391 Phil. 929.

[15] *Vide* note 13 at 38.

His motion for reconsideration having been denied by the RTC,[16] petitioner lodged the present petition for review which, in the main, faults the RTC

I

. . . IN AFFIRMING THE MTC-MANILA JUDGE'S RULING THAT COMPLIANCE WITH RULE 119, SECTION 9 OF THE RULES IS NOT MANDATORY. THE RIGHT OF AN ACCUSED TO A SPEEDY TRIAL IS A SUBSTANTIVE RIGHT THAT CANNOT BE DISREGARDED.

II

. . . IN AFFIRMING THE MTC-MANILA JUDGE'S RULING THAT THE ENUMERATION OF ALLOWABLE TIME EXCLUSIONS UNDER RULE 119, SECTION 3 IS NOT EXCLUSIVE, AND THAT THE FAILURE TO BRING PETITIONER TO TRIAL WITHIN THE PERIOD PROVIDED UNDER RULE 119, SECTION 6 WAS JUSTIFIED.

x x x x x x x x x,[17]

errors which raise a question of law.

Petitioner argues that his right to speedy trial is a substantive right and that, contrary to the RTC ruling, Section 9 of Rule 119 is mandatory in character, having been taken from SCC No. 38-98, strict compliance with which is urged to remove any attempt on the part of judges to exercise discretion with respect to the time frame for conducting the trial of an accused; that the last paragraph of said Section 9 clearly indicates that it is the right of an accused to move for dismissal of the Information should the prosecution fail to prove the existence of the time exclusions under Section 3 of Rule 119; and that the enumeration of the allowable time exclusions under Section 3 is exclusive, hence, the RTC erred in considering the excessive caseload of respondent judge, as a mere pairing judge, to be an allowable time exclusion under the Rules.

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[16] *Rollo*, pp. 40-41.

[17] *Id.* at 13.

In its Comment,[18] the People, through the Office of the Solicitor General (OSG), counters that "speed alone is not the chief objective of a trial" such that mere assertion of a violation of the right to speedy trial does not necessarily result in the automatic dismissal of an Information; that the time exclusions referred to in paragraphs (a) to (f) of Section 3, Rule 119 are not exclusive and admit of other exceptions; that petitioner himself contributed to the delay in the proceedings when he filed a frivolous motion to suspend proceedings and failed to appear during the scheduled pre-trial; and that the RTC statement about respondent judge being a mere pairing judge was not an apology for the court's congested dockets but a mere statement of fact as to the impossibility of setting the case for pre-trial at an earlier date.

Furthermore, the OSG asserts that respondent judge's denial of petitioner's motion to dismiss was in order as he correctly applied the principles of relativity and flexibility in determining whether petitioner's right to speedy trial had been violated.[19]

Respondents-private complainants, on the other hand, maintain in their Comment[20] that several Supreme Court decisions[21] dealing with the issue of the constitutional guaranty of a speedy trial, the *Speedy Trial Act of 1998,* and SCC No. 38-98 have held that the right is deemed violated only when the proceedings are attended by vexatious, capricious and oppressive delays, which did not obtain in the present case, petitioner himself having been instrumental in the delay in the prosecution of the case.

The petition does not impress.

Petitioner draws attention to the time gap of 105 days from his arraignment on February 12, 2003 up to the first pre-trial setting on May 28, 2003, and another gap of 148 days from the

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[18] *Id.* at 229-241.

[19] *Id.* at 239-240.

[20] *Id.* at 205- 208.

[21] *People v. Tee*, 443 Phil. 521 (2003); *Gonzales v. Sandiganbayan*, G.R. No. 94750, July 16, 1991, 199 SCRA 298.

latter date up to the second pre-trial setting on October 23, 2003 or for a total of 253 days — a clear contravention, according to petitioner, of the 80-day time limit from arraignment to trial.

It bears noting, however, that on his arraignment on February 12, 2003, petitioner interposed no objection to the setting of the pre-trial to May 28, 2003 which was, as earlier stated, later declared a non-working day. Inarguably, the cancellation of the scheduled pre-trial on that date was beyond the control of the trial court.

Petitioner argues, however, that the lapse of 253 days (from arraignment to October 23, 2003) was not justified by any of the excusable delays as embodied in the time exclusions[22] specified under Section 3 of Rule 119. The argument is unavailing.

In *Solar Team Entertainment, Inc. v. Judge How,*[23] the Court stressed that the exceptions consisting of the time exclusions provided in the *Speedy Trial Act of 1998* reflect the fundamentally recognized principle that "speedy trial" is a relative term and necessarily involves a degree of flexibility. This was reiterated in *People v. Hernandez*,[24] *viz*:

> The right of the accused to a speedy trial is guaranteed under Sections 14(2) and 16, Article III of the 1987 Constitution. In 1998, Congress enacted R.A. No. 8493, otherwise known as the "Speedy Trial Act of 1998." The law provided for time limits in order "to ensure a speedy trial of all criminal cases before the Sandiganbayan, [RTC], Metropolitan Trial Court, Municipal Trial Court, and Municipal Circuit Trial Court." On August 11, 1998, the Supreme Court issued Circular No. 38-98, the Rules Implementing R.A. No. 8493. <u>The provisions of said circular were adopted in the 2000 Revised Rules of Criminal Procedure</u>. As to the time limit within which trial must commence after arraignment, the 2000 Revised Rules of Criminal Procedure states:

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[22] <u>*Vide*</u> at note 12.

[23] 393 Phil. 172, 182 (2000).

[24] G.R. Nos. 154218 & 154372, August 28, 2006, 499 SCRA 688, 708-710; *Caballes v. Court of Appeals*, 492 Phil. 410, 429 (2005).

Sec. 6, Rule 119. Extended time limit. — Notwithstanding the provisions of Section 1(g), Rule 116 and the preceding Section 1, for the first twelve-calendar-month period following its effectivity on September 15, 1998, **the time limit with respect to the period from arraignment to trial imposed by said provision shall be** one hundred eighty (180) days. For the second twelve-month period, the time limit shall be one hundred twenty (120) days, and for the third twelve-month period, the time limit shall be **eighty (80) days**.

R.A. No. 8493 and its implementing rules and the Revised Rules of Criminal Procedure enumerate certain reasonable delays as exclusions in the computation of the prescribed time limits. They also provide that "no provision of law on speedy trial and no rule implementing the same shall be interpreted as a bar to any charge of denial of speedy trial as provided by Article III, Section 14(2), of the 1987 Constitution." **Thus, in spite of the prescribed time limits, jurisprudence continues to adopt the view that the concept of "speedy trial" is a relative term and must necessarily be a flexible concept.** In *Corpuz v. Sandiganbayan*, we held:

The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. *Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays.* x x x

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the

reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. (*citations omitted*) (underscoring supplied)

The time limits set by the *Speedy Trial Act of 1998* do not thus preclude justifiable postponements and delays when so warranted by the situation.[25] To the Court, the reasons for the postponements and delays attendant to the present case reflected above are not unreasonable. While the records indicate that neither petitioner nor his counsel was notified of the resetting of the pre-trial to October 23, 2003, the same appears to have been occasioned by oversight or simple negligence which, standing alone, does not prove fatal to the prosecution's case. The *faux pas* was acknowledged and corrected when the MeTC recalled the arrest warrant it had issued against petitioner under the mistaken belief that petitioner had been duly notified of the October 23, 2003 pre-trial setting.[26]

Reiterating the Court's pronouncement in *Solar Team Entertainment, Inc.*[27] that "speedy trial" is a relative and flexible term, *Lumanlaw v. Peralta, Jr.*[28] summons the courts to maintain a delicate balance between the demands of due process and the strictures of speedy trial on the one hand, and the right of the State to prosecute crimes and rid society of criminals on the other.

Applying the balancing test for determining whether an accused has been denied his constitutional right to a speedy trial, or a speedy disposition of his case, taking into account several factors such as the length and reason of the delay, the accused's assertion or non-assertion of his right, and the prejudice to the accused resulting from the delay,[29] the Court does not find petitioner to

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[25] *Domondon v. Sandiganbayan*, G.R. No. 166606, November 29, 2005, 476 SCRA 496, 504.

[26] Vide Petition for *Certiorari* and Prohibition before the RTC Manila; *rollo*, p. 79.

[27] *Supra* at note 23.

[28] G.R. No. 164953, February 13, 2006, 482 SCRA 396, 409.

[29] *Domondon v. Sandiganbayan*, *supra* at note 25 citing *Gonzales v. Sandiganbayan*, *supra* note 21 at 307.

have been unduly and excessively prejudiced by the "delay" in the proceedings, especially given that he had posted bail.

WHEREFORE, the petition is *DENIED*.

Costs against Petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

EN BANC

[G.R. No. 175803. December 4, 2009]

GOVERNOR ORLANDO A. FUA, JR.,[*] IN REPRESENTATION OF THE PROVINCIAL GOVERNMENT OF SIQUIJOR and ALL ITS OFFICIALS AND EMPLOYEES, *petitioners, vs.* **THE COMMISSION ON AUDIT and ELIZABETH S. ZOSA, DIRECTOR IV, LEGAL AND ADJUDICATION OFFICE-LOCAL COMMISSION ON AUDIT, QUEZON CITY, PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES, CONSTRUED; APPLICATION IN CASE AT BAR. — The 1997 Revised Rules of Procedure of the COA states, thus: RULE VI APPEAL FROM DIRECTOR TO COMMISSION

[*] By virtue of the Court's Resolution dated December 11, 2007, the original petitioner, Orlando B. Fua, was substituted by Orlando A. Fua, Jr., the incumbent Governor of the Province of Siquijor.

PROPER Section 1. ***Who May Appeal and Where to Appeal.*** — The party aggrieved by a final order or decision of the Director may appeal to the Commission Proper. RULE XI JUDICIAL REVIEW Section 1. ***Petition for Certiorari***. — Any decision, order or resolution of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law, the Rules of Court and these Rules. Clearly, by immediately filing the present petition for *certiorari*, petitioner failed to exhaust the administrative remedies available to him. The hornbook doctrine, reiterated in *Joseph Peter Sison, et al. v. Rogelio Tablang*, *etc.,* is as follows: The general rule is that before a party may seek the intervention of the court, he should first avail himself of all the means afforded him by administrative processes. **The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to the court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.** x x x The non-observance of the doctrine results in the petition having no cause of action, thus, justifying its dismissal. **In this case, the necessary consequence of the failure to exhaust administrative remedies is obvious: the disallowance as ruled by the LAO-C has now become final and executory.** There is nothing in this case to convince us that it should be considered as an exception to the aforementioned general rule. The issue presented is not a purely legal one. The Commission Proper, which is the tribunal possessing special knowledge, experience and tools to determine technical and intricate matters of fact involved in the conduct of the audit, would still be the best body to determine whether the marginal note of *No Objection* on petitioner's letter-request to the President is indeed authentic and tantamount to the required approval.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN AVAILABLE; NOT PRESENT IN CASE AT BAR.** — Section 1, Rule 65 of the Rules of Court, provides that the remedy of *certiorari* may only be availed of if "there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." In *Badillo v. Court of Appeals*, it was held that: x x x "the special civil action for *certiorari* is a limited form of review and is a remedy of last recourse." It lies only where there is no appeal or plain, speedy, and adequate remedy

in the ordinary course of law. It was absolutely necessary for petitioner to allege in the petition, and adduce evidence to prove, that any other existing remedy is not speedy or adequate. Thus, since petitioner could have appealed the Decision of the Director to the Commission Proper under the 1997 Revised Rules of Procedure of the COA, he is definitely not entitled to a writ of *certiorari*, because there was some other speedy and adequate remedy available to him.

3. **ID.; CIVIL PROCEDURE; JUDGMENTS; RULE ON FINALITY OF DECISIONS, ORDERS AND RESOLUTIONS OF A JUDICIAL, QUASI-JUDICIAL OR ADMINISTRATIVE BODY; CONSTRUED. —** Petitioner having failed to pursue an appeal with the Commission Proper, the Decision issued by the COA-LAO-Local has become final and executory. In *Peña v. Government Service Insurance System*, the Court held that: x x x it is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, so also the winning party has the correlative right to enjoy the finality of the resolution of the case. x x x **The rule on finality of decisions, orders or resolutions of a judicial, quasi-judicial or administrative body is "*not a question of technicality but of substance and merit,*"** the underlying consideration therefore, being the protection of the substantive rights of the winning party. **Nothing is more settled in law than that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.**

APPEARANCES OF COUNSEL

The Solicitor General and *Elizabeth S. Zosa* for public respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for *Certiorari,* under Rule 64 in relation to Rule 65 of the Rules of Court, praying that the Decision[1] of the Commission on Audit (COA) dated October 19, 2006, denying petitioner's appeal, be declared null and void.

The undisputed facts, as gathered from the records, are as follows.

On November 14, 2003, the *Sangguniang Panlalawigan* of the Province of Siquijor adopted Resolution No. 2003-247 segregating the sum of ₱8,600,000.00 as payment for the grant of extra Christmas bonus at ₱20,000.00 each to all its officials and employees. On the same date, corresponding Appropriation Ordinance No. 029 was passed.

Thereafter, Resolution No. 2003-239 was adopted requesting President Gloria Macapagal Arroyo for an authority to the Provincial Government of Siquijor to grant such bonus. On even date, petitioner wrote a letter to the President reiterating said request. On said letter, the President then wrote a marginal note reading, *NO OBJECTION.*

The provincial government, relying on the aforementioned resolutions and the President's marginal note, then proceeded to release the extra Christmas bonus to its officials and employees. However, a post-audit was conducted by Ms. Eufemia C. Jaugan, Audit Team Leader (ATL), Province of Siquijor, and thereafter, she issued Audit Observation Memorandum (AOM) Nos. 2004-011 and 2004-022, dated June 28, 2004 and October 27, 2004, respectively. In AOM Nos. 2004-011 and 2004-022, Ms. Jaugan questioned the legality of the payment of said bonuses, citing Section 4.1 of Budget Circular No. 2003-7 dated December 5, 2003, limiting the grant of Extra Christmas Bonus to ₱5,000.00,

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[1] Penned by Elizabeth S. Zosa, Director IV, Legal and Adjudication Office-Local, Commission on Audit, *rollo*, pp. 23-25.

and Section 325 (a) of the Local Government Code imposing a 55% limitation on Personal Services expenditures.

AOM Nos. 2004-011 and 2004-022 were then reviewed by Atty. Roy L. Ursal, Regional Cluster Director, Legal and Adjudication Sector, Commission on Audit Region VII. Atty. Ursal disallowed the payments and issued Notices of Disallowance Nos. 2004-001-100 (2003) L3-05-164-00-018-A and 2004-002-100 (2003) L3-05-164-00-019-A, both dated October 28, 2005 in the total amount of ₱6,345,000.00 on the following grounds:

1. Violation of item 8.0 of Budget Circular No. 2002-A dated November 28, 2002 on the prohibition of any increase in compensation not in accordance with the Salary Standardization Law (SSL) and the grant of other additional incentives, bonuses, cash gifts and similar benefits outside of those authorized in said Circular and Republic Act (R.A.) No. 6686, without the prior approval of the President. The President's marginal note of "*No Objection*" cannot be considered an approval.

2. Based on the computation submitted by the Provincial Budget Officer for the Province of Siquijor, Personal Services of the local government unit has exceeded the limitation for Budget Year 2003.

Petitioner filed a motion for reconsideration dated October 28, 2005, but in the 1st Indorsement dated February 1, 2006, the same was denied by the Regional Cluster Director.

From said denial, petitioner appealed to the Commission on Audit-Legal and Adjudication Office (COA-LAO-Local), headed by respondent Director IV, Elizabeth S. Zosa. Petitioner raised the issues of (1) whether the President's marginal note of *No Objection* on the letter-request of Gov. Orlando B. Fua to grant extra Christmas bonus to the provincial government's employees should be a ground to lift the disallowance, and (2) whether the Province, in granting the extra Christmas bonus, has complied with the 55% Personal Service limitation under Section 325 of the Local Government Code.

On October 19, 2006, the COA-LAO-Local issued a Decision affirming the Regional Cluster Director's Notice of Disallowance, the dispositive portion of which reads thus:

WHEREFORE, premises considered, the herein appeal is hereby denied for lack of merit and the disallowance is affirmed in the total amount of ₱6,345,000.00.[2]

Aggrieved by the foregoing Decision of the COA-LAO-Local, petitioner filed the present petition alleging that:

THE COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RULING FOR THE DISALLOWANCE OF ₱6,345,000.00 PURSUANT TO ADMINISTRATIVE ORDER NO. 88 AND DISREGARDING THE CONSENT OF THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES TO THE GIVING OF EXTRA BONUS.[3]

Respondents, on the other hand, argued that the petition should not be given due course because of petitioner's failure to observe the doctrine of exhaustion of administrative remedies.[4] Moreover, respondents emphasized that the marginal note allegedly written by the President stating *No Objection* had never been authenticated and was effectively revoked by Budget Circular No. 2003-7 and Administrative Circular No. 88, limiting extra cash-gift to all government and local government personnel to ₱5,000.00 only.[5]

Petitioner counters that the present case should be deemed an exception to the above-mentioned general rule, because the issue raised here is a purely legal one.[6]

The petition is doomed to fail.

The 1997 Revised Rules of Procedure of the COA states, thus:

RULE VI
APPEAL FROM DIRECTOR TO COMMISSION PROPER

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[2] *Rollo*, p. 25.

[3] *Id.* at 10.

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

[5] *Id.* at 44-46.

[6] *Id.* at 58.

Section 1. ***Who May Appeal and Where to Appeal. —*** The party aggrieved by a final order or decision of the Director may appeal to the Commission Proper.

RULE XI
JUDICIAL REVIEW

Section 1. ***Petition for Certiorari. —*** Any decision, order or resolution of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law, the Rules of Court and these Rules.

Clearly, by immediately filing the present petition for *certiorari*, petitioner failed to exhaust the administrative remedies available to him. The hornbook doctrine, reiterated in *Joseph Peter Sison, et al. v. Rogelio Tablang*, *etc.*,[7] is as follows:

The general rule is that before a party may seek the intervention of the court, he should first avail himself of all the means afforded him by administrative processes. **The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to the court without first giving such administrative agency the opportunity to dispose of the same after due deliberation**.

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x x x The non-observance of the doctrine results in the petition having no cause of action, thus, justifying its dismissal. **In this case, the necessary consequence of the failure to exhaust administrative remedies is obvious: the disallowance as ruled by the LAO-C has now become final and executory**.[8]

There is nothing in this case to convince us that it should be considered as an exception to the aforementioned general rule. The issue presented is not a purely legal one. The Commission Proper, which is the tribunal possessing special knowledge, experience and tools to determine technical and intricate matters of fact involved in the conduct of the audit, would still be the

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[7] G.R. No. 177011, June 5, 2009.

[8] Emphasis ours.

best body to determine whether the marginal note of *No Objection* on petitioner's letter-request to the President is indeed authentic and tantamount to the required approval.

In addition, Section 1, Rule 65 of the Rules of Court, provides that the remedy of *certiorari* may only be availed of if "there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." In *Badillo v. Court of Appeals*,[9] it was held that:

> x x x "the special civil action for *certiorari* is a limited form of review and is a remedy of last recourse." It lies only where there is no appeal or plain, speedy, and adequate remedy in the ordinary course of law.[10]

It was absolutely necessary for petitioner to allege in the petition, and adduce evidence to prove, that any other existing remedy is not speedy or adequate.[11] Thus, since petitioner could have appealed the Decision of the Director to the Commission Proper under the 1997 Revised Rules of Procedure of the COA, he is definitely not entitled to a writ of *certiorari*, because there was some other speedy and adequate remedy available to him.

Petitioner having failed to pursue an appeal with the Commission Proper, the Decision issued by the COA-LAO-Local has become final and executory. In *Peña v. Government Service Insurance System*,[12] the Court held that:

> x x x it is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, so also the winning party has the correlative right to enjoy the finality of the resolution of the case.[13]

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[9] G.R. No. 131903, June 26, 2008, 555 SCRA 435.

[10] *Id.* at 451.

[11] *Abides v. Court of Appeals*, G.R. No. 174373, October 15, 2007, 536 SCRA 268, 284.

[12] G.R. No. 159520, September 19, 2006, 502 SCRA 383.

[13] *Id.* at 396-397.

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The rule on finality of decisions, orders or resolutions of a judicial, quasi-judicial or administrative body is "*not a question of technicality but of substance and merit,*" the underlying consideration therefore, being the protection of the substantive rights of the winning party. **Nothing is more settled in law than that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.**[14]

Consequently, the Decision of the COA-LAO-Local can no longer be altered or modified.

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

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 176291. December 4, 2009]

JORGE B. NAVARRA, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, SAMUEL NAMANAMA, FELIXBERTO LAZARO and DANILO MEDINA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; DEFINED. — "Probable cause" is defined as "such

[14] *Id.* at 403-404. (Emphasis ours).

facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."

2. **CRIMINAL LAW; GRAVE COERCION; ELEMENTS. —** For grave coercion to lie, the following elements must be established: 1) that a person is prevented by another from doing something not prohibited by law, or compelled to do something against his will, be it right or wrong; 2) that the prevention or compulsion is effected by violence, threats, or intimidation; and 3) that the person who restrains the will and liberty of another has no right to do so, or in other words, that the restraint is not made under authority of law or in the exercise of any lawful right.

3. **CIVIL LAW; PROPERTY; POSSESSION; POSSESSION CANNOT BE ACQUIRED THROUGH FORCE AND INTIMIDATION. —** It is elementary that in no case may possession be acquired through force or intimidation as long as there is a possessor who objects thereto, and that he who believes that he has an action or a right to deprive another of the holding of a thing must invoke the aid of the competent court if the holder should refuse to deliver the thing.

APPEARANCES OF COUNSEL

Jephte S. Daliva for petitioner.
The Solicitor General for public respondent.
Fondevilla Jasarino Young Rondario & Librojo Law Offices for private respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

The petition is one for *certiorari*.

Far East Network of Integrated Circuit Subcontractors Corporation (FENICS) leased the premises of Food Terminal, Inc. (FTI) in Taguig, Metro Manila from 1995 up to 2002.

It appears that before the expiration of the lease contract or on the night of September 16, 2002, armed elements of the

FTI took over the FTI premises in Taguig, Metro Manila and forced two building custodians to leave following which the gates were welded, drawing FENICS' president- herein petitioner Jorge B. Navarra to file before public respondent, Office of the Ombudsman, a complaint for grave coercion, malicious mischief, and/or grave threats against herein private respondents Samuel Namanama (Namanama, head of FTI's legal department) and Danilo Medina (Medina, FTI's Senior Manager) along with Felixberto Lazaro (FTI's Legal Assistant).

The pertinent portions of petitioner's affidavit read:

> x x x [On September 16, 2002] Gerry informed me that our people had already been ejected from our premises and that they could not re-enter through the welded gates. Armed FTI policemen were guarding the perimeters and FTI employees had forcibly opened the doors to our building and had gone inside. x x x
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> In the morning of September 17, the employees working in our compound were not allowed to enter the FENICS compound and were forced to stay outside the gates. x x x I went to the group of FTI policemen who were positioned near Gate 1 and inquired from them why they welded our gates and prevented our people from entering our place of work. They replied that they were acting on orders from FTI higher-ups. I inquired on what grounds the FTI management had ordered the take-over of our compound without a court order. They replied that FENICS owed unpaid rentals to FTI and that "*matagal nang plano ng aming management na gawin ito*." x x x
>
> Then, I walked to Gate 2 which was not welded but which was guarded from both the outside and the inside by FTI policemen without nameplates and FTI employees in civilian clothes. x x x I talked to the security guards occupying the FENICS guard house inside Gate 2. I asked him if he could allow me to enter thru Gate 2. He replied that his orders were not to allow anyone to go in, except FTI personnel. I asked what the FTI personnel were doing inside. He said he did not know. I asked him who went inside. He mentioned the name of Mr. [Felixberto] Lazaro as the only person he knew because he was the leader of the group. x x x
>
> x x x x x x x x x

[At about 2:00 PM, a van] arrived and was heading towards Gate 2. [The driver was signaled] to stop and identify himself. x x x A man got out and he was asked his named. He identified himself as Danny Medin[a] of FTI Legal Department. [He was asked] why the FENICS premises were padlocked and repossessed by FTI. Danny Medin[a] replied that "FENICS owed rentals to FTI." He was asked what he and the people [with] him would be doing inside FENICS. Danny Medin[a] answered that they were taking inventories. I told him that FENICS personnel should be present to ensure that things would be done correctly. Danny answered that the *barangay* was with them.[1]

The pertinent portions of the affidavit of petitioner's witness Freddie San Juan, a FENICS employee, read:

x x x *Nang bandang mga alas 8:30 ng gabi ng [ika-16 ng Septiyebre* (sic) *2002], x x x may isang sasakyan ang Fuji Reynolds na lumalabas sa aming Gate 1 kaya binuksan ng kasama kong si Jun Abalajen ang gate nang biglang dumating at pumasok sa nakabukas na gate ang maraming taong naka-uniporme ng FTI police na may dalang mga baril at shotgun at hinarangan ang L-300 na kasalukuyang minamaneho palabas na sana ng gate.*

x x x Pinatigil ang sasakyan at pinalabas ang driver. Kinuha ang papel ng registration na pinakita ng driver at hindi na binalik pagkatapos sigawan ang driver na lisanin na ang lugar. Sinabi ng driver na may mga kargamento siyang kailangan ihatid sa mga proyekto ng Fuji Reynolds ngunit siya ay pinilit na pinalabas ng mga armadong FTI police. Mahigit kumulang sa tatlumpo (30) katao silang lahat.

Nagtanong kami kung bakit nila ginagawa iyon. Sinagot lang kami na utos ng mga Boss nila (at kasama na doon ang isang Attorney Samuel Namanama). Natakot na rin ako dahil sa dami nilang mga armado, may dalang mga shotgun, at sabay-sabay na nagsisigawan. Pinilit nila kaming pina-alis sabay ang panakot na may masamang mangyayari sa amin dahil bubuksan at papasukin na nila ang loob ng aming opisina. x x x Nakita ko rin na ang kasama kong si Jun Abalajen ay *pilit ding pinalabas at pilit pang kinukuha ang kanyang bisikleta.*

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[1] Ombudsman records, pp. 3-4.

Pagkalabas namin, agad ni-welding nila ang paikot na steel bar sa poste ng aming Gate 1. x x x

Noong nasa labas kami ng gate dahil napilitang lumabas at natakot na baka kami ay saktan o barilin, sinabi ko sa mga FTI police na huwag sanang magkasakitan dahil pareho lang kaming lahat na ginagampanan ang aming katungkulan. Nilista ko sa isang papel ang mga pangalan ng ilan sa kanila na may mga pangalan sa kanilang uniporme. x x x Habang sinusulat ko ang mga pangalan ng ilan sa kanila, biglang inagaw sa aking kamay ang aking papel ng isang FTI policeman na walang nameplate o namepatch sa dibdib. Wala akong magawa dahil bigla niyang ginawa iyon AT NARINIG KO NA MAY NAGPAPUTOK NG BARIL SA LOOB NG FENICS COMPOUND. x x x

x x x x x x x x x

Magdamag kaming nagbantay sa labas. Kinabukasan sa umaga ng ika-17 ng Septiyembre, dumating ang mga empleyadong pumapasok sa FENICS compound ngunit sinalubong sila ng mga FTI police x x x.[2] (Capitalization in the original)

Donato Abalajen, another witness of petitioner, executed another affidavit substantially corroborating that of Freddie de Juan.[3]

Neither petitioner nor FENICS employees had thereafter been allowed to enter the FTI premises.

Upon the other hand, private respondents claimed that, among other things, they acted under the orders of their superiors, and that FTI was merely exercising its right under a Compromise Agreement forged <u>between FTI and FENICS</u> wherein FENICS undertook to pay the outstanding obligation of a previous lessee of FTI, the pertinent portion of which Compromise Agreement reads:

x x x x x x x x x

In the event that FENICS shall default in at least three (3) consecutive monthly amortization payments on its rental arrearages or one (1) semestral or annual payment of its current rentals, FTI

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[2] *Id.* at 6-7.

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

shall be entitled to rescind the lease contract without need of judicial action or intervention and all unpaid rentals, including unpaid arrearages shall automatically be considered due and demandable plus interest of one (1%) percent per month commencing from due date.[4]

x x x (Underscoring supplied)

Private respondents also cited Article 21 of the lease contract between FTI and FENICS which provides:

It is expressly agreed that if the rent hereby stipulated shall be unpaid after becoming payable, whether formally demanded or not, or if any covenant herein contravened shall not be performed or observed, then in any of said cases, it shall be lawful for the LESSOR to re-enter the leased premises and the lease shall automatically terminated, without prejudice, however, to the right of action of the LESSOR with respect to any covenant herein contained. The LESSOR shall in such case, be entitled likewise to forfeit improvements on the leased premises without any obligation to pay the value thereof.[5] (Underscoring supplied)

By Resolution of February 22, 2005, Graft Investigation and Prosecution Officer Janet Cabigas-Vejerano found probable cause to hale private respondents into court for grave coercion under Article 286 of the Revised Penal Code[6] under the following disquisition:

The strong assertion by the respondents that FENICS property was voluntarily opened to them cannot stand in the light of the surrounding circumstances that precipitated the take-over of FENICS premises. The undeniable facts, to wit: the circumstance of nighttime, the overwhelming number of armed respondents as against two (2) caretakers of FENICS marching at the compound, their failure to notify complainant of the date of actual repossession, and their lack of any court order authorizing their action, convince this Office that respondents truly abused their authority. This notwithstanding any rightful claim that FTI may have over the subject property. No

[4] *Id.* at 234.

[5] *Id.* at 228.

[6] *Id.* at 360-385.

man is above the law. It is elementary even to some respondents from the FTI legal department that any such kind of repossession requires a court order to be implemented by the proper officer of the court, or at the very least a notice to the party concerned, provisions in their contract notwithstanding, The purported witness, a Barangay Tanod, did not even submit his account of what actually transpired. He would have then attested to whether FENICS was indeed invited to observe the inventory undertaken. It is unfortunate that respondents, who are government employees at that, took the matter into their own hands.

Under Article 286 of the Revised Penal Code (RPC) the crime of Grave Coercion in "imposed upon any person who, without any authority of law, shall, by means of violence, threats, or intimidation, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong."

On the other hand, Grave Threats under Article 282, RPC, is imposed upon "any person who shall threaten another with the infliction upon the person, honor or property of the latter or of his family of any wrong amounting to a crime."

x x x x x x x x x

While it may be true that FTI had the right to collect payment for the outstanding obligation of the company complainant represents, the immediate actual and imminent force employed by the respondents to compel complainants caretakers to leave their posts at FENICS, and to prevent complainant as President of FENICS as well as all other officers and employees of FENICS from entering the compound, truly amount to coercion.

Notably, the presence of conspiracy in the present case is clear as it is founded on a firm basis by sizing up the concerted action of all the respondents who have common criminal design and purpose, which is to repossess the FENICS compound, and they in fact succeeded.[7] (Citation omitted)

The Ombudsman, on recommendation of Over-all Deputy Ombudsman Margarito P. Gervacio, Jr., dismissed petitioner's complaint, however, by Order of September 1, 2005.[8]

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[7] *Id.* at 380-382.

[8] *Id.* at 438-448.

In dismissing the complaint, public respondent held:

Records show that respondent Namanama sent several demand letters to Mr. Jorge Navarra, the herein complainant, reminding the latter of their indebtedness to FTI and at the same time warning him that in case of non-payment, FTI would resort to a more drastic action.

In the same token, [in] the Compromise Agreement entered into between the FTI and FENICS there is a proviso which states:

8. *In the event that FENICS shall default in at least three (3) consecutive monthly amortization payments on its rental arrearages or one (1) semestral or annual payment of its current rentals, FTI shall be entitled to rescind the lease contracts without need of judicial action or intervention and all unpaid rentals…"*

In like manner, respondent Lazaro made mention that not only FENICS refused to comply with the terms agreed upon in its Compromise Agreement with FTI but also subleased a portion of the leased premises without approval of FTI.

On their entering FENICS premises, respondent Lorenzo [*sic*] argued that they only exercised their authority to re-enter the premises because FENICS refused to pay its rentals and due to its blatant violations of the terms and conditions of their Contract of Lease.

Indeed, while respondent may have acted in such a way, the same could be said to have been <u>done in good faith and without any intention of doing harm against their adversaries</u>.

From the narrations given by the parties to this case, it has been established that FENICS had been indebted to FTI in an aggregate sum of more than ₱35M and the check it paid the latter even bounced; [a]lso FENICS even subleased its leased premises in violation of its contract of lease. Thus, the long delay in its payment of its obligation to FTI could also be said to have caused the latter undue injury. <u>To resort to court at that time could even prolong the situation inasmuch as court processes nowadays are also delayed. Hence, in order to protect FTI's interest, respondents herein have to resort to some extraordinary measures as what was done under the circumstances</u>.[9]

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[9] *Id.* at 407-409.

In like manner, and except for his bare allegations/arguments, complainant-movant failed to substantiate his claims. For one, why did he sign the Compromise Agreement if the same is a mere draft considering that in the agreement, it has been specifically mentioned that FENICS had agreed to pay ₱12,551,841.82 to FTI? Logic would dictate that no one could ever affix his signature on a document, more particularly that which would create an obligation on his part, if FENICS has not been indebted to FTI. (Italics in the original, underscoring supplied.)

Hence, the present petition for review, petitioner arguing as follows:

All the elements of Grave Coercion were extant.

That a person prevented another from doing something not prohibited by law, or that he compelled him to do something against his will, be it right or wrong. — In this case, Private Respondents prevented Petitioner and his employees from entering their own premises. They had also compelled Petitioner's caretakers to leave the premises against their will.

That the prevention or compulsion be effected by violence, either by material force or such display of force as would produce intimidation and control of the will of the offended party. — In this case, when Private Respondents entered the FENICS compound in the evening, they had a contingent of about 20-30 armed personnel as against Petitioner's two (2) caretakers. They forced their way into the gates, threatened the caretakers and a driver, admittedly destroyed one padlock and welded the gates to prevent entry.

That the person that restrained the will and liberty of another had not the authority of law or the right to do so (that the restraint shall not be made under authority of law or in the exercise of a lawful right.) – In this case, the possessor of the FENICS compound exhibited its opposition to any takeover. Certainly, Private Respondents had no right to enter the compound and evict the occupants against their will. They had no court order to evict the existing occupants.[10] (Italics in the original)

The Court finds for petitioner.

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[10] *Rollo*, pp. 27-28.

Ordinarily, the Court does not interfere with the Ombudsman's determination of whether probable cause exists, except when the Ombudsman commits grave abuse of discretion.[11]

"Probable cause" is defined as "such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."[12]

For grave coercion to lie, the following elements must be established:

> 1) that a person is prevented by another from doing something not prohibited by law, or compelled to do something against his will, be it right or wrong; 2) that the prevention or compulsion is effected by violence, threats, or intimidation; and 3) that the person who restrains the will and liberty of another has no right to do so, or in other words, that the restraint is not made under authority of law or in the exercise of any lawful right.[13]

In the case at bar, the affidavits of petitioner and his witnesses *prima facie* show that the elements of grave coercion are present.

Whether FENICS is indebted to FTI is immaterial. It is elementary that in no case may possession be acquired <u>through force or intimidation</u> as long as there is a possessor who objects thereto, and that he who believes that he has an action or a right to deprive another of the holding of a thing must invoke the aid of the competent court if the holder should refuse to deliver the thing.[14]

In *United States v. Mena*,[15] the Court, affirming the conviction of therein respondent for *coaccion* under Article 497 of the old

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[11] *Tentangco v. Ombudsman,* G.R. No. 156427, January 20, 2006, 479 SCRA 249, 253.

[12] <u>*Vide*</u> RULES OF COURT, Rule 112, Section 1; *Sy v. Secretary of Justice*, G.R. No. 166315, December 14, 2006, 511 SCRA 92, 96.

[13] REVISED PENAL CODE, Article 286; *Sy v. Secretary of Justice*, G.R. No. 166315, December 14, 2006, 511 SCRA 92, 97.

[14] <u>*Vide*</u> CIVIL CODE, Article 536.

[15] 11 Phil. 543 (1908).

Penal Code, rejected the defense that he owned the carabaos which he forced therein complaining witness to release. It held:

> The defendant was not clothed with any judicial or administrative authority, and it is a maxim of the law that no man is authorized to take the law into his own hands and enforce his rights with threats of violence, except in certain well-defined cases, where one acts in the necessary *defense* of one's life, liberty, or property, against unlawful aggression, and manifestly the defendant can not successfully maintain that his action was taken in *defense* of life, liberty or property. The carabaos were in the possession of the complaining witness for the purpose of turning them over to the justice of the peace; the defendant denied the right of the complaining witness to this possession and claimed the absolute right to possession in himself; but in forcibly depriving the complaining witness of possession of the carabaos the defendant was not acting in defense of his right to the possession of the carabaos from unlawful aggression, but rather asserting his right to take the possession from another, and thus he himself became the aggressor.[16]

Private respondents Namanama and Medina cite the ruling in *University of the Philippines v. de los Angeles*[17] in which this Court, noting therein petitioner's right to rescind the contract — subject of the case, held:

> x x x [T]he law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages.[18]

Private respondents' citation of the above-said ruling is misplaced. Unlike in the present case, that case did not allege an act by which therein petitioner employed violence, threats, or intimidation

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[16] *Id.* at 545-546.

[17] G.R. No. L-28602, September 29, 1970, 35 SCRA 102.

[18] *Id.* at 107.

to compel therein respondent to relinquish possession of the premises subject of the agreement.

As to good faith and lack of "any intention of doing harm against their adversaries" which public respondent ascribes to private respondents, these are matters of defense which are better ventilated during the trial than during the preliminary investigation.[19]

In fine, public respondent committed grave abuse of discretion in dismissing petitioner's complaint.

WHEREFORE, the petition is *GRANTED*. The Order of the Ombudsman dated September 1, 2005 is *SET ASIDE*, and the Ombudsman is *ORDERED* to file an Information for Grave Coercion under Article 286 of the Revised Penal Code against private respondents.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

SPECIAL THIRD DIVISION

[G.R. No. 177404. December 4, 2009]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **KUMASSIE PLANTATION COMPANY INCORPORATED,** *respondent.*

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[19] *Vide Presidential Commission on Good Government v. Desierto*, G.R. No. 132120, February 10, 2003, 397 SCRA 171, 190.

[G.R. No. 178097. December 4, 2009]

KUMASSIE PLANTATION COMPANY INCORPORATED, *petitioner, vs.* **LAND BANK OF THE PHILIPPINES and THE SECRETARY OF THE DEPARTMENT OF AGRARIAN REFORM,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM LAW; COMPUTATION OF JUST COMPENSATION; REMAND OF THE CASE TO THE COURT OF ORIGIN IS PROPER FOR THE DETERMINATION OF THE CORRECT VALUATION OF THE SUBJECT LAND. — We are compelled to remand the instant consolidated cases to the RTC for the proper computation of just compensation, based on the formula and parameters provided in DAO No. 6, Series of 1992, as amended. While this Court wants to write *finis* to these consolidated cases by computing the just compensation due to KPCI, the evidence on record is not sufficient for the Court to do so in accordance with DAO No. 6, Series of 1992, as amended. We are thus left with no choice but to return these cases to the RTC for a determination of the correct valuation of the subject land.

APPEARANCES OF COUNSEL

LBP Legal Services Group for Land Bank of the Philippines.

Amihan Gacad Alo & Associates and *Kintanar Jamon Parungo Ladia Law Office* for Kumassie Plantation Company, Inc.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

For resolution is a Motion[1] and Supplement to the Motion[2] filed in these consolidated cases by Kumassie Plantation Co.,

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[1] Dated 30 July 2009; *rollo* (G.R. No. 177404), pp. 415-441.

[2] Dated 24 August 2009; *rollo* (G.R. No. 177404), pp. 479-503.

Inc. (KPCI), seeking reconsideration of our Decision dated 25 June 2009, the dispositive part of which reads:

WHEREFORE, in view of the foregoing:

1) The Petition of Land Bank of the Philippines in G.R. No. 177404 is **GRANTED**. The Decision, dated 24 November 2005, and Resolution, dated 30 March 2007, of the Court of Appeals in CA-G.R. CV No. 65923, are **REVERSED and SET ASIDE**. The valuation of the subject land at ₱41,792.94 per hectare, for a total of ₱19,140,965.91, by the Land Bank of the Philippines is **APPROVED**, and such amount is **DECLARED PAID IN FULL**; and

2) The Petition of Kumassie Plantation Company Incorporated is **DENIED**. No costs.[3]

In the said Decision, we reversed the Court of Appeals' ruling on the amount of just compensation to be paid KPCI, pursuant to the compulsory acquisition of its 457-hectare landholding located in Basiawan, Santa Maria, Davao del Sur. We based our decision on the fact that the appellate court, as well as the Regional Trial Court (RTC), failed to consider the factors mentioned in Section 17 of Republic Act No. 6657, and to apply the formula stated in Department of Agrarian Reform Administrative Order (DAO) No. 6, Series of 1992, as amended by DAO No. 11, Series of 1994. In accordance with our rulings in *Land Bank of the Philippines v. Banal*[4] and *Land Bank of the Philippines v. Lim,*[5] we held that the factors laid down in Section 17 of Republic Act No. 6657 and the formula stated in DAO No. 6, Series of 1992, as amended, must be adhered to by courts in fixing the valuation of lands subject to acquisition under agrarian reform laws. These factors and formula are mandatory and not mere guides that the courts may disregard. Considering that the Land Bank of the Philippines (LBP) applied the factors and formula prescribed by law for the determination

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[3] *Rollo* (G.R. No. 177404) p. 413.

[4] 478 Phil. 701 (2004).

[5] G.R. No. 171941, 2 August 2007, 529 SCRA 129.

of just compensation, we rejected the RTC's valuation of KPCI's land at ₱100,000.00 per hectare, and approved the valuation made by LBP in the amount of ₱41,792.94 per hectare.

KPCI is now before us pleading for reconsideration of our decision. It insists that the DAR valuation formula should not bind the courts, as the determination of just compensation is primarily a judicial function. It also claims that the LBP erred in its computation of the just compensation to be paid, since it did not include the *cacao* production of the property as part of its valuation. It further asserts that it should be compensated for the *cacao* trees planted on the land because, even if the same were planted by its lessee, the Philippine Cocoa Estates Corporation (PCEC), the same belong to KPCI under the terms of their lease contract. It prays for the reinstatement of the RTC and the Court of Appeals' decision in the present cases.

Anent the first ground cited by KPCI, suffice it to state that while the determination of just compensation involves the exercise of judicial discretion, such discretion must nonetheless be discharged within the bounds of law.[6] It must be stressed that DAO No. 6, Series of 1992, as amended, partakes of the nature of a statute, as it was issued to carry out the provisions of Republic Act No. 6657. The DAR valuation formula embodied in the said administrative order was devised to implement Section 17 of Republic Act No. 6657. Thus, courts are bound by the formula unless and until the same is invalidated in appropriate proceedings.[7]

With respect to the second ground raised by KPCI, however, there is indeed a cogent reason to reconsider our earlier decision. We have taken a second hard look at the computation made by LBP and found that it mistakenly excluded figures pertaining to the land's *cacao* production.

In computing for the value of the land subject to acquisition, the formula provided in DAO No. 6, Series of 1992, as amended,

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[6] *Land Bank of the Philippines v. Banal, supra* note 4.

[7] *Land Bank of the Philippines v. Celada,* G.R. No. 164876, 23 January 2006, 479 SCRA 495, 507.

requires that figures pertaining to the Capitalized Net Income (CNI) and Market Value (MV) of the property be used as inputs in arriving at the correct land valuation. Thus, the applicable formula, as correctly used by the LBP in its valuation, is LV (Land Value) = (CNI x 0.9) + (MV x 0.1).[8]

To arrive at the figure for the CNI of lands planted to a combination of crops, Item II B.5 of the said administrative order provides that the same should be computed based on the combination of actual crops produced on the covered land. The said provision states:

> B.5. Total income shall be computed from the combination of crops actually produced on the covered land whether seasonal or permanent.
>
> a. Landholdings planted to permanent crop with another permanent crop/s:
>
> a.1. In case all the permanent crops are productive or fruit-bearing at the time of the ocular inspection, CNI per Hectare is derived by dividing TNI/Hectare by the capitalization rate.
>
> Expressed in equation form:
>
> $$\text{CNI/Ha.} = \frac{\text{TNI/Ha.}}{.12}$$
>
> Where:
>
> $$\text{TNI/Ha.} = \frac{(\text{NI 1} + \text{NI 2} + \ldots\text{NIn})}{\text{Total Area}}$$
>
> NI 1, NI 2 and NIn represent the annual net income of each crop.
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> Total area is the hectarage of the land where all the crops are commonly planted.
>
> a.2. In case one or more of the permanent crops are productive or fruit-bearing and the other permanent crops are not yet fruit-bearing,

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[8] CA *rollo*, pp. 45-46.

> CNI shall be the sum of the CNI per Hectare of the productive crop as defined in Item B.5-a.1 and the cumulative cost per hectare of the non-fruit bearing permanent trees as defined in Item B.4.

It is an undisputed fact that the land subject of these consolidated cases was planted to coconuts and *cacao*.[9] Thus, the LBP should have based its computation of the CNI on the combined net incomes from the crops produced on KPCI's land. However, the LBP did not include *cacao* in its computation because there allegedly was "no production data available." Moreover, the LBP justified its non-inclusion of figures pertaining to *cacao* production on the ground that the *cacao* trees were "introduced by the lessees," PCEC.[10]

Under DAO No. 6, Series of 1992, as amended, LBP cannot simply exclude figures pertaining to the land's *cacao* production on the pretext that there was "no production data available." In arriving at a just valuation of the land, the LBP could have obtained the necessary information from various sources, adopted any available industry data or even caused an industry study to be conducted in order to arrive at the proper figures. Items B.1 and B.2 of DAO No. 6, Series of 1992, as amended, are explicit in this point, to wit:

> B.1. Industry data on production, cost of operations and selling price shall be obtained from government/private entities. Such entities shall include, but not limited to the Department of Agriculture (DA), the Sugar Regulatory Authority (SRA), the Philippine Coconut Authority (PCA) and other private persons/entities knowledgeable in the concerned industry.
>
> B.2. The landowner shall submit a statement of net income derived from the land subject of acquisition. This shall include among others, total production and cost of operations on a per crop basis, selling price/s (farm gate) and such other data as may be required. These data shall be validated/verified by the

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[9] *Rollo* (G.R. No. 177404), p. 394.

[10] *Id.*

> Department of Agrarian Reform and Land Bank of the Philippines field personnel. The actual tenants/farmworkers of the subject property will be the primary source of information for purposes of verification or if not available, the tenants/farmworkers of adjoining property.

In case of failure by the landowner to submit the statement within fifteen (15) days from the date of receipt of letter-request as certified by the Municipal Agrarian Reform Office (MARO) or the data stated therein cannot be verified/validated from the farmers, LBP may adopt any available industry data or, in the absence thereof, conduct an industry study on the specific crop which will be used in determining the production, cost and net income of the subject landholding.

Ergo, the LBP cannot simply brush aside the subject land's *cacao* production on the flimsy excuse that there were no available data relative to this particular produce. As the agency primarily charged with the determination of land valuation and compensation in acquisition proceedings relative to agrarian reform, the LBP has at its disposal all possible resources to come up with the necessary data in order to ensure the proper valuation of lands acquired for the purpose. The LBP should be mindful that the compulsory acquisition of lands under agrarian reform laws involves the forcible taking by government of private property for distribution to farmer-beneficiaries. It should thus exert all efforts to diligently ascertain the value of lands, if only to avoid recriminations from landowners and farmer-beneficiaries alike.

Also, we cannot accept LBP's position that the subject land's *cacao* production should be excluded from the computation of the CNI, since the *cacao* trees were planted by KPCI's lessee, PCEC. DAO No. 6, Series of 1992, as amended, does not differentiate between crops planted by the landowner and those planted by a lessee in computing for the CNI. To our mind, this is only logical since the crops produced by the land will undoubtedly contribute to its net income regardless of who planted the same. The sum of incomes derived from all crops planted on the land is representative of the land's over-all productivity and naturally comprises part of its value.

Notably, KPCI earlier submitted to us a copy of a Memorandum[11] dated 25 July 2000 in which it appears that the LBP approved the upward adjustment of the subject land's value to include a "2% Cacao Gross Sale" in the computation of the CNI. The "2% Cacao Gross Sale" presumably represents KPCI's share in, and thus the income from, the gross sale of *cacao* under its lease contract with PCEC. It also appears that the *cacao* trees themselves have been valued by LBP at ₱18,541,635.00. The latter amount was made payable to PCEC as planter and supposed owner of the *cacao* trees.

In its Memorandum filed in G.R. No. 178097, LBP urged us to ignore the Memorandum dated 25 July 2000, because KPCI did not present and offer the same in evidence before the RTC when the case was pending trial on the merits. According to LBP, we should not consider said memorandum in determining the just compensation due to KPCI, as it was not formally offered in evidence and was merely attached for the first time by KPCI to its petition in G.R. No. 178097. Moreover, LBP alleges that the issue of who is entitled to just compensation for the *cacao* trees is a matter that should be separately resolved between KPCI and PCEC in accordance with the terms of their lease contract.

In view of our earlier observation that LBP erroneously excluded figures pertaining to the subject land's *cacao* production in the computation of the CNI, it is difficult to ignore the Memorandum dated 25 July 2000 even if the same was not formally offered in evidence during the trial of the case. It should first be pointed out that KPCI could not have presented the said memorandum before the RTC, since it was apparently issued long after trial on the merits had already been concluded.[12] The said memorandum would also seem to indicate that LBP in fact committed a mistake in its original computation that excluded income from *cacao* production in the CNI. Under this memorandum, the LBP approved the payment of an additional

[11] *Rollo* (G.R. No. 178097), pp. 277-279.

[12] The RTC rendered its Decision on 18 February 1999.

₱8,116,919.09 to KPCI, over and above the ₱19,140,965.91 that the former had already paid as original valuation of the subject land. We cannot simply turn a blind eye and not take this document into account, especially as it reinforces our independent observation that LBP's computation was indeed erroneous.

At any rate, while we view the said memorandum as an indication that LBP committed a mistake in its computation, we are not prepared to accept the actual amount specified in said document as the true and final sum owed to KPCI as just compensation for its property. Although it would seem that the additional value of the land appearing in said document took into consideration the "2% Cacao Gross Sale" in computing for the CNI, the memorandum does not clearly show how the LBP arrived at the aggregate sum of ₱8,116,919.09. In other words, while the document fortifies our finding that LBP erroneously omitted figures relative to the *cacao* production of the subject land, we cannot conclusively determine the accuracy and correctness of the computation and figures from an examination of said document.

In light of the foregoing, we are compelled to remand the instant consolidated cases to the RTC for the proper computation of just compensation, based on the formula and parameters provided in DAO No. 6, Series of 1992, as amended. While this Court wants to write *finis* to these consolidated cases by computing the just compensation due to KPCI, the evidence on record is not sufficient for the Court to do so in accordance with DAO No. 6, Series of 1992, as amended.[13] We are thus left with no choice but to return these cases to the RTC for a determination of the correct valuation of the subject land.

Lastly, the matter of who is entitled to the value of the *cacao* trees should be resolved in separate proceedings between KPCI and its lessee, PCEC. Underlying this matter is the determination of who properly owns the *cacao* trees under the lease contract between the parties. The RTC had no authority to resolve this

[13] *Land Bank of the Philippines v. Lim, supra* note 5 at 141.

issue, which involves the interpretation of contractual stipulations, as it merely acted as a Special Agrarian Court with limited jurisdiction over these consolidated cases. It is thus premature for KPCI to claim compensation for the *cacao* trees, which its lessee admittedly planted.

WHEREFORE, after due deliberation, the Motion for Reconsideration, dated 30 July 2009, and Supplement to the Motion for Reconsideration, dated 24 August 2009, filed by Kumassie Plantation Co., Inc. are hereby *PARTIALLY GRANTED*. The instant consolidated cases are *REMANDED* to the court of origin, Branch 15 of the Regional Trial Court, Davao City, which is directed to determine with dispatch the just compensation due to KPCI in accordance with the formula prescribed in DAR Administrative Order No. 6, Series of 1992, as amended by DAR Administrative Order No. 11, Series of 1994.

SO ORDERED.

Velasco, Jr., Nachura, Peralta, and *Bersamin,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 177777. December 4, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FERNANDO GUTIERREZ *y* GATSO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AS A RULE, IN PROSECUTION INVOLVING ILLEGAL

[*] Associate Justice Lucas P. Bersamin was designated to sit as additional member replacing Associate Justice Renato C. Corona per Raffle dated 19 October 2009.

POSSESSION OR SALE OF PROHIBITED DRUGS, THE TRIAL COURT'S ASSESMENT ON THE CREDIBILITY OF THE APPREHENDING OFFICERS SHALL PREVAIL OVER THE ACCUSED'S SELF-SERVING AND UNCORROBORATED CLAIM OF FRAME-UP; RATIONALE. — In prosecution proceedings involving illegal possession or sale of prohibited drugs, credence is usually accorded the narration of the incident by the prosecution witnesses, especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary. Moreover, in the absence of proof of motive on the part of the police officers to falsely ascribe a serious crime against the accused, the presumption of regularity in the performance of official duty, as well as the trial court's assessment on the credibility of the apprehending officers, shall prevail over the accused's self-serving and uncorroborated claim of frame-up.

2. **ID.; ID.; ID.; HONEST DIFFERING ACCOUNTS ON MINOR AND TRIVIAL MATTERS SERVE TO STRENGTHEN RATHER THAN DESTROY THE CREDIBILITY OF A WITNESS TO A CRIME. —** It is perhaps too much to hope that different eyewitnesses shall give, at all times, testimonies that are in all fours with the realities on the ground. Minor discrepancies in their testimonies are in fact to be expected; they neither vitiate the essential integrity of the evidence in its material entirety nor reflect adversely on the credibility of witnesses. Inconsistencies deflect suspicions that the testimony is rehearsed or concocted. And as jurisprudence teaches, honest differing accounts on minor and trivial matters serve to strengthen rather than destroy the credibility of a witness to a crime. x x x To reiterate a long-settled rule, the Court will not disturb the trial court's evaluation of the credibility of witnesses, save when it had overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which, when considered, will alter the assailed decision or affect the result of the case.

3. **CRIMINAL LAW; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. —** The elements necessary for the prosecution of illegal possession of dangerous drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not

authorized by law; and (3) the accused freely and consciously possessed the said drug. Elucidating on the nature of this offense, the Court in *People v. Tira* wrote: x x x This crime is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus posidendi*) the drugs. **Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused.** On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.

4. **ID.; ID.; PENALTY. —** Fernando was caught in possession of 14.052 grams of *shabu*. Applying the law, the proper penalty should be life imprisonment and a fine ranging from PhP 400,000 to PhP 500,000. Hence, Fernando was correctly sentenced to life imprisonment and a fine of PhP 400,000.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

On appeal is the Decision[1] dated January 22, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01688, affirming the decision in Criminal Case No. 12318 of the Regional Trial Court (RTC), Branch 65 in Tarlac City. The RTC found accused-

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[1] *Rollo*, pp. 2-12. Penned by Associate Justice Rodrigo V. Cosico and concurred in by Associate Justices Lucas P. Bersamin (now a member of the Court) and Estela M. Perlas-Bernabe.

appellant Fernando Gutierrez guilty of the crime of illegal possession of dangerous drugs punishable under Section 11, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

An Amended Information[2] charged accused-appellant Fernando with violation of Sec. 11, Art. II of RA 9165, allegedly committed as follows:

> That on or about September 12, 2002 at around 4:45 o'clock in the afternoon at Purok Jasmin, Poblacion North, Municipality of Ramos, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously possess two (2) small plastic [sachets] containing white crystalline substance weighing more or less 14.052 grams of *shabu*.
>
> Contrary to law.

Arraigned on December 12, 2002, Fernando, assisted by counsel *de oficio*, entered a plea of "not guilty." After pre-trial, trial on the merits ensued.

To substantiate the accusation, the prosecution presented the testimonies of the arresting police officers. Offered in evidence too was Exhibit "B", captioned Chemistry Report No. D-186-2002 and prepared and signed by Ma. Luisa G. David, forensic chemist of the Tarlac Provincial Crime Laboratory Office. Exhibit "B" contains the following entries, among others: the precise time and date the specimen confiscated from Fernando was submitted for examination by the requesting party, the time and date of the examination's completion, and the results of the examination.

Culled from the challenged CA decision, the People's version of the incident is synthesized as follows:

At around 4:45 p.m. on September 12, 2002, the police station of Ramos, Tarlac acting on a tip regarding a *shabu* transaction (drug-pushing) taking place somewhere in Purok Jasmin,

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[2] Records, pp. 12-13, dated November 5, 2002.

Poblacion Norte, dispatched a three-man team composed of PO3 Romeo Credo, P/Insp. Napoleon Dumlao, and SPO1 Restituto Fernandez to the place mentioned. Arriving at the target area, the three noticed Fernando and one Dennis Cortez under a *santol* tree handing plastic sachets containing white crystalline substance to certain individuals. At the sight of the police officers, Fernando and the others scampered in different directions. After a brief chase, however, one of the three police operatives caught up with and apprehended Fernando, then carrying a bag.

When searched in the presence of the *barangay* captain of Poblacion Norte, the bag yielded the following, among other items: plastic sachets containing white crystalline substance weighing 15 grams or less, one small plastic sachet/bag containing white powdered substance, one set of pipe tooter tube glass, one laptop computer, one Motorola cell phone, one rolled aluminum foil, three bundles of plastic used for repacking, one weighing scale, a Metrobank deposit slip in the name of Dhen Bito, and cash amounting to PhP 1,500 in different denominations. Forthwith, Fernando and the seized items were brought to the Ramos police station and the corresponding request for examination was then prepared. The following day, the confiscated sachets were sent to and received by the Tarlac Provincial Crime Laboratory Field Office. When subjected to qualitative examination, the substances in the plastic sachets and plastic bags were found positive for *methamphetamine hydrochloride*.

For its part, the defense offered in evidence the sole testimony of Fernando. His defense relied on denial and alleged fabrication of the charge by the police, thus:

At around 4:35 in the afternoon of September 12, 2002, while at home in Anao, Tarlac resting, Fernando was asked by a neighbor, Cortez, to accompany him to Ramos, Tarlac to buy a duck. At that time, Cortez had with him a backpack, the contents of which Fernando knew nothing about.

In Ramos, Tarlac, the two, after buying a duck, repaired to a house whose owner was not known to Fernando. Cortez went inside the house with his backpack, leaving Fernando outside

the front yard. Not long thereafter, the police arrived, fired a warning shot, and went inside the house. After a while, the policemen emerged from the house accompanied by two individuals who pointed to Fernando as Cortez's companion, a fact Fernando readily admitted. The policemen then proceeded to arrest Fernando on the pretext he and Cortez were earlier peddling *shabu* in the town of Paniqui. As they were not able to apprehend Cortez, the arresting officers had Fernando hold and admit ownership of Cortez's backpack earlier taken from inside the house. Fernando denied ownership of the backpack that contained items belonging to Cortez, such as but not limited to the cell phone, laptop computer, driver's license, and wallet. A bank book and Metrobank deposit slip signed by Cortez were also inside the bag.

The Ruling of the RTC and CA

After due proceedings, the RTC, invoking, among other things, the presumptive regularity in the performance of official duties, rendered, on September 1, 2005, its judgment[3] finding Fernando guilty beyond reasonable doubt of possession of 14.052 grams of the prohibited drug, *methamphetamine hydrochloride*, commonly known as *shabu*. The *fallo* reads:

> WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, the court hereby sentences him to suffer the penalty of life imprisonment, to pay the fine of ₱400,000.00 and to pay the costs.
>
> The Tarlac Provincial Crime Laboratory who has custody of the 14.052 grams of shabu, subject of this case is hereby ordered to transmit the same to the Philippine Drug Enforcement Agency for proper disposition and furnish the court proof of compliance.
>
> SO ORDERED.

Therefrom, Fernando went on appeal to the CA, docketed as CA-G.R. CR-H.C. No. 01688.

Eventually, the CA issued the assailed decision dated January 22, 2007, affirming that of the trial court, thus:

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[3] CA *rollo*, pp. 5-8. Penned by Judge Bitty G. Viliran.

WHEREFORE, premises considered, the Decision dated September 1, 2005 of the Regional Trial Court, Branch 65 of Tarlac City in Criminal Case No. 12318 finding accused-appellant Fernando Gutierrez *y* Gatso GUILTY beyond reasonable doubt of violation of Section 11, Rule II of Republic Act No. 9165 or the Dangerous Drugs Act of 2002 is hereby AFFIRMED.

SO ORDERED.[4]

The Issues

Undaunted, Fernando is now with this Court via the present recourse raising the very same assignment of errors he invoked before the CA, thus:

I

THE COURT *A QUO* ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 11, ARTICLE II, R.A. NO. 9165.[5]

The foregoing assignment of errors can actually be reduced and summarized to one: the credibility of the testimonies of the three police officers as prosecution witnesses and the weight to be accorded on said parol evidence.

The parties chose not to file any supplemental briefs, maintaining their respective positions and arguments in their briefs filed before the CA.

The Court's Ruling

The appeal is bereft of merit.

In prosecution proceedings involving illegal possession or sale of prohibited drugs, credence is usually accorded the narration

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[4] *Rollo*, p. 11.

[5] CA *rollo*, p. 22.

of the incident by the prosecution witnesses, especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary. Moreover, in the absence of proof of motive on the part of the police officers to falsely ascribe a serious crime against the accused, the presumption of regularity in the performance of official duty, as well as the trial court's assessment on the credibility of the apprehending officers, shall prevail over the accused's self-serving and uncorroborated claim of frame-up.[6]

In the case at bench, there is nothing in the records that would dictate a departure from the above doctrinal rule as far as the testimonies of prosecution witnesses PO3 Credo, SPO1 Fernandez, and P/Insp. Dumlao are concerned. We see no valid reason, in fine, to discredit the veracity of their narration. And as aptly noted by the trial court, there is no evidence of any ill motive on the part of the police officers who merely responded to a tip about a drug-pushing incident in their area.

The prosecution's evidence established the fact that a *bona fide* follow-up operation was undertaken following a phone call, reporting some drug-pushing activities in Poblacion Norte. To recall, PO3 Credo, SPO1 Fernandez, and P/Insp. Dumlao, Chief of the Ramos police station, made up the team that proceeded to the reported area to check the veracity of the drug-related call. Upon reaching the target site, they espied Fernando passing sachets of white crystalline substance. And Fernando, upon noticing the arrival of policemen, lost no time in fleeing from the scene. PO3 Credo gave chase and eventually collared the bag-carrying Fernando and conducted an immediate search on the bag. The search led to the discovery of two sachets and one small plastic bag containing suspicious-looking crystalline substance and drug paraphernalia, among other items.

Thereafter, the police team brought Fernando to the Ramos police station and a request was immediately made for the

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[6] *Mamangun v. People*, G.R. No. 149152, February 2, 2007, 514 SCRA 44; citing *People v. Chua*, G.R. No. 128046, March 7, 2000, 327 SCRA 335.

examination of the seized items. After laboratory examination, the white crystalline substance contained in the sachets was found positive for *shabu.*

Fernando now questions the credibility of the prosecution witnesses and the weight the trial court gave to their narration of events, laying stress on the inconsistencies and/or discrepancies of their respective accounts. The adverted inconsistencies/ discrepancies relate to the place where the police initially spotted and apprehended Fernando and where the confiscated bag was searched. Fernando urges the Court to consider: (1) SPO1 Fernandez and P/Insp. Dumlao testified first seeing Fernando and the three others under a *santol* tree exchanging sachets of drugs, while PO3 Credo testified that they (Fernando and three others) were under a *kubo*; and (2) PO3 Credo testified that, immediately upon apprehending Fernando, he searched the latter's bag and found the contraband inside. On the other hand, SPO1 Fernandez and P/Insp. Dumlao placed the search as having been effected in the police station in the presence of the *barangay* captain of Poblacion Norte.

The inconsistencies Fernando cited relate to extraneous matters that do not in any way affect the material points of the crime charged. The seeming inconsistency with regard to where Fernando and Cortez exactly were when the sachets of *shabu* changed hands — be they in a *kubo*, as PO3 Credo mentioned,[7] or under a *santol* tree, as SPO3 Fernandez[8] and P/Insp.

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[7] TSN, February 18, 2003, p. 3. PO3 Credo testified:

Q When you arrived at Jasmin, Poblacion, Ramos, Tarlac, what happened?

A When we arrived in the place, they were in a hut and when we arrived, they suddenly ran away.

[8] TSN, June 26, 2003, pp. 2 and 5. SPO3 Fernandez testified:

Q Did you go out of the police station?

A Yes sir.

Q Where did you go?

A We received a call and we went to Poblacion Norte, Ramos, Tarlac.

Q What happened?

A We reached someone seated under the santol tree.

Dumlao[9] asserted — is of little moment and hardly of any bearing on the central fact of the commission of the crime. In context, the more important occurrence relates to Fernando and his companions scampering in different directions when the policemen chanced upon them, and that Fernando, when apprehended, was holding a bag which contained *shabu* and drug paraphernalia — facts categorically confirmed by the prosecution witnesses. It is perhaps too much to hope that different eyewitnesses shall give, at all times, testimonies that are in all fours with the realities on the ground. Minor discrepancies in their testimonies are in fact to be expected; they neither vitiate the essential integrity of the evidence in its material entirety nor reflect adversely on the credibility of witnesses. Inconsistencies deflect suspicions that the testimony is rehearsed or concocted. And as jurisprudence teaches, honest differing accounts on minor and trivial matters serve to strengthen rather than destroy the credibility of a witness to a crime.[10]

We took pains in reviewing the transcript of stenographic notes taken during the trial and found nothing to support Fernando's allegations of inconsistencies between or among the prosecution witnesses' versions of relevant events. For instance, PO3 Credo testified that, after arresting Fernando, he immediately searched the bag the latter was carrying.[11] This account does

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Q How many were they?

A Four to five persons sir.

x x x x x x x x x

Q And they were seated under what kind of tree?

A Santol tree sir.

[9] TSN, May 15, 2003, p. 2. P/Insp. Dumlao testified:

Q Will you describe the place where they were pushing *shabu*?

A The place sir is under a santol tree, they were there, and we noticed that they ran away when they saw us.

[10] *People v. Pateo*, G.R. No. 156786, June 3, 2004, 430 SCRA 609, 615.

[11] TSN, February 18, 2003, p. 4. PO3 Credo testified:

Q You said you chased Fernando Gutierrez who was then carrying a bag, were you able to chase him?

not contradict the testimonies of SPO3 Fernandez[12] and P/Insp. Dumlao,[13] who both recounted the search made in the police station in the presence of a *barangay* captain. As earlier indicated,

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A Yes, sir.

Q And what did you do with him when you were able to chase him?

A We searched the bag.

Q And what did you find out?

A *Shabu* and *shabu* paraphernalia.

[12] TSN, June 26, 2003, pp. 2-3. SPO3 Fernandez testified:

Q When you saw them transferring a plastic sachet from one another, what did you do?

A They ran away sir.

Q What about you, what did you do?

A We chased them sir and we were able to apprehend Fernando Gutierrez in a small house.

Q What did you find out?

A He was carrying a bag sir.

Q What did you do with the bag?

A We brought it to the police station sir.

Q Did you not open the bag?

A Not yet sir.

Q When did you open it?

A At the police station sir.

Q What did you find out?

A *Shabu* and *shabu* paraphernalia sir.

[13] TSN, May 15, 2003, pp. 2-3. P/Insp. Dumlao testified:

Q And so you said that they scampered when they saw the police, what did you do?

A We ran after them.

Q What transpired when you ran after them?

A Fernando Gutierrez and Dennis Cortez were apprehended and were brought to the police station and the bag that they were carrying contains the items listed in the information.

Q From whom did you get the bag?

A From the possession of Fernando Gutierrez sir.

Q What did you do with the bag?

it was PO3 Credo who arrested Fernando[14] and had the opportunity to make the search at the scene of the crime.

On the other hand, SPO3 Fernandez and P/Insp. Dumlao ran after Cortez and the two others, eventually arresting Cortez, who was initially included in the original Information.[15] What is fairly deducible from the testimonies of the arresting operatives is that there were two separate searches actually made: (1) the first done by PO3 Credo immediately after he arrested Fernando

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A We inspected the bag.

Q What did you find out?

A Sachet of *shabu* containing more or less 15 grams.

Q What did you discover from Dennis Cortez?

A Yes sir.

Q What did you discover from Dennis Cortez?

A Nothing sir.

Q What did you do with the items in the bag of Fernando Gutierrez?

A We inventorie[d] the contents in the presence of the *barangay* captain of Poblacion Norte.

[14] TSN, June 26, 2003, pp. 3 and 6. SPO3 Fernandez testified:

Q Who were your companions in going to Barangay Jasmin?

A Napoleon Dumlao and Romeo Credo sir.

Q And who was the one who chased Fernando Gutierrez?

A Romeo Credo sir.

Q So you and Dumlao were left and it was Credo who ran after the accused in this case. (sic)

A Only Credo gave chase sir.

Q So you were not the one who found the bag containing the *shabu*?

A Yes sir.

x x x x x x x x x

Q Is it not a fact that Credo was able to apprehend the accused because he chased the accused?

A Yes sir.

Q And when you arrived at the place, Credo already subdued Gutierrez?

A We went there together but only Credo actually arrested him.

[15] Records, pp. 1-2, dated September 13, 2002.

which is the usual and standard police practice; and (2) a subsequent one effected at the police station where the bag was apparently marked and its contents inventoried.

The Court notes that immediately after his arrest, Cortez was also searched but no illegal drugs were found in his person. It was obviously for this reason that after the original Information was filed following an inquest, Fernando and Cortez filed a joint Motion for Preliminary Investigation and/or Re-Investigation.[16] The preliminary investigation resulted in the filing of the Amended Information that dropped Cortez as accused paving the way for the dismissal of the charge against him, but retained Fernando as the sole accused in Criminal Case No. 12318.

To reiterate a long-settled rule, the Court will not disturb the trial court's evaluation of the credibility of witnesses, save when it had overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which, when considered, will alter the assailed decision or affect the result of the case.[17] None of the exceptions obtain in the case at bar.

At the trial, Fernando invoked the defenses of denial and frame-up, claiming at every opportunity that the bag containing the *shabu* sachets and drug paraphernalia belonged to Cortez, not to him, as the arresting officers would make it appear. To prove this point, Fernando testified that among the items found in the bag were Cortez's driver's license and wallet.

The defense thus put up deserves scant consideration, because, off-hand, it stands uncorroborated. Fernando, as may be noted, failed to present the owner of the house where he and Cortez supposedly went to and where he allegedly was when arrested, to substantiate his posture about Cortez being really owning the bag. Certainly, Fernando had the right to compel the appearance of persons who he believes can support his defense, but for reasons known only to Fernando, he did not secure the

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[16] *Id.* at 15.

[17] *People v. Aguilar*, G.R. No. 177749, December 17, 2007, 540 SCRA 509, 522.

appearance of the person who could have plausibly lent credence to his claim of frame-up. As we have time and again held, the defense of denial or frame-up, like alibi, has been invariably viewed with disfavor for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act.

Here, no clear and convincing evidence was adduced to prove Fernando's defense of denial or frame-up. On the contrary, Fernando's action while the policemen were undertaking follow-up operations was what took him behind the bars. The reference, of course, is to the fact that Fernando hastily fled from the scene of the crime upon noticing the arrival of the police at the target area.

Fernando's allegation that the bag the police seized contained Cortez's driver's license and wallet — a futile attempt to avoid culpability over his possession of the bag — will not save the day for him. *First*, his assertion on what the bag contained is belied by the Joint Affidavit[18] of the three apprehending officers. It was stated under paragraph 5 of their joint affidavit that the items found in the bag had been duly inventoried. The items enumerated clearly did not include any wallet or driver's license of Cortez. Since said joint affidavit was used in the inquest to indict Fernando and Cortez, the inventoried items would have included the license and wallet adverted to, the search of the bag conducted in the police station having been made in the presence of the *barangay* captain of Poblacion Norte.

Second, it bears to stress that Fernando was indicted for illegal possession of dangerous drugs. In the prosecution of this offense, the ownership of the bag where the *shabu* and drug paraphernalia were found is really inconsequential. The elements necessary for the prosecution of illegal possession of dangerous drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously

[18] Records, p. 4, dated September 12, 2002, signed by PO3 Credo, SPO3 Fernandez, and P/Insp. Dumlao.

possessed the said drug.[19] Elucidating on the nature of this offense, the Court in *People v. Tira* wrote:

> x x x This crime is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus posidendi*) the drugs. **Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused**. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.[20] (Emphasis ours.)

Without a trace of equivocation, the RTC and later the CA held that the prosecution had discharged the burden of proving all the elements of the crime charged. Since Fernando was caught carrying the incriminating bag after the police had been tipped off of drug pushing in the target area, any suggestion that he was not in actual possession or control of the prohibited drug hidden in the area would be puny. Thus, ownership of the bag is truly inconsequential.

We emphasize at this juncture that in no instance did Fernando intimate to the trial court that there were lapses in the safekeeping of the seized items that affected their integrity and evidentiary value. He, thus, veritably admits that the crystalline substance in the sachets found in his bag was the same substance sent for laboratory examination and there positively determined to be *shabu* and eventually presented in evidence in court as part of the *corpus delicti*. In other words, Fernando, before the RTC and the CA, opted not to make an issue of whether the chain of custody of the drugs subject of this case has been broken.

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[19] *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 846; citing *People v. Khor*, G.R. No. 126391, May 19, 1999, 307 SCRA 295, 328.

[20] G.R. No. 139615, May 28, 2004, 430 SCRA 134, 151-152.

This disposition on the part of Fernando is deducible from the August 18, 2005 Order[21] of the trial court, pertinently saying, "[The] Acting Provincial Prosecutor x x x and Atty. Emmanuel Abellera, counsel de oficio of the accused manifested that the chain of custody of the searched illegal drug or shabu is admitted."

As a mode of authenticating evidence, the chain of custody rule requires that the presentation of the seized prohibited drugs as an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.[22] This would ideally cover the testimony about every link in the chain, from seizure of the prohibited drug up to the time it is offered in evidence, in such a way that everyone who touched the exhibit would describe how and from whom it was received, to include, as much as possible, a description of the condition in which it was delivered to the next link in the chain.[23]

Given the foregoing considerations, particularly the established fact that the crystalline powder in two sachets the police confiscated from Fernando in the afternoon of September 12, 2002 was *shabu*, the Court is constrained to affirm the judgment of conviction appealed from.

We find the penalty imposed by the RTC, as affirmed by the CA, to be in accordance with law. As aptly pointed out by the appellate court, Sec. 11, Art. II of RA 9165 pertinently provides:

SEC. 11. *Possession of Dangerous Drugs.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";

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[21] Records, p. 121.

[22] *Id.*

[23] *Lopez v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619.

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) **Life imprisonment** and a **fine ranging from Four hundred thousand pesos (₱400,000.00)** to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "*shabu*" is **ten (10) grams or more but less than fifty (50) grams**. (Emphasis supplied.)

Fernando was caught in possession of 14.052 grams of *shabu*. Applying the law, the proper penalty should be life imprisonment and a fine ranging from PhP 400,000 to PhP 500,000. Hence, Fernando was correctly sentenced to life imprisonment and a fine of PhP 400,000.

WHEREFORE, the appeal of accused-appellant Fernando Gutierrez is hereby *DENIED*. Accordingly, the January 22, 2007 CA Decision in CA-G.R. CR-H.C. No. 01688 is *AFFIRMED*.

Costs against accused-appellant.

SO ORDERED.

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

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[*] Additional member as per Special Order No. 789 dated November 3, 2009.

[**] Additional member as per raffle dated October 12, 2009.

EN BANC

[G.R. Nos. 178000 and 178003. December 4, 2009]

LIBERATO M. CARABEO, *petitioner, vs.* **COURT OF APPEALS, OMBUDSMAN SIMEON B. MARCELO, ASSISTANT OMBUDSMAN PAMO PELAGIO S. APOSTOL, MARGARITO TEVES, IN HIS CAPACITY AS SECRETARY OF FINANCE, AND TROY FRANCIS C. PIZARRO, JOEL APOLONIO, REYNALITO L. LAZARO, ISMAEL LEONOR, AND MELCHOR PIOL, IN THEIR CAPACITY AS MEMBERS OF THE PANEL OF INVESTIGATORS OF THE DEPARTMENT OF FINANCE-REVENUE INTEGRITY PROTECTION SERVICE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; DEPARTMENT OF FINANCE-REVENUE INTEGRITY PROTECTION SERVICE (DOF-RIPS); CREATION THEREOF THROUGH EXECUTIVE ORDER 259 (EO 259), SUSTAINED. — The Court finds that EO 259 is basically internal in nature needing no implementing rules and regulations in order to be enforceable. Principally aimed at curbing graft and corruption in the DOF and its attached agencies, EO 259 covers only officers and employees engaged in revenue collection. DOF-RIPS, which was created by virtue of EO 259, acts as the anti-corruption arm of the DOF that investigates allegations of corruption in the DOF and its attached agencies, then files the necessary charges against erring officials and employees with the proper government agencies. EO 259 expressly provides that the DOF-RIPS has the function, among others, "to gather evidence and file the appropriate criminal, civil or administrative complaints against government officials and employees before the appropriate court of law, administrative body, or agency of competent jurisdiction, and to assist the prosecuting agency or officer towards the successful prosecution of such cases." Simply put, the creation of an internal body in the DOF (RIPS), through EO 259, is but an essential component in the organized and effective collection of evidence against corrupt DOF

officials and employees. The so-called "lifestyle check" pertains to the evidence-gathering process itself because it is through this method that the DOF-RIPS would be able to collect sufficient evidence to indict a suspected DOF official or employee for graft and corruption. Considering this, the Court finds nothing illegal with the "lifestyle check" as long as the constitutional and statutory rights of the accused are recognized and respected by the DOF-RIPS.

2. ID.; ADMINISTRATIVE LAW; PREVENTIVE SUSPENSION ORDER; IT IS IN THE NATURE OF A PRELIMINARY STEP IN AN ADMINISTRATIVE INVESTIGATION AND NOT A PENALTY; EXPLAINED. — Settled is the rule that prior notice and hearing are not required in the issuance of a preventive suspension order, such suspension not being a penalty but only a preliminary step in an administrative investigation. *As held in Nera v. Garcia:* In connection with the suspension of petitioner before he could file his answer to the administrative complaint, suffice it to say that the suspension was not a punishment or penalty for the acts of dishonesty and misconduct in office, but only as a preventive measure. Suspension is a preliminary step in an administrative investigation. If after such investigation, the charges are established and the person investigated is found guilty of acts warranting his removal, then he is removed or dismissed. This is the penalty. There is, therefore, nothing improper in suspending an officer pending his investigation and before the charges against him are heard and be given an opportunity to prove his innocence. Moreover, there is nothing in the law, specifically Section 24 of RA 6770, or *The Ombudsman Act of 1989*, which requires that notice and hearing precede the preventive suspension of an erring public official. This provision states: SEC. 24. *Preventive Suspension.* — The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him. While a preventive suspension order may originate from a complaint, the Ombudsman is not required to furnish the respondent with a copy of the complaint prior to ordering a preventive

suspension. Public office is not property but a "public trust or agency." While their right to due process may be relied upon by public officials to protect their security of tenure which, in a limited sense, is analogous to property, such fundamental right to security of tenure cannot be invoked against a preventive suspension order which is a preventive measure, not imposed as a penalty. An order of preventive suspension is not a demonstration of a public official's guilt, which can be pronounced only after a trial on the merits.

3. **ID.; ID.; ID.; REQUISITES FOR VALIDITY. —** Under Section 24 of RA 6770, two requisites must concur to render the preventive suspension order valid. First, there must be a prior determination by the Ombudsman that the evidence of respondent's guilt is strong. Second, (a) the offense charged must involve dishonesty, oppression, grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

4. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION AS A GROUND; CONSTRUED. —** Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It exists where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

APPEARANCES OF COUNSEL

Suarez Paredes Zamora Suarez & Luna Law Offices and *Aguirre Cacho and Tuazon Law Firm* for petitioner.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for *certiorari*[1] challenges the Court of Appeals' 31 October 2006 Joint Decision[2] in CA-G.R. SP Nos. 91607 and 92313 dismissing Liberato M. Carabeo's *certiorari* petition against respondents, and the 28 March 2007 Resolution[3] denying reconsideration and dismissing the contempt charge against Secretary Margarito Teves (Secretary Teves).

The Facts

On 8 July 2005, the Department of Finance-Revenue Integrity Protection Service (DOF-RIPS), composed of private respondents Troy Francis Pizarro, Joel Apolonio, Reynalito L. Lazaro, Ismael Leonor, and Melchor Piol, filed a complaint with the Office of the Ombudsman against Carabeo, Officer-in-Charge (OIC) of the Office of the Treasurer of Parañaque City. The complaint pertinently alleged:

4. Based on the records we obtained, CARABEO is currently designated by the BLGF as City Treasurer II x x x. In September 1981, CARABEO first occupied the position of Revenue Collection Clerk at the Office of the City Treasurer of Parañaque earning an annual gross salary of Eight Thousand Four Hundred Pesos (₱8,400.00). As the present City Treasurer (In-charge of Office) at the City of Parañaque, CARABEO receives an annual gross salary of Two Hundred Ninety One Thousand Thirty-Six Pesos (₱291,036.00).

5. The net worth of CARABEO, based on his Statements of Assets Liabilities and Net Worth (SALNs), from the time he commenced

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[1] Under Rule 65 of the Rules of Court.

[2] *Rollo*, pp. 41-65. Penned by Justice Conrado M. Vasquez, Jr. with Justices Jose C. Mendoza and Santiago Javier Ranada, concurring.

[3] *Id.* at 67-69. Penned by Justice Conrado M. Vasquez, Jr. with Justices Jose C. Mendoza and Vicente Q. Roxas, concurring.

employment at the Parañaque Treasurer's Office in 1981 has ballooned from ₱114,900.00 to approximately ₱7.5 Million in the year 2004.

6. Equally noticeable as the drastic increase in his net worth is the steady accumulation of various expensive properties by CARABEO and his spouse ranging from real properties to vehicles to club shares ownership.

7. In the last nine years, CARABEO and/or his spouse was able to purchase numerous real properties, including:

a. 1,000 sq.m. Residential lot in Tagaytay City;
b. 1,500 sq.m. Residential lot also in Tagaytay City;
c. Townhouse in Cavite; and
d. Three separate parcels of land in Laguna.

8. Also, various expensive vehicles were found to be currently owned by CARABEO and/or his spouse, including the following:

a. Ford F150 Flareside (WMD-126);
b. Mazda Familia (WCL-191);
c. Chevrolet Cassia (WSG-781);
d. Mitsubishi Lancer (XCW-149);
e. Honda CRV (CYN-808).

In addition to these vehicles, CARABEO also owned, as of last year, two additional vehicles – a Honda City (WLX-553) and a Nissan Sentra (WSG-869).

9. However, CARABEO did not declare most of the foregoing vehicles in his SALNs. In his SALN for year 2003, CARABEO claimed that he owns only three vehicles GSR, CITY and CASSIA. In the succeeding year, CARABEO only declared ownership of only one vehicle, a GSR supposed acquired in 2002.

10. The records of the Land Transportation Office however belie this declaration of ownership of only three vehicles and later (in year 2004), of only one vehicle, with the LTO certification that CARABEO and/or his spouse owns at least seven vehicles including the expensive Ford F150 and Honda CRV.

11. Also, CARABEO and/or his spouse acquired the 1,000 sq.m. Tagaytay property in year 2001 but this substantial property acquisition was not reflected in the SALNs of CARABEO for said year as well as for the subsequent year.

12. CARABEO's failure to disclose his and his spouse's ownership of the foregoing Tagaytay property and vehicles in the pertinent SALNs amounts to a violation of Section 7 of RA 3019 and Section 8(A) of RA 6713 requiring him to file under oath the true and detailed statement of his assets as well as those of his spouse.

13. Punctuating the expensive list of purchases CARABEO and/ or his spouse is his recent purchase of a share in the very exclusive The Palms Country Club in Alabang, Muntinlupa. An individual share in this premiere country club is currently priced at Seven Hundred Forty-Five Thousand Pesos (₱745,000.00) and can only be purchased in cash.

14. x x x

15. While CARABEO claims in his SALNs to have investments in various businesses (Diosa Properties, Nalpa Trading, L.M. Carabeo Realty, Romilia Enterprises and J's Appleseed Food Products), the information we gathered on these alleged businesses indicates that these purported investments could not possibly justify the foregoing substantial purchases.

x x x x x x x x x

16. Any anticipated claim to the effect that CARABEO's wife has business undertakings that should explain their acquired wealth cannot also be given credence. Our inquiry with the BIR further showed that CARABEO's spouse, Cynthia, had no tax payments reflected on the Bureau's records, except for a one-time tax payment of approximately three thousand pesos (representing capital gains tax for one transaction). Such information provided by the BIR shows that CARABEO's spouse had no substantial income that can justify the foregoing property acquisitions.

17. It was also discovered in the course of our investigation that, in addition to the foregoing purchases, during the period 1996 to 2004, CARABEO went abroad at least fifteen times (or more than once a year) x x x.[4]

The DOF-RIPS prayed that the Office of the Ombudsman issue an order: (a) filing the appropriate criminal informations against Carabeo for violation of Republic Act (RA) Nos. 3019,[5]

[4] *Id.* at 118-121.

[5] Anti-Graft and Corrupt Practices Act.

6713,[6] and 1379[7] and the Revised Penal Code; (b) instituting the appropriate administrative cases against Carabeo for the same violations, for dishonesty and grave misconduct; (c) commencing forfeiture proceedings against Carabeo's unlawfully acquired properties including those illegally obtained in the names of his spouse, children, relatives and agents; and (d) placing Carabeo under preventive suspension pursuant to Section 24 of RA 6770.[8]

In an Order dated 26 July 2005 in OMB-C-A-05-0333-G (LSC) and OMB-C-C-05-0337-G(LSC),[9] the Office of the Ombudsman's Preliminary Investigation and Administrative Adjudication Bureau-A Acting Director, Corazon DLP. Tanglao-Dacanay (Acting Director Dacanay), directed Secretary Teves to place Carabeo under preventive suspension for a period not to exceed six months without pay. The order likewise directed Carabeo to file his counter-affidavit to the DOF-RIPS' complaint within ten days from receipt thereof and gave the DOF-RIPS a similar period to file its reply thereto.

On 19 September 2005, Ombudsman Simeon V. Marcelo (Ombudsman Marcelo), upon the recommendation of Assistant Ombudsman Pelagio S. Apostol (Assistant Ombudsman Apostol), approved Acting Director Dacanay's 26 July 2005 Order.[10]

Aggrieved, Carabeo filed a petition for *certiorari*, docketed as CA-G.R. SP No. 91607, against Ombudsman Marcelo, Assistant Ombudsman Apostol, Secretary Teves, and the members of the DOF-RIPS, alleging that grave abuse of discretion amounting to lack or excess of jurisdiction attended the approval of his preventive suspension.

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[6] Code of Conduct and Ethical Standards for Public Officials and Employees.

[7] Act Declaring Forfeiture of Ill-Gotten Wealth of Public Officers and Employees.

[8] *Rollo*, p. 124.

[9] For dishonesty and grave misconduct.

[10] *Rollo*, pp. 99-111.

On 18 October 2005, the Court of Appeals issued a 60-day Temporary Restraining Order (TRO) enjoining the enforcement of Carabeo's preventive suspension.[11]

Meanwhile, on 10 November 2005, Secretary Teves issued Department Special Order No. 4-05 directing the detail of Carabeo to the DOF's Bureau of Local Government Finance at the DOF's Central Office (BLGF-CO). In his stead, Assistant City Treasurer of Makati, Jesusa E. Cuneta, was designated OIC-City Treasurer of Parañaque.

Claiming that his detail to the BLGF-CO violated the TRO issued in CA-G.R. SP No. 91607, Carabeo filed another petition before the Court of Appeals, docketed as CA-G.R. SP No. 92313, where he prayed, among others, that Secretary Teves be cited for contempt of court.

On 19 December 2005, the Court of Appeals granted Carabeo's request that CA-G.R. SP No. 92313 be consolidated with CA-G.R. SP No. 91607 after holding that both petitions involved the same parties or related questions of fact and law and that the later petition for contempt arose out of Secretary Teves' alleged violation of the TRO issued in CA-G.R. SP No. 91607.

On 31 October 2006, the Court of Appeals rendered a Joint Decision, the dispositive portion of which reads:

> IN VIEW OF ALL THE FOREGOING, the consolidated petitions are hereby DISMISSED. No costs.
>
> SO ORDERED.[12]

Carabeo moved for reconsideration, which the Court of Appeals denied in its Resolution of 28 March 2007.

The Ruling of the Court of Appeals

In dismissing the petition for *certiorari*, the Court of Appeals held that a preventive suspension decreed by the Ombudsman by virtue of his authority under Section 21 of RA 6770, in

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[11] *Id.* at 161-162.

[12] *Id.* at 64.

relation to Section 9 of Administrative Order No. 7, is not meant to be a penalty but a means taken to insure the proper and impartial conduct of an investigation, which did not require prior notice and hearing.

The Court of Appeals rejected Carabeo's contention that he was deprived of due process. Carabeo wrongfully assumed that the Ombudsman did not consider the evidence he presented when the Ombudsman approved Assistant Ombudsman Apostol's recommendation to preventively suspend him. Contrary to Carabeo's conclusion, however, the order of the Ombudsman to preventively suspend him stemmed from the Ombudsman's review of the factual findings reached by the investigating prosecutor.

The Court of Appeals also ruled that there is no need to publish Executive Order No. 259 (EO 259) before it could be given the force and effect of law because it is merely internal in nature regulating only the personnel of the administrative agency and not the public.

On Carabeo's contempt charge against Secretary Teves, the Court of Appeals classified it as indirect contempt, since it consisted of disobedience of or resistance to a lawful order of a court, under Section 3, Rule 71 of the Rules of Court. Thus, the contempt charge must be in writing and due process must be observed before the penalty is imposed.

In its Resolution of 28 March 2007, the Court of Appeals, aside from denying Carabeo's motion for reconsideration, ruled that the detail order was in accordance with Section 6 of Rule IV of the Civil Service Rules on Personnel Actions and Policies and CSC Resolution No. 621181 dated 21 September 2002. Therefore, Secretary Teves, in detailing Carabeo to BLGF-CO, did not commit contempt of court.

The Issue

The issue in this case is whether the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in (1) ruling that the failure to provide implementing rules of EO 259 does not render the same unenforceable; (2) sustaining

the preventive suspension imposed by the Ombudsman on Carabeo; and (3) not considering the complaint against Carabeo a violation of Section 10 of RA 6713 which entitles Carabeo to be informed beforehand and to take the necessary corrective action.

There is no more dispute on the matter of publication of EO 259 as it was clearly established that it was published in the Official Gazette[13] on 23 February 2004.

The Ruling of this Court

We dismiss the petition.

I.

The question on EO 259's enforceability is immaterial to the validity of the charges against Carabeo.

Carabeo impugns the validity of EO 259 for lack of implementing rules and regulations. Indeed, EO 259 lacks any implementing guidelines. However, such fact is immaterial and does not affect, in any manner, the validity of the criminal and administrative charges against Carabeo. While the DOF-RIPS derived from EO 259 its power and authority to gather evidence against DOF officials and employees suspected of graft and corruption, the DOF-RIPS need not be vested with such power in order to validly file criminal and administrative charges against Carabeo. In fact, any concerned ordinary citizen can file criminal and administrative charges against any corrupt government official or employee if there exists sufficient evidence of culpability. Hence, the DOF-RIPS, even without EO 259 and whether as subordinates of the Secretary of Finance or as private citizens, can validly file criminal and administrative charges against Carabeo.

At any rate, the Court finds that EO 259 is basically internal in nature needing no implementing rules and regulations in order to be enforceable. Principally aimed at curbing graft and corruption

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[13] Vol. 100, No. 8, pp. 1117-1119.

in the DOF and its attached agencies,[14] EO 259 covers only officers and employees engaged in revenue collection. DOF-RIPS, which was created by virtue of EO 259, acts as the anti-corruption arm of the DOF that investigates allegations of corruption in the DOF and its attached agencies, then files the necessary charges against erring officials and employees with the proper government agencies.[15] EO 259 expressly provides that the DOF-RIPS has the function, among others, "to gather evidence and file the appropriate criminal, civil or administrative complaints against government officials and employees before the appropriate court of law, administrative body, or agency of competent jurisdiction, and to assist the prosecuting agency or officer towards the successful prosecution of such cases." Simply put, the creation of an internal body in the DOF (RIPS), through EO 259, is but an essential component in the organized and effective collection of evidence against corrupt DOF officials and employees. The so-called "lifestyle check" pertains to the evidence-gathering process itself because it is through this method that the DOF-RIPS would be able to collect sufficient evidence to indict a suspected DOF official or employee for graft and corruption. Considering this, the Court finds nothing illegal with the "lifestyle check" as long as the constitutional and statutory rights of the accused are recognized and respected by the DOF-RIPS.

II.

The preventive suspension order was legal.

Carabeo contends that there must be prior notice and hearing before the Ombudsman may issue a preventive suspension order.

The contention is bereft of merit. Settled is the rule that prior notice and hearing are not required in the issuance of a

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[14] Attached agencies such as the Bureau of Internal Revenue and the Bureau of Customs, the Bureau of Local Government Finance, Bureau of Treasury, Central Board of Assessment Appeals, the Insurance Commission, the National Tax Research Center, the Fiscal Incentive Review Board, and the Privatization and Management Office. (http://www.rips.gov.ph/).

[15] http://www.rips.gov.ph/.

preventive suspension order, such suspension not being a penalty but only a preliminary step in an administrative investigation.[16] As held in *Nera v. Garcia*:[17]

> In connection with the suspension of petitioner before he could file his answer to the administrative complaint, suffice it to say that the suspension was not a punishment or penalty for the acts of dishonesty and misconduct in office, but only as a preventive measure. Suspension is a preliminary step in an administrative investigation. If after such investigation, the charges are established and the person investigated is found guilty of acts warranting his removal, then he is removed or dismissed. This is the penalty. There is, therefore, nothing improper in suspending an officer pending his investigation and before the charges against him are heard and be given an opportunity to prove his innocence.

Moreover, there is nothing in the law, specifically Section 24 of RA 6770, or The Ombudsman Act of 1989, which requires that notice and hearing precede the preventive suspension of an erring public official. This provision states:

> SEC. 24. *Preventive Suspension.* — The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

While a preventive suspension order may originate from a complaint, the Ombudsman is not required to furnish the respondent with a copy of the complaint prior to ordering a preventive suspension.[18]

Carabeo also points out that his counter-affidavit and the evidence presented clearly shows that the complaint filed by

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[16] *Lastimosa v. Vasquez,* 313 Phil. 358, 375 (1995); *Office of the Ombudsman v. Evangelista,* G.R. No. 177211, 13 March 2009, 581 SCRA 350.

[17] 106 Phil. 1031, 1034 (1960).

[18] *Id.*

the DOF-RIPS was baseless. Hence, the preventive suspension order had no leg to stand on.

Under Section 24 of RA 6770, two requisites must concur to render the preventive suspension order valid. First, there must be a prior determination by the Ombudsman that the evidence of respondent's guilt is strong. Second, (a) the offense charged must involve dishonesty, oppression, grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.[19]

These requisites are present here. The Ombudsman justified the issuance of the preventive suspension order in this wise:

> As can be gleaned from the evidence on record, the deliberate failure of respondent Carabeo to disclose all of his supposed properties in his SALN, particularly the vehicles which are registered in his name involves dishonesty which, if proven, warrant his corresponding removal from the government service. The same is true with respect to the 1,000 square meter residential lot located at Tagaytay City which he failed to disclose in his SALN for 2001 and 2002, respectively.
>
> Contrary to the respondent's declaration in his SALN for 2003 and 2004 respectively, the LTO-IT System database as of July 7, 2004 issued by Arabele O. Petilla, Chief, Record Section Management Information Division of the Land Transportation Office, x x x disclosed that there are seven motor vehicles registered in his name, x x x
>
> As regards the 1,000 square meter residential lot located at Tagaytay City, records from the Office of Engr. Gregorio M. Monreal, City Assessor of Tagaytay disclosed that the same was the subject of a Deed of Absolute Sale between the heirs of Teodoro Ambion and spouses Carabeo dated July 16, 2001. Records show that respondent only included the said property in his SALN in 2003 and 2004, respectively.
>
> Second, being the Officer-in-Charge of the Office of the City Treasurer's Office of Parañaque, respondent Carabeo's continued stay thereat may prejudice the outcome of the instant case, he being

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[19] *Id.*

the head of that particular office, albeit in an Officer-in-Charge capacity.

Third, the evidence of guilt against him is strong. It bears stressing that as the current Officer-in-Charge of the Office of the City Treasurer's Office of Parañaque receiving only an annual gross salary of ₱291,036.00, it is highly inconceivable how respondent Carabeo could have legally acquired all these real and personal properties. The fact is that complainant has submitted evidence showing that from 1996 to 2004, respondent Carabeo traveled abroad fifteen (15) times, as shown by his travel records furnished by the Bureau of Immigration; his 2004 club share purchase at Palm Country Club at Ayala Alabang worth ₱640,000.00; two (2) lots in Biñan, Laguna and one (1) townhouse in Cavite purchased in 1998 in the total amount of ₱668,365.00; (3) real properties in Biñan, Laguna and in Tagaytay City, purchased in 1999, 2001 and 2003, respectively, in the total amount of ₱1,272,960.00. This is exclusive of the seven (7) vehicles all registered in his name.

Fourth, respondent's unauthorized foreign travels abroad numbering fifteen (15) times between the years 1996 to 2004, indicates that he has financial resources which could not be legally justified relying solely on his declared income.[20]

Whether the evidence of guilt is strong is left to the determination of the Ombudsman by taking into account the evidence before him.[21] In *Buenaseda v. Flavier*,[22] the Court relevantly pronounced:

The import of the *Nera* decision is that the disciplining authority is given the discretion to decide when the evidence of guilt is strong. This fact is bolstered by Section 24 of R.A. No. 6770, which expressly left such determination of guilt to the "judgment" of the Ombudsman on the basis of the administrative complaint x x x

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[20] *Rollo*, pp. 54-56.

[21] *Ombudsman v. Valeroso,* G.R. No. 167828, 2 April 2007, 520 SCRA 140, 147; *Garcia v. Mojica,* 372 Phil. 892, 906 (1999), citing *Nera v. Garcia*, 106 Phil. 1031 (1960); *Lastimosa v. Vasquez,* 313 Phil. 358 (1995); *Castillo-Co v. Barbers*, 353 Phil. 160 (1998).

[22] G.R. No. 106719, 21 September 1993, 226 SCRA 645. See also *Yasay, Jr. v. Desierto*, 360 Phil. 680 (1998).

As aptly stated by the Court of Appeals, the court cannot substitute its own judgment for that of the Ombudsman on the question of whether the evidence of respondent's guilt is strong warranting the issuance of the preventive suspension order, absent a clear showing of grave abuse of discretion on the part of the Ombudsman.

Moreover, Carabeo cannot claim any right against, or damage or injury that he is bound to suffer from the issuance of the preventive suspension order, since there is no vested right to a public office, or even an absolute right to hold it.[23] Public office is not property but a "public trust or agency."[24] While their right to due process may be relied upon by public officials to protect their security of tenure which, in a limited sense, is analogous to property, such fundamental right to security of tenure cannot be invoked against a preventive suspension order which is a preventive measure, not imposed as a penalty.[25] An order of preventive suspension is not a demonstration of a public official's guilt, which can be pronounced only after a trial on the merits.[26]

III.

Carabeo's non-disclosure of assets in his SALN constitutes a violation of RA 3019, among others.

Carabeo claims that the complaint against him involves a violation of Section 10, RA 6713, or the *Code of Conduct and Ethical Standards for Public Officials and Employees*, which entitles him to be informed beforehand of his omission and to take the necessary corrective action.

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[23] *Ombudsman v. Valeroso, supra* at 150, citing *National Land Titles and Deeds Registration Administration v. Civil Service Commission,* G.R. No. 84301, 7 April 1993, 221 SCRA 145.

[24] *Id.*, citing *Cornejo v. Gabriel*, 41 Phil. 188, 194 (1920); Section 1, Article XI of the 1987 Constitution.

[25] *Id.*, citing *Alonzo v. Capulong*, 313 Phil. 776 (1995); *Yabut v.Ombudsman,* G.R. No. 111304, 17 June 1994, 233 SCRA 310*; Rios v. Sandiganbayan*, 345 Phil. 85 (1997).

[26] *Yasay, Jr. v. Desierto*, *supra* at 698.

Section 10 of RA 6713 provides:

Section 10. *Review of Compliance Procedure.* — (a) The designated Committees of both Houses of the Congress shall establish procedures for the review of statements to determine whether said statements which have been submitted on time, are complete, and are in proper form. In the event a determination is made that a statement is not so filed, the appropriate Committee shall so inform the reporting individual and direct him to take the necessary corrective action.

(b) In order to carry out their responsibilities under this Act, the designated Committees of both Houses of Congress shall have the power within their respective jurisdictions, to render any opinion interpreting this Act, in writing, to persons covered by this Act, subject in each instance to the approval by affirmative vote of the majority of the particular House concerned.

The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act.

(c) The heads of other offices shall perform the duties stated in subsections (a) and (b) hereof insofar as their respective offices are concerned, subject to the approval of the Secretary of Justice, in the case of the Executive Department and the Chief Justice of the Supreme Court, in the case of the Judicial Department.

While Section 10 of RA 6713 indeed allows for corrective measures, Carabeo is charged not only with violation of RA 6713, but also with violation of the Revised Penal Code, RA 1379, and RA 3019, as amended, specifically Sections 7 and 8 thereof, which read:

Sec. 7. *Statement of Assets and Liabilities.* — Every public officer, within thirty days after assuming office, and thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of corresponding Department Head, or in the case of a Head Department or chief of an independent office, with the Office of the President, a true, detailed and sworn statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding

calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of said calendar year.

Sec. 8. *Prima Facie Evidence of and Dismissal Due to Unexplained Wealth.* — If in accordance with the provisions of Republic Act Numbered One Thousand Three Hundred Seventy-Nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be ground for dismissal or removal. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including but not limited to activities in any club or association or any ostentatious display of wealth including frequent travel abroad of a non-official character by any public official when such activities entail expenses evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this Section, notwithstanding any provision of law to the contrary. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation of the unexplained wealth is completed.

In *Ombudsman v. Valeroso,*[27] the Court explained fully the significance of these provisions, to wit:

Section 8 above, speaks of *unlawful acquisition* of wealth, the evil sought to be suppressed and avoided, and Section 7, which mandates full disclosure of wealth in the SALN, is a means of preventing said evil and is aimed particularly at curtailing and minimizing, the opportunities for official corruption and maintaining a standard of honesty in the public service. "Unexplained" matter normally results from "non-disclosure" or concealment of vital facts. SALN, which all public officials and employees are mandated to file, are the means to achieve the policy of accountability of all public officers and employees in the government. By the SALN,

[27] *Supra* note 21 at 149-150.

the public are able to monitor movement in the fortune of a public official; it is a valid check and balance mechanism to verify undisclosed properties and wealth.

Significantly, Carabeo failed to show any requirement under RA 3019 that prior notice of the non-completion of the SALN and its correction precede the filing of charges for violation of its provisions. Neither are these measures needed for the charges of dishonesty and grave misconduct, which Carabeo presently faces.

Based on the foregoing, the Court of Appeals did not commit grave abuse of discretion in rendering the assailed decision. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[28] It exists where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility.[29] It must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[30] No abuse, much less grave abuse, attended the Court of Appeals' judgment in these cases.

WHEREFORE, we *DISMISS* the petitions. Costs against petitioner Liberato M. Carabeo.

SO ORDERED.

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

Leonardo-de Castro, J., no part.

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[28] *Domondon v. Sandiganbayan,* 384 Phil. 848, 857 (2000).

[29] *Id.* See *Balangauan v. Court of Appeals,* G.R. No. 174350, 13 August 2008, 562 SCRA 184, 200-201.

[30] *Id.*

EN BANC

[G.R. No. 178158. December 4, 2009]

STRATEGIC ALLIANCE DEVELOPMENT CORPORATION, *petitioner, vs.* **RADSTOCK SECURITIES LIMITED and PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,** *respondents.* **ASIAVEST MERCHANT BANKERS BERHAD,** *intervenor.*

[G.R. No. 180428. December 4, 2009]

LUIS SISON, *petitioner, vs.* **PHILIPPINE NATIONAL CONSTRUCTION CORPORATION and RADSTOCK SECURITIES LIMITED,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; MAY BE ALLOWED EVEN BEYOND THE PRESCRIBED PERIOD IN THE HIGHER INTEREST OF JUSTICE; SUSTAINED. —** The rule on intervention, like all other rules of procedure, is intended to make the powers of the Court completely available for justice. It is aimed to facilitate a comprehensive adjudication of rival claims, overriding technicalities on the timeliness of the filing of the claims. This Court has ruled: [A]llowance or disallowance of a motion for intervention rests on the sound discretion of the court after consideration of the appropriate circumstances. Rule 19 of the *Rules of Court* is a rule of procedure whose object is to make the powers of the court fully and completely available for justice. Its purpose is not to hinder or delay but to facilitate and promote the administration of justice. Thus, interventions have been allowed even beyond the prescribed period in the Rule in the higher interest of justice. Interventions have been granted to afford indispensable parties, who have not been impleaded, the right to be heard even after a decision has been rendered by the trial court, when the petition for review of the judgment was already submitted for decision before the Supreme Court, and even where the assailed order has already become final and executory. In *Lim v. Pacquing* (310 Phil. 722 (1995)],

the motion for intervention filed by the Republic of the Philippines was allowed by this Court to avoid grave injustice and injury and to settle once and for all the substantive issues raised by the parties. x x x Besides, in the interest of substantial justice and for compelling reasons, such as the nature and importance of the issues raised in this case, this Court must take cognizance of Sison's action. This Court should exercise its prerogative to set aside technicalities in the Rules, because after all, the power of this Court to suspend its own rules whenever the interest of justice requires is well recognized. In *Solicitor General v. The Metropolitan Manila Authority*, this Court held: Unquestionably, the Court has the power to suspend procedural rules in the exercise of its inherent power, as expressly recognized in the Constitution, to promulgate rules concerning 'pleading, practice and procedure in all courts.' In proper cases, procedural rules may be relaxed or suspended in the interest of substantial justice, which otherwise may be miscarried because of a rigid and formalistic adherence to such rules. x x x We have made similar rulings in other cases, thus: Be it remembered that rules of procedure are but mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. x x x Time and again, this Court has suspended its own rules and excepted a particular case from their operation whenever the higher interests of justice so require.

2. **ID.; ID.; ACTIONS; DERIVATIVE ACTION; DEFINED AND CONSTRUED. —** A derivative action is a suit by a stockholder to enforce a corporate cause of action. Under the Corporation Code, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. However, an individual stockholder may file a derivative suit on behalf of the corporation to protect or vindicate corporate rights whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold control of the corporation. In such actions, the corporation is the real party-in-interest while the suing stockholder, on behalf of the corporation, is only a nominal party.

3. **COMMERCIAL LAW; CORPORATION CODE; BOARD OF DIRECTORS; THREE-FOLD DUTIES. —** In this jurisdiction, the members of the board of directors have a three-fold duty:

duty of obedience, duty of diligence, and duty of loyalty. Accordingly, the members of the board of directors (1) shall direct the affairs of the corporation only in accordance with the purposes for which it was organized; (2) **shall not willfully and knowingly vote for or assent to patently unlawful acts of the corporation or act in bad faith or with gross negligence in directing the affairs of the corporation;** and (3) shall not acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees.

4. CIVIL LAW; PRESCRIPTION; ACTION UPON WRITTEN CONTRACT SUCH AS LOAN MUST BE BROUGHT WITHIN TEN YEARS FROM THE TIME THE RIGHT OF ACTION ACCRUES. — Settled is the rule that actions prescribe by the mere lapse of time fixed by law. Under Article 1144 of the Civil Code, an action upon a written contract, such as a loan contract, must be brought within ten years from the time the right of action accrues. The prescription of such an action is interrupted when the action is filed before the court, when there is a written extrajudicial demand by the creditor, or when there is any written acknowledgment of the debt by the debtor.

5. POLITICAL LAW; ADMINISTRATIVE LAW; POWER TO COMPROMISE A SETTLED CLAIM IS VESTED EXCLUSIVELY IN CONGRESS; PURPOSE, EXPLAINED. — Section 36 of PD 1445, enacted on 11 June 1978, has been **superseded by a later law** — Section 20(1), Chapter IV, Subtitle B, Title I, Book V of Executive Order No. 292 or the **Administrative Code of 1987**, which provides: Section 20. Power to Compromise Claims. — (1) When the interest of the Government so requires, the Commission may compromise or release in whole or in part**, any settled claim or liability to any government agency** not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos. **In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the President, with their recommendations, to the Congress**[.] x x x Under this provision, the authority to compromise a settled claim or liability exceeding ₱100,000.00 involving a government agency, as in

this case where the liability amounts to ₱6.185 billion, is vested not in COA but exclusively in Congress. Congress alone has the power to compromise the ₱6.185 billion purported liability of PNCC. Without congressional approval, the Compromise Agreement between PNCC and Radstock involving ₱6.185 billion is void for being contrary to Section 20(1), Chapter IV, Subtitle B, Title I, Book V of the Administrative Code of 1987. PNCC is a "**government agency**" because Section 2 on Introductory Provisions of the Revised Administrative Code of 1987 provides that — *Agency of the Government* refers to any of the various units of the Government, including a department, bureau, office, instrumentality, **or government-owned or controlled corporation,** or a local government or a distinct unit therein. Thus, Section 20(1), Chapter IV, Subtitle B, Title I, Book V of the Administrative Code of 1987 applies to PNCC, which indisputably is a government owned or controlled corporation. In the same vein, the COA's stamp of approval on the Compromise Agreement is void for violating Section 20(1), Chapter IV, Subtitle B, Title I, Book V of the Administrative Code of 1987. x x x The provision of the Revised Administrative Code on the power to settle claims or liabilities was precisely enacted to prevent government agencies from admitting liabilities against the government, then compromising such "settled" liabilities. **The present case is exactly what the law seeks to prevent, a compromise agreement on a creditor's claim settled through admission by a government agency without the approval of Congress for amounts exceeding ₱100,000.00.** What makes the application of the law even more necessary is that the PNCC Board's twin moves are manifestly and grossly disadvantageous to the Government. First, the PNCC admitted solidary liability for a staggering ₱10.743 billion private debt incurred by a private corporation which PNCC does not even control. Second, the PNCC Board agreed to pay Radstock ₱6.185 billion as a compromise settlement ahead of all other creditors, including the Government which is the biggest creditor.

6. ID.; ID.; GOVERNMENT OWNED AND CONTROLLED CORPORATION; DEFINED AND CONSTRUED. — Section 36(2) of the Government Auditing Code expressly states that it applies to the governing bodies of "**government-owned or controlled corporations**." The phrase "government-owned or controlled corporations" refers to both those created by

special charter as well as those incorporated under the Corporation Code. Section 2, Article IX-D of the Constitution provides: SECTION 2. (1) **The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities,** including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) **other government-owned or controlled corporations and their subsidiaries;** and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto. (2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and **promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.**

7. **ID.; ID.; ID.; EXTENT OF JURISDICTION OF THE COMMISSION ON AUDIT; EXPLAINED. —** In explaining the extent of the jurisdiction of COA over government owned or controlled corporations, this Court declared in *Feliciano v. Commission on Audit*: The COA's audit jurisdiction extends not only to government "agencies or instrumentalities," but also to "government-owned and controlled corporations with original charters" as well as "other government-owned or controlled corporations" without original charters. x x x Petitioner forgets that the constitutional criterion on the

exercise of COA's audit jurisdiction depends on the government's ownership or control of a corporation. The nature of the corporation, whether it is private, quasi-public, or public is immaterial. The Constitution vests in the COA audit jurisdiction over "government-owned and controlled corporations with original charters," as well as "government-owned or controlled corporations" without original charters. GOCCs with original charters are subject to COA pre-audit, while GOCCs without original charters are subject to COA post-audit. GOCCs without original charters refer to corporations created under the Corporation Code but are owned or controlled by the government. The nature or purpose of the corporation is not material in determining COA's audit jurisdiction. Neither is the manner of creation of a corporation, whether under a general or special law. Clearly, the COA's audit jurisdiction extends to government owned or controlled corporations incorporated under the Corporation Code. Thus, the COA must apply the Government Auditing Code in the audit and examination of the accounts of such government owned or controlled corporations **even though incorporated under the Corporation Code**. This means that Section 20(1), Chapter IV, Subtitle B, Title I, Book V of the Administrative Code of 1987 on the power to compromise, **which superseded Section 36 of the Government Auditing Code,** applies to the present case in determining PNCC's power to compromise. In fact, the COA has been regularly auditing PNCC on a post-audit basis in accordance with Section 2, Article IX-D of the Constitution, the Government Auditing Code, and COA rules and regulations.

8. ID.; ID.; ID.; ID.; FUNDAMENTAL PRINCIPLES GOVERNING FINANCIAL TRANSACTIONS AND OPERATIONS OF ANY GOVERNMENT AGENCIES. — Forming part of the General Fund, the toll fees can only be disposed of in accordance with the **fundamental** principles governing financial transactions and operations of any government agency, to wit: **(1) no money shall be paid out of the Treasury except in pursuance of an appropriation made by law, as expressly mandated by Section 29(1), Article VI of the Constitution; and (2) government funds or property shall be spent or used *solely* for public purposes, as expressly mandated by Section 4(2) of PD 1445 or the Government Auditing Code.** Section 29(1), Article VI of the Constitution provides: Section 29(1).

No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

9. **ID.; ID.; POWER TO APPROPRIATE MONEY FROM THE GENERAL FUNDS OF THE GOVERNMENT BELONGS EXCLUSIVELY TO THE LEGISLATURE; RATIONALE.** — The power to appropriate money from the General Funds of the Government belongs **exclusively** to the Legislature. Any act in violation of this iron-clad rule is unconstitutional. Reinforcing this Constitutional mandate, Sections 84 and 85 of PD 1445 require that before a government agency can enter into a contract involving the expenditure of government funds, there must be an **appropriation law** for such expenditure, thus: Section 84. *Disbursement of government funds.* 1. Revenue funds shall not be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority. x x x Section 85. *Appropriation before entering into contract.* 1. No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure. x x x Section 86 of PD 1445, on the other hand, requires that the proper accounting official must certify that funds have been appropriated for the purpose. **Section 87 of PD 1445 provides that any contract entered into contrary to the requirements of Sections 85 and 86 shall be void, thus:** Section 87. *Void contract and liability of officer.* **Any contract entered into contrary to the requirements of the two immediately preceding sections shall be void,** and the officer or officers entering into the contract shall be liable to the government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties. Applying Section 29(1), Article VI of the Constitution, as implanted in Sections 84 and 85 of the Government Auditing Code, a law must first be enacted by Congress appropriating ₱6.185 billion as compromise money before payment to Radstock can be made. Otherwise, such payment violates a prohibitory law and thus void under Article 5 of the Civil Code which states that **"[a]cts executed against the provisions of mandatory or prohibitory laws shall be void,** except when the law itself authorizes their validity."

10. **ID.; ID.; GOVERNMENT FUNDS OR PROPERTY SHALL BE SPENT OR USED SOLELY FOR PUBLIC PURPOSES; WHEN VIOLATED. —** Indisputably, funds held in trust by PNCC for the National Government cannot be used by PNCC to pay a private debt of CDCP Mining to Radstock, otherwise the PNCC Board will be liable for malversation of public funds. In addition, to pay Radstock ₱6.185 billion violates the **fundamental** public policy, expressly articulated in Section 4(2) of the Government Auditing Code**, that government funds or property shall be spent or used *solely* for pubic purposes,** thus: Section 4. *Fundamental Principles*. x x x (2) **Government funds or property shall be spent or used *solely* for public purposes.** There is no question that the subject of the Compromise Agreement is CDCP Mining's **private debt** to Marubeni, which Marubeni subsequently assigned to Radstock. x x x PNCC cannot use public funds, like toll fees that indisputably form part of the General Fund, to pay a private debt of CDCP Mining to Radstock. Such payment cannot qualify as expenditure for a public purpose. The toll fees are merely held in trust by PNCC for the National Government, which is the owner of the toll fees. Considering that there is no appropriation law passed by Congress for the ₱6.185 billion compromise amount, the Compromise Agreement is void for being contrary to law, specifically Section 29(1), Article VI of the Constitution and Section 87 of PD 1445. And since the payment of the ₱6.185 billion pertains to CDCP Mining's private debt to Radstock, the Compromise Agreement is also void for being contrary to the fundamental public policy that government funds or property shall be spent or used solely for public purposes, as provided in Section 4(2) of the Government Auditing Code.

11. **ID.; CONSTITUTIONAL LAW; PUBLIC POLICY; PROHIBITION AGAINST A FOREIGN PRIVATE CORPORATION OWNING LAND IN THE PHILIPPINES; APPLICATION IN CASE AT BAR. —** There is no dispute that Radstock is disqualified to own lands in the Philippines. Consequently, Radstock is also disqualified to own the rights to ownership of lands in the Philippines. Contrary to the OGCC's claim, Radstock cannot own the rights to ownership of any land in the Philippines because Radstock cannot lawfully own the land itself. Otherwise, there will be a blatant circumvention of the Constitution, which prohibits a foreign private

corporation from owning land in the Philippines. In addition, Radstock cannot transfer the rights to ownership of land in the Philippines if it cannot own the land itself. **It is basic that an assignor or seller cannot assign or sell something he does not own at the time the ownership, or the rights to the ownership, are to be transferred to the assignee or buyer.** The third party assignee under the Compromise Agreement who will be designated by Radstock can only acquire rights duplicating those which its assignor (Radstock) is entitled by law to exercise. Thus, the assignee can acquire ownership of the land only if its assignor, Radstock, owns the land. Clearly, the assignment by PNCC of the real properties to a nominee to be designated by Radstock is a circumvention of the Constitutional prohibition against a private foreign corporation owning lands in the Philippines. Such circumvention renders the Compromise Agreement void.

12. **ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; THE GOVERNMENT AUDITING CODE; PROVIDES FOR THE GUIDELINES ON THE DISPOSAL OF PROPERTY AND OTHER ASSETS OF THE GOVERNMENT. —** Under Section 79 of the Government Auditing Code, the disposition of government lands to private parties requires public bidding. COA Circular No. 89-926, issued on 27 January 1989, sets forth the guidelines on the disposal of property and other assets of the government. Part V of the COA Circular provides: V. MODE OF DISPOSAL/ DIVESTMENT: — This Commission recognizes the following modes of disposal/divestment of assets and property of national government agencies, local government units and government-owned or controlled corporations and their subsidiaries, aside from other such modes as may be provided for by law. 1. Public Auction. **Conformably to existing state policy, the divestment or disposal of government property as contemplated herein shall be undertaken primarily thru public auction.** Such mode of divestment or disposal shall observe and adhere to established mechanics and procedures in public bidding, *viz:* a. adequate publicity and notification so as to attract the greatest number of interested parties; (vide, Sec. 79, P.D. 1445) b. sufficient time frame between publication and date of auction; c. opportunity afforded to interested parties to inspect the property or assets to be disposed of; d. confidentiality of sealed proposals; e. bond and other

prequalification requirements to guarantee performance; and f. fair evaluation of tenders and proper notification of award. It is understood that the Government reserves the right to reject any or all of the tenders.

13. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; *DACION EN PAGO;* DEFINED AND CONSTRUED. —** [A] *dacion en pago* is in essence a form of sale, which basically involves a disposition of a property. In *Filinvest Credit Corp. v. Philippine Acetylene, Co., Inc.*, the Court defined *dacion en pago* in this wise: *Dacion en pago*, according to Manresa, is the transmission of the ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of obligation. In *dacion en pago*, as a special mode of payment, the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt. **The undertaking really partakes in one sense of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt.** As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price. In any case, common consent is an essential prerequisite, be it sale or innovation to have the effect of totally extinguishing the debt or obligation.

14. **ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; INTENTION TO DEFRAUD CREDITORS; BADGES OF FRAUD; ENUMERATION. —** Notably, the presumption of fraud or intention to defraud creditors is not just limited to the two instances set forth in the first and second paragraphs of Article 1387 of the Civil Code. Under the third paragraph of the same article, "the design to defraud creditors may be proved in any other manner recognized by the law of evidence." In *Oria v. Mcmicking,* this Court considered the following instances as badges of fraud: 1. The fact that the consideration of the conveyance is fictitious or is inadequate. 2. A transfer made by a debtor after suit has begun and while it is pending against him. 3. A sale upon credit by an insolvent debtor. 4. Evidence

of large indebtedness or complete insolvency. 5. The transfer of all or nearly all of his property by a debtor, especially when he is insolvent or **greatly embarrassed financially.** 6. The fact that the transfer is made between father and son, when there are present other of the above circumstances. 7. The failure of the vendee to take exclusive possession of all the property. Among the circumstances indicating fraud is a transfer of all or nearly all of the debtor's assets, especially when the debtor is greatly embarrassed financially. Accordingly, neither a declaration of insolvency nor the institution of insolvency proceedings is a condition *sine qua non* for a transfer of all or nearly all of a debtor's assets to be regarded in fraud of creditors. **It is sufficient that a debtor is greatly embarrassed financially.**

15. **ID.; ID.; COMPROMISE AGREEMENT; WHEN VOID AND INEXISTENT. —** Under Article 1409 of the Civil Code, the Compromise Agreement is **"inexistent and void from the beginning," and "cannot be ratified,"** thus: Art. 1409. **The following contracts are inexistent and void from the beginning:** (1) Those whose cause, object or purpose is **contrary to law**, morals, good customs, public order or **public policy;** x x x (7) Those **expressly prohibited or declared void by law. These contracts cannot be ratified.** x x x. The Compromise Agreement is indisputably contrary to the Constitution, existing laws and public policy. Under Article 1409, the Compromise Agreement is expressly declared void and **"cannot be ratified." No court, not even this Court, can ratify or approve the Compromise Agreement.** This Court must perform its duty to defend and uphold the Constitution, existing laws, and fundamental public policy. This Court must not shirk in declaring the Compromise Agreement ***inexistent and void ab initio.***

CARPIO MORALES, *J., concurring opinion*:

POLITICAL LAW; ADMINISTRATIVE LAW; COMPROMISE CLAIMS; REQUIREMENT FOR CONGRESSIONAL APPROVAL THEREOF, EXPLAINED. — Executive Order No. 292 or the Administrative Code of 1987 requires congressional approval on the compromise of claims valued at more than ₱100,000, thus the pertinent section provides:

Section 20. *Power to Compromise Claims.* — (1) When the interest of the Government so requires, the Commission [on Audit] may compromise or release in whole or in part, **any settled claim or liability to any government agency** not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos. **In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the President, with their recommendations, to the Congress** x x x. At the outset, it bears clarification that the phrase "any settled claim or liability *to* any government agency" includes not just liabilities *to* the government but also claims *against* the government. Although the two relevant cases (*infra*) so far decided by this Court involved only liabilities *to* the government, there is nothing in the law that prohibits the government from amicably settling its own liability to a person, subject to the same stringent qualifications and conditions. That the State has the whole government machinery to contest any alleged liability and protect the release of government funds to pay off such claim is not in consonance with the avowed State policy expressed by law that encourages settlement of civil cases. In *Benedicto v. Board of Administrators of Television Stations RPN, BBC and IBC*, the Court ruled that the requirement of prior congressional approval for the compromise of an amount exceeding ₱100,000 applies only to a settled claim or liability. x x x I submit that a claim or liability is settled once it has been liquidated or determined and no issue remains as to the amount or identity of the liability. In *Benedicto*, the Court explained that "[t]he Government's claim against Benedicto is not yet **settled**, and the ownership of the alleged ill-gotten assets is still being litigated in the Sandiganbayan, hence, the PCGG's Compromise Agreement with Benedicto need not be submitted to the Congress for approval." In *Benedicto*, there was yet no determination as to the ownership of the sequestered properties. The determination, if it be a judicial one, need not be final and executory. Since the aim of a compromise is to "avoid a litigation or put an end to one already commenced," there is no rhyme or reason to end a litigation that is already terminated and to wait for a final and executory decision before

discussing a possible compromise. In *The Alexandra Condominium Corporation v. Laguna Lake Development Corporation*, the subject of compromise was the ₱1,062,000 fine imposed by the Laguna Lake Development Authority against a condominium corporation as compensation for damages resulting from failure to meet established water and effluent quality standards. The Court therein ruled that the condominium corporation should have first pursued the administrative recourse to the Department of Environment and Natural Resources Secretary before filing the petition in court. On the issue of the alleged pending amicable settlement *vis-à-vis* the claim of non-exhaustion of administrative remedies, the Court ruled that congressional approval of a compromise agreement is "not administrative but legislative [in nature], and need not be resorted to before filing a judicial action." In the scheme of things, the congressional approval acts as a safeguard in reviewing the soundness of the business judgment. It is not for the Court to preempt the legislative branch and say that "under the circumstances, the compromise agreement could not be considered as disadvantageous to PNCC and the National Government."

LEONARDO-DE CASTRO, *J., concurring opinion*:

1. **POLITICAL LAW; ADMINISTRATIVE LAW; POWER TO COMPROMISE CLAIMS; EXPLAINED. —** Section 36, as amended by Section 20, Chapter 4, Title I-B, Book V, E.O. No. 292 (the Administrative Code of 1987), provides: Section 36. *Power to compromise claims.* — (1) When the interest of the Government so requires, the Commission may compromise or release in whole or in part, **any settled claim or liability to any government agency** not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos. In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the President, with their recommendations, to the Congress; and (2) The Commission may, in the interest of the Government, authorize the charging or crediting to an appropriate account in the National Treasury, small

discrepancies (overage or shortage) in the remittances to, and disbursements of, the National Treasury, subject to the rules and regulations as it may prescribe. Plainly, pursuant to the above-quoted provision, the power to compromise or release involves a claim or liability **to** a government agency, *i.e.* an indebtedness **to** a government agency, which term by definition under E.O. No. 292 includes "government owned or controlled corporations." The language of Section 36 does not authorize the compromise of an indebtedness of the government or a liability of the government to any party. x x x When there is a compromise of an indebtedness **to** the government, it generally presupposes that the government's claim will be paid, albeit at a lower amount than the actual liability. It involves funds going into the coffers of the government. On the other hand, when there is a compromise of an indebtedness **of** the government, this means that public funds will be disbursed from the treasury to answer for such debt. The former type of compromise makes practical sense since in that situation, the State is condoning a portion of an actual or settled or definite obligation in order to collect some amount for a good or meritorious ground rather than risk the non-payment of all of its claim. However, the power to compromise an indebtedness to the government does not necessarily include the power to compromise an asserted claim against or liability of the government, more so if the said claim against or liability of the government is unsettled. It needs no deep logical reasoning to understand that before the government is made to part with public funds or property, the claim **against** the government must be fixed, definite or settled. Otherwise, the government may be holding itself liable for unfounded or baseless claims. This is because the power to compromise a liability of the government entails the disbursement of public funds or property which is an act subject to stringent rules in order to safeguard against loss or wastage of such funds or property that are so vital to the delivery of basic public goods and services. Not the least of these rules is Article VI, Section 29(1) of the 1987 Constitution which states that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law." In consonance with Section 29, Article VI, the General Auditing Code also provides: Section 4. *Fundamental Principles.* — Financial transactions and operations of any government agency shall be governed by the fundamental

principles set forth hereunder, to wit: 1. **No money shall be paid out of any public treasury** or depository **except in pursuance of an appropriation law or other specific statutory authority.** 2. Government funds or property shall be spent or **used solely for public purposes.**

2. ID.; ID.; ID.; AUTHORITY TO COMPROMISE MUST INVOLVE A SETTLED CLAIM OR LIABILITY; REQUIREMENTS. — Section 36 is very clear that the Commission on Audit (COA) may only compromise or release "any **settled** claim or liability." x x x Under Section 36, the authority to compromise must involve a "settled claim or liability" regardless of amount, the latter being significant only to determine the approving authority. This is the clear import of Section 36. This interpretation of Section 36, which requires a final and executory judicial determination of the liability as a prerequisite to the exercise of the power to compromise, would reinforce the mandate of the COA to guard against illegal or negligent disbursement of public funds. x x x Section 36 requires, as indispensable conditions for a compromise, that the claim is settled and the application for relief is submitted to Congress for approval with the recommendation of the COA and the President if the "settled claim" exceeds ₱100,000.00. The statutory conditions of (1) a settled claim and (2) Presidential endorsement and Congressional approval of the compromise depending on the amount of the claim are entrenched as mechanisms for ensuring public accountability and fiscal responsibility. If a settled claim (*i.e.* a claim that has been adjudged valid and has been competently computed based on evidence) that exceeds ₱100,000.00 requires Presidential endorsement and Congressional approval, with more reason, an unsettled claim (*i.e.* one that is still of questionable validity or legality) of any amount should require Presidential endorsement and Congressional approval before it can be compromised. This is especially true in the case of a compromise of a supposed debt of the government to another party. It seems absurd that a compromise that will require a disbursement of public funds or property will not require Congressional approval when the Constitution and the law demand legislative action and a public purpose before such a disbursement can be made. To be sure, in the case of a compromise of an indebtedness **to** the government, there must be a reasonable and dependable benchmark by which to ascertain

whether the amount of loss or waived receivables under the compromise is acceptable or justified. x x x We simply cannot apply to this case the statutory provisions on compromise of cases in ordinary civil or corporate litigation. We must consider the far-reaching public interests involved herein and the special laws or rules applicable to the expenditure or disposition of public funds or property, especially proscriptions against government guarantee of debts or obligations incurred for a private purpose. Public officers entering into a compromise of an "unsettled" indebtedness **of** the government, in the absence of a definite and categorical legal authority to do so, are assuming a heavy burden of justifying such compromise in order to avoid accusations of entering into a manifestly disadvantageous agreement on behalf of the government.

BERSAMIN, *J., dissenting opinion*:

1. **REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; AS A RULE, THE PROSPECTIVE INTERVENOR MUST SHOW AN INTEREST IN THE LITIGATION. —** Rule 19 of the 1997 *Rules of Civil Procedure,* which regulates the procedure for permitting an intervention, relevantly provides: Section 1. *Who may intervene*. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding. (2[a], [b]a, R12) To be able to intervene in an action, therefore, the prospective intervenor must show an interest in the litigation that is of such direct and material character that he will either gain or lose by the direct legal operation and effect of judgment.
2. **ID.; ID.; ID.; DEFINED AND CONSTRUED. —** Intervention is a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining the plaintiff in claiming what is sought by the complaint, or uniting with the defendant in resisting the claims of the plaintiff,

or demanding something adverse to both of them. It is the act or proceeding by which a third person becomes a party to a suit pending between two others. It is the admission, by leave of court, of a person not an original party to pending legal proceedings, by which such person becomes a party for the protection of some alleged right or interest to be affected by such proceedings. x x x for intervention is merely permissive; and that the conditions for the right of intervention to be exercised must be shown by the party proposing to intervene. The procedure to secure the right to intervene is fixed by a statute or rule, and intervention can be secured only in accordance with the terms of the applicable statutory or reglementary provision. Under the rules on intervention, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court or judge.

3. **ID.; ID.; ID.; PURPOSE, EXPLAINED. —** The purpose of intervention — never an independent action, but ancillary and supplemental to the existing litigation – is not to obstruct or to unnecessarily delay the placid operation of the machinery of trial, but merely to afford one not an original party, yet having a certain right or interest in the pending case, the opportunity to appear and be joined so he can assert or protect such right or interest. Accordingly, as a general guide for determining whether a party may be allowed to intervene or not, the trial court, in the exercise of its sound discretion, shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

4. **ID.; ID.; JUDGMENT; JURISDICTION TO ANNUL JUDGMENT RENDERED BY THE REGIONAL TRIAL COURT IS EXPRESSLY GRANTED TO THE COURT OF APPEALS. —** The jurisdiction to annul a judgment rendered by the Regional Trial Court is expressly granted to the CA by Section 9 (2) of *Batas Pambansa Blg*. 129, otherwise known as the *Judiciary Reorganization Act*. The procedure for the purpose is governed by Rule 47, 1997 *Rules of Civil Procedure*, whose Section 1 provides: Section 1. *Coverage*. — This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal,

petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. Explaining the coverage of the procedure under Rule 47 in *Grande v. University of the Philippines,* the Court definitely ruled out the application of Rule 47 to the nullification of a decision of the CA, *viz:* The annulment of judgments, as a recourse, is equitable in character, allowed only in exceptional cases, as where there is no available or other adequate remedy. It is generally governed by Rule 47 of the 1997 Rules of Civil Procedure. Section 1 thereof expressly states that the Rule "shall govern the annulment by the Court of Appeals of judgments of final orders and resolutions in civil action of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner." Clearly, Rule 47 applies only to petitions for the nullification of judgments rendered by regional trial courts filed with the Court of Appeals. It does not pertain to the nullification of decisions of the Court of Appeals.

5. **COMMERCIAL LAW; CORPORATION CODE; DERIVATIVE SUIT; REQUISITES. —** A corporation is vested by law with a personality separate and distinct from that of each person composing or representing it. This legal personality of the corporation gives rise to the proposition that a stockholder may not generally bring a suit to repudiate the actions of the corporation, unless it is a stockholder's suit, more commonly known as a derivative suit. x x x In this jurisdiction, the stockholder must comply with the essential requisites for the filing of a derivative suit. The requisites are set forth in Section 1, Rule 8 of the *Interim Rules of Procedure Governing Intra-Corporate Controversies,* namely: 1. That he was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed; 2. That he exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires, and alleges the same with particularity in the complaint; 3. No appraisal rights are available for the act or acts complained of; and 4. The suit is not a nuisance or harassment suit.

6. **ID.; ID.; PRIMARY FRANCHISE DISTINGUISHED FROM SECONDARY FRANCHISE. —** It becomes appropriate to stress, for purposes of clarity, that the *primary franchise* of a corporation should not be confused with its *secondary franchise,* if any. According to *J.R.S. Business Corp. v. Imperial Insurance, Inc.*: For practical purposes, franchises, so far as relating to corporations, are divisible into (1) **corporate or general franchises;** and (2) **special or secondary franchises. The former is the franchise to exist as a corporation, while the latter are certain rights and privileges conferred upon existing corporations, such as the right to use the streets of a municipality to lay pipes or tracks, erect poles or string wires.** The distinction between the two franchises of a corporation should always be delineated. The *primary franchise* (or the right to exist as such) is vested in the individuals composing the corporation, not in the corporation itself, and cannot be conveyed in the absence of a legislative authority to do so; but the special or secondary franchise of a corporation is vested in the corporation itself, and may ordinarily be conveyed or mortgaged under a general power granted to the corporation to dispose of its property, except such special or secondary franchises as are charged with a public use. The general law under which a private corporation is formed or organized is the *Corporation Code*, whose requirements must be complied with by individuals desiring to incorporate themselves. Only upon such compliance will the corporation come into being and acquire a juridical personality, as to give rise to its right to exist and to act as a legal entity. This right is a corporation's *primary franchise*. In contrast, a government corporation is normally created by special law, often referred to as its charter.

7. **POLITICAL LAW; ADMINISTRATIVE LAW; POWER TO COMPROMISE CLAIMS; APPLICABLE ONLY TO SETTLED CLAIMS OR LIABILITY TO ANY GOVERNMENT AGENCY; SUSTAINED. —** In *Benedicto v. Board of Administrators of Television Stations* and *Guingona, Jr. v. PCGG*, the Court clarified that Section 20, Chapter 4, Sub-Title B, Title 1, Book 5, of Executive Order No. 292, was applicable only to a *settled claim or liability*, to wit: Prior congressional approval is not required for the PCGG to enter into a *compromise agreement* with persons against whom it has filed actions for recovery of ill-gotten wealth. Section 20, Chapter 4, Subtitle B, Title I, Book V of

the Revised Administrative Code of 1987 (E.O. No. 292) cited by Senator Guingona is inapplicable as it refers to a settled claim or liability. The provision reads: Section 20. *Power to Compromise Claims*. — (1) When the interest of the Government so requires, the Commission may compromise or release, in whole or in part, any settled claim or liability to any government agency not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos. In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the President, with their recommendations, to the Congress; x x x The Government's claim against Benedicto is not yet settled, and the ownership of the alleged ill-gotten assets is still being litigated in the Sandiganbayan. Hence, the PCGG's *compromise agreement* with Benedicto need not be submitted to the Congress for approval. The exception of a compromise or release of a claim or liability *yet to be settled* from the requirement for presidential and congressional approval is realistic and practical. In a settlement by *compromise agreement*, the negotiating party must have the freedom to negotiate and bargain with the other party. Otherwise, tying the hands of the Government representative by requiring him to submit each step of the negotiation to the President and to Congress will unduly hinder him from effectively entering into any *compromise agreement*.

8. **ID.; ID.; DIVESTMENT OR DISPOSAL OF GOVERNMENT PROPERTY SHOULD BE UNDERTAKEN THROUGH PUBLIC BIDDING; EXCEPTION. —** The rationale for requiring a public bidding is the need to prevent the Government from being shortchanged by minimizing the occasions for corruption and the temptations to commit abuse of discretion on the part of government authorities. As a rule, divestment or disposal of government property should be undertaken primarily through public bidding. The mode of disposition of Government properties and assets is not limited to public bidding, however, because there are recognized exceptions, including when public bidding is not the most advantageous means for the Government to divest or dispose of its properties.

9. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; *DACION EN PAGO*; APPLICATION IN CASE AT BAR. —** Under Article 1245 of the *Civil Code,* a *dacion en pago* or a dation in payment involves the alienation of property to the creditor in satisfaction of a debt in money. The modern concept of dation in payment considers it as a novation by change of the object. Thus, the *compromise agreement* was a *dacion en pago*, in that a novation by a change of the object took place due to the original obligation of PNCC to pay its liability (adjudged in the amount of ₱13,151,956,528) being thereby converted into another obligation whereby PNCC would transfer the real properties listed in the *compromise agreement* to the qualified assignees nominated by Radstock. Regardless of the pegging of the values of the listed properties at specified amounts, the transfer to Radstock's assignees would already constitute a performance of PNCC's obligations. In other words, the obligation of PNCC to Radstock would be deemed fulfilled, although Radstock might realize a lesser value from the assignees for the properties. Verily, the dispositions made in the *compromise agreement,* being in the nature of a *dacion en pago*, did not require public bidding. This conclusion accords with the holding in *Uy v. Sandiganbayan,* where the Court sustained the argument of PCGG that the *dacion en pago* transactions were beyond the ambit of COA Circular No. 89-296.

10. **POLITICAL LAW; ADMINISTRATIVE LAW; POWER OF ADMINISTRATIVE AGENCIES TO ISSUE OPERATING PERMITS; SUSTAINED. —** In this jurisdiction, the power of administrative agencies to issue operating permits or franchises to public utilities has long been recognized. In *Philippine Airlines v. Civil Aeronautics Board*, for instance, the Court pronounced: Given the foregoing postulates, we find that the Civil Aeronautics Board has the authority to issue a Certificate of Public Convenience and Necessity, or Temporary Operating Permit to a domestic air transport operator, who, though not possessing a legislative franchise, meets all the other requirements prescribed by law. Such requirements were enumerated in Section 21 of R.A. 776. <u>There is nothing in the law nor in the Constitution, which indicates that a legislative franchise is an indispensable requirement for an entity to operate as a domestic air transport operator</u>. Although Section 11 of Article XII recognizes Congress' control over any franchise, certificate or authority to operate a public utility, it does not

mean Congress has exclusive authority to issue the same. Franchises issued by Congress are not required before each and every public utility may operate. In many instances, Congress has seen it fit to delegate this function to government agencies, specialized particularly in their respective areas of public service. A reading of Section 10 of the same reveals the clear intent of Congress to delegate the authority to regulate the issuance of a license to operate domestic air transport services: SECTION 10. *Powers and Duties of the Board.* (A) Except as otherwise provided herein, the Board shall have the power to regulate the economic aspect of air transportation, and shall have general supervision and regulation of, the carriers, general sales agents, cargo sales agents, and air freight forwarders as well as their property rights, equipment, facilities and franchise, insofar as may be necessary for the purpose of carrying out the provision of this Act. Likewise, we said in *Metropolitan Cebu Water District v. Adala*: Moreover, this Court, in *Philippine Airlines, Inc. vs. Civil Aeronautics Board*, has construed the term "franchise" broadly so as to include, not only authorizations issuing directly from Congress in the form of statute, but also those granted by administrative agencies to which the power to grant franchises has been delegated by Congress, to wit: Congress has granted certain administrative agencies the power to grant licenses for, or to authorize the operation of certain public utilities. With the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is constantly growing tendency towards the delegation of greater powers by the legislature, and towards the generally recognized that a franchise may be derived indirectly from the state through a duly designated agency, and to this extent, the power to grant franchises has frequently been delegated, even to agencies other than those of legislative in nature. In pursuance of this, it has been held that privileges conferred by grant by local authorities as agents for the state constitute as much a legislative franchise as though the grant had been made by an act of the Legislature.

11. **CIVIL LAW; CONCURRENCE AND PREFERENCE OF CREDITS; WHEN PREFERENCE OF CREDITS MAY BE INVOKED. —** The Court explained when preference of credit may be invoked in *Development Bank of the Philippines v. Secretary of Labor*, thus: x x x A preference of credit bestows

upon the preferred creditor an advantage of having his credit satisfied first ahead of other claims which may be established against the debtor. Logically, it becomes material only when the properties and assets of the debtor are insufficient to pay his debts in full; for if the debtor is amply able to pay his various creditors in full, how can the necessity exist to determine which of his creditors shall be paid first or whether they shall be paid out of the proceeds of the sale of the debtor's specific property? Indubitably, the preferential right of credit attains significance only after the properties of the debtor have been inventoried and liquidated, and the claims held by his various creditors have been established. In this jurisdiction, bankruptcy, insolvency and general judicial liquidation proceedings provide the only proper venue for the enforcement of a creditor's preferential right x x x for these are *in rem* proceedings binding against the whole world where all persons having interest in the assets of the debtors are given the opportunity to establish their respective credits.

12. **ID.; ID.; THE GOVERNMENT CAN NOT GENERALLY CLAIM PREFERENCE OF CREDIT AND RECEIVE PAYMENTS AHEAD OF OTHER CREDITORS; SUSTAINED. —** In *In Re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., Philippine Deposit Insurance Corporation v. Bureau of Internal Revenue*, the Court clarifies: x x x The Government, in this case, cannot generally claim preference of credit, and receive payments ahead of the other creditors of RBBI. Duties, taxes, and fees due the Government enjoy priority only when they are with reference to a specific movable property, under Article 2241 (1) of the Civil Code, or immovable property, under Article 2242 (1) of the same Code. However, with reference to the other real and personal property of the debtor, sometimes referred to as "free property," the taxes and assessments due the National Government, other than those in Articles 2241(1) and 2242 (1) of the Civil Code will come only in ninth place in the order of the preference. Verily, any creditor who may feel aggrieved by the *compromise agreement* (such that his rights over PNCC's assets may be prejudiced by the *compromise agreement*) should initiate the *proper* proceedings to protect his rights. Yet, no bankruptcy, insolvency, or general judicial liquidation proceedings have been initiated or filed by any of PNCC's creditors. With none, including the

Government, having done so as yet, it is improper and premature for Sison to cry *fraud against the Government*.

13. **ID.; ID.; INSOLVENCY; THE STATE OF INSOLVENCY IS PRIMARILY GOVERNED BY THE CIVIL CODE; TWO DISTINCT PROCEEDINGS. —** Ordinarily, a person is *insolvent* when all his properties are not sufficient to pay all of his debts. This definition is the general and popular meaning of the term *insolvent*. In this jurisdiction, the state of insolvency is governed by special laws to the extent that they are not inconsistent with the *Civil Code*. In other words, the state of insolvency is primarily governed by the *Civil Code* and subsidiarily by the *Insolvency Law* (Act No. 1956, as amended). Under Act No. 1956, there are two distinct proceedings by which to declare a person insolvent, namely: a) the voluntary or debtor-initiated proceedings; and b) the involuntary or creditor-initiated proceedings, which require that the petition be filed by three or more creditors. The judicial declaration that a person (either natural or juridical) is insolvent produces legal effects, particularly on the disposition of the debtor's assets. Until and unless there is an insolvency proceeding or a judicial declaration that a person is insolvent, however, any state of insolvency of a debtor remains legally insignificant as far as his capacity to dispose of his properties is concerned. This capacity to dispose is not in itself iniquitous or questionable, for the creditor is not meanwhile left without recourse. There are remedies for the creditor in case any disposition of the debtor's assets is in fraud of creditors.

14. **COMMERCIAL LAW; CORPORATION CODE; RULE ON THE SALE AND DISPOSITION OF ASSETS, SPECIFIED. —** Section 40 of the *Corporation Code* provides: Sec. 40. *Sale or other disposition of assets.* — Subject to the provisions of existing laws on illegal combinations and monopolies, a corporation may, by a majority vote of its board of directors or trustees, sell, lease, exchange, mortgage, pledge or otherwise dispose of all or substantially all of its property and assets, including its goodwill, upon such terms and conditions and for such consideration, which may be money, stocks, bonds or other instruments for the payment of money or other property or consideration, as its board of directors or trustees may deem expedient, when authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital

stock, or in case of non-stock corporation, by the vote of at least to two-thirds (2/3) of the members, in a stockholder's or member's meeting duly called for the purpose. Written notice of the proposed action and of the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally: Provided, That any dissenting stockholder may exercise his appraisal right under the conditions provided in this Code. A sale or other disposition shall be deemed to cover substantially all the corporate property and assets if thereby the corporation would be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated. After such authorization or approval by the stockholders or members, the board of directors or trustees may, nevertheless, in its discretion, abandon such sale, lease, exchange, mortgage, pledge or other disposition of property and assets, subject to the rights of third parties under any contract relating thereto, without further action or approval by the stockholders or members. Nothing in this section is intended to restrict the power of any corporation, without the authorization by the stockholders or members, to sell, lease, exchange, mortgage, pledge or otherwise dispose of any of its property and assets if the same is necessary in the usual and regular course of business of said corporation or if the proceeds of the sale or other disposition of such property and assets be appropriated for the conduct of its remaining business. In non-stock corporations where there are no members with voting rights, the vote of at least a majority of the trustees in office will be sufficient authorization for the corporation to enter into any transaction authorized by this section. (28 1/2a) The law defines a *sale or disposition of substantially all assets and property* as one by which the corporation "would be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated." Any disposition short of this will not need stockholder action. The text and tenor of Section 40, *supra*, are clear and do not require interpretation, that the Court must not read any other meaning to the law.

15. POLITICAL LAW; CONSTITUTIONAL LAW; PRINCIPLES OF CONSTITUTIONAL CONSTRUCTION; GUIDELINES. — Well-settled principles of constitutional construction are

also firm guides for interpretation. These principles are reiterated in *Francisco v. The House of Representatives*, to wit: First, *verba legis*, that is, wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed. x x x. Second, where there is ambiguity, *ratio legis et anima*. The words of the Constitution should be interpreted in accordance with the intent of the framers. x x x. Finally, *ut magis valeat quam pereat*. The Constitution is to be interpreted as a whole.

16. **CIVIL LAW; PROPERTY; OWNERSHIP; ATTRIBUTE OF OWNERSHIP; EXPLAINED. —** Although it may be argued that the "right to designate the qualified assignee to the property" is an attribute of ownership, it does not necessarily follow that the presence of such right already means that the person holding the right has become the owner of the property. There is more to ownership than being able to designate an assignee for the property. The attributes of ownership are: *jus utendi* (right to possess and enjoy), *jus fruendi* (right to the fruits), *jus abutendi* (right to abuse or consume), *jus disponendi* (right to dispose or alienate), and *jus vindicandi* (right to recover or vindicate). An owner of a thing or property may agree to transfer, assign, or limit the rights attributed to his ownership, but this does not mean that he loses his ownership over the thing. Accordingly, one may lease his property to others without affecting his title over it; or he may enter into a contract limiting his enjoyment or use of the property; or he may bind himself to first offer a thing for sale to a particular person before selling it to another; or he may agree to let another person designate an assignee to whom the property will be transferred or sold in consideration of an obligation. In any of such situations, there is no actual or legal transfer of ownership, for ownership still pertains, legally and for all intents and purposes, to the owner, not to the other person to whom *an* attribute of ownership has been transferred.

17. **ID.; TRUST; DEFINED AND CONSTRUED. —** Trust is the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter. By definition, trust relations between parties are either express or implied. Express trusts are created

by the direct and positive acts of the parties, by some writing or deed, or will, or by words evincing an intention to create a trust.

18. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; LAW OF THE CASE; DEFINED AND CONSTRUED. —** *Law of the case* is defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be facts of the case before the court, notwithstanding that the rule laid down may have been reversed in other cases. Indeed, after the appellate court has issued a pronouncement on a point presented to it with a full opportunity to be heard having been accorded to the parties, that pronouncement should be regarded as the law of the case and should not be reopened on a remand of the case. The concept of the *law of the case* is explained in *Mangold v. Bacon*, thus: The general rule, nakedly and badly put, is that legal conclusions announced on a first appeal, whether on the general law or the law as applied to the concrete facts, not only prescribe the duty and limit the power of the trial court to strict obedience and conformity thereto, but they become and remain the law of the case in all after steps below or above on subsequent appeal. The rule is grounded on convenience, experience, and reason. Without the rule there would be no end to criticism, re-agitation, re-examination, and reformulation. In short, there would be endless litigation. It would be intolerable if parties litigant were allowed to speculate on changes in the personnel of a court, or on the change of our rewriting propositions once gravely ruled on solemn argument and handed down as the law of a given case. An itch to reopen questions foreclosed on a first appeal would result in the foolishness of the inquisitive youth who pulled up his corn to see how it grew. Courts are allowed, if they so choose, to act like ordinary sensible persons. The administration of justice is a practical affair. The rule is a practical and a good one of frequent and beneficial use.

APPEARANCES OF COUNSEL

Mutia Trinidad Venadas and Pantanosas Law Offices for STRADEC.
Luis Sison for petitioners in G.R. No. 180428.
Office of the Government Corporate Counsel for PNCC.
Agabin Verzola and Layaoen Law Offices for RADSTOCK.
Sycip Salazar Hernandez and Gatmaitan for Asiavest.

D E C I S I O N

CARPIO, *J.*:

Prologue

This case is an anatomy of a ₱6.185 billion[1] pillage of the public coffers that ranks among one of the most brazen and hideous in the history of this country. This case answers the questions why our Government perennially runs out of funds to provide basic services to our people, why the great masses of the Filipino people wallow in poverty, and why a very select few amass unimaginable wealth at the expense of the Filipino people.

On 1 May 2007, the 30-year old franchise of Philippine National Construction Corporation (PNCC) under Presidential Decree No. 1113 PD 1113), as amended by Presidential Decree No. 1894 (PD 1894), expired. During the 13th Congress, PNCC sought to extend its franchise. PNCC won approval from the House of Representatives, which passed House Bill No. 5749[2]

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[1] This is a conservative amount since the real properties conveyed under the Compromise Agreement are valued only at 70% of their appraised value. In addition, payment from 50% of the toll fees for 27 years, amounting to ₱9.382 billion, is given a net present value of only ₱1.287 billion. **Senator Franklin M. Drilon puts the actual value of the compromise at ₱17.676 billion**.

[2] AN ACT RENEWING THE FRANCHISE OF THE PHILIPPINE NATIONAL CONSTRUCTION CORPORATION (PNCC), FORMERLY KNOWN AS THE CONSTRUCTION AND DEVELOPMENT CORPORATION OF THE PHILIPPINES (CDCP), GRANTED UNDER PRESIDENTIAL

renewing PNCC's franchise for another 25 years. However, PNCC failed to secure approval from the Senate, dooming the extension of PNCC's franchise. Led by Senator Franklin M. Drilon, the Senate opposed PNCC's plea for extension of its franchise.[3] Senator Drilon's privilege speech[4] explains why the Senate chose not to renew PNCC's franchise:

> I repeat, Mr. President. PNCC has agreed in a compromise agreement dated 17 August 2006 to transfer to Radstock Securities Limited ₱17,676,063,922, no small money, Mr. President, my dear colleagues, ₱17.6 billion.
>
> What does it consist of? It consists of the following: 19 pieces of real estate properties with an appraised value of ₱5,993,689,000. Do we know what is the bulk of this? An almost 13-hectare property right here in the Financial Center. As we leave the Senate, as we go out of this Hall, as we drive thru past the GSIS, we will see on the right a vacant lot, that is PNCC property. As we turn right on Diosdado Macapagal, we see on our right new buildings, these are all PNCC properties. That is 12.9 hectares of valuable asset right in this Financial Center that is worth ₱5,993,689.000.
>
> What else, Mr. President? The 20% of the outstanding capital stock of PNCC with a par value of ₱2,300,000,000 — I repeat, 20% of the outstanding capital stock of PNCC worth ₱2,300 billion — was assigned to Radstock.

DECREE NO. 1113, AS AMENDED BY PRESIDENTIAL DECREE NO. 1894, TO ANOTHER (25) YEARS FROM THE DATE OF THE APPROVAL OF THIS ACT AND FOR OTHER PURPOSES.

[3] On 7 February 2007, Senator Franklin Drilon introduced P.S. Res. No. 618 or the RESOLUTION DIRECTING THE SENATE COMMITTEE ON FINANCE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE COMPROMISE AGREEMENT ENTERED INTO BY THE PHILIPPINE NATIONAL CONSTRUCTION CORPORATION (PNCC) WITH RADSTOCK SECURITIES LIMITED, FOR THE PURPOSE OF PROVIDING REMEDIAL LEGISLATION AND POLICY PARAMETERS ON COMPROMISE AGREEMENTS TO PROTECT GOVERNMENT ASSETS AND ENSURE THE JUDICIOUS USE OF GOVERNMENT FUNDS. This Resolution was submitted to the Senate and referred to the Committee on Finance.

[4] Delivered on 21 December 2006 during the Plenary Session.

In addition, Mr. President and my dear colleagues, please hold on to your seats because part of the agreement is 50% of PNCC's 6% share in the gross toll revenue of the Manila North Tollways Corporation for 27 years, from 2008 to 2035, is being assigned to Radstock. How much is this worth? It is worth ₱9,382,374,922. I repeat, ₱9,382,374,922.

x x x x x x x x x

Mr. President, ₱17,676,000,000, however, was made to appear in the agreement to be only worth ₱6,196,156,488. How was this achieved? How was an aggregate amount of ₱17,676,000,000 made to appear to be only ₱6,196,156,488? First, the 19 pieces of real estate worth ₱5,993,689,000 were only assigned a value of ₱4,195,000,000 or only 70% of their appraised value.

Second, the PNCC shares of stock with a par value of ₱2.3 billion were marked to market and therefore were valued only at ₱713 million.

Third, the share of the toll revenue assigned was given a net present value of only ₱1,287,000,000 because of a 15% discounted rate that was applied.

In other words, Mr. President, the toll collection of ₱9,382,374,922 for 27 years was given a net present value of only ₱1,287,000,000 so that it is made to appear that the compromise agreement is only worth ₱6,196,000,000.

Mr. President, my dear colleagues, this agreement will substantially wipe out all the assets of PNCC. It will be left with nothing else except, probably, the collection for the next 25 years or so from the North Luzon Expressway. This agreement brought PNCC to the cleaners and literally cleaned the PNCC of all its assets. They brought PNCC to the cleaners and cleaned it to the tune of ₱17,676,000,000.

x x x x x x x x x

Mr. President, are we not entitled, as members of the Committee, to know who is Radstock Securities Limited?

Radstock Securities Limited was allegedly incorporated under the laws of the British Virgin Islands. It has no known board of directors, except for its recently appointed attorney-in-fact, Mr. Carlos Dominguez.

Mr. President, are the members of the Committee not entitled to know why 20 years after the account to Marubeni Corporation, which

gave rise to the compromise agreement 20 years after the obligation was allegedly incurred, PNCC suddenly recognized this obligation in its books when in fact this obligation was not found in its books for 20 years?

In other words, Mr. President, for 20 years, the financial statements of PNCC did not show any obligation to Marubeni, much less, to Radstock. Why suddenly on October 20, 2000, ₱10 billion in obligation was recognized? Why was it recognized?

During the hearing on December 18, Mr. President, we asked this question to the Asset Privatization Trust (APT) trustee, Atty. Raymundo Francisco, and he was asked: "What is the basis of your recommendation to recognize this?" He said: "I based my recommendation on a legal opinion of Feria and Feria." I asked him: "Who knew of this opinion?" He said: "Only me and the chairman of PNCC, Atty. Renato Valdecantos." I asked him: "Did you share this opinion with the members of the board who recognized the obligation of ₱10 billion?" He said: "No." "Can you produce this opinion now?" He said: "I have no copy."

Mysteriously, Mr. President, an obligation of ₱10 billion based on a legal opinion which, even Mr. Arthur Aguilar, the chairman of PNCC, is not aware of, none of the members of the PNCC board on October 20, 2000 who recognized this obligation had seen this opinion. It is mysterious.

Mr. President, are the members of our Committee not entitled to know why Radstock Securities Limited is given preference over all other creditors notwithstanding the fact that this is an unsecured obligation? There is no mortgage to secure this obligation.

More importantly, Mr. President, equally recognized is the obligation of PNCC to the Philippine government to the tune of ₱36 billion. PNCC owes the Philippine government ₱36 billion recognized in its books, apart from ₱3 billion in taxes. Why in the face of all of these is Radstock given preference? Why is it that Radstock is given preference to claim ₱17.676 billion of the assets of PNCC and give it superior status over the claim of the Philippine government, of the Filipino people to the extent of ₱36 billion and taxes in the amount of ₱3 billion? Why, Mr. President? Why is Radstock given preference not only over the Philippine government claims of ₱39 billion but also over other creditors including a certain best merchant banker in Asia, which has already a final and executory

judgment against PNCC for about ₱300 million? Why, Mr. President? Are we not entitled to know why the compromise agreement assigned ₱17.676 billion to Radstock? Why was it executed?[5] (Emphasis supplied)

Aside from Senator Drilon, Senator Sergio S. Osmeña III also saw irregularities in the transactions involving the Marubeni loans, thus:

SEN. OSMEÑA. Ah okay. Good.

Now, I'd like to point out to the Committee that — it seems that this was a politically driven deal like IMPSA. Because the acceptance of the 10 billion or 13 billion debt came in October 2000 and the Radstock assignment was January 10, 2001. **Now, why would Marubeni sell for $2 million three months after there was a recognition that it was owed ₱10 billion. Can you explain that, Mr. Dominguez?**

MR. DOMINGUEZ. Your Honor, I am not aware of the decision making process of Marubeni. But my understanding was, the Japanese culture is not a litigious one and they didn't want to get into a, you know, a court situation here in the Philippines having a lot of other interest, *et cetera.*

SEN. OSMEÑA. Well, but that is beside the point, Mr. Dominguez. All I am asking is does it stand to reason that after you get an acceptance by a debtor that he owes you 10 billion, you sell your note for 100 million.

Now, if that had happened a year before, maybe I would have understood why he sold for such a low amount. But right after, it seems that this was part of an orchestrated deal wherein with certain powerful interest would be able to say, "Yes, we will push through. We'll fix the courts. We'll fix the board. We'll fix the APT. And we will be able to do it, just give us 55 percent of whatever is recovered," am I correct?

MR. DOMINGUEZ. As I said, Your Honor, I am not familiar with the decision making process of Marubeni. But my understanding was, as I said, they didn't want to get into a . . .

SEN. OSMEÑA. All right.

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[5] Record of the Senate, Vol. III, Session No. 55, 21 December 2006.

MR. DOMINGUEZ. . . . litigious situation.[6]

x x x x x x x x x

SEN. OSMEÑA. All of these financial things can be arranged. They can hire a local bank, Filipino, to be trustee for the real estate. So . . .

SEN. DRILON. Well, then, that's a dummy relationship.

SEN. OSMEÑA. In any case, to me the main point here is that a third party, Radstock, whoever owns it, bought Marubeni's right for $2 million or ₱100 million. Then, they are able to go through all these legal machinations and get awarded with the consent of PNCC of 6 billion. That's a 100 million to 6 billion. Now, Mr. Aguilar, you have been in the business for such a long time. I mean, this hedge funds whether it's Radstock or New Bridge or Texas Pacific Group or Carlyle or Avenue Capital, they look at their returns. So if Avenue Capital buys something for $2 million and you give him $4 million in one year, it's a 100 percent return. They'll walk away and dance to their stockholders. So here in this particular case, if you know that Radstock only bought it for $2 million, I would have gotten board approval and say, "Okay, let's settle this for $4 million." And Radstock would have jumped up and down. So what looks to me is that this was already a scheme. Marubeni wrote it off already. Marubeni wrote everything off. They just got a $2 million and they probably have no more residual rights or maybe there's a clause there, a secret clause, that says, "I want 20 percent of whatever you're able to eventually collect." So $2 million. But whatever it is, Marubeni practically wrote it off. Radstock's liability now or exposure is only $2 million plus all the lawyer fees, under-the-table, etcetera. All right. Okay. So it's pretty obvious to me that if anybody were using his brain, I would have gone up to Radstock and say, "Here's $4 million. Here's ₱200 million. Okay." They would have walked away. But evidently, the "ninongs" of Radstock — See, I don't care who owns Radstock. I want to know who is the ninong here who stands to make a lot of money by being able to get to courts, the government agencies, OGCC, or whoever else has been involved in this, to agree to 6 billion or whatever it was. That's a lot of money. And believe me, Radstock will probably get one or two billion and four billion will go into somebody else's pocket. Or Radstock will turn around,

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[6] Transcript of Committee Hearings, 19 December 2006, pp. 69-70.

sell that claim for ₱4 billion and let the new guy just collect the payments over the years.

x x x x x x x x x[7]

SEN. OSMEÑA. x x x I just wanted to know is CDCP Mining a 100 percent subsidiary of PNCC?

MR. AGUILAR. *Hindi ho*. Ah, no.

SEN. OSMEÑA. If they're not a 100 percent, why would they sign jointly and severally? I just want to plug the loopholes.

MR. AGUILAR. I think it was — if I may just speculate. It was just common ownership at that time.

SEN. OSMEÑA. Al right. Now — Also, the . . .

MR. AGUILAR. Ah, 13 percent daw, Your Honor.

SEN. OSMEÑA. Huh?

MR. AGUILAR. Thirteen percent ho.

SEN. OSMEÑA. What's 13 percent?

MR. AGUILAR. We owned . . .

x x x x x x x x x

SEN. OSMEÑA. x x x CDCP Mining, how many percent of the equity of CDCP Mining was owned by PNCC, formerly CDCP?

MS. PASETES. Thirteen percent.

SEN. OSMEÑA. Thirteen. And as a 13 percent owner, they agreed to sign jointly and severally?

MS. PASETES. Yes.

SEN. OSMEÑA. One-three? So poor PNCC and CDCP got taken to the cleaners here. They sign for a 100 percent and they only own 13 percent.

x x x x x x x x x[8]
(Emphasis supplied)

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[7] *Id.*, 14 December 2006, pp. 62-64.

[8] *Id.* at 64-66.

I.
The Case

Before this Court are the consolidated petitions for review[9] filed by Strategic Alliance Development Corporation (STRADEC) and Luis Sison (Sison), with a motion for intervention filed by Asiavest Merchant Bankers Berhad (Asiavest), challenging the validity of the Compromise Agreement between PNCC and Radstock. The Court of Appeals approved the Compromise Agreement in its Decision of 25 January 2007[10] in CA-G.R. CV No. 87971.

II.
The Antecedents

PNCC was incorporated in 1966 for a term of fifty years under the Corporation Code with the name Construction Development Corporation of the Philippines (CDCP).[11] PD 1113, issued on 31 March 1977, granted CDCP a 30-year franchise to construct, operate and maintain toll facilities in the North and South Luzon Tollways. PD 1894, issued on 22 December 1983, amended PD 1113 to include in CDCP's franchise the Metro Manila Expressway, which would "serve as an additional artery in the transportation of trade and commerce in the Metro Manila area."

Sometime between 1978 and 1981, Basay Mining Corporation (Basay Mining), an affiliate of CDCP, obtained loans from Marubeni Corporation of Japan (Marubeni) amounting to 5,460,000,000 yen and US$5 million. A CDCP official issued letters of guarantee for the loans, committing CDCP to pay solidarily for the full amount of the 5,460,000,000 yen loan and to the extent of ₱20 million for the US$5 million loan. However, there was no CDCP Board Resolution authorizing the issuance of the letters of guarantee. Later, Basay Mining

[9] Under Rule 45 of the Rules of Court.

[10] *Rollo*, pp. 31-43. Penned by Associate Justice (now a member of this Court) Mariano C. Del Castillo, concurred in by then Presiding Justice Ruben T. Reyes and Associate Justice Arcangelita Romilla Lontok.

[11] http://www.pncc.com.ph/

changed its name to CDCP Mining Corporation (CDCP Mining). CDCP Mining secured the Marubeni loans when CDCP and CDCP Mining were still privately owned and managed.

Subsequently in 1983, CDCP changed its corporate name to PNCC to reflect the extent of the Government's equity investment in the company, which arose when government financial institutions converted their loans to PNCC into equity following PNCC's inability to pay the loans.[12] Various government financial institutions held a total of seventy-seven point forty-eight percent (77.48%) of PNCC's voting equity, most of which were later transferred to the Asset Privatization Trust (APT) under Administrative Orders No. 14 and 64, series of 1987 and 1988, respectively.[13] Also, the Presidential Commission on Good Government holds some 13.82% of PNCC's voting equity under a writ of sequestration and through the voluntary surrender of certain PNCC shares. In fine, the Government owns 90.3% of the equity of PNCC and only 9.70% of PNCC's voting equity is under private ownership.[14]

Meanwhile, the Marubeni loans to CDCP Mining remained unpaid. On 20 October 2000, during the short-lived Estrada Administration, the PNCC Board of Directors[15] (PNCC Board) passed Board Resolution No. BD-092-2000 admitting PNCC's liability to Marubeni for ₱10,743,103,388 as of 30 September 1999. PNCC Board Resolution No. BD-092-2000 reads as follows:

RESOLUTION NO. BD-092-2000

RESOLVED, That the Board recognizes, acknowledges and confirms PNCC's obligations as of September 30, 1999 with the following

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[12] http://www.pncc.com.ph/

[13] *Id.*

[14] *Id.*

[15] The members of the PNCC Board who were present during the meeting were Renato B. Valdecantos, Chairman, Rolando L. Macasaet, President and Chief Executive Officer, Braulio B. Balbas, Jr., Romulo F. Coronado, Basilio R. Cruz, Jr., Alfredo F. Laya, Jr., Victor Pineda, Edwin Tanonliong, Jose Luis Vera, Hermogenes Concepcion, Jr., and Raymundo Francisco, Directors.

entities, exclusive of the interests and other charges that may subsequently accrue and still become due therein, to wit:

a). **the Government of the Republic of the Philippines in the amount of ₱36,023,784,751.00; and**

b). **Marubeni Corporation in the amount of ₱10,743,103,388.00.** (Emphasis supplied)

This was the first PNCC Board Resolution admitting PNCC's liability for the Marubeni loans. Previously, for two decades the PNCC Board consistently refused to admit any liability for the Marubeni loans.

Less than two months later, or on 22 November 2000, the PNCC Board passed Board Resolution No. BD-099-2000 amending Board Resolution No. BD-092-2000. PNCC Board Resolution No. BD-099-2000 reads as follows:

RESOLUTION NO. BD-099-2000

RESOLVED, That the Board hereby amends its Resolution No. BD-092-2000 dated October 20, 2000 so as to read as follows:

RESOLVED, That the Board recognizes, acknowledges and confirms its obligations as of September 30, 1999 with the following entities, exclusive of the interests and other charges that may subsequently accrue and still due thereon, subject to the final determination by the Commission on Audit (COA) of the amount of obligation involved, and subject further to the declaration of the legality of said obligations by the Office of the Government Corporate Counsel (OGCC), to wit:

a). **the Government of the Republic of the Philippines in the amount of ₱36,023,784,751.00; and**

b). **Marubeni Corporation in the amount of ₱10,743,103,388.00.** (Emphasis supplied)

In January 2001, barely three months after the PNCC Board first admitted liability for the Marubeni loans, Marubeni assigned its entire credit to Radstock for US$2 million or less than ₱100 million. In short, Radstock paid Marubeni less than 10% of the ₱10.743 billion admitted amount. Radstock immediately sent a notice and demand letter to PNCC.

On 15 January 2001, Radstock filed an action for collection and damages against PNCC before the Regional Trial Court of Mandaluyong City, Branch 213 (trial court). In its order of 23 January 2001, the trial court issued a writ of preliminary attachment against PNCC. The trial court ordered PNCC's bank accounts garnished and several of its real properties attached. On 14 February 2001, PNCC moved to set aside the 23 January 2001 Order and to discharge the writ of attachment. PNCC also filed a motion to dismiss the case. The trial court denied both motions. PNCC filed motions for reconsideration, which the trial court also denied. PNCC filed a petition for *certiorari* before the Court of Appeals, docketed as CA-G.R. SP No. 66654, assailing the denial of the motion to dismiss. On 30 August 2002, the Court of Appeals denied PNCC's petition. PNCC filed a motion for reconsideration, which the Court of Appeals also denied in its 22 January 2003 Resolution. PNCC filed a petition for review before this Court, docketed as G.R. No. 156887.

Meanwhile, on 19 June 2001, at the start of the Arroyo Administration, the PNCC Board, under a new President and Chairman, revoked Board Resolution No. BD-099-2000.

The trial court continued to hear the main case. On 10 December 2002, the trial court ruled in favor of Radstock, as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and the defendant is directed to pay the total amount of Thirteen Billion One Hundred Fifty One Million Nine Hundred Fifty Six thousand Five Hundred Twenty-Eight Pesos (₱13,151,956,528.00) with interest from October 15, 2001 plus Ten Million Pesos (₱10,000,000.00) as attorney's fees.
>
> SO ORDERED.[16]

PNCC appealed the trial court's decision to the Court of Appeals, docketed as CA-G.R. CV No. 87971.

On 19 March 2003, this Court issued a temporary restraining order in G.R. No. 156887 forbidding the trial court from

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[16] Penned by Judge Amalia F. Dy.

implementing the writ of preliminary attachment and ordering the suspension of the proceedings before the trial court and the Court of Appeals. In its 3 October 2005 Decision, this Court ruled as follows:

> WHEREFORE, the petition is partly GRANTED and insofar as the Motion to Set Aside the Order and/or Discharge the Writ of Attachment is concerned, the Decision of the Court of Appeals on August 30, 2002 and its Resolution of January 22, 2003 in CA-G.R. SP No. 66654 are REVERSED and SET ASIDE. The attachments over the properties by the writ of preliminary attachment are hereby ordered LIFTED effective upon the finality of this Decision. The Decision and Resolution of the Court of Appeals are AFFIRMED in all other respects. The Temporary Restraining Order is DISSOLVED immediately and the Court of Appeals is directed to PROCEED forthwith with the appeal filed by PNCC.
>
> No costs.
>
> SO ORDERED.[17]

On 17 August 2006, PNCC and Radstock entered into the Compromise Agreement where they agreed to reduce PNCC's liability to Radstock, supposedly from ₱17,040,843,968, to ₱6,185,000,000. PNCC and Radstock submitted the Compromise Agreement to this Court for approval. In a Resolution dated 4 December 2006 in G.R. No. 156887, this Court referred the Compromise Agreement to the Commission on Audit (COA) for comment. The COA recommended approval of the Compromise Agreement. In a Resolution dated 22 November 2006, this Court noted the Compromise Agreement and referred it to the Court of Appeals in CA-G.R. CV No. 87971. In its 25 January 2007 Decision, the Court of Appeals approved the Compromise Agreement.

STRADEC moved for reconsideration of the 25 January 2007 Decision. STRADEC alleged that it has a claim against PNCC as a bidder of the National Government's shares, receivables,

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[17] *Philippine National Construction Corporation v. Dy*, G.R. No. 156887, 3 October 2005, 472 SCRA 1, 12.

securities and interests in PNCC. The matter is subject of a complaint filed by STRADEC against PNCC and the Privatization and Management Office (PMO) for the issuance of a Notice of Award of Sale to Dong-A Consortium of which STRADEC is a partner. The case, docketed as Civil Case No. 05-882, is pending before the Regional Trial Court of Makati, Branch 146 (RTC Branch 146).

The Court of Appeals treated STRADEC's motion for reconsideration as a motion for intervention and denied it in its 31 May 2007 Resolution. STRADEC filed a petition for review before this Court, docketed as G.R. No. 178158.

Rodolfo Cuenca (Cuenca), a stockholder and former PNCC President and Board Chairman, filed an intervention before the Court of Appeals. Cuenca alleged that PNCC had no obligation to pay Radstock. The Court of Appeals also denied Cuenca's motion for intervention in its Resolution of 31 May 2007. Cuenca did not appeal the denial of his motion.

On 2 July 2007, this Court issued an order directing PNCC and Radstock, their officers, agents, representatives, and other persons under their control, to maintain the *status quo ante*.

Meanwhile, on 20 February 2007, Sison, also a stockholder and former PNCC President and Board Chairman, filed a *Petition for Annulment of Judgment Approving Compromise Agreement* before the Court of Appeals. The case was docketed as CA-G.R. SP No. 97982.

Asiavest, a judgment creditor of PNCC, filed an *Urgent Motion for Leave to Intervene and to File the Attached Opposition and Motion-in-Intervention* before the Court of Appeals in CA-G.R. SP No. 97982.

In a Resolution dated 12 June 2007, the Court of Appeals dismissed Sison's petition on the ground that it had no jurisdiction to annul a final and executory judgment also rendered by the Court of Appeals. In the same resolution, the Court of Appeals also denied Asiavest's urgent motion.

Asiavest filed its *Urgent Motion for Leave to Intervene and to File the Attached Opposition and Motion-in-Intervention* in G.R. No. 178158.[18]

Sison filed a motion for reconsideration. In its 5 November 2007 Resolution, the Court of Appeals denied Sison's motion.

On 26 November 2007, Sison filed a petition for review before this Court, docketed as G.R. No. 180428.

In a Resolution dated 18 February 2008, this Court consolidated G.R. Nos. 178158 and 180428.

On 13 January 2009, the Court held oral arguments on the following issues:

1. Does the Compromise Agreement violate public policy?
2. Does the subject matter involve an assumption by the government of a private entity's obligation in violation of the law and/or the Constitution? Is the PNCC Board Resolution of 20 October 2000 defective or illegal?
3. Is the Compromise Agreement viable in the light of the non-renewal of PNCC's franchise by Congress and its inclusion of all or substantially all of PNCC's assets?
4. Is the Decision of the Court of Appeals annullable even if final and executory on grounds of fraud and violation of public policy and the Constitution?

III.
Propriety of Actions

The Court of Appeals denied STRADEC's motion for intervention on the ground that the motion was filed only after the Court of Appeals and the trial court had promulgated their respective decisions.

Section 2, Rule 19 of the 1997 Rules of Civil Procedure provides:

SECTION 2. *Time to intervene.* — The motion to intervene may be filed at any time before rendition of judgment by the trial court.

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[18] *Rollo*, pp. 237-290.

A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

The rule is not absolute. The rule on intervention, like all other rules of procedure, is intended to make the powers of the Court completely available for justice.[19] It is aimed to facilitate a comprehensive adjudication of rival claims, overriding technicalities on the timeliness of the filing of the claims.[20] This Court has ruled:

> [A]llowance or disallowance of a motion for intervention rests on the sound discretion of the court after consideration of the appropriate circumstances. Rule 19 of the *Rules of Court* is a rule of procedure whose object is to make the powers of the court fully and completely available for justice. Its purpose is not to hinder or delay but to facilitate and promote the administration of justice. Thus, interventions have been allowed even beyond the prescribed period in the Rule in the higher interest of justice. Interventions have been granted to afford indispensable parties, who have not been impleaded, the right to be heard even after a decision has been rendered by the trial court, when the petition for review of the judgment was already submitted for decision before the Supreme Court, and even where the assailed order has already become final and executory. In *Lim v. Pacquing* (310 Phil. 722 (1995)], the motion for intervention filed by the Republic of the Philippines was allowed by this Court to avoid grave injustice and injury and to settle once and for all the substantive issues raised by the parties.[21]

In *Collado v. Court of Appeals*,[22] this Court reiterated that exceptions to Section 2, Rule 12 could be made in the interest of substantial justice. Citing *Mago v. Court of Appeals*,[23] the Court stated:

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[19] *Pinlac v. Court of Appeals*, 457 Phil. 527 (2003).

[20] *Id.*

[21] *Office of the Ombudsman v. Masing*, G.R. No. 165416, 22 January 2008, 542 SCRA 253, 265.

[22] 439 Phil. 149 (2002), citing *Mago v. Court of Appeals,* 363 Phil. 225 (1999) and *Director of Lands v. Court of Appeals*, No. L-45168, 25 September 1979, 93 SCRA 239.

[23] 363 Phil. 225, 234 (1999), which in turn cited *Director of Lands v. Court of Appeals*, No. L-45168, 25 September 1979, 93 SCRA 239, 245-246.

It is quite clear and patent that the motions for intervention filed by the movants at this stage of the proceedings where trial had already been concluded x x x and on appeal x x x the same affirmed by the Court of Appeals and the instant petition for *certiorari* to review said judgments is already submitted for decision by the Supreme Court, are obviously and, manifestly late, beyond the period prescribed under x x x Section 2, Rule 12 of the Rules of Court.

But Rule 12 of the Rules of Court, like all other Rules therein promulgated, is simply a rule of procedure, the whole purpose and object of which is to make the powers of the Court fully and completely available for justice. The purpose of procedure is not to thwart justice. Its proper aim is to facilitate the application of justice to the rival claims of contending parties. It was created not to hinder and delay but to facilitate and promote the administration of justice. It does not constitute the thing itself which courts are always striving to secure to litigants. It is designed as the means best adopted to obtain that thing. In other words, it is a means to an end.

Concededly, STRADEC has no legal interest in the subject matter of the Compromise Agreement. Section 1, Rule 19 of the 1997 Rules of Civil Procedure states:

SECTION 1. *Who may intervene*. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The Court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

STRADEC's interest is dependent on the outcome of Civil Case No. 05-882. Unless STRADEC can show that RTC Branch 146 had already decided in its favor, its legal interest is simply contingent and expectant.

However, Asiavest has a direct and material interest in the approval or disapproval of the Compromise Agreement. **Asiavest is a judgment creditor of PNCC in G.R. No. 110263 and *a***

court has already issued a writ of execution in its favor. **Asiavest's interest is actual and material, direct and immediate characterized by either gain or loss from the judgment that this Court may render.**[24] Considering that the Compromise Agreement involves the disposition of all or substantially all of the assets of PNCC, Asiavest, as PNCC's judgment creditor, will be greatly prejudiced if the Compromise Agreement is eventually upheld.

Sison has legal standing to challenge the Compromise Agreement. Although there was no allegation that Sison filed the case as a derivative suit in the name of PNCC, it could be fairly deduced that Sison was assailing the Compromise Agreement as a stockholder of PNCC. In such a situation, a stockholder of PNCC can sue on behalf of PNCC to annul the Compromise Agreement.

A derivative action is a suit by a stockholder to enforce a corporate cause of action.[25] Under the Corporation Code, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees.[26] However, an individual stockholder may file a derivative suit on behalf of the corporation to protect or vindicate corporate rights whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold control of the corporation.[27] In such actions, the corporation is the real party-in-interest while the suing stockholder, on behalf of the corporation, is only a nominal party.[28]

In this case, the PNCC Board cannot conceivably be expected to attack the validity of the Compromise Agreement since the PNCC Board itself approved the Compromise Agreement. In

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[24] *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*, G.R. No. 171586, 15 July 2009.

[25] *Hi-Yield Realty Incorporated v. Court of Appeals*, G.R. No. 168863, 23 June 2009.

[26] *Id.*

[27] *Id.*

[28] *Id.*

fact, the PNCC Board steadfastly defends the Compromise Agreement for allegedly being advantageous to PNCC.

Besides, the circumstances in this case are peculiar. Sison, as former PNCC President and Chairman of the PNCC Board, was responsible for the approval of the Board Resolution issued on 19 June 2001 **revoking** the previous Board Resolution admitting PNCC's liability for the Marubeni loans.[29] Such revocation, however, came after Radstock had filed an action for collection and damages against PNCC on 15 January 2001. Then, when the trial court rendered its decision on 10 December 2002 in favor of Radstock, Sison was no longer the PNCC President and Chairman, although he remains a stockholder of PNCC.

When the case was on appeal before the Court of Appeals, there was no need for Sison to avail of any remedy, until PNCC and Radstock entered into the Compromise Agreement, which disposed of all or substantially all of PNCC's assets. Sison came to know of the Compromise Agreement only in December 2006. PNCC and Radstock submitted the Compromise Agreement to the Court of Appeals for approval on 10 January 2007. The Court of Appeals approved the Compromise Agreement on 25 January 2007. To require Sison at this stage to exhaust all the remedies within the corporation will render such remedies useless as the Compromise Agreement had already been approved by the Court of Appeals. PNCC's assets are in danger of being dissipated in favor of a private foreign corporation. Thus, Sison had no recourse but to avail of an extraordinary remedy to protect PNCC's assets.

Besides, in the interest of substantial justice and for compelling reasons, such as the nature and importance of the issues raised in this case,[30] this Court must take cognizance of Sison's action. This Court should exercise its prerogative to set aside technicalities in the Rules, because after all, the power of this Court to suspend its own rules whenever the interest of justice requires is well

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[29] TSN, Oral Arguments, pp. 19-20.

[30] *Del Mar v. PAGCOR*, 400 Phil. 307 (2000).

recognized.[31] In *Solicitor General v. The Metropolitan Manila Authority*,[32] this Court held:

Unquestionably, the Court has the power to suspend procedural rules in the exercise of its inherent power, as expressly recognized in the Constitution, to promulgate rules concerning 'pleading, practice and procedure in all courts.' In proper cases, procedural rules may be relaxed or suspended in the interest of substantial justice, which otherwise may be miscarried because of a rigid and formalistic adherence to such rules. x x x

We have made similar rulings in other cases, thus:

Be it remembered that rules of procedure are but mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. x x x Time and again, this Court has suspended its own rules and excepted a particular case from their operation whenever the higher interests of justice so require.

IV.
The PNCC Board Acted in Bad Faith and with Gross Negligence in Directing the Affairs of PNCC

In this jurisdiction, the members of the board of directors have a three-fold duty: duty of obedience, duty of diligence, and duty of loyalty.[33] Accordingly, the members of the board of directors (1) shall direct the affairs of the corporation only in accordance with the purposes for which it was organized;[34] (2) **shall not willfully and knowingly vote for or assent to patently unlawful acts of the corporation or act in bad faith**

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[31] *Agote v. Lorenzo*, G.R. No. 142675, 22 July 2005, 464 SCRA 60.

[32] G.R. No. 102782, 11 December 1991, 204 SCRA 837, 842-843.

[33] Villanueva, *Philippine Corporate Law*, 2001, p. 318. Section 31 of the Corporation Code.

[34] Villanueva, *Philippine Corporate Law*, 2001, pp. 321-322. Section 25 of the Corporation Code pertinently provides:

x x x x x x x x x

The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and by the by-laws of the corporation. x x x

or with gross negligence in directing the affairs of the corporation;[35] and (3) shall not acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees.[36]

In the present case, the PNCC Board blatantly violated its duty of diligence as it miserably failed to act in good faith in handling the affairs of PNCC.

First. For almost two decades, the PNCC Board had consistently refused to admit liability for the Marubeni loans because of the absence of a PNCC Board resolution authorizing the issuance of the letters of guarantee.

There is no dispute that between 1978 and 1980, Marubeni Corporation extended two loans to Basay Mining (later renamed CDCP Mining): (1) US$5 million to finance the purchase of copper concentrates by Basay Mining; and (2) ¥5.46 billion to finance the completion of the expansion project of Basay Mining including working capital.

There is also no dispute that it was only on 20 October 2000 when the PNCC Board approved a resolution expressly admitting PNCC's liability for the Marubeni loans. This was the first Board Resolution admitting liability for the Marubeni loans, for PNCC never admitted liability for these debts in the past. Even Radstock admitted that PNCC's 1994 Financial Statements did not reflect the Marubeni loans.[37] Also, former PNCC Chairman Arthur Aguilar stated during the Senate hearings that "the Marubeni claim was never in the balance sheet x x x nor was it in a contingent account."[38] Miriam M. Pasetes, SVP Finance of PNCC, and Atty. Herman R. Cimafranca of the Office of the Government Corporate Counsel, confirmed this fact, thus:

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[35] Section 31 of the Corporation Code.

[36] *Id.*

[37] *Philippine National Construction Corporation v. Dy*, *supra* note 17 at 10.

[38] No stopping PNCC-Radstock deal, Daxim Lucas, 26 April 2007 (http://business.inquirer.net/money/topstories/view/20070426-62559/No stopping PNCC-Radstock_deal).

SEN. DRILON. x x x And so, PNCC itself did not recognize this as an obligation but the board suddenly recognized it as an obligation. It was on that basis that the case was filed, is that correct? In fact, the case hinges on — they knew that this claim has prescribed but because of that board resolution which recognized the obligation they filed their complaint, is that correct?

MR. CIMAFRANCA. Apparently, it's like that, Senator, because the filing of the case came after the acknowledgement.

SEN. DRILON. Yes. In fact, the filing of the case came three months after the acknowledgement.

MR. CIMAFRANCA. Yes. And that made it difficult to handle on our part.

SEN. DRILON. That is correct. So, that it was an obligation which was not recognized in the financial statements of PNCC but revived — in the financial statements because it has prescribed but revived by the board effectively. That's the theory, at least, of the plaintiff. Is that correct? Who can answer that?

Ms. Pasetes, yes.

MS. PASETES. It is not an obligation of PNCC that is why it is not reflected in the financial statements.[39] (Emphasis supplied)

In short, after two decades of consistently refuting its liability for the Marubeni loans, the PNCC Board suddenly and inexplicably reversed itself by admitting in October 2000 liability for the Marubeni loans. Just three months after the PNCC Board recognized the Marubeni loans, Radstock acquired Marubeni's receivable and filed the present collection case.

Second. The PNCC Board admitted liability for the Marubeni loans despite PNCC's total liabilities far exceeding its assets. There is no dispute that the Marubeni loans, once recognized, would wipe out the assets of PNCC, "virtually emptying the coffers of the PNCC."[40] While PNCC insists that it remains financially

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[39] Transcript of Committee Hearings, 14 December 2006, pp. 26-28.

[40] P.S. Res. No. 618, introduced by Senator Franklin M. Drilon.

viable, the figures in the COA Audit Reports tell otherwise.[41] **For 2006 and 2005, "the Corporation has incurred negative gross margin of ₱84.531 Million and ₱80.180 Million, respectively, and *net losses that had accumulated in a deficit of ₱14.823 Billion as of 31 December 2006*."**[42] The COA even opined that **"unless [PNCC] Management addresses the issue on net losses in its financial rehabilitation plan, x x x the Corporation may not be able to continue its operations as a going concern."**

Notably, during the oral arguments before this Court, the Government Corporate Counsel admitted the PNCC's **huge negative net worth**, thus:

JUSTICE CARPIO

> **x x x what is the net worth now of PNCC? Negative what? Negative 6 Billion at least[?]**

ATTY. AGRA

> **Yes, your Honor.**[43] (Emphasis supplied)

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[41] The Annual Audit Report on the PNCC For the Year Ended December 31, 2006 pertinently provides: "There is a variance of ₱43.959 Billion between PNCC recorded balance of obligations to various Government Financial Institutions (GFIs) and the amount confirmed by the Bureau of Treasury (BTr). Said obligations are still not fully converted to equity as prescribed under LOI 1295. If converted, the available capital stock of ₱44.568 Million would not be sufficient to cover the recorded outstanding obligations of ₱5.552 Billion or the BTr confirmed amount of ₱50.893 Billion."

The Annual Audit Report on the PNCC For the Year Ended December 31, 2007 pertinently provides: "The Corporation's liabilities are understated by ₱42.50 billion due tonon-recognition of advances made by the Bureau of Treasury for the account of PNCC. x x x The Corporation has designed a corporate strategic plan to include the servicing of accounts with the BTr via conversion of the obligations into long-term debt or equity. However, said obligations are still not converted to long term-debt and fully converted to equity as prescribed under LOI 1295. If converted, the available capital stock of ₱445.68 million would not be sufficient to cover the recorded outstanding obligations of ₱5.55 billion or the BTr confirmed amount of ₱48.05 billion.

[42] Annual Audit Report on the PNCC For the Year Ended December 31, 2006.

[43] TSN, Oral Arguments, pp. 299-304.

Clearly, the PNCC Board's admission of liability for the Marubeni loans, given PNCC's huge negative net worth of at least ₱6 billion as admitted by PNCC's counsel, or ₱14.823 billion based on the 2006 COA Audit Report, would leave PNCC an empty shell, without any assets to pay its biggest creditor, the National Government with an admitted receivable of ₱36 billion from PNCC.

Third. In a debilitating self-inflicted injury, the PNCC Board revived what appeared to have been a dead claim by abandoning one of PNCC's strong defenses, which is the prescription of the action to collect the Marubeni loans.

Settled is the rule that actions prescribe by the mere lapse of time fixed by law.[44] Under Article 1144 of the Civil Code, an action upon a written contract, such as a loan contract, must be brought within ten years from the time the right of action accrues. The prescription of such an action is interrupted when the action is filed before the court, when there is a written extrajudicial demand by the creditor, or when there is any written acknowledgment of the debt by the debtor.[45]

In this case, Basay Mining obtained the Marubeni loans sometime between 1978 and 1981. While Radstock claims that numerous demand letters were sent to PNCC, based on the records, the extrajudicial demands to pay the loans appear to have been made only in 1984 and 1986. Meanwhile, the written acknowledgment of the debt, in the form of Board Resolution No. BD-092-2000, was issued only on 20 October 2000.

Thus, more than ten years would have already lapsed between Marubeni's extrajudicial demands in 1984 and 1986 and the acknowledgment by the PNCC Board of the Marubeni loans in 2000. However, the PNCC Board suddenly passed Board Resolution No. BD-092-2000 expressly admitting liability for the Marubeni loans. In short, the PNCC Board admitted liability for the Marubeni loans despite the fact that the same might no

[44] Article 1139 of the Civil Code.

[45] Article 1155 of the Civil Code.

longer be judicially collectible. Although the legal advantage was obviously on its side, the PNCC Board threw in the towel even before the fight could begin. During the Senate hearings, the matter of prescription was discussed, thus:

SEN. DRILON. . . . the prescription period is 10 years and there were no payments — the last demands were made, when? The last demands for payment?

MS. OGAN. It was made January 2001 prior to the filing of the case.

SEN. DRILON. Yes, all right. Before that, when was the last demand made? By the time they filed the complaint more than 10 years already lapsed.

MS. OGAN. On record, Mr. Chairman, we have demands starting from — a series of demands which started from May 23, 1984, letter from Marubeni to PNCC, demand payment. And we also have the letter of September 3, 1986, letter of Marubeni to then PNCC Chair Mr. Jaime. We have the June 24, 1986 letter from Marubeni to the PNCC Chairman. Also the March 4, 1988 letter . . .

SEN. DRILON. The March 4, 1988 letter is not a demand letter.

MS. OGAN. It is exactly addressed to the Asset Privatization Trust.

SEN. DRILON. It is not a demand letter? Okay.

MS. OGAN. And we have also . . .

SEN. DRILON. Anyway . . .

THE CHAIRMAN. Please answer when you are asked, Ms. Ogan. We want to put it on the record whether it is "yes" or "no."

MS. OGAN. Yes, sir.

SEN. DRILON. So, even assuming that all of those were demand letters, the 10 years prescription set in and it should have prescribed in 1998, whatever is the date, or before the case was filed in 2001.

MR. CIMAFRANCA. The 10-year period for — if the contract is written, it's 10 years and it should have prescribed in 10 years and we did raise that in our answer, in our motion to dismiss.

SEN. DRILON. I know. You raised this in your motion to dismiss and you raised this in your answer. Now, we are not saying that you were negligent in not raising that. What we are just putting on the record that indeed there is basis to argue that these claims have prescribed.

Now, the reason why there was a colorable basis on the complaint filed in 2001 was that somehow the board of PNCC recognized the obligation in a special board meeting on October 20, 2000. *Hindi ba ganoon 'yon*?

MS. OGAN. Yes, that is correct.

SEN. DRILON. Why did the PNCC recognize this obligation in 2000 when it was very clear that at that point more than 10 years have lapsed since the last demand letter?

MR. AGUILAR. May I volunteer an answer?

SEN. DRILON. Please.

MR. AGUILAR. I looked into that, Mr. Chairman, Your Honor. It was as a result of and I go to the folder letter "N." In our own demand research it was not period, Your Honor, that Punongbayan in the big folder, sir, letter "N" it was the period where PMO was selling PNCC and Punongbayan and Araullo Law Office came out with an investment brochure that indicated liabilities both to national government and to Marubeni/Radstock. So, PMO said, "For good order, can you PNCC board confirm that by board resolution?" That's the tone of the letter.

SEN. DRILON. Confirm what? Confirm the liabilities that are contained in the Punongbayan investment prospectus both to the national government and to PNCC. That is the reason at least from the record, Your Honor, how the PNCC board got to deliberate on the Marubeni.

THE CHAIRMAN. What paragraph? Second to the last paragraph?

MR. AGUILAR. Yes. Yes, Mr. Chairman. *Ito po 'yong* — that"s to our recollection, in the records, that was the reason.

SEN. DRILON. Is that the only reason why . . .

MR. AGUILAR. From just the records, Mr. Chairman, and then interviews with people who are still around.

SEN. DRILON. You mean, you acknowledged a prescribed obligation because of this paragraph?

MR. AGUILAR. I don't know what legal advice we were following at that time, Mr. Chairman.[46] (Emphasis supplied)

Besides prescription, the Office of the Government Corporate Counsel (OGCC) originally believed that PNCC had another formidable legal weapon against Radstock, that is, the lack of authority of Alfredo Asuncion, then Executive Vice-President of PNCC, to sign the letter of guarantee on behalf of CDCP. During the Senate hearings, the following exchange reveals the OGCC's original opinion:

THE CHAIRMAN. What was the opinion of the Office of the Government Corporate Counsel?

MS. OGAN. The opinion of the Office of the Government Corporate Counsel is that PNCC should exhaust all means to resist the case using all defenses available to a guarantee and a surety that there is a valid ground for PNCC's refusal to honor or make good the alleged guarantee obligation. **It appearing that from the documents submitted to the OGCC that there is no board authority in favor or authorizing Mr. Asuncion, then EVP, to sign or execute the letter of guarantee in behalf of CDCP and that said letter of guarantee is not legally binding upon or enforceable against CDCP as principals**, your Honors.[47]

x x x x x x x x x

SEN. DRILON. Now that we have read this, what was the opinion of the Government Corporate Counsel, Mr. Cimafranca?

MR. CIMAFRANCA. Yes, Senator, we did issue an opinion upon the request of PNCC and our opinion was that there was no valid obligation, no valid guarantee. And we incorporated that in our pleadings in court.[48] (Emphasis supplied)

Clearly, PNCC had strong defenses against the collection suit filed by Radstock, as originally opined by the OGCC. It is

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[46] Transcript of Committee Hearings, 14 December 2006, pp. 23-26.

[47] *Id.*, 19 December 2006, p. 47.

[48] *Id.*, 14 December 2006, p. 108.

quite puzzling, therefore, that the PNCC Board, which had solid grounds to refute the legitimacy of the Marubeni loans, admitted its liability and entered into a Compromise Agreement that is manifestly and grossly prejudicial to PNCC.

Fourth. The basis for the admission of liability for the Marubeni loans, which was an opinion of the Feria Law Office, was not even shown to the PNCC Board.

Atty. Raymundo Francisco, the APT trustee overseeing the proposed privatization of PNCC at the time, was responsible for recommending to the PNCC Board the admission of PNCC's liability for the Marubeni loans. **Atty. Francisco based his recommendation solely on a mere alleged opinion of the Feria Law Office. Atty. Francisco did not bother to show this "Feria opinion" to the members of the PNCC Board, except to Atty. Renato Valdecantos, who as the then PNCC Chairman did not also show the "Feria opinion" to the other PNCC Board members**. During the Senate hearings, Atty. Francisco could not produce a copy of the "Feria opinion." The Senators grilled Atty. Francisco on his recommendation to recognize PNCC's liability for the Marubeni loans, thus:

THE CHAIRMAN. x x x You were the one who wrote this letter or rather this memorandum dated 17 October 2000 to Atty. Valdecantos. Can you tell us the background why you wrote the letter acknowledging a debt which is non-existent?

MR. FRANCISCO. I was appointed as the trustee in charge of the privatization of the PNCC at that time, sir. And I was tasked to do a study and engage the services of financial advisors as well as legal advisors to do a legal audit and financial study on the position of PNCC. I bidded out these engagements, the financial advisership went to Punongbayan and Araullo. The legal audit went to the Feria Law Offices.

THE CHAIRMAN. Spell it. Boy Feria?

MR. FRANCISCO. Feria — Feria.

THE CHAIRMAN. Lugto?

MR. FRANCISCO. Yes. Yes, Your Honor. And this was the findings of the Feria Law Office — that the Marubeni account was a legal obligation.

So, I presented this to our board. Based on the findings of the legal audit conducted by the Ferial Law Offices, sir.

THE CHAIRMAN. **Why did you not ask the government corporate counsel? Why did you have to ask for the opinion of an outside counsel?**

MR. FRANCISCO. That was the — that was the mandate given to us, sir, that we have to engage the . . .

THE CHAIRMAN. Mandate given by whom?

MR. FRANCISCO. That is what we usually do, sir, in the APT.

THE CHAIRMAN. Ah, you get outside counsel?

MR. FRANCISCO. Yes, we . . .

THE CHAIRMAN. Not necessarily the government corporate counsel?

MR. FRANCISCO. No, sir.

THE CHAIRMAN. So, on the basis of the opinion of outside counsel, private, you proceeded to, in effect, recognize an obligation which is not even entered in the books of the PNCC? You probably resuscitated a non-existing obligation anymore?

MR. FRANCISCO. Sir, I just based my recommendation on the professional findings of the law office that we engaged, sir.

THE CHAIRMAN. Did you not ask for the opinion of the government corporate counsel?

MR. FRANCISCO. No, sir.

THE CHAIRMAN. Why?

MR. FRANCISCO. I felt that the engagements of the law office was sufficient, anyway we were going to raise it to the Committee on Privatization for their approval or disapproval, sir.

THE CHAIRMAN. The COP?

MR. FRANCISCO. Yes, sir.

THE CHAIRMAN. That's a cabinet level?

MR. FRANCISCO. Yes, sir. And we did that, sir.

THE CHAIRMAN. Now . . . So you sent your memo to Atty. Renato B. Valdecantos, who unfortunately is not here but I think we have to get his response to this. And as part of the minutes of special meeting with the board of directors on October 20, 2000, the board resolved in its Board Resolution No. 092-2000, the board resolved to recognize, acknowledge and confirm PNCC's obligations as of September 30, 1999, etcetera, etcetera. (A), or rather (B), Marubeni Corporation in the amount of ₱10,740,000.

Now, we asked to be here because the franchise of PNCC is hanging in a balance because of the — on the questions on this acknowledgement. So we want to be educated.

Now, the paper trail starts with your letter. So, that's it — that's my kuwan, Frank.

Yes, Senator Drilon.

SEN. DRILON. Thank you, Mr. Chairman.

Yes, Atty. Francisco, you have a copy of the minutes of October 20, 2000?

MR. FRANCISCO. I'm sorry, sir, we don't have a copy.

SEN. DRILON. May we ask the corporate secretary of PNCC to provide us with a copy?

Okay naman andiyan siya.

(Ms. Ogan handing the document to Mr. Francisco.)

You have familiarized yourselves with the minutes, Atty. Francisco?

MR. FRANCISCO. Yes, sir.

SEN. DRILON. Now, mention is made of a memorandum here on line 8, page 3 of this board's minutes. It says, "Director Francisco has prepared a memorandum requesting confirmation, acknowledgement, and ratification of this indebtedness of PNCC to the national government which was determined by Bureau of Treasury as of September 30, 1999 is 36,023,784,751. And with respect to PNCC's obligation to Marubeni, this has been determined to be in the total amount of 10,743,103,388, also as of September 30, 1999; that there is need to ratify this because there has already been a representation made with respect to the review of the financial records of PNCC by Punongbayan and Araullo, which have been included as part of the package of APT's disposition to the national government's interest in PNCC."

You recall having made this representation as found in the minutes, I assume, Atty. Francisco?

MR. FRANCISCO. Yes, sir. But I'd like to be refreshed on the memorandum, sir, because I don't have a copy.

SEN. DRILON. Yes, this memorandum was cited earlier by Senator Arroyo, and maybe the secretary can give him a copy? Give him a copy?

MS. OGAN. (Handing the document to Mr. Francisco.)

MR. FRANCISCO. Your Honor, I have here a memorandum to the PNCC board through Atty. Valdecantos, which says that — in the last paragraph, if I may read? "May we request therefore, that a board resolution be adopted, acknowledging and confirming the aforementioned PNCC obligations with the national government and Marubeni as borne out by the due diligence audit."

SEN. DRILON. This is the memorandum referred to in these minutes. This memorandum dated 17 October 2000 is the memorandum referred to in the minutes.

MR. FRANCISCO. I would assume, Mr. Chairman.

SEN. DRILON. Right.

Now, the Punongbayan representative who was here yesterday, Mr. . . .

THE CHAIRMAN. Navarro.

SEN. DRILON. . . . Navarro denied that he made this recommendation.

THE CHAIRMAN. He asked for opinion, legal opinion.

SEN. DRILON. He said that they never made this representation and the transcript will bear us out. They said that they never made this representation that the account of Marubeni should be recognized.

MR. FRANCISCO. Mr. Chairman, in the memorandum, I only mentioned here the acknowledgement and confirmation of the PNCC obligations. I was not asking for a ratification. I never mentioned ratification in the memorandum. I just based my memo based on the due diligence audit of the Feria Law Offices.

SEN. DRILON. Can you say that again? You never asked for a ratification . . .

MR. FRANCISCO. No. I never mentioned in my memorandum that I was asking for a ratification. I was just — in my memo it says, "acknowledging and confirming the PNCC obligation." This was what . . .

SEN. DRILON. Isn't it the same as ratification? I mean, what's the difference?

MR. FRANCISCO. I – well, my memorandum was meant really just to confirm the findings of the legal audit as . . .

SEN. DRILON. In your mind as a lawyer, Atty. Francisco, there's a difference between ratification and — what's your term? — acknowledgment and confirmation?

MR. FRANCISCO. Well, I guess there's no difference, Mr. Chairman.

SEN. DRILON. Right.

Anyway, just of record, the Punongbayan representatives here yesterday said that they never made such representation.

In any case, now you're saying it's the Feria Law Office who rendered that opinion? Can we — you know, yesterday we were asking for a copy of this opinion but we were never furnished one. The . . . no less than the Chairman of this Committee was asking for a copy.

THE CHAIRMAN. Well, copy of the opinion . . .

MS. OGAN. Yes, Mr. Chairman, we were never furnished a copy of this opinion because it's opinion rendered for the Asset Privatization Trust which is its client, not the PNCC, Mr. Chairman.

THE CHAIRMAN. All right. The question is whether — but you see, this is a memorandum of Atty. Francisco to the Chairman of the Asset Privatization Trust. You say now that you were never furnished a copy because that's supposed to be with the Asset . . .

MS. OGAN. Yes, Mr. Chairman.

THE CHAIRMAN. . . . but yet the action of — or rather the opinion of the Feria Law Offices was in effect adopted by the board of directors

of PNCC in its minutes of October 20, 2000 where you are the corporate secretary, Ms. Ogan.

MS. OGAN. Yes, Mr. Chairman.

THE CHAIRMAN. So, what I am saying is that this opinion or rather the opinion of the Feria Law Offices of which you don't have a copy?

MS. OGAN. Yes, sir.

THE CHAIRMAN. And the reason being that, it does not concern the PNCC because that's an opinion rendered for APT and not for the PNCC.

MS. OGAN. Yes, Mr. Chairman, that was what we were told although we made several requests to the APT, sir.

THE CHAIRMAN. All right. Now, since it was for the APT and not for the PNCC, I ask the question why did PNCC adopt it? That was not for the consumption of PNCC. It was for the consumption of the Asset Privatization Trust. And that is what Atty. Francisco says and it's confirmed by you saying that this was a memo — you don't have a copy because this was sought for by APT and the Feria Law Offices just provided an opinion — provided the APT with an opinion. So, as corporate secretary, the board of directors of PNCC adopted it, recognized the Marubeni Corporation.

You read the minutes of the October 20, 2000 meeting of the board of directors on Item V. The resolution speaks of . . . so, go ahead.

MS. OGAN. I gave my copies. Yes, sir.

THE CHAIRMAN. In effect the Feria Law Offices' opinion was for the consumption of the APT.

MS. OGAN. That was what we were told, Mr. Chairman.

THE CHAIRMAN. And you were not even provided with a copy.

THE CHAIRMAN. Yet you adopted it.

MS. OGAN. Yes, sir.

SEN DRILON. Considering you were the corporate secretary.

THE CHAIRMAN. She was the corporate secretary.

SEN. DRILON. She was just recording the minutes.

THE CHAIRMAN. Yes, she was recording.

Now, we are asking you now why it was taken up?

MS. OGAN. Yes, sir, Mr. Chairman, this was mentioned in the memorandum of Atty. Francisco, memorandum to the board.

SEN. DRILON. Mr. Chairman, Mr. Francisco represented APT in the board of PNCC. And is that correct, Mr. Francisco?

THE CHAIRMAN. You're an *ex-officio* member.

SEN. DRILON. Yes.

MR. FRANCISCO. *Ex-officio* member only, sir, as trustee in charge of the privatization of PNCC.

SEN. DRILON. With the permission of Mr. Chair, may I ask a question...

THE CHAIRMAN. Oh, yes, Senator Drilon.

SEN. DRILON. Atty. Francisco, you sat in the PNCC board as APT representative, you are a lawyer, there was a legal opinion of Feria, Feria, Lugto, Lao Law Offices which you cited in your memorandum. Did you discuss — first, did you give a copy of this opinion to PNCC?

MR. FRANCISCO. I gave a copy of this opinion, sir, to our chairman who was also a member of the board of PNCC, Mr. Valdecantos, sir.

SEN. DRILON. And because he was . . .

MR. FRANCISCO. Because he was my immediate boss in the APT.

SEN. DRILON. Apparently, [it] just ended up in the personal possession of Mr. Valdecantos because the corporate secretary, Glenda Ogan, who is supposed to be the custodian of the records of the board never saw a copy of this.

MR. FRANCISCO. Well, sir, my — the copy that I gave was to Mr. Valdecantos because he was the one sitting in the PNCC board, sir.

SEN. DRILON. No, you sit in the board.

MR. FRANCISCO. I was just an *ex-officio* member. And all my reports were coursed through our Chairman, Mr. Valdecantos, sir.

SEN. DRILON. Now, did you ever tell the board that there is a legal position taken or at least from the documents it is possible that the claim has prescribed?

MR. FRANCISCO. I took this up in the board meeting of the PNCC at that time and I told them about this matter, sir.

SEN. DRILON. No, you told them that the claim could have, under the law, could have prescribed?

MR. FRANCISCO. No, sir.

SEN. DRILON. Why? You mean, you didn't tell the board that it is possible that this liability is no longer a valid liability because it has prescribed?

MR. FRANCISCO. I did not dwell into the findings anymore, sir, because I found the professional opinion of the Feria Law Office to be sufficient.[49] (Emphasis supplied)

Atty. Francisco's act of recommending to the PNCC Board the acknowledgment of the Marubeni loans based only on an opinion of a private law firm, without consulting the OGCC and without showing this opinion to the members of the PNCC Board except to Atty. Valdecantos, reflects how shockingly little his concern was for PNCC, contrary to his claim that "he only had the interest of PNCC at heart." In fact, if what was involved was his own money, Atty. Francisco would have preferred not just two, but at least three different opinions on how to deal with the matter, and he would have maintained his non-liability.

SEN. OSMEÑA. x x x

All right. And lastly, just to clear our minds, there has always been this finger-pointing, of course, whenever – this is typical Filipino. When they're caught in a bind, they always point a finger, they pretend they don't know. And it just amazes me that you have been appointed trustees, meaning, representatives of the Filipino people, that's what you were at APT, right? You were not Erap's representatives, you

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[49] *Id.*, 19 December 2006, pp. 13-25.

were representative of the Filipino people and you were tasked to conserve the assets that that had been confiscated from various cronies of the previous administration. And here, you are asked to recognize the ₱10 billion debt and you point only to one law firm. If you have cancer, don't you go to a second opinion, a second doctor or a third doctor? This is just a question. I am just asking you for your opinion if you would take the advice of the first doctor who tells you that he's got to open you up.

MR. FRANCISCO. I would go to three or more doctors, sir.

SEN. OSMEÑA. Three or more. Yeah, that's right. And in this case the APT did not do so.

MR. FRANCISCO. We relied on the findings of the . . .

SEN. OSMEÑA. If these were your money, would you have gone also to obtain a second, third opinion from other law firms. Kung pera mo itong 10 billion na ito. Siguro you're not gonna give it up that easily ano, 'di ba?

MR. FRANCISCO. Yes, sir.

SEN. OSMEÑA. You'll probably keep it in court for the next 20 years.

x x x x x x x x x[50]

(Emphasis supplied)

This is a clear admission by Atty. Francisco of bad faith in directing the affairs of PNCC — that he would not have recognized the Marubeni loans if his own funds were involved or if he were the owner of PNCC.

The PNCC Board admitted liability for the ₱10.743 billion Marubeni loans **without seeing, reading or discussing** the "Feria opinion" which was the sole basis for its admission of liability. Such act surely goes against ordinary human nature, and amounts to gross negligence and utter bad faith, even bordering on fraud, on the part of the PNCC Board in directing the affairs of the corporation. Owing loyalty to PNCC and its stockholders, the PNCC Board should have exercised utmost care and diligence in admitting a gargantuan debt of ₱10.743 billion that would

[50] *Id.* at 82-83.

certainly force PNCC into insolvency, a debt that previous PNCC Boards in the last two decades consistently refused to admit.

Instead, the PNCC Board admitted PNCC's liability for the Marubeni loans relying solely on a mere opinion of a private law office, which opinion the PNCC Board members never saw, except for Atty. Valdecantos and Atty. Francisco. The PNCC Board knew that PNCC, as a government owned and controlled corporation (GOCC), must rely "**exclusively**" on the opinion of the OGCC. Section 1 of Memorandum Circular No. 9 dated 27 August 1998 issued by the President states:

SECTION 1. **All legal matters pertaining to government-owned or controlled corporations**, their subsidiaries, other corporate off-springs and government acquired asset corporations (GOCCs) **shall be *exclusively* referred to and handled by the Office of the Government Corporate Counsel (OGCC)**. (Emphasis supplied)

The PNCC Board acted in bad faith in relying on the opinion of a private lawyer knowing that PNCC is required to rely **"exclusively"** on the OGCC's opinion. Worse, the PNCC Board, in admitting liability for ₱10.743 billion, relied on the recommendation of a private lawyer whose opinion the PNCC Board members have not even seen.

During the oral arguments, Atty. Sison explained to the Court that the intention of APT was for the PNCC Board **merely to disclose** the claim of Marubeni as part of APT's full disclosure policy to prospective buyers of PNCC. **Atty. Sison stated that it was not the intention of APT for the PNCC Board to admit liability for the Marubeni loans**, thus:

x x x It was the Asset Privatization Trust A-P-T that was tasked to sell the company. The A-P-T, for purposes of disclosure statements, tasked the Feria Law Office to handle the documentation and the study of all legal issues that had to be resolved or clarified for the information of prospective bidders and or buyers. **In the performance of its assigned task the Feria Law Office came upon the Marubeni claim and mentioned that the APTC and/or PNCC must disclose that there is a claim by Marubeni against PNCC for purposes of satisfying the requirements of full disclosure. This seemingly innocent statement or requirement made by the Feria Law**

Office was then taken by two officials of the Asset Privatization Trust and with malice aforethought turned it into the basis for a multi-billion peso debt by the now government owned and/ or controlled PNCC. x x x.[51] (Emphasis supplied)

While the PNCC Board passed Board Resolution No. BD-099-2000 amending Board Resolution No. BD-092-2000, such amendment merely added conditions for the recognition of the Marubeni loans, namely, subjecting the recognition to a final determination by COA of the amount involved and to the declaration by OGCC of the legality of PNCC's liability. However, the PNCC Board reiterated and stood firm that it "**recognizes, acknowledges and confirms its obligations**" for the Marubeni loans. Apparently, Board Resolution No. BD-099-2000 was a futile attempt to "revoke" Board Resolution No. BD-092-2000. Atty. Alfredo Laya, Jr., a former PNCC Director, spoke on his protests against Board Resolution No. BD-092-2000 at the Senate hearings, thus:

MR. LAYA. Mr. Chairman, if I can . . .

THE CHAIRMAN. Were you also at the board?

MR. LAYA. At that time, yes, sir.

THE CHAIRMAN. Okay, go ahead.

MR. LAYA. That's why if — maybe this can help clarify the sequence. There was this meeting on October 20. This matter of the Marubeni liability or account was also discussed. Mr. Macasaet, if I may try to refresh. And there was some discussion, sir, and in fact, they were saying even at that stage that there should be a COA or an OGCC audit. Now, that was during the discussion of October 20. Later on, the minutes came out. The practice, then, sir, was for the minutes to come out at the start of the meeting of the subsequent. So the minutes of October 20 came out on November 22 and then we were going over it. And that is in the subsequent minutes of the meeting . . .

THE CHAIRMAN. May I interrupt. You were taking up in your November 22 meeting the October 20 minutes?

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[51] TSN, Oral Arguments, pp. 12-13.

MR. LAYA. Yes, sir.

THE CHAIRMAN. This minutes that we have?

MR. LAYA. Yes, sir.

THE CHAIRMAN. All right, go ahead.

MR. LAYA. Now, in the November 22 meeting, we noticed this resolution already for confirmation of the board — proceedings of October 20. So immediately we made — actually, protest would be a better term for that — we protested the wording of the resolution and that's why we came up with this resolution amending the October 20 resolution.

SEN. DRILON. So you are saying, Mr. Laya, that the minutes of October 20 did not accurately reflect the decisions that you made on October 20 because you were saying that this recognition should be subject to OGCC and COA? You seem to imply and we want to make it — and I want to get that for the record. You seem to imply that there was no decision to recognize the obligation during that meeting because you wanted it to subject it to COA and OGCC, is that correct?

MR. LAYA. Yes, your Honor.

SEN. DRILON. So how did . . .

MR. LAYA. That's my understanding of the proceedings at that time, that's why in the subsequent November 22 meeting, we raised this point about obtaining a COA and OGCC opinion.

SEN. DRILON. Yes. But you know, the November 22 meeting repeated the wording of the resolution previously adopted only now you are saying subject to final determination which is completely of different import from what you are saying was your understanding of the decision arrived at on October 20.

MR. LAYA. Yes, sir. Because our thinking then . . .

SEN. DRILON. What do you mean, yes, sir?

MR. LAYA. It's just a claim under discussion but then the way it is translated, as the minutes of October 20 were not really verbatim.

SEN. DRILON. So, you never intended to recognize the obligation.

MR. LAYA. I think so, sir. That was our — personally, that was my position.

SEN. DRILON. How did it happen, Corporate Secretary Ogan, that the minutes did not reflect what the board …

THE CHAIRMAN. Ms. Pasetes …

MS. PASETES. Yes, Mr. Chairman.

THE CHAIRMAN. … you are the chief financial officer of PNCC.

MS. PASETES. Your Honor, before that November 22 board meeting, management headed by Mr. Rolando Macasaet, myself and Atty. Ogan had a discussion about the recognition of the obligations of 10 billion of Marubeni and 36 billion of the national government on whether to recognize this as an obligation in our books or recognize it as an obligation in the pro forma financial statement to be used for the privatization of PNCC because recognizing both obligations in the books of PNCC would defeat our going concern status and that is where the position of the president then, Mr. Macasaet, stemmed from and he went back to the board and moved to reconsider the position of October 20, 2000, Mr. Chair.[52] (Emphasis supplied)

In other words, despite Atty. Laya's objections to PNCC's admitting liability for the Marubeni loans, the PNCC Board still admitted the same and merely imposed additional conditions to temper somehow the devastating effects of Board Resolution No. BD-092-2000.

The act of the PNCC Board in issuing Board Resolution No. BD-092-2000 expressly admitting liability for the Marubeni loans demonstrates the PNCC Board's gross and willful disregard of the requisite care and diligence in managing the affairs of PNCC, amounting to bad faith and resulting in grave and irreparable injury to PNCC and its stockholders. This reckless and treacherous move on the part of the PNCC Board clearly constitutes a serious breach of its fiduciary duty to PNCC and its stockholders, rendering the members of the PNCC Board liable under Section 31 of the Corporation Code, which provides:

SEC. 31. *Liability of directors, trustees or officers*. — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence

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[52] Transcript of Committee Hearings, 19 December 2006, pp. 36-39.

or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

Soon after the short-lived Estrada Administration, the PNCC Board revoked its previous admission of liability for the Marubeni loans. During the oral arguments, Atty. Sison narrated to the Court:

x x x After President Estrada was ousted, I was appointed as President and Chairman of PNCC in April of 2001, this particular board resolution was brought to my attention and I immediately put the matter before the board. I had no problem in convincing them to reverse the recognition as it was illegal and had no basis in fact. The vote to overturn that resolution was unanimous. Strange to say that some who voted to overturn the recognition were part of the old board that approved it. Stranger still, Renato Valdecantos who was still a member of the Board voted in favor of reversing the resolution he himself instigated and pushed. **Some of the board members who voted to recognize the obligation of Marubeni even came to me privately and said "*pinilit lang kami*."** x x x.[53] (Emphasis supplied)

In approving PNCC Board Resolution Nos. BD-092-2000 and BD-099-2000, the PNCC Board caused undue injury to the Government and gave unwarranted benefits to Radstock, through manifest partiality, evident bad faith or gross inexcusable negligence of the PNCC Board. Such acts are declared under Section 3(e) of RA 3019 or the Anti-Graft and Corrupt Practices Act, as "**corrupt practices xxx and xxx unlawful**." Being unlawful

[53] TSN, Oral Arguments, pp. 19-20.

and criminal acts, these PNCC Board Resolutions are void *ab initio* and cannot be implemented or in any way given effect by the Executive or Judicial branch of the Government.

Not content with forcing PNCC to commit corporate suicide with the admission of liability for the Marubeni loans under Board Resolution Nos. BD-092-2000 and BD-099-2000, the PNCC Board drove the last nail on PNCC's coffin when the PNCC Board entered into the manifestly and grossly disadvantageous Compromise Agreement with Radstock. This time, the OGCC, headed by Agnes DST Devanadera, reversed itself and recommended approval of the Compromise Agreement to the PNCC Board. As Atty. Sison explained to the Court during the oral arguments:

> x x x While the case was pending in the Court of Appeals, Radstock in a rare display of extreme generosity, conveniently convinced the Board of PNCC to enter into a compromise agreement for ½ the amount of the judgment rendered by the RTC or ₱6.5 Billion Pesos. **This time the OGCC, under the leadership of now Solicitor General Agnes Devanadera, approved the compromise agreement abandoning the previous OGCC position that PNCC had a meritorious case and would be hard press to lose the case**. What is strange is that although the compromise agreement we seek to stop ostensibly is for ₱6.5 Billion only, truth and in fact, the agreement agrees to convey to Radstock all or substantially all of the assets of PNCC worth ₱18 Billion Pesos. There are three items that are undervalued here, the real estate that was turned over as a result of the controversial agreement, the toll revenues that were being assigned and the value of the new shares of PNCC the difference is about ₱12 Billion Pesos. x x x (Emphasis supplied)

V.
The Compromise Agreement is Void for Being Contrary to the Constitution, Existing Laws, and Public Policy

For a better understanding of the present case, the pertinent terms and conditions of the Compromise Agreement between PNCC and Radstock are quoted below:

COMPROMISE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement made and entered into this 17th day of August 2006, in Mandaluyong City, Metro Manila, Philippines, by and between:

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, a government acquired asset corporation, created and existing under the laws of the Republic of the Philippines, with principal office address at EDSA corner Reliance Street, Mandaluyong City, Philippines, duly represented herein by its Chairman ARTHUR N. AGUILAR, pursuant to a Board Resolution attached herewith as Annex "A" and made an integral part hereof, hereinafter referred to as PNCC;

- and -

RADSTOCK SECURITIES LIMITED, a private corporation incorporated in the British Virgin Islands, with office address at Suite 1402 1 Duddell Street, Central Hongkong duly-represented herein by its Director, CARLOS G. DOMINGUEZ, pursuant to a Board Resolution attached herewith as Annex "B" and made an integral part hereof, hereinafter referred to as RADSTOCK.

WITNESSETH:

WHEREAS, on January 15, 2001, RADSTOCK, as assignee of Marubeni Corporation, filed a complaint for sum of money and damages with application for a writ of preliminary attachment with the Regional Trial Court (RTC), Mandaluyong City, docketed as Civil Case No. MC-01-1398, to collect on PNCC's guarantees on the unpaid loan obligations of CDCP Mining Corporation as provided under an Advance Payment Agreement and Loan Agreement;

WHEREAS, on December 10, 2002, the RTC of Mandaluyong rendered a decision in favor of plaintiff RADSTOCK directing PNCC to pay the total amount of Thirteen Billion One Hundred Fifty One Million Nine Hundred Fifty-Six Thousand Five Hundred Twenty-Eight Pesos (₱13,151,956,528.00) with interest from October 15, 2001 plus Ten Million Pesos (₱10,000,000.00) as attorney's fees.

WHEREAS, PNCC had elevated the case to the Court of Appeals (CA-G.R. SP No. 66654) on *Certiorari* and thereafter, to the Supreme Court (G.R. No. 156887) which Courts have consistently ruled that the RTC did not commit grave abuse of discretion when it denied

PNCC's Motion to Dismiss which sets forth similar or substantially the same grounds or defenses as those raised in PNCC's Answer;

WHEREAS, the case has remained pending for almost six (6) years even after the main action was appealed to the Court of Appeals;

WHEREAS, on the basis of the RTC Decision dated December 10, 2002, the current value of the judgment debt against PNCC stands at ₱17,040,843,968.00 as of July 31, 2006 (the "Judgment Debt");

WHEREAS, RADSTOCK is willing to settle the case at the reduced Compromise Amount of Six Billion One Hundred Ninety-Six Million Pesos (₱6,196,000,000.00) which may be paid by PNCC, either in cash or in kind to avoid the trouble and inconvenience of further litigation as a gesture of goodwill and cooperation;

WHEREAS, it is an established legal policy or principle that litigants in civil cases should be encouraged to compromise or amicably settle their claims not only to avoid litigation but also to put an end to one already commenced (Articles 2028 and 2029, Civil Code);

WHEREAS, this Compromise Agreement has been approved by the respective Board of Directors of both PNCC and RADSTOCK, subject to the approval of the Honorable Court;

NOW, THEREFORE, for and in consideration of the foregoing premises, and the mutual covenants, stipulations and agreements herein contained, PNCC and RADSTOCK have agreed to amicably settle the above captioned Radstock case under the following terms and conditions:

1. RADSTOCK agrees to receive and accept from PNCC in full and complete settlement of the Judgment Debt, the reduced amount of Six Billion, One Hundred Ninety-Six Million Pesos (₱6,196,000,000.00) (the "Compromise Amount").

2. This Compromise Amount shall be paid by PNCC to RADSTOCK in the following manner:

a. PNCC shall assign to a third party assignee to be designated by RADSTOCK all its rights and interests to the following real properties provided the assignee shall be duly qualified to own real properties in the Philippines;

(1) PNCC's rights over that parcel of land located in Pasay City with a total area of One Hundred Twenty-Nine Thousand

Five Hundred Forty-Eight (129,548) square meters, more or less, and which is covered by and more particularly described in Transfer Certificate of Title No. T-34997 of the Registry of Deeds for Pasay City. The transfer value is ₱3,817,779,000.00.

PNCC's rights and interests in Transfer Certificate of Title No. T-34997 of the Registry of Deeds for Pasay City is defined and delineated by Administrative Order No. 397, Series of 1998, and RADSTOCK is fully aware and recognizes that PNCC has an undertaking to cede at least 2 hectares of this property to its creditor, the Philippine National Bank; and that furthermore, the Government Service Insurance System has also a current and existing claim in the nature of boundary conflicts, which undertaking and claim will not result in the diminution of area or value of the property. Radstock recognizes and acknowledges the rights and interests of GSIS over the said property.

(2) T-452587 (T-23646) — Parañaque (5,123 sq. m.) subject to the clarification of the Privatization and Management Office (PMO) claims thereon. The transfer value is ₱45,000,900.00.

(3) T-49499 (529715 including T-68146-G (S-29716) (1,9747-A) — Parañaque (107 sq. m.) (54 sq. m.) subject to the clarification of the Privatization and Management Office (PMO) claims thereon. The transfer value is ₱1,409,100.00.

(4) 5-29716 — Parañaque (27,762 sq. m.) subject to the clarification of the Privatization and Management Office (PMO) claims thereon. The transfer value is ₱242,917,500.00.

(5) P-169 — Tagaytay (49,107 sq. m.). The transfer value is ₱13,749,400.00.

(6) P-170 — Tagaytay (49,100 sq. m.). The transfer value is ₱13,749,400.00.

(7) N-3320 — Town and Country Estate, Antipolo (10,000 sq. m.). The transfer value is ₱16,800,000.00.

(8) N-7424 — Antipolo (840 sq. m.). The transfer value is ₱940,800.00.

(9) N-7425 — Antipolo (850 sq. m.). The transfer value is ₱952,000.00.

(10) N-7426 — Antipolo (958 sq. m.). The transfer value is ₱1,073,100.00.

(11) T-485276 — Antipolo (741 sq. m.). The transfer value is ₱830,200.00.

(12) T-485277 — Antipolo (680 sq. m.). The transfer value is ₱761,600.00.

(13) T-485278 — Antipolo (701 sq. m.). The transfer value is ₱785,400.00.

(14) T-131500 — Bulacan (CDCP Farms Corp.) (4,945 sq, m.). The transfer value is ₱6,475,000.00.

(15) T-131501 — Bulacan (678 sq. m.). The transfer value is ₱887,600.00.

(16) T-26,154 (M) — Bocaue, Bulacan (2,841 sq. m.). The transfer value is ₱3,779,300.00.

(17) T-29,308 (M) — Bocaue, Bulacan (733 sq. m.). The transfer value is ₱974,400.00.

(18) T-29,309 (M) Bocaue, Bulacan (1,141 sq. m.). The transfer value is ₱1,517,600.00.

(19) T-260578 (R. Bengzon) Sta. Rita, Guiguinto, Bulacan (20,000 sq. m.). The transfer value is ₱25,200,000.00.

The transfer values of the foregoing properties are based on 70% of the appraised value of the respective properties.

b. PNCC shall issue to RADSTOCK or its assignee common shares of the capital stock of PNCC issued at par value which shall comprise 20% of the outstanding capital stock of PNCC after the conversion to equity of the debt exposure of the Privatization Management Office (PMO) and the National Development Company (NDC) and other government agencies and creditors such that the total government holdings shall not fall below 70% voting equity subject to the approval of the Securities and Exchange Commission (SEC) and ratification of PNCC's stockholders, if necessary. The assigned value of the shares issued to RADSTOCK is ₱713 Million based on the approximate last trading price of PNCC shares in the Philippine Stock Exchange as the date of this agreement, based further on current generally accepted accounting standards which stipulates the valuation of shares to be based on the lower of cost or market value.

Subject to the procurement of any and all necessary approvals from the relevant governmental authorities, PNCC shall deliver to

RADSTOCK an instrument evidencing an undertaking of the Privatization and Management Office (PMO) to give RADSTOCK or its assignee the right to match any offer to buy the shares of the capital stock and debts of PNCC held by PMO, in the event the same shares and debt are offered for privatization.

c. PNCC shall assign to RADSTOCK or its assignee 50% of the PNCC's 6% share in the gross toll revenue of the Manila North Tollways Corporation (MNTC), with a Net Present Value of ₱1.287 Billion computed in the manner outlined in Annex "C" herein attached as an integral part hereof, that shall be due and owing to PNCC pursuant to the Joint Venture Agreement between PNCC and First Philippine Infrastructure Development Corp. dated August 29, 1995 and other related existing agreements, commencing in 2008. It shall be understood that as a result of this assignment, PNCC shall charge and withhold the amounts, if any, pertaining to taxes due on the amounts assigned.

Under the Compromise Agreement, PNCC shall pay Radstock the reduced amount of ₱6,185,000,000.00 in full settlement of PNCC's guarantee of CDCP Mining's debt allegedly totaling ₱17,040,843,968.00 as of 31 July 2006. To satisfy its reduced obligation, PNCC undertakes to (1) "assign to a third party assignee to be designated by Radstock all its rights and interests" to the listed real properties therein; (2) issue to Radstock or its assignee common shares of the capital stock of PNCC issued at par value which shall comprise 20% of the outstanding capital stock of PNCC; and (3) assign to Radstock or its assignee 50% of PNCC's 6% share, **for the next 27 years (2008-2035)**, in the gross toll revenues of the Manila North Tollways Corporation.

A. The PNCC Board has no power to compromise the ₱6.185 billion amount.

Does the PNCC Board have the power to compromise the ₱6.185 billion "reduced" amount? The answer is in the negative.

The Dissenting Opinion asserts that PNCC has the power, citing Section 36(2) of Presidential Decree No. 1445 (PD 1445), otherwise known as the Government Auditing Code of the Philippines, enacted in 1978. Section 36 states:

SECTION 36. Power to Compromise Claims. — (1) When the interest of the government so requires, the Commission may compromise or release in whole or in part, any claim or settled liability to any government agency not exceeding ten thousand pesos and with the written approval of the Prime Minister, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the Prime Minister, with their recommendations, to the National Assembly.

(2) The respective governing bodies of government-owned or controlled corporations, and self-governing boards, commissions or agencies of the government shall have the exclusive power to compromise or release any similar claim or liability when expressly authorized by their charters and if in their judgment, the interest of their respective corporations or agencies so requires. **When the charters do not so provide, the power to compromise shall be exercised by the Commission in accordance with the preceding paragraph.** (Emphasis supplied)

The Dissenting Opinion asserts that since PNCC is incorporated under the Corporation Code, the PNCC Board has all the powers granted to the governing boards of corporations incorporated under the Corporation Code, which includes the power to compromise claims or liabilities.

Section 36 of PD 1445, enacted on 11 June 1978, has been **superseded by a later law** — Section 20(1), Chapter IV, Subtitle B, Title I, Book V of Executive Order No. 292 or the **Administrative Code of 1987**, which provides:

Section 20. Power to Compromise Claims. — (1) When the interest of the Government so requires, the Commission may compromise or release in whole or in part, **any settled claim or liability to any government agency** not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos. **In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the President, with their recommendations, to the Congress**[.] x x x (Emphasis supplied)

Under this provision,[54] the authority to compromise a settled claim or liability exceeding ₱100,000.00 involving a government agency, as in this case where the liability amounts to ₱6.185 billion, is vested not in COA but exclusively in Congress. Congress alone has the power to compromise the ₱6.185 billion purported liability of PNCC. Without congressional approval, the Compromise Agreement between PNCC and Radstock involving ₱6.185 billion is void for being contrary to Section 20(1), Chapter IV, Subtitle B, Title I, Book V of the Administrative Code of 1987.

PNCC is a "**government agency**" because Section 2 on Introductory Provisions of the Revised Administrative Code of 1987 provides that —

> *Agency of the Government* refers to any of the various units of the Government, including a department, bureau, office, instrumentality, **or government-owned or controlled corporation**, or a local government or a distinct unit therein. (Boldfacing supplied)

Thus, Section 20(1), Chapter IV, Subtitle B, Title I, Book V of the Administrative Code of 1987 applies to PNCC, which indisputably is a government owned or controlled corporation.

In the same vein, the COA's stamp of approval on the Compromise Agreement is void for violating Section 20(1), Chapter IV, Subtitle B, Title I, Book V of the Administrative Code of 1987. Clearly, the Dissenting Opinion's reliance on the COA's finding that the terms and conditions of the Compromise Agreement are "fair and above board" is patently erroneous.

Citing *Benedicto v. Board of Administrators of Television Stations RPN, BBC and IBC*,[55] the Dissenting Opinion views that congressional approval is not required for the validity of the Compromise Agreement because the liability of PNCC is not yet "**settled**."

In *Benedicto,* the PCGG filed in the Sandiganbayan a civil case to recover from the defendants (including Roberto S.

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[54] See *The Alexandra Condominium Corporation v. Laguna Lake Development Authority*, G.R. No.169228, 11 September 2009.

[55] G.R. No. 87710, 31 March 1992, 207 SCRA 659.

Benedicto) their ill-gotten wealth consisting of funds and other properties. The PCGG executed a compromise agreement with Roberto S. Benedicto ceding to the latter a substantial part of his ill-gotten assets and the State granting him immunity from further prosecution. The Court held that prior congressional approval is not required for the PCGG to enter into a compromise agreement with persons against whom it has filed actions for recovery of ill-gotten wealth.

In *Benedicto*, the Court found that the government's claim against Benedicto was not yet settled unlike here where the PNCC Board expressly admitted the liability of PNCC for the Marubeni loans. **In *Benedicto*, the ownership of the alleged ill-gotten assets was still being litigated in the Sandiganbayan and *no party ever admitted any liability*, unlike here where the PNCC Board had already admitted through a formal Board Resolution PNCC's liability for the Marubeni loans**. PNCC's express admission of liability for the Marubeni loans is essentially the premise of the execution of the Compromise Agreement. **In short, Radstock's claim against PNCC is *settled* by virtue of PNCC's express admission of liability for the Marubeni loans. The Compromise Agreement merely reduced this *settled liability* from ₱17 billion to ₱6.185 billion**.

The provision of the Revised Administrative Code on the power to settle claims or liabilities was precisely enacted to prevent government agencies from admitting liabilities against the government, then compromising such "settled" liabilities. **The present case is exactly what the law seeks to prevent, a compromise agreement on a creditor's claim settled through admission by a government agency without the approval of Congress for amounts exceeding ₱100,000.00**. What makes the application of the law even more necessary is that the PNCC Board's twin moves are manifestly and grossly disadvantageous to the Government. First, the PNCC admitted solidary liability for a staggering ₱10.743 billion private debt incurred by a private corporation which PNCC does not even control. Second, the PNCC Board agreed to pay Radstock ₱6.185 billion as a compromise settlement ahead of all other creditors, including the Government which is the biggest creditor.

The Dissenting Opinion further argues that since the PNCC is incorporated under the Corporation Code, it has the power, through its Board of Directors, to compromise **just like any other *private* corporation** organized under the Corporation Code. Thus, the Dissenting Opinion states:

> Not being a government corporation created by special law, PNCC does not owe its creation to some charter or special law, but to the Corporation Code. Its powers are enumerated in the Corporation Code and its articles of incorporation. **As an autonomous entity**, it undoubtedly has the power to compromise, and to enter into a settlement through its Board of Directors, **just like any other private corporation** organized under the Corporation Code. To maintain otherwise is to ignore the character of PNCC as a corporate entity organized under the Corporation Code, by which it was vested with a personality and identity distinct and separate from those of its stockholders or members. (Boldfacing and underlining supplied)

The Dissenting Opinion is woefully wide off the mark. **The PNCC is not "*just like any other private corporation*" precisely because it is not a private corporation but indisputably a government owned corporation**. Neither is PNCC "**an autonomous entity**" considering that PNCC is under the Department of Trade and Industry, over which the President exercises control. To claim that PNCC is an "autonomous entity" is to say that it is a lost command in the Executive branch, a concept that violates the President's constitutional power of control over the entire Executive branch of government.[56]

The government nominees in the PNCC Board, who practically compose the entire PNCC Board, are public officers subject to the Anti-Graft and Corrupt Practices Act, accountable to the Government and the Filipino people. To hold that a corporation incorporated under the Corporation Code, despite its being 90.3% owned by the Government, is "**an autonomous entity**" that could solely through its Board of Directors compromise, and transfer ownership of, substantially all its assets to a private third party without the approval required under the Administrative

[56] *Rufino v. Endriga*, G.R. Nos. 139554 and 139565, 21 July 2006, 496 SCRA 13.

Code of 1987,[57] is to invite the plunder of all such government owned corporations.

The Dissenting Opinion's claim that PNCC is an autonomous entity just like any other private corporation is inconsistent with its assertion that Section 36(2) of the Government Auditing Code is the governing law in determining PNCC's power to compromise. Section 36(2) of the Government Auditing Code expressly states that it applies to the governing bodies of "**government-owned or controlled corporations**." The phrase "government-owned or controlled corporations" refers to both those created by special charter as well as those incorporated under the Corporation Code. Section 2, Article IX-D of the Constitution provides:

SECTION 2. (1) **The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities,** including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) **other government-owned or controlled corporations and their subsidiaries**; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor,

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[57] Section 20(1), Chapter IV, Subtitle B, Title I, Book V of the Administrative Code of 1987.

and **promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties**. (Emphasis supplied)

In explaining the extent of the jurisdiction of COA over government owned or controlled corporations, this Court declared in *Feliciano v. Commission on Audit*:[58]

The COA's audit jurisdiction extends not only to government "agencies or instrumentalities," but also to "government-owned and controlled corporations with original charters" as well as "other government-owned or controlled corporations" without original charters.

x x x x x x x x x

Petitioner forgets that the constitutional criterion on the exercise of COA's audit jurisdiction depends on the government's ownership or control of a corporation. The nature of the corporation, whether it is private, quasi-public, or public is immaterial.

The Constitution vests in the COA audit jurisdiction over "government-owned and controlled corporations with original charters," as well as "government-owned or controlled corporations" without original charters. GOCCs with original charters are subject to COA pre-audit, while GOCCs without original charters are subject to COA post-audit. GOCCs without original charters refer to corporations created under the Corporation Code but are owned or controlled by the government. The nature or purpose of the corporation is not material in determining COA's audit jurisdiction. Neither is the manner of creation of a corporation, whether under a general or special law.

Clearly, the COA's audit jurisdiction extends to government owned or controlled corporations incorporated under the Corporation Code. Thus, the COA must apply the Government Auditing Code in the audit and examination of the accounts of such government owned or controlled corporations **even though incorporated under the Corporation Code**. This means that Section 20(1), Chapter IV, Subtitle B, Title I, Book V of the Administrative Code of 1987 on the power to compromise, **which**

[58] 464 Phil. 441, 453, 461-462 (2004).

superseded Section 36 of the Government Auditing Code, applies to the present case in determining PNCC's power to compromise. In fact, the COA has been regularly auditing PNCC on a post-audit basis in accordance with Section 2, Article IX-D of the Constitution, the Government Auditing Code, and COA rules and regulations.

B. PNCC's toll fees are public funds.

PD 1113 granted PNCC a 30-year franchise to construct, operate and maintain toll facilities in the North and South Luzon Expressways. Section 1 of PD 1113[59] provides:

> **Section 1.** Any provision of law to the contrary notwithstanding, there is hereby **granted to the Construction and Development Corporation of the Philippines (CDCP)**, a corporation duly organized and registered under the laws of the Philippines, hereinafter called the GRANTEE, **for a period of thirty (30) years from May 1, 1977 the right, privilege and authority to construct, operate and maintain toll facilities covering the expressways** from Balintawak (Station 9 + 563) to Carmen, Rosales, Pangasinan and from Nichols, Pasay City (Station 10 + 540) to Lucena, Quezon, hereinafter referred to collectively as North Luzon Expressway, respectively.
>
> **The franchise herein granted shall include the right to collect toll fees** at such rates as may be fixed and/or authorized by the Toll Regulatory Board hereinafter referred to as the Board created under Presidential Decree No. 1112 for the use of the expressways above-mentioned. (Emphasis supplied)

Section 2 of PD 1894,[60] which amended PD 1113 to include in PNCC's franchise the Metro Manila expressway, also provides:

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[59] PRESIDENTIAL DECREE NO. 1113 — GRANTING THE CONSTRUCTION AND DEVELOPMENT CORPORATION OF THE PHILIPPINES (CDCP) A FRANCHISE TO OPERATE, CONSTRUCT AND MAINTAIN TOLL FACILITIES IN THE NORTH AND SOUTH LUZON TOLL EXPRESSWAYS AND FOR OTHER PURPOSES.

[60] PRESIDENTIAL DECREE NO. 1894 — AMENDING THE FRANCHISE OF THE PHILIPPINE NATIONAL CONSTRUCTION CORPORATION TO CONSTRUCT, MAINTAIN AND OPERATE TOLL FACILITIES IN THE NORTH LUZON AND SOUTH LUZON EXPRESSWAYS TO INCLUDE

Section 2. **The term of the franchise provided under Presidential Decree No. 1113 for the North Luzon Expressway and the South Luzon Expressway which is thirty (30) years from 1 May 1977 shall remain the same**; provided that, the franchise granted for the Metro Manila Expressway and all extensions linkages, stretches and diversions that may be constructed after the date of approval of this decree shall likewise have a term of thirty (30) years commencing from the date of completion of the project. (Emphasis supplied)

Based on these provisions, the franchise of the PNCC expired on 1 May 2007 or thirty years from 1 May 1977.

PNCC, however, claims that under PD 1894, the North Luzon Expressway (NLEX) shall have a term of 30 years from the date of its completion in 2005. PNCC argues that the proviso in Section 2 of PD 1894 gave "toll road projects completed within the franchise period and after the approval of PD No. 1894 on 12 December 1983 their own thirty-year term commencing from the date of the completion of the said project, notwithstanding the expiry of the said franchise."

This contention is untenable.

The proviso in Section 2 of PD 1894 refers to the franchise granted for the Metro Manila Expressway and all extensions linkages, stretches and diversions constructed after the approval of PD 1894. **It does not pertain to the NLEX because the term of the NLEX franchise, "*which is 30 years from 1 May 1977, <u>shall remain the same</u>*," as expressly provided in the first sentence of the same Section 2 of PD 1894**. To construe that the NLEX franchise had a new term of 30 years starting from 2005 glaringly conflicts with the plain, clear and unequivocal language of the first sentence of Section 2 of PD 1894. That would be clearly absurd.

There is no dispute that Congress did not renew PNCC's franchise after its expiry on 1 May 2007. However, PNCC asserts that it "remains a viable corporate entity even after the expiration of its franchise under Presidential Decree No. 1113." PNCC points

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THE METRO MANILA EXPRESSWAY TO SERVE AS AN ADDITIONAL ARTERY IN THE TRANSPORTATION OF TRADE AND COMMERCE IN THE METRO MANILA AREA.

out that the Toll Regulatory Board (TRB) granted PNCC a "Tollway Operation Certificate" (TOC) which conferred on PNCC the authority to operate and maintain toll facilities, which includes the power to collect toll fees. PNCC further posits that the toll fees are private funds because they represent "the consideration given to tollway operators in exchange for costs they incurred or will incur in constructing, operating and maintaining the tollways."

This contention is devoid of merit.

With the expiration of PNCC's franchise, the assets and facilities of PNCC were automatically turned over, by operation of law, to the government at no cost. Sections 2(e) and 9 of PD 1113 and Section 5 of PD 1894 provide:

> Section 2 [of PD 1113]. In consideration of this franchise, the GRANTEE shall:
>
> (e) Turn over the toll facilities and all equipment directly related thereto to the government upon expiration of the franchise period without cost.
>
> Section 9 [of PD 1113]. For the purposes of this franchise, the Government, shall turn over to the GRANTEE (PNCC) not later than April 30, 1977 all physical assets and facilities including all equipment and appurtenances directly related to the operations of the North and South Toll Expressways: Provided, That, the extensions of such Expressways shall also be turned over to GRANTEE upon completion of their construction or of functional sections thereof: Provided, However, **That upon termination of the franchise period, said physical assets and facilities including improvements thereon, together with equipment and appurtenances directly related to their operations, shall be turned over to the Government without any cost or obligation on the part of the latter.** (Emphasis supplied)
>
> Section 5 [of PD No. 1894]. In consideration of this franchise, the GRANTEE shall:
>
> (a) Construct, operate and maintain at its own expense the Expressways; and
>
> **(b) Turn over, without cost, the toll facilities and all equipment, directly related thereto to the Government upon expiration of the franchise period.** (Emphasis supplied)

The TRB does not have the power to give back to PNCC the toll assets and facilities which were automatically turned over to the Government, by operation of law, upon the expiration of the franchise of the PNCC on 1 May 2007. Whatever power the TRB may have to grant authority to operate a toll facility or to issue a "Tollway Operation Certificate," such power does not obviously include the authority to transfer back to PNCC ownership of National Government assets, like the toll assets and facilities, which have become National Government property upon the expiry of PNCC's franchise. Such act by the TRB would repeal Section 5 of PD 1894 which automatically vested in the National Government ownership of PNCC's toll assets and facilities upon the expiry of PNCC's franchise. The TRB obviously has no power to repeal a law. Further, PD 1113, as amended by PD 1894, granting the franchise to PNCC, is a later law that must necessarily prevail over PD 1112 creating the TRB. Hence, the provisions of PD 1113, as amended by PD 1894, are controlling.

The government's ownership of PNCC's toll assets and facilities inevitably results in the government's ownership of the toll fees and the net income derived from these toll assets and facilities. Thus, the toll fees form part of the National Government's General Fund, which includes public moneys of every sort and other resources pertaining to any agency of the government.[61] **Even Radstock's counsel admits that the toll fees are public funds, to wit**:

ASSOCIATE JUSTICE CARPIO:

Okay. Now, when the franchise of PNCC expired on May 7, 2007, under the terms of the franchise under PD 1896, all the assets, toll way assets, equipment, etcetera of PNCC became owned by government at no cost, correct, under the franchise?

DEAN AGABIN:

Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:

Okay. So this is now owned by the national government. [A]ny income from these assets of the national government is national government income, correct?

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[61] Section 3, Definition of Terms, Government Auditing Code.

DEAN AGABIN:
Yes, Your Honor.[62]

x x x x x x x x x

ASSOCIATE JUSTICE CARPIO:
x x x My question is very simple x x x Is the income from these assets of the national government (interrupted)

DEAN AGABIN:
Yes, Your Honor.[63]

x x x x x x x x x

ASSOCIATE JUSTICE CARPIO:
So, it's the government [that] decides whether it goes to the general fund or another fund. [W]hat is that other fund? Is there another fund where revenues of the government go?

DEAN AGABIN:
It's the same fund, Your Honor, except that (interrupted)

ASSOCIATE JUSTICE CARPIO:
So it goes to the general fund?

DEAN AGABIN:
Except that it can be categorized as a private fund in a commercial sense, and it can be categorized as a public fund in a Public Law sense.

ASSOCIATE JUSTICE CARPIO:
Okay. So we agree that, okay, it goes to the general fund. I agree with you, but you are saying it is categorized still as a private funds?

DEAN AGABIN:
Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:
But it's part of the general fund. Now, if it is part of the general fund, who has the authority to spend that money?

DEAN AGABIN:
Well, the National Government itself.

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[62] TSN, Oral Arguments, pp. 504-506.

[63] *Id.* at 508.

ASSOCIATE JUSTICE CARPIO:
Who in the National Government, the Executive, Judiciary or Legislative?

DEAN AGABIN:
Well, the funds are usually appropriated by the Congress.

ASSOCIATE JUSTICE CARPIO:
x x x you mean to say there are exceptions that money from the general fund can be spent by the Executive without going t[hrough] Congress, or x x x is [that] the absolute rule?

DEAN AGABIN:
Well, in so far as the general fund is concerned, that is the absolute rule set aside by the National Government.

ASSOCIATE JUSTICE CARPIO:
x x x you are saying this is general fund money — the collection from the assets[?]

DEAN AGABIN:
Yes.[64] (Emphasis supplied)

Forming part of the General Fund, the toll fees can only be disposed of in accordance with the **fundamental** principles governing financial transactions and operations of any government agency, to wit: **(1) no money shall be paid out of the Treasury except in pursuance of an appropriation made by law, as expressly mandated by Section 29(1), Article VI of the Constitution; and (2) government funds or property shall be spent or used *solely* for public purposes, as expressly mandated by Section 4(2) of PD 1445 or the Government Auditing Code.**[65]

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[64] *Id.* at 515-518.

[65] Section 4 of the Government Auditing Code provides:

"*Fundamental principles*. Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

1. No money shall be paid out of any public treasury of depository except in pursuance of an appropriation law or other specific statutory authority;

2. Government funds or property shall be spent or used solely for public purposes;

3. Trust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received;

Section 29(1), Article VI of the Constitution provides:

> Section 29(1). No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

The power to appropriate money from the General Funds of the Government belongs **exclusively** to the Legislature. Any act in violation of this iron-clad rule is unconstitutional.

Reinforcing this Constitutional mandate, Sections 84 and 85 of PD 1445 require that before a government agency can enter into a contract involving the expenditure of government funds, there must be an **appropriation law** for such expenditure, thus:

> Section 84. *Disbursement of government funds.*
>
> 1. Revenue funds shall not be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.
>
> x x x x x x x x x
>
> Section 85. *Appropriation before entering into contract.*
>
> 1. No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure.
>
> x x x x x x x x x

Section 86 of PD 1445, on the other hand, requires that the proper accounting official must certify that funds have been

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4. Fiscal responsibility shall, to the greatest extent, be shared by all those exercising authority over the financial affairs, transactions, and operations of the government agency;

5. Disbursements or disposition of government funds or property shall invariably bear the approval of the proper officials;

6. Claims against government funds shall be supported with complete documentation;

7. All laws and regulations applicable to financial transactions shall be faithfully adhered to;

8. Generally accepted principles and practices of accounting as well as of sound management and fiscal administration shall be observed, provided that they do not contravene existing laws and regulations. (Emphasis supplied)

appropriated for the purpose.[66] **Section 87 of PD 1445 provides that any contract entered into contrary to the requirements of Sections 85 and 86 shall be void, thus:**

Section 87. *Void contract and liability of officer.* **Any contract entered into contrary to the requirements of the two immediately preceding sections shall be void**, and the officer or officers entering into the contract shall be liable to the government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties. (Emphasis supplied)

Applying Section 29(1), Article VI of the Constitution, as implanted in Sections 84 and 85 of the Government Auditing Code, a law must first be enacted by Congress appropriating ₱6.185 billion as compromise money before payment to Radstock can be made.[67] Otherwise, such payment violates a prohibitory law and thus void under Article 5 of the Civil Code which states that "**[a]cts executed against the provisions of mandatory or prohibitory laws shall be void**, except when the law itself authorizes their validity."

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[66] Section 86. *Certificate showing appropriation to meet contract.* Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three months, or banking transactions of government-owned or controlled banks no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

See *Melchor v. COA*, G.R. No. 95398, 16 August 1991, 200 SCRA 704; *Osmeña v. COA*, G.R.No. 98355, 2 March 1994, 230 SCRA 585; *Comelec v. Quijano-Padilla*, 438 Phil. 72 (2002).

[67] See *Guingona, Jr. v. Carague*, G.R. No. 94571, 22 April 1991, 196 SCRA 221.

Indisputably, without an appropriation law, PNCC cannot lawfully pay ₱6.185 billion to Radstock. Any contract allowing such payment, like the Compromise Agreement, "**shall be void**" as provided in Section 87 of the Government Auditing Code. In *Comelec v. Quijano-Padilla*,[68] this Court ruled:

> Petitioners are justified in refusing to formalize the contract with PHOTOKINA. Prudence dictated them not to enter into a contract not backed up by sufficient appropriation and available funds. Definitely, to act otherwise would be a futile exercise for the contract would inevitably suffer the vice of nullity. In *Osmeña vs. Commission on Audit*, this Court held:
>
> > The Auditing Code of the Philippines (P.D. 1445) further provides that no contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor and the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof. **Any contract entered into contrary to the foregoing requirements shall be VOID**.
> >
> > Clearly then, the contract entered into by the former Mayor Duterte was void from the very beginning since the agreed cost for the project (₱368,920.00) was way beyond the appropriated amount (₱419,180.00) as certified by the City Treasurer. Hence, the contract was properly declared void and unenforceable in COA's 2nd Indorsement, dated September 4, 1986. The COA declared and we agree, that:
> >
> > > The prohibition contained in Sec. 85 of PD 1445 (Government Auditing Code) is explicit and mandatory. Fund availability is, as it has always been, an indispensable prerequisite to the execution of any government contract involving the expenditure of public funds by all government agencies at all levels. Such contracts are not to be considered as final or binding unless such a certification as to funds availability is issued (Letter of Instruction No. 767, s. 1978). Antecedent of advance appropriation

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[68] 438 Phil. 72, 96-98 (2002).

is thus essential to government liability on contracts (*Zobel vs. City of Manila*, 47 Phil. 169). **This contract being violative of the legal requirements aforequoted, the same contravenes Sec. 85 of PD 1445 and is null and void by virtue of Sec. 87.**

Verily, the contract, as expressly declared by law, is inexistent and void *ab initio*. This is to say that the proposed contract is without force and effect from the very beginning or from its incipiency, as if it had never been entered into, and hence, cannot be validated either by lapse of time or ratification. (Emphasis supplied)

Significantly, Radstock's counsel admits that an appropriation law is needed before PNCC can use toll fees to pay Radstock, thus:

ASSOCIATE JUSTICE CARPIO:

Okay, I agree with you. Now, you are saying that money can be paid out of the general fund only through an appropriation by Congress, correct? That's what you are saying.

DEAN AGABIN:

Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:

I agree with you also. Okay, now, can PNCC x x x use this money to pay Radstock without Congressional approval?

DEAN AGABIN:

Well, I believe that that may not be necessary. Your Honor, because earlier, the government had already decreed that PNCC should be properly paid for the reclamation works which it had done. And so (interrupted)

ASSOCIATE JUSTICE CARPIO:

No. I am talking of the funds.

DEAN AGABIN:

And so it is like a foreign obligation.

ASSOCIATE JUSTICE CARPIO:

Counsel, I'm talking of the general funds, collection from the toll fees. Okay. You said, they go to the general fund. You also said, money from the general fund can be spent only if there is an appropriation law by Congress.

DEAN AGABIN:
Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:
So my question is, did Congress authorize PNCC to use this money to pay Radstock?

DEAN AGABIN:
No, Your Honor.

ASSOCIATE JUSTICE CARPIO:
There is no law.

DEAN AGABIN:
Yes, except that, Your Honor, this fund has not yet gone to the general fund.

ASSOCIATE JUSTICE CARPIO:
No. It's being collected everyday. As of May 7, 2007, national government owned those assets already. All those x x x collections that would have gone to PNCC are now national government owned. It goes to the general fund. And any body who uses that without appropriation from Congress commits malversation, I tell you.

DEAN AGABIN:
That is correct, Your Honor, as long as it has already gone into the general fund.

ASSOCIATE JUSTICE CARPIO:
Oh, you mean to say that it's still being held now by the agent, PNCC. It has not been remitted to the National Government?

DEAN AGABIN:
Well, if PNCC (interrupted)

ASSOCIATE JUSTICE CARPIO:
But if (interrupted)

DEAN AGABIN:
If this is the share that properly belongs to PNCC as a private entity (interrupted)

ASSOCIATE JUSTICE CARPIO:
No, no. I am saying that — You just agreed that all those collections now will go to the National Government forming

part of the general fund. If, somehow, PNCC is holding this money in the meantime, it holds x x x it in trust, correct? Because you said, it goes to the general fund, National Government. So it must be holding this in trust for the National Government.

DEAN AGABIN:
Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:
Okay. Can the person holding in trust use it to pay his private debt?

DEAN AGABIN:
No, Your Honor.

ASSOCIATE JUSTICE CARPIO:
Cannot be.

DEAN AGABIN:
But I assume that there must be some portion of the collections which properly pertain to PNCC.

ASSOCIATE JUSTICE CARPIO:
If there is some portion that x x x may be [for] operating expenses of PNCC. But that is not

DEAN AGABIN:
Even profit, Your Honor.

ASSOCIATE JUSTICE CARPIO:
Yeah, but that is not the six percent. Out of the six percent, that goes now to PNCC, that's entirely national government. But the National Government and the PNCC can agree on service fees for collecting, to pay toll collectors.

DEAN AGABIN:
Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:
But those are expenses. We are talking of the net income. It goes to the general fund. And it's only Congress that can authorize that expenditure. Not even the Court of Appeals can give its stamp of approval that it goes to Radstock, correct?

DEAN AGABIN:

Yes, Your Honor.[69] (Emphasis supplied)

Without an appropriation law, the use of the toll fees to pay Radstock would constitute malversation of public funds. **Even counsel for Radstock expressly admits that the use of the toll fees to pay Radstock constitutes malversation of public funds, thus:**

ASSOCIATE JUSTICE CARPIO:

x x x As of May 7, 2007, [the] national government owned those assets already. All those x x x collections that would have gone to PNCC are now national government owned. It goes to the general fund. And any body who uses that without appropriation from Congress commits malversation, I tell you.

DEAN AGABIN:

That is correct, Your Honor, as long as it has already gone into the general fund.

ASSOCIATE JUSTICE CARPIO:

Oh, you mean to say that it's still being held now by the agent, PNCC. It has not been remitted to the National Government?

DEAN AGABIN:

Well, if PNCC (interrupted)

ASSOCIATE JUSTICE CARPIO:

But if (interrupted)

DEAN AGABIN:

If this is the share that properly belongs to PNCC as a private entity (interrupted)

ASSOCIATE JUSTICE CARPIO:

No, no. I am saying that — You just agreed that all those collections now will go to the National Government forming part of the general fund. If, somehow, PNCC is holding this money in the meantime, it holds x x x it in trust, correct? Because you said, it goes to the general fund, National Government. So it must be holding this in trust for the National Government.

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[69] TSN, Oral Arguments, pp. 518-526.

DEAN AGABIN:
Yes, Your Honor.[70] (Emphasis supplied)

Indisputably, funds held in trust by PNCC for the National Government cannot be used by PNCC to pay a private debt of CDCP Mining to Radstock, otherwise the PNCC Board will be liable for malversation of public funds.

In addition, to pay Radstock ₱6.185 billion violates the **fundamental** public policy, expressly articulated in Section 4(2) of the Government Auditing Code,[71] that **government funds or property shall be spent or used *solely* for pubic purposes**, thus:

Section 4. *Fundamental Principles*. x x x (2) **Government funds or property shall be spent or used *solely* for public purposes**. (Emphasis supplied)

There is no question that the subject of the Compromise Agreement is CDCP Mining's **private debt** to Marubeni, which Marubeni subsequently assigned to Radstock. **Counsel for Radstock admits that Radstock holds a *private debt* of CDCP Mining**, thus:

ASSOCIATE JUSTICE CARPIO:
So your client is holding a private debt of CDCP Mining, correct?

DEAN AGABIN:
Correct, Your Honor.[72] (Emphasis supplied)

CDCP Mining obtained the Marubeni loans when CDCP Mining and PNCC (then CDCP) were still privately owned and managed corporations. The Government became the majority stockholder of PNCC only because government financial institutions converted their loans to PNCC into equity when PNCC failed to pay the

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[70] *Id.* at 521-523.

[71] The Court applied this provision in *Brgy. Sindalan, San Fernando, Pampanga v. Court of Appeals*, G.R. No. 150640, 22 March 2007, 518 SCRA 649.

[72] TSN, Oral Arguments, p. 504.

loans. **However, CDCP Mining have always remained a majority privately owned corporation with PNCC owning only 13% of its equity as admitted by former PNCC Chairman Arthur N. Aguilar and PNCC SVP Finance Miriam M. Pasetes during the Senate hearings**, thus:

SEN. OSMEÑA. x x x — I just wanted to know is CDCP Mining a 100 percent subsidiary of PNCC?

MR. AGUILAR. *Hindi ho*. Ah, no.

SEN. OSMEÑA. If they're not a 100 percent, why would they sign jointly and severally? I just want to plug the loopholes.

MR. AGUILAR. I think it was — if I may just speculate. It was just common ownership at that time.

SEN. OSMEÑA. Alright. Now — Also, the . . .

MR. AGUILAR. Ah, 13 percent daw, your Honor.

SEN. OSMEÑA. Huh?

MR. AGUILAR. Thirteen percent ho.

SEN. OSMEÑA. What's 13 percent?

MR. AGUILAR. We owned . . .

MS. PASETES. Thirteen percent of . . .

SEN. OSMEÑA. PNCC owned . . .

MS. PASETES. (Mike off) CDCP . . .

SEN. DRILON. Use the microphone, please.

MS. PASETES. Sorry. Your Honor, the ownership of CDCP of CDCP Basay Mining . . .

SEN. OSMEÑA. No, no, the ownership of CDCP. CDCP Mining, how many percent of the equity of CDCP Mining was owned by PNCC, formerly CDCP?

MS. PASETES. Thirteen percent.

SEN. OSMEÑA. Thirteen. And as a 13 percent owner, they agreed to sign jointly and severally?

MS. PASETES. Yes.

SEN. OSMEÑA. One-three?

So poor PNCC and CDCP got taken to the cleaners here. They sign for a 100 percent and they only own 13 percent.

x x x x x x x x x[73]
(Emphasis supplied)

PNCC cannot use public funds, like toll fees that indisputably form part of the General Fund, to pay a private debt of CDCP Mining to Radstock. Such payment cannot qualify as expenditure for a public purpose. The toll fees are merely held in trust by PNCC for the National Government, which is the owner of the toll fees.

Considering that there is no appropriation law passed by Congress for the ₱6.185 billion compromise amount, the Compromise Agreement is void for being contrary to law, specifically Section 29(1), Article VI of the Constitution and Section 87 of PD 1445. And since the payment of the ₱6.185 billion pertains to CDCP Mining's private debt to Radstock, the Compromise Agreement is also void for being contrary to the fundamental public policy that government funds or property shall be spent or used solely for public purposes, as provided in Section 4(2) of the Government Auditing Code.

C. Radstock is not qualified to own land in the Philippines.

Radstock is a private corporation incorporated in the British Virgin Islands. Its office address is at Suite 14021 Duddell Street, Central Hongkong. As a foreign corporation, with unknown owners whose nationalities are also unknown, Radstock is not qualified to own land in the Philippines pursuant to Section 7, in relation to Section 3, Article XII of the Constitution. These provisions state:

Section. 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands.

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[73] Transcript of Committee Hearings, 14 December 2006, pp. 64-66.

Private corporations or associations may not hold such lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one hundred thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

x x x x x x x x x

Section 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

The OGCC admits that Radstock cannot own lands in the Philippines. However, the OGCC claims that Radstock can own ***the rights to ownership of lands*** in the Philippines, thus:

ASSOCIATE JUSTICE CARPIO:
Under the law, a foreigner cannot own land, correct?

ATTY. AGRA:
Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:
Can a foreigner who x x x cannot own land assign the right of ownership to the land?

ATTY. AGRA:
Again, Your Honor, at that particular time, it will be PNCC, not through Radstock, that chain of events should be, there's a qualified nominee (interrupted)

ASSOCIATE JUSTICE CARPIO:
Yes, x x x you said, Radstock will assign the right of ownership to the qualified assignee[.] So my question is, can a foreigner own the right to ownership of a land when it cannot own the land itself?

ATTY. AGRA:
The foreigner cannot own the land, Your Honor.

ASSOCIATE JUSTICE CARPIO:
But you are saying it can own the right of ownership to the land, because you are saying, the right of ownership will be assigned by Radstock.

ATTY. AGRA:
The rights over the properties, Your Honors, if there's a valid assignment made to a qualified party, then the assignment will be made.

ASSOCIATE JUSTICE CARPIO:
Who makes the assignment?

ATTY. AGRA:
It will be Radstock, Your Honor.

ASSOCIATE JUSTICE CARPIO:
So, if Radstock makes the assignment, it must own its rights, otherwise, it cannot assign it, correct?

ATTY. AGRA:
Pursuant to the compromise agreement, once approved, yes, Your Honors.

ASSOCIATE JUSTICE CARPIO:
So, you are saying that Radstock can own the rights to ownership of the land?

ATTY. AGRA:
Yes, Your Honors.

ASSOCIATE JUSTICE CARPIO:
Yes?

ATTY. AGRA:
The premise, Your Honor, you mentioned a while ago was, if this Court approves said compromise (interrupted)

ASSOCIATE JUSTICE CARPIO:
No, no. Whether there is such a compromise agreement — It's an academic question I am asking you, can a foreigner assign rights to ownership of a land in the Philippines?

ATTY. AGRA:

Under the Compromise Agreement, Your Honors, these rights should be respected.

ASSOCIATE JUSTICE CARPIO:

So, it can?

ATTY. AGRA:

It can. Your Honor. But again, this right must, cannot be perfected or cannot be, could not take effect.

ASSOCIATE JUSTICE CARPIO:

But if it cannot — It's not perfected, how can it assign?

ATTY. AGRA:

Not directly, Your Honors. Again, there must be a qualified nominee assigned by Radstock.

ASSOCIATE JUSTICE CARPIO:

It's very clear, it's an indirect way of selling property that is prohibited by law, is it not?

ATTY. AGRA:

Again, Your Honor, know, believe this is a Compromise Agreement. This is a *dacion en pago*.

ASSOCIATE JUSTICE CARPIO:

So, *dacion en pago* is an exception to the constitutional prohibition.

ATTY. AGRA:

No, Your Honor. PNCC, will still hold on to the property, absent a valid assignment of properties.

ASSOCIATE JUSTICE CARPIO:

But what rights will PNCC have over that land when it has already signed the compromise? It is just waiting for instruction x x x from Radstock what to do with it? So, it's a trustee of somebody, because it does not, it cannot, [it] has no dominion over it anymore? It's just holding it for Radstock. So, PNCC becomes a dummy, at that point, of Radstock, correct?

ATTY. AGRA:

No, Your Honor, I believe it (interrupted)

ASSOCIATE JUSTICE CARPIO:

Yeah, but it does not own the land, but it still holding the land in favor of the other party to the Compromise Agreement

ATTY. AGRA:
Pursuant to the compromise agreement, that will happen.

ASSOCIATE JUSTICE CARPIO:
Okay. May I (interrupted)

ATTY. AGRA:
Again, Your Honor, if the compromise agreement ended with a statement that Radstock will be the owner of the property (interrupted)

ASSOCIATE JUSTICE CARPIO:
Yeah. Unfortunately, it says, to a qualified assignee.

ATTY. AGRA:
Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:
And at this point, when it is signed and execut[ed] and approved, PNCC has no dominion over that land anymore. Who has dominion over it?

ATTY. AGRA:
Pending the assignment to a qualified party, Your Honor, PNCC will hold on to the property.

ASSOCIATE JUSTICE CARPIO:
Hold on, but who x x x can exercise acts of dominion, to sell it, to lease it?

ATTY. AGRA:
Again, Your Honor, without the valid assignment to a qualified nominee, the compromise agreement in so far as the transfer of these properties will not become effective. It is subject to such condition. Your Honor.[74] (Emphasis supplied)

There is no dispute that Radstock is disqualified to own lands in the Philippines. Consequently, Radstock is also disqualified to own the rights to ownership of lands in the Philippines. Contrary to the OGCC's claim, Radstock cannot own the rights to ownership of any land in the Philippines because Radstock cannot lawfully own the land itself. Otherwise, there will be a blatant circumvention of the Constitution, which prohibits a foreign

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[74] TSN, Oral Arguments, pp. 470-480.

private corporation from owning land in the Philippines. In addition, Radstock cannot transfer the rights to ownership of land in the Philippines if it cannot own the land itself. **It is basic that an assignor or seller cannot assign or sell something he does not own at the time the ownership, or the rights to the ownership, are to be transferred to the assignee or buyer.**[75]

The third party assignee under the Compromise Agreement who will be designated by Radstock can only acquire rights duplicating those which its assignor (Radstock) is entitled by law to exercise.[76] Thus, the assignee can acquire ownership of the land only if its assignor, Radstock, owns the land. Clearly, the assignment by PNCC of the real properties to a nominee to be designated by Radstock is a circumvention of the Constitutional prohibition against a private foreign corporation owning lands in the Philippines. Such circumvention renders the Compromise Agreement void.

D. Public bidding is required for the disposal of government properties.

Under Section 79 of the Government Auditing Code,[77] the disposition of government lands to private parties requires public

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[75] Article 1459 of the Civil Code provides: "The thing must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered." The vendor cannot transfer ownership of the thing if he does not own the thing or own rights of ownership to the thing. The only possible exception is in a short sale of securities or commodities, where the seller borrows from the broker or third party the securities or commodities the ownership of which is immediately transferred to the buyer. This is feasible only when the subject matter of the transaction is a **fungible object**.

[76] See *Casabuena v. Court of Appeals*, 350 Phil. 237 (1998).

[77] Section 79 of the Government Auditing Codes provides as follows: "When government property has become unserviceable for any cause, or is no longer needed, it shall, upon application of the officer accountable therefor, be inspected by the head of the agency or his duly authorized representative in the presence of the auditor concerned and, if found to be valueless or unsaleable, it may be destroyed in their presence. **If found to be valuable, it may be sold at public auction to the highest bidder** under the supervision of the proper committee on award or similar body in the presence of the auditor concerned or other authorized representative of the Commission, after advertising by printed

bidding.[78] COA Circular No. 89-926, issued on 27 January 1989, sets forth the guidelines on the disposal of property and other assets of the government. Part V of the COA Circular provides:

> V. MODE OF DISPOSAL/DIVESTMENT: —
>
> This Commission recognizes the following modes of disposal/ divestment of assets and property of national government agencies, local government units and government-owned or controlled corporations and their subsidiaries, aside from other such modes as may be provided for by law.
>
> 1. Public Auction
>
> **Conformably to existing state policy, the divestment or disposal of government property as contemplated herein shall be undertaken primarily thru public auction.** Such mode of divestment or disposal shall observe and adhere to established mechanics and procedures in public bidding, *viz*:
>
> a. adequate publicity and notification so as to attract the greatest number of interested parties; (vide, Sec. 79, P.D. 1445)
> b. sufficient time frame between publication and date of auction;
> c. opportunity afforded to interested parties to inspect the property or assets to be disposed of;
> d. confidentiality of sealed proposals;
> e. bond and other prequalification requirements to guarantee performance; and
> f. fair evaluation of tenders and proper notification of award.
>
> It is understood that the Government reserves the right to reject any or all of the tenders. (Emphasis supplied)

Under the Compromise Agreement, PNCC shall dispose of substantial parcels of land, by way of *dacion en pago*, in favor of

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notice in the Official Gazette, or for not less than three consecutive days in any newspaper of general circulation, or where the value of the property does not warrant the expense of publication, by notices posted for a like period in at least three public places in the locality where the property is to be sold. **In the event that the public auction fails, the property may be sold at a private sale at such price as may be fixed by the same committee or body concerned and approved by the Commission**." (Emphasis supplied)

[78] *Chavez v. Public Estates Authority*, 433 Phil. 506 (2002).

Radstock. Citing *Uy v. Sandiganbayan,*[79] PNCC argues that a *dacion en pago* is an exception to the requirement of a public bidding.

PNCC's reliance on *Uy* is misplaced. There is nothing in *Uy* declaring that public bidding is dispensed with in a *dacion en pago* transaction. The Court explained the transaction in *Uy* as follows:

> We do not see any infirmity in either the MOA or the SSA executed between PIEDRAS and respondent banks. By virtue of its shareholdings in OPMC, PIEDRAS was entitled to subscribe to 3,749,906,250 class "A" and 2,499,937,500 class "B" OPMC shares. Admittedly, it was financially sound for PIEDRAS to exercise its pre-emptive rights as an existing shareholder of OPMC lest its proportionate shareholdings be diluted to its detriment. However, PIEDRAS lacked the necessary funds to pay for the additional subscription. Thus, it resorted to contract loans from respondent banks to finance the payment of its additional subscription. The mode of payment agreed upon by the parties was that the payment would be made in the form of part of the shares subscribed to by PIEDRAS. The OPMC shares therefore were agreed upon by the parties to be equivalent payment for the amount advanced by respondent banks. We see the wisdom in the conditions of the loan transaction. In order to save PIEDRAS and/or the government from the trouble of selling the shares in order to raise funds to pay off the loans, an easier and more direct way was devised in the form of the *dacion en pago* agreements.
>
> Moreover, we agree with the Sandiganbayan that neither PIEDRAS nor the government sustained any loss in these transactions. In fact, after deducting the shares to be given to respondent banks as payment for the shares, PIEDRAS stood to gain about 1,540,781,554 class "A" and 710,550,000 class "B" OPMC shares virtually for free. Indeed, the question that must be asked is whether or not PIEDRAS, in the exercise of its pre-emptive rights, would have been able to acquire any of these shares at all if it did not enter into the financing agreements with the respondent banks.[80]

Suffice it to state that in *Uy*, neither PIEDRAS[81] nor the government suffered any loss in the *dacion en pago* transactions, unlike here

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[79] G.R. No. 111544, 6 July 2004, 433 SCRA 424.

[80] *Id.* at 438-439.

[81] Piedras Petroleum Company, Inc.

where the government stands to lose at least ₱6.185 billion worth of assets.

Besides, a *dacion en pago* is in essence a form of sale, which basically involves a disposition of a property. In *Filinvest Credit Corp. v. Philippine Acetylene, Co., Inc.*,[82] the Court defined *dacion en pago* in this wise:

> *Dacion en pago*, according to Manresa, is the transmission of the ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of obligation. In *dacion en pago*, as a special mode of payment, the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt. **The undertaking really partakes in one sense of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt.** As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price. In any case, common consent is an essential prerequisite, be it sale or innovation to have the effect of totally extinguishing the debt or obligation.[83] (Emphasis supplied)

E. PNCC must follow rules on preference of credit.

Radstock is only one of the creditors of PNCC. Asiavest is PNCC's judgment creditor. In its Board Resolution No. BD-092-2000, PNCC admitted not only its debt to Marubeni but also its debt to the National Government[84] in the amount of **₱36 billion**.[85] **During the Senate hearings, PNCC admitted that it owed the Government** ₱36 billion, thus:

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[82] 197 Phil. 394 (1982).

[83] *Id.* at 402-403.

[84] TSN, Oral Arguments, pp. 355-356.

[85] According to this article, the current amount of PNCC's debt is ₱50 billion. The PNCC's Legacy of Debt **by** GEMMA B. BAGAYAUA, abs-cbnNEWS.com/Newsbreak 01/13/2009 (http://www.abs-cbnnews.com/nation/01/13/09/pncc%E2%80%99s-legacy-debt#comment-form).

SEN. OSMEÑA. All right. Now, second question is, the management of PNCC also recognize the obligation to the national government of 36 billion. It is part of the board resolution.

MS. OGAN. Yes, sir, it is part of the October 20 board resolution.

SEN. OSMEÑA. All right. So if you owe the national government 36 billion and you owe Marubeni 10 billion, you know, I would just declare bankruptcy and let an orderly disposition of assets be done. What happened in this case to the claim, the 36 billion claim of the national government? How was that disposed of by the PNCC? *Mas malaki ang utang ninyo sa* national government, 36 billion. *Ang gagawin ninyo, babayaran lahat ang utang ninyo sa* Marubeni without any assets left to satisfy your obligations to the national government. There should have been, at least, *a pari passu* payment of all your obligations, '*di ba*?

MS. PASETES. Mr. Chairman . . .

SEN. OSMEÑA. Yes.

MS. PASETES. PNCC still carries in its books an equity account called equity adjustments arising from transfer of obligations to national government — 5.4 billion — in addition to shares held by government amounting to 1.2 billion.

SEN. OSMEÑA. What is the 36 billion?

THE CHAIRMAN. Ms. Pasetes . . .

SEN. OSMEÑA. Wait, wait, wait.

THE CHAIRMAN. *Baka ampaw yun eh*.

SEN. OSMEÑA. *Teka muna*. What is the 36 billion that appear in the resolution of the board in September 2000 (sic)? This is the same resolution that recognizes, acknowledges and confirms PNCC's obligations to Marubeni. And subparagraph (a) says "Government of the Philippines, in the amount of 36,023,784,000 and change. And then (b) Marubeni Corporation in the amount of 10,743,000,000. So, therefore, in the same resolution, you acknowledged that had something like ₱46.7 billion in obligations. Why did PNCC settle the 10 billion and did not protect the national government's 36 billion? And then, number two, why is it now in your books, the 36 billion is now down to five? If you use that ratio, then Marubeni should be down to one.

MS. PASETES. Sir, the amount of 36 billion is principal plus interest and penalties.

SEN. OSMEÑA. And what about Marubeni? Is that just principal only?

MS. PASETES. Principal and interest.

SEN. OSMEÑA. So, I mean, you know, it's equal treatment. Ten point seven billion is principal plus penalties plus interest, *hindi ba*?

MS. PASETES. Yes, sir. Yes, Your Honor.

SEN. OSMEÑA. All right. So now, what you are saying is that you gonna pay Marubeni 6 billion and change and the national government is only recognizing 5 billion. I don't think that's protecting the interest of the national government at all.[86]

In giving priority and preference to Radstock, the Compromise Agreement is certainly in fraud of PNCC's other creditors, including the National Government, and violates the provisions of the Civil Code on concurrence and preference of credits.

This Court has held that while the Corporation Code allows the transfer of all or substantially all of the assets of a corporation, the transfer should not prejudice the creditors of the assignor corporation.[87] Assuming that PNCC may transfer all or substantially all its assets, to allow PNCC to do so **without the consent of its creditors or without requiring Radstock to assume PNCC's debts** will defraud the other PNCC creditors[88] since the assignment will place PNCC's assets beyond the reach of its other creditors.[89] As this Court held in *Caltex (Phil.), Inc. v. PNOC Shipping and Transport Corporation*:[90]

While the Corporation Code allows the transfer of all or substantially all the properties and assets of a corporation, the transfer

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[86] Transcript of the Committee Hearings, 18 December 2006, pp. 122-124.

[87] *Caltex (Philippines), Inc. v. PNOC Shipping and Transport Corporation,* G.R. No. 150711, 10 August 2006, 498 SCRA 400.

[88] *Id.*

[89] *Id.*

[90] *Id.*

should not prejudice the creditors of the assignor. **The only way the transfer can proceed without prejudice to the creditors is to hold the assignee liable for the obligations of the assignor**. **The acquisition by the assignee of all or substantially all of the assets of the assignor necessarily includes the assumption of the assignor's liabilities, unless the creditors who did not consent to the transfer choose to rescind the transfer on the ground of fraud.** To allow an assignor to transfer all its business, properties and assets without the consent of its creditors and without requiring the assignee to assume the assignor's obligations will defraud the creditors. The assignment will place the assignor's assets beyond the reach of its creditors. (Emphasis supplied)

Also, the law, specifically Article 1387[91] of the Civil Code, presumes that there is fraud of creditors when property is alienated by the debtor after judgment has been rendered against him, thus:

Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking rescission. (Emphasis supplied)

As stated earlier, Asiavest is a judgment creditor of PNCC in G.R. No. 110263 and a court has already issued a writ of execution in its favor. **Thus, when PNCC entered into the Compromise Agreement conveying several prime lots in favor of Radstock, by way of *dacion en pago*, there is a legal presumption that**

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[91] Article 1387. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.

Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking rescission.

In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by law and of evidence.

such conveyance is fraudulent under Article 1387 of the Civil Code.[92] This presumption is strengthened by the fact that the conveyance has virtually left PNCC's other creditors, including the biggest creditor — the National Government — with no other asset to garnish or levy.

Notably, the presumption of fraud or intention to defraud creditors is not just limited to the two instances set forth in the first and second paragraphs of Article 1387 of the Civil Code. Under the third paragraph of the same article, "the design to defraud creditors may be proved in any other manner recognized by the law of evidence." In *Oria v. Mcmicking,*[93] this Court considered the following instances as **badges of fraud**:

1. The fact that the consideration of the conveyance is fictitious or is inadequate.
2. A transfer made by a debtor after suit has begun and while it is pending against him.
3. A sale upon credit by an insolvent debtor.
4. Evidence of large indebtedness or complete insolvency.
5. The transfer of all or nearly all of his property by a debtor, especially when he is insolvent or **greatly embarrassed financially.**
6. The fact that the transfer is made between father and son, when there are present other of the above circumstances.
7. The failure of the vendee to take exclusive possession of all the property. (Emphasis supplied)

Among the circumstances indicating fraud is a transfer of all or nearly all of the debtor's assets, especially when the debtor is greatly embarrassed financially. Accordingly, neither a declaration of insolvency nor the institution of insolvency proceedings is a condition *sine qua non* for a transfer of all or nearly all of a debtor's assets to be regarded in fraud of creditors. **It is sufficient that a debtor is greatly embarrassed financially**.

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[92] See *China Banking Corporation v. Court of Appeals,* 384 Phil. 116 (2000).

[93] 21 Phil. 243 (1912), cited in *China Banking Corporation v. Court of Appeals*, 384 Phil. 116 (2000) and *Caltex v. PNOC Shipping and Transport Corporation*, G.R. No. 150711, 10 August 2006, 498 SCRA 400.

In this case, PNCC's huge negative net worth — at least ₱6 billion as expressly admitted by PNCC's counsel during the oral arguments, or ₱14 billion based on the 2006 COA Audit Report — necessarily translates to an extremely embarrassing financial situation. With its **huge negative net worth** arising from unpaid billions of pesos in debt, PNCC cannot claim that it is financially stable. As a consequence, the Compromise Agreement stipulating a transfer in favor of Radstock of substantially all of PNCC's assets constitutes fraud. To legitimize the Compromise Agreement just because there is still no judicial declaration of PNCC's insolvency will work fraud on PNCC's other creditors, the biggest creditor of which is the National Government. To insist that PNCC is very much liquid, given its admitted huge negative net worth, is nothing but denial of the truth. The toll fees that PNCC collects belong to the National Government. Obviously, PNCC cannot claim it is liquid based on its collection of such toll fees, because PNCC merely holds such toll fees in trust for the National Government. PNCC does not own the toll fees, and such toll fees do not form part of PNCC's assets.

PNCC owes the National Government ₱36 billion, **a substantial part of which constitutes taxes and fees,** thus:

SEN. ROXAS. Thank you, Mr. Chairman.

Mr. PNCC Chairman, could you describe for us the composition of your debt of about five billion — there are in thousands, so this looks like five and half billion. Current portion of long-term debt, about five billion. What is this made of?

MS. PASETES. The five billion is composed of what is owed the Bureau of Treasury and the Toll Regulatory Board for concession fees that's almost three billion and another 2.4 billion owed Philippine National Bank.

SEN. ROXAS. So, how much is the Bureau of Treasury?

MS. PASETES. Three billion.

SEN. ROXAS. Three — Why do you owe the Bureau of Treasury three billion?

MS. PASETES. That represents the concession fees due Toll Regulatory Board principal plus interest, Your Honor.

x x x x x x x x x[94]
(Emphasis supplied)

In addition, PNCC's 2006 Audit Report by COA states as follows:

TAX MATTERS

The Company was assessed by the Bureau of Internal Revenue (BIR) of its deficiencies in various taxes. However, no provision for any liability has been made yet in the Company's financial statements.

- **1980 deficiency income tax, deficiency contractor's tax and deficiency documentary stamp tax assessments by the BIR totaling ₱212.523 Million.**

x x x x x x x x x

- **Deficiency business tax of ₱64 Million due the Belgian Consortium, PNCC's partner in its LRT Project.**
- **1992 deficiency income tax, deficiency value-added tax and deficiency expanded withholding tax of ₱1.04 Billion which was reduced to ₱709 Million after the Company's written protest.**

x x x x x x x x x

- **2002 deficiency internal revenue taxes totaling ₱72.916 Million.**

x x x x x x x x x[95]
(Emphasis supplied)

Clearly, PNCC owes the National Government substantial taxes and fees amounting to billions of pesos.

The ₱36 billion debt to the National Government was acknowledged by the PNCC Board in the same board resolution that recognized the Marubeni loans. Since PNCC is clearly insolvent with a huge negative net worth, the government enjoys preference over Radstock in the satisfaction of PNCC's liability

[94] Transcript of Committee Hearings, 18 December 2006, pp. 163-165.

[95] 2006 Annual Audit Report, pp. 23-24; 2007 Annual Audit Report, pp. 23-24.

arising from taxes and duties, pursuant to the provisions of the Civil Code on concurrence and preference of credits. Articles 2241,[96]

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[96] Article 2241. With reference to specific movable property of the debtor, **the following claims or liens shall be preferred**:

(1) **Duties, taxes and fees due thereon to the State or any subdivision thereof**;

(2) Claims arising from misappropriation, breach of trust, or malfeasance by public officials committed in the performance of their duties, on the movables, money or securities obtained by them;

(3) Claims for the unpaid price of movable sold, on said movables, so long as they are in the possession of the debtor, up to the amount of the same; and if the movable has been resold by the debtor and the price is still unpaid, the lien may be enforced on the price; this right is not lost by the immobilization of the thing by destination, provided it has not lost its form, substance and identity; neither is the right lost by the sale of the thing together with other property for a lump sum, when the price thereof can be determined proportionally;

(4) Credits guaranteed with a pledge so long as the things pledged are in the hands of the creditor, or those guaranteed by a chattel mortgage, upon the things pledged or mortgaged, up to the value thereof;

(5) Credits for the making, repair, safekeeping or preservation of personal property, on the movable thus made, repaired, kept or possessed;

(6) Claims for laborers' wages, on the goods manufactured or the work done;

(7) For expenses of salvage, upon the goods salvaged;

(8) Credits between the landlord and the tenant, arising from the contract of tenancy on shares, on the share of each in the fruits or harvest;

(9) Credits for transportation, upon the goods carried, for the price of the contract and incidental expenses, until their delivery and for thirty days thereafter;

(10) Credits for lodging and supplies usually furnished to travelers by hotel keepers, on the movables belonging to the guest as long as such movables are in the hotel, but not for money loaned to the guests;

(11) Credits for seeds and expenses for cultivation and harvest advanced to the debtor, upon the fruits harvested.

(12) Credits for rent for one year, upon the personal property of the lessee existing on the immovable leased and on the fruits of the same, but not on money or instruments of credits;

(13) Claims in favor of the depositor if the depositary has wrongfully sold the thing deposited, upon the price of the sale.

In the foregoing cases, if the movables to which the lieu or preference attaches have been wrongfully taken, the creditor may demand them from any possessor, within thirty days from the unlawful seizure. (Emphasis supplied)

2242[97] and 2243[98] of the Civil Code expressly mandate that taxes and fees due the National Government "**shall be preferred**" and "**shall first be satisfied**" over claims like those arising from the Marubeni loans which "**shall enjoy no preference**" under Article 2244.[99]

However, in flagrant violation of the Civil Code, the PNCC Board favored Radstock over the National Government in the

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[97] Article 2242. With reference to specific immovable property and real rights of the debtor, the following claims, mortgages and liens shall be preferred, and shall constitute an encumbrance on the immovable or real right:

(1) **Taxes due upon the land or building**;

(2) For the unpaid price of real property sold, upon the immovable sold;

(3) Claims of laborers, masons, mechanics and other workmen, as well as of architects, engineers and contractors, engaged in the construction, reconstruction or repair of buildings, canals or other works, upon said buildings, canals or other works;

(4) Claims of furnishers of materials used in the construction, reconstruction, or repair of buildings, canals or other works, upon said buildings, canals or other works;

(5) Mortgage credits recorded in the Registry of Property, upon the real estate mortgaged;

(6) Expenses for the preservation or improvement of real property when the law authorizes reimbursement, upon the immovable preserved or improved;

(7) Credits annotated in the Registry of Property, in virtue of a judicial order, by attachments or executions, upon the property affected, and only as to later credits;

(8) Claims or co-heirs for warranty in the partition of an immovable among them, upon the real property thus divided;

(9) Claims of donors of real property for pecuniary charges or other conditions imposed upon the donee, upon the immovable donated;

(10) Credits of insurers, upon the property insured, for the insurance premium for two years. (Emphasis supplied)

[98] Article 2243. The claims or credits enumerated in the two preceding articles shall be considered as mortgages or pledges or real or personal property, or liens within the purview of legal provisions governing insolvency. **Taxes mentioned in No. 1, article 2241, and No. 1, article 2242, shall be first satisfied**. (Emphasis supplied)

[99] Article 2245. **Credits of any other kind or class, or by any other right or title not comprised in the four preceding articles, shall enjoy no preference**. (Emphasis supplied)

order of credits. This would strip PNCC of its assets leaving virtually nothing for the National Government. This action of the PNCC Board is manifestly and grossly disadvantageous to the National Government and amounts to fraud.

During the Senate hearings, Senator Osmeña pointed out that in the Board Resolution of 20 October 2000, PNCC acknowledged its obligations to the National Government amounting to ₱36,023,784,000 and to Marubeni amounting to ₱10,743,000,000. Yet, Senator Osmeña noted that in the PNCC books at the time of the hearing, the ₱36 billion obligation to the National Government was reduced to ₱5 billion. PNCC's Miriam M. Pasetes could not properly explain this discrepancy, except by stating that the ₱36 billion includes the principal plus interest and penalties, thus:

SEN. OSMEÑA. *Teka muna*. What is the 36 billion that appear in the resolution of the board in September 2000 (sic)? This is the same resolution that recognizes, acknowledges and confirms PNCC's obligations to Marubeni. And subparagraph (a) says "Government of the Philippines, in the amount of 36,023,784,000 and change. And then (b) Marubeni Corporation in the amount of 10,743,000,000. So, therefore, in the same resolution, you acknowledged that had something like ₱46.7 billion in obligations. Why did PNCC settle the 10 billion and did not protect the national government's 36 billion? And then, number two, why is it now in your books, the 36 billion is now down to five? If you use that ratio, then Marubeni should be down to one.

MS. PASETES. Sir, the amount of 36 billion is principal plus interest and penalties.

SEN. OSMEÑA. And what about Marubeni? Is that just principal only?

MS. PASETES. Principal and interest.

SEN. OSMEÑA. So, I mean, you know, it's equal treatment. Ten point seven billion is principal plus penalties plus interest, *hindi ba*?

MS. PASETES. Yes, sir. Yes, Your Honor.

SEN. OSMEÑA. All right. So now, what you are saying is that you gonna pay Marubeni 6 billion and change and the national

government is only recognizing 5 billion. I don't think that's protecting the interest of the national government at all.[100]

PNCC failed to explain satisfactorily why in its books the obligation to the National Government was reduced when no payment to the National Government appeared to have been made. **PNCC failed to justify why it made it appear that the obligation to the National Government was less than the obligation to Marubeni. It is another obvious ploy to justify the preferential treatment given to Radstock to the great prejudice of the National Government.**

VI.
Supreme Court is Not Legitimizer of Violations of Laws

During the oral arguments, counsels for Radstock and PNCC admitted that the Compromise Agreement violates the Constitution and existing laws. However, they rely on this Court to approve the Compromise Agreement to shield their clients from possible criminal acts arising from violation of the Constitution and existing laws. In their view, once this Court approves the Compromise Agreement, their clients are home free from prosecution, and can enjoy the **₱6.185 billion** loot. The following exchanges during the oral arguments reveal this view:

ASSOCIATE JUSTICE CARPIO:

If there is no agreement, they better remit all of that to the National Government. They cannot just hold that. They are holding that [in] trust, as you said, x x x you agree, for the National Government.

DEAN AGABIN:

Yes, that's why, they are asking the Honorable Court to approve the compromise agreement.

ASSOCIATE JUSTICE CARPIO:

We cannot approve that if the power to authorize the expenditure [belongs] to Congress. How can we usurp x x x the power of Congress to authorize that expenditure[?] It's only Congress that can authorize the expenditure of funds from the general funds.

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[100] Transcript of the Committee Hearings, 18 December 2006, p. 123.

DEAN AGABIN:

But, Your Honor, if the Honorable Court would approve of this compromise agreement, I believe that this would be binding on Congress.

ASSOCIATE JUSTICE CARPIO:

Ignore the Constitutional provision that money shall be paid out of the National Treasury only pursuant to an appropriation by law. You want us to ignore that[?]

DEAN AGABIN:

Not really, Your Honor, but I suppose that Congress would have no choice, because this is a final judgment of the Honorable Court.[101]

x x x x x x x x x

ASSOCIATE JUSTICE CARPIO:

So, if Radstock makes the assignment, it must own its rights, otherwise, it cannot assign it, correct?

ATTY. AGRA:

Pursuant to the compromise agreement, **once approved**, yes, Your Honors.

ASSOCIATE JUSTICE CARPIO:

So, you are saying that Radstock can own the rights to ownership of the land?

ATTY. AGRA:

Yes, Your Honors.

ASSOCIATE JUSTICE CARPIO:

Yes?

ATTY. AGRA:

The premise, Your Honor, you mentioned a while ago was, if this Court approves said compromise (interrupted).[102] (Emphasis supplied)

This Court is not, and should never be, a rubber stamp for litigants hankering to pocket public funds for their selfish private gain. This Court is the ultimate guardian of the public interest,

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[101] TSN, Oral Arguments, pp. 527-529.

[102] *Id.* at 473-474.

the last bulwark against those who seek to plunder the public coffers. This Court cannot, and must never, bring itself down to the level of legitimizer of violations of the Constitution, existing laws or public policy.

Conclusion

In sum, the acts of the PNCC Board in (1) issuing Board Resolution Nos. BD-092-2000 and BD-099-2000 expressly admitting liability for the Marubeni loans, and (2) entering into the Compromise Agreement, constitute evident bad faith and gross inexcusable negligence, amounting to fraud, in the management of PNCC's affairs. Being public officers, the government nominees in the PNCC Board must answer not only to PNCC and its stockholders, but also to the Filipino people for grossly mishandling PNCC's finances.

Under Article 1409 of the Civil Code, the Compromise Agreement is "**inexistent and void from the beginning**," and "**cannot be ratified**," thus:

> Art. 1409. **The following contracts are inexistent and void from the beginning**:
>
> (1) Those whose cause, object or purpose is **contrary to law**, morals, good customs, public order or **public policy**;
>
> x x x x x x x x x
>
> (7) Those **expressly prohibited or declared void by law**.
>
> **These contracts cannot be ratified**. x x x. (Emphasis supplied)

The Compromise Agreement is indisputably contrary to the Constitution, existing laws and public policy. Under Article 1409, the Compromise Agreement is expressly declared void and "**cannot be ratified**." **No court, not even this Court, can ratify or approve the Compromise Agreement**. This Court must perform its duty to defend and uphold the Constitution, existing laws, and fundamental public policy. This Court must not shirk in declaring the Compromise Agreement ***inexistent and void ab initio***.

WHEREFORE, we *GRANT* the petition in G.R. No. 180428. We *SET ASIDE* the Decision dated 25 January 2007 and the

Resolutions dated 12 June 2007 and 5 November 2007 of the Court of Appeals. We *DECLARE* (1) PNCC Board Resolution Nos. BD-092-2000 and BD-099-2000 admitting liability for the Marubeni loans *VOID **AB INITIO*** for causing undue injury to the Government and giving unwarranted benefits to a private party, constituting a corrupt practice and unlawful act under Section 3(e) of the Anti-Graft and Corrupt Practices Act, and (2) the Compromise Agreement between the Philippine National Construction Corporation and Radstock Securities Limited *INEXISTENT AND VOID **AB INITIO*** for being contrary to Section 29(1), Article VI and Sections 3 and 7, Article XII of the Constitution; Section 20(1), Chapter IV, Subtitle B, Title I, Book V of the Administrative Code of 1987; Sections 4(2), 79, 84(1), and 85 of the Government Auditing Code; and Articles 2241, 2242, 2243 and 2244 of the Civil Code.

We *GRANT* the intervention of Asiavest Merchant Bankers Berhad in G.R. No. 178158 but *DECLARE* that Strategic Alliance Development Corporation has no legal standing to sue.

SO ORDERED.

Puno, C.J., Chico-Nazario, Abad, and *Villarama, Jr., JJ.,* concur.

Carpio Morales, J., please see concurring opinion.

Leonardo-de Castro, J., please see separate concurring opinion.

Brion, J., joins the concurring opinion of Justice de Castro.

Corona, Velasco, Jr., and *Nachura, JJ.,* joins the dissent of Mr. Justice Bersamin.

Bersamin, J., please see dissent.

Peralta and *del Castillo, JJ.,* took no part.

CONCURRING OPINION

CARPIO MORALES, *J.*:

I join the majority in granting the petition in G.R. No. 180428.

In **G.R. No. 178159**, petitioner Strategic Alliance Development Corporation (Stradec) assails the appellate court's Resolutions of January 25, 2007 and May 31, 2007 in CA-G.R. CV No. 87971 approving the Compromise Agreement of August 17, 2006 between Radstock Securities Limited (Radstock) and Philippine National Construction Corporation (PNCC), and denying Stradec's motion for reconsideration, respectively. In **G.R. No. 180428**, petitioner Luis Sison (Sison) assails the appellate court's Resolutions of June 12, 2007 and November 5, 2007 in CA-G.R. SP No. 97982 dismissing his petition for annulment of the appellate court's January 25, 2007 Resolution, and denying reconsideration thereof, respectively.

This opinion dwells only on the legal claims and defenses surrounding the execution of the Compromise Agreement, the validity of which is challenged in the present petitions.

The debt-to-equity transaction between the government and the PNCC (then CDCP) covered the assumption of ownership not only as to the assets but also as to the liabilities of CDCP to the extent of its equity.

The separate issue of defensibility of the subject liability could not be taken into account in rejecting the compromise agreement, since part of a compromise is the concession to surrender or waive the defenses against the claim. Whether such waiver subjected the PNCC officers to personal liability is likewise a different question altogether.

Going beyond the mathematical computations in arriving at the ₱6.185 Billion value of the properties subject of the Compromise Agreement *vis-à-vis* the ₱17.04 Billion liability adjudged by the trial court, the immediate effect of approving the Compromise Agreement is pulling Radstock from the queue of PNCC creditors and placing it in front of the line in order to

collect on a debt ahead of the other PNCC creditors. Yet Radstock itself was complaining and crying foul about this same scenario in its application for a writ of preliminary attachment, the subject of this Court's decision in *Philippine National Construction Corporation v. Dy.*[1] Thus Radstock alleged:

> . . . PNCC knowing that it is **bankrupt** and that it does not have enough assets to meet its existing obligations is now offering for **sale** its assets as shown in the reports published in newspapers of general circulation.[2] (emphasis and underscoring supplied)

The Court in that case did not find such allegation as constitutive of fraud to merit Radstock's prayer for the attachment of PNCC properties because

> . . . the fact that PNCC has insufficient assets to cover its obligations is no indication of fraud even if PNCC attempts to sell them because **it is quite possible that PNCC was entering into a *bona fide* . . . sale where at least fair market value for the assets will be received**. In such a situation, Marubeni**[-predecessor-in-interest of Radstock] would not be in a worse position than before as the assets will still be there but just liquidated**.[3] (italics in the original; emphasis and underscoring supplied)

Finding itself in the same position it abhors, Radstock now finds no objection to PNCC "selling"[4] its assets to Radstock and placing itself in a worse position than before as the assets will be actually conveyed and not merely liquidated. Even worse, Radstock admits that PNCC is financially in distress and intimates that the creditors cannot in any manner collect the claims due them.

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[1] G.R. No. 156887, October 3, 2005, 472 SCRA 1.

[2] *Id.* at 10.

[3] *Id.* at 11, where the Court affirmed the denial of the motion to dismiss but reversed the denial of the motion to set aside and discharge the order and writ of preliminary attachment.

[4] CIVIL CODE, Art. 1245 provides that the law of sales governs dation in payment whereby property is alienated to the creditor in satisfaction of a debt in money. Admittedly, the Compromise Agreement is essentially a *dacion en pago*.

Furthermore, Executive Order No. 292 or the Administrative Code of 1987 requires congressional approval on the compromise of claims valued at more than ₱100,000, thus the pertinent section provides:

> Section 20. *Power to Compromise Claims.* — (1) When the interest of the Government so requires, the Commission [on Audit] may compromise or release in whole or in part, **any settled claim or liability to any government agency** not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos. **In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the President, with their recommendations, to the Congress** x x x.[5] (emphasis and underscoring supplied)

At the outset, it bears clarification that the phrase "any settled claim or liability *to* any government agency" includes not just liabilities *to* the government but also claims *against* the government. Although the two relevant cases (*infra*) so far decided by this Court involved only liabilities *to* the government, there is nothing in the law that prohibits the government from amicably settling its own liability to a person, subject to the same stringent qualifications and conditions. That the State has the whole government machinery to contest any alleged liability and protect the release of government funds to pay off such claim is not in consonance with the avowed State policy expressed by law[6] that encourages settlement of civil cases.

In *Benedicto v. Board of Administrators of Television Stations RPN, BBC and IBC*,[7] the Court ruled that the requirement of prior congressional approval for the compromise of an amount exceeding ₱100,000 applies only to a **settled** claim or liability.

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[5] EXECUTIVE ORDER No. 292, Book V, Title I, Subtitle B, Chapter IV, Sec. 20, par. 1.

[6] CIVIL CODE, Arts. 2028-2029.

[7] G.R. No. 87110, March 31, 1992, 207 SCRA 659.

In his dissent, Justice Lucas Bersamin states that the liability of PNCC to Radstock was not yet settled at the time of the execution of the Compromise Agreement since the case was still the subject of litigation, in which PNCC resisted liability by pleading various defenses. He expounds:

> The exception of a compromise or release of a claim or liability yet to be settled from the requirement for presidential or congressional approval is realistic and practical. In a settlement by compromise agreement, the negotiating party must have the freedom to negotiate and bargain with the other party. Otherwise, tying the hands of the Government representative by requiring him to submit each step of the negotiation to the President and to Congress will unduly hinder him from effectively entering into any compromise agreement. (italics in the original omitted)

The majority opinion, meanwhile, declares that the claim was already settled upon recognition of the obligation in the books of PNCC via the Board Resolution.

> [It] was precisely enacted to prevent government agencies from admitting liabilities against the government, then compromising such "settled" liabilities. The present case is exactly what the law seeks to prevent, a compromise agreement on a creditor's claim settled through admission by a government agency without the approval of Congress for amounts exceeding ₱100,000.00. What makes the application of the law even more necessary is that the PNCC Board's twin moves are manifestly and grossly disadvantageous to the Government. x x x (emphasis in the original omitted)

I submit that a claim or liability is settled once it has been liquidated or determined and no issue remains as to the amount or identity of the liability.

In *Benedicto*, the Court explained that "[t]he Government's claim against Benedicto is not yet settled, and the ownership of the alleged ill-gotten assets is still being litigated in the Sandiganbayan, hence, the PCGG's Compromise Agreement with Benedicto need not be submitted to the Congress for approval." In *Benedicto*, there was yet no determination as to the ownership of the sequestered properties.

The determination, if it be a judicial one, need not be final and executory. Since the aim of a compromise is to "avoid a litigation or put an end to one already commenced," there is no rhyme or reason to end a litigation that is already terminated and to wait for a final and executory decision before discussing a possible compromise.

In *The Alexandra Condominium Corporation v. Laguna Lake Development Corporation*,[8] the subject of compromise was the ₱1,062,000 fine imposed by the Laguna Lake Development Authority against a condominium corporation as compensation for damages resulting from failure to meet established water and effluent quality standards. The Court therein ruled that the condominium corporation should have first pursued the administrative recourse to the Department of Environment and Natural Resources Secretary before filing the petition in court. On the issue of the alleged pending amicable settlement *vis-à-vis* the claim of non-exhaustion of administrative remedies, the Court ruled that congressional approval of a compromise agreement is "not administrative but legislative [in nature], and need not be resorted to before filing a judicial action."

In the scheme of things, the congressional approval acts as a safeguard in reviewing the soundness of the business judgment. It is not for the Court to preempt the legislative branch and say that "under the circumstances, the compromise agreement could not be considered as disadvantageous to PNCC and the National Government."

CONCURRING OPINION

LEONARDO-DE CASTRO, *J.*:

I concur in the *ponencia* of the Honorable Justice Antonio T. Carpio, subject to the following qualifications:

First, I do not believe that Section 36 of the Government Auditing Code grants government agencies any power to

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[8] G.R. No. 169228, September 11, 2009.

compromise, and thereby admit, any indebtedness of the government to another party. Section 36, as amended by Section 20, Chapter 4, Title I-B, Book V, E.O. No. 292 (the Administrative Code of 1987), provides:

> Section 36. *Power to compromise claims.* — (1) When the interest of the Government so requires, the Commission may compromise or release in whole or in part, **any settled claim or liability to any government agency** not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos. In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the President, with their recommendations, to the Congress; and
>
> (2) The Commission may, in the interest of the Government, authorize the charging or crediting to an appropriate account in the National Treasury, small discrepancies (overage or shortage) in the remittances to, and disbursements of, the National Treasury, subject to the rules and regulations as it may prescribe. (emphasis supplied)

Plainly, pursuant to the above-quoted provision, the power to compromise or release involves a claim or liability **to** a government agency, *i.e.* an indebtedness **to** a government agency, which term by definition under E.O. No. 292 includes "government owned or controlled corporations." The language of Section 36 does not authorize the compromise of an indebtedness **of** the government or a liability of the government to any party.

The aforesaid meaning or import of the term "claim or liability" used in Section 36 is reinforced by the immediate preceding Section 35 which reads:

> Section 35. *Collection of Indebtedness Due to the Government.* — The Commission shall, through proper channels, assist in the collection and enforcement of all debts and claims, and the restitution of all funds or the replacement or payment as a reasonable price of property, **found to be due the Government, or any of its subdivisions, agencies or instrumentalities, or any government-owned or controlled corporation** or self-governing board, commission or agency of the Government, in the settlement and

adjustment of its accounts. If any legal proceeding is necessary to that end, the Commission shall refer the case to the Solicitor General, the Government Corporate Counsel, or the Legal Staff of the Creditor Government Office or agency concerned to institute such legal proceeding. The Commission shall extend full support in the litigation. All such moneys due and payable shall bear interest at the legal rate from the date of written demand by the Commission. (emphasis supplied)

Previous jurisprudence applying Section 36 confirms that this provision authorizes the compromise of a liability or indebtedness **to** the government.[1] This is true even in *Benedicto v. Board of Administrators of Television Stations,*[2] which was cited in the dissent. The *Benedicto* case ruled upon the power of the PCGG to compromise **actions for recovery of ill-gotten wealth**. In such actions, it is the government who has a claim against third persons and not the other way around.

Now, one might ask: Is there compelling reason to treat a compromise of an indebtedness **to** the government differently from a compromise of an indebtedness **of** the government?

The answer is undeniably in the affirmative. First, when there is a compromise of an indebtedness **to** the government, it generally presupposes that the government's claim will be paid, albeit at a lower amount than the actual liability. It involves funds going into the coffers of the government. On the other hand, when there is a compromise of an indebtedness **of** the government, this means that public funds will be disbursed from the treasury to answer for such debt. The former type of compromise makes practical sense since in that situation, the State is condoning a portion of an actual or settled or definite obligation in order to

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[1] *Land Bank of the Philippines v. Commission on Audit*, G.R. Nos. 89679-81, September 28, 1990, 190 SCRA 154; *The Alexandra Condominium Corporation v. Laguna Lake Development Authority*, G.R. No. 169228, September 11, 2009. See also, *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 49410, January 26, 1989, 169 SCRA 409 (where the Court sustained the authority of DBP, as a government owned or controlled corporation, to compromise **claims due to the government**).

[2] G.R. Nos. 87710 and 96087, March 31, 1992, 207 SCRA 659.

collect some amount for a good or meritorious ground rather than risk the non-payment of all of its claim.

However, the power to compromise an indebtedness to the government does not necessarily include the power to compromise an asserted claim against or liability of the government, more so if the said claim against or liability of the government is unsettled. It needs no deep logical reasoning to understand that before the government is made to part with public funds or property, the claim **against** the government must be fixed, definite or settled. Otherwise, the government may be holding itself liable for unfounded or baseless claims. This is because the power to compromise a liability of the government entails the disbursement of public funds or property which is an act subject to stringent rules in order to safeguard against loss or wastage of such funds or property that are so vital to the delivery of basic public goods and services. Not the least of these rules is Article VI, Section 29(1) of the 1987 Constitution which states that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law." In consonance with Section 29, Article VI, the General Auditing Code also provides:

> Section 4. *Fundamental Principles.* — Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:
>
> **1. No money shall be paid out of any public treasury** or depository **except in pursuance of an appropriation law or other specific statutory authority.**
>
> 2. Government funds or property shall be spent or **used solely for public purposes**. xxx xxx xxx (emphasis supplied)

To my mind, neither Section 36 of the Government Auditing Code nor *Benedicto* can be used as legal basis for the vaunted validity of the Compromise Agreement subject of this case.

Second, even assuming for the sake of argument that Section 36 may be interpreted as also authorizing the compromise of government indebtedness **to** another party, it is my considered view as stated above that it must be a **settled** claim or liability.

Section 36 is very clear that the Commission on Audit (COA) may only compromise or release "any **settled** claim or liability."

The dissenting opinion characterizes Radstock's claim against PNCC as an unsettled claim since its validity and its amount had not yet been determined with judicial finality and in fact, the Compromise Agreement was entered into by the parties during the pendency of the case with the Court of Appeals.

However, I respectfully beg to disagree with the proposition that since Radstock's claim is not yet settled, the requirement under Section 36 for Presidential or Congressional approval does not apply. On the contrary, it is precisely because the claim is still unsettled that Section 36 should not come into play at all and the concerned government agency should be deemed to have no authority to compromise such claim. Under Section 36, the authority to compromise must involve a "settled claim or liability" regardless of amount, the latter being significant only to determine the approving authority. This is the clear import of Section 36.

This interpretation of Section 36, which requires a final and executory judicial determination of the liability as a prerequisite to the exercise of the power to compromise, would reinforce the mandate of the COA to guard against illegal or negligent disbursement of public funds.

This is an opportune time for the Court to revisit and reexamine the doctrine in *Benedicto*, insofar as it rules that Presidential and/or Congressional approval may be dispensed with in the compromise of **unsettled** claims. The authority to compromise granted in cases of settled claims, under Section 36, as amended by E.O. 292, subject to the approval of the offices concerned depending on the amount of the claim cannot, by any rational reasoning, be construed as to confer absolute authority to compromise, that is, *sans* any condition or approval at all, if the claim is unsettled or not yet established. Rather, the inescapable deduction from the language of Section 36 is that no compromise is allowed if the claim is unsettled. Besides, it should be emphasized that the claim in *Benedicto* did not involve a claim **against** the

government but a claim **due to** the government. Hence, it cannot be invoked as a precedent.

Section 36 requires, as indispensable conditions for a compromise, that the claim is settled and the application for relief is submitted to Congress for approval with the recommendation of the COA and the President if the "settled claim" exceeds ₱100,000.00. The statutory conditions of (1) a settled claim and (2) Presidential endorsement and Congressional approval of the compromise depending on the amount of the claim are entrenched as mechanisms for ensuring public accountability and fiscal responsibility.

If a settled claim (*i.e.* a claim that has been adjudged valid and has been competently computed based on evidence) that exceeds ₱100,000.00 requires Presidential endorsement and Congressional approval, with more reason, an unsettled claim (*i.e.* one that is still of questionable validity or legality) of any amount should require Presidential endorsement and Congressional approval before it can be compromised. This is especially true in the case of a compromise of a supposed debt of the government to another party. It seems absurd that a compromise that will require a disbursement of public funds or property will not require Congressional approval when the Constitution and the law demand legislative action and a public purpose before such a disbursement can be made.

To be sure, in the case of a compromise of an indebtedness **to** the government, there must be a reasonable and dependable benchmark by which to ascertain whether the amount of loss or waived receivables under the compromise is acceptable or justified.

The existence of a reliable benchmark of the liability to be paid is even more imperative in the case of a compromise of an indebtedness **of** the government because it entails a payment out of public funds or property. A judicial determination of the liability would be one such standard by which we can reasonably gauge if the compromise entered into by public officials is disadvantageous to the government or inimical to interests of the Filipino people.

The benchmark most certainly cannot be what the claimant asserts the government's liability to be. I simply cannot accept the reasoning that PNCC's entering into a compromise with Radstock for ₱6 Billion is advantageous to the government, since the purported claim amounted to approximately ₱17 Billion. For if Radstock is actually not entitled to a single centavo of its claim, then our government would have lost ₱6 Billion for nothing. It is my firm belief that a claim against the government must be proven, or otherwise settled with finality, before the whole claim or any part of it can be paid or compromised.

If this Court approves the compromise of an unsettled claim, then we will open the floodgates to even more suits of this sort. Predictably, that kind of permissive ruling will encourage parties to file flimsy or dubious claims against the government and unscrupulous government officials can compromise such claims even during the pendency of the case and without need of any approval from higher authority. To say that this would be an anomalous outcome would be an understatement. It is an abomination that the Court should not countenance or perpetuate.

We simply cannot apply to this case the statutory provisions on compromise of cases in ordinary civil or corporate litigation. We must consider the far-reaching public interests involved herein and the special laws or rules applicable to the expenditure or disposition of public funds or property, especially proscriptions against government guarantee of debts or obligations incurred for a private purpose. Public officers entering into a compromise of an "unsettled" indebtedness **of** the government, in the absence of a definite and categorical legal authority to do so, are assuming a heavy burden of justifying such compromise in order to avoid accusations of entering into a manifestly disadvantageous agreement on behalf of the government.

Finally, it should not escape this Court's notice that PNCC became a government owned or controlled corporation (GOCC) in the first place because it was indebted to the government. Instead of paying the government in cash, it settled its obligations in shares of stock. If we approve the Compromise Agreement, the government, who itself was a creditor of PNCC, will now

in effect be paying PNCC's debts. Worse, one such debt was not even an obligation of PNCC to begin with but of its affiliate, and was incurred at a time when both PNCC and the affiliate were private corporations. The strange circumstances surrounding PNCC's recognition of the said debt and the startling facility by which that debt was recognized by a PNCC official and then bought and sued upon by Radstock all arouse suspicion. I believe the Court is right to disapprove the Compromise Agreement and should allow all issues to be fully ventilated in the proceedings on merits.

There are still a number of important legal issues to be settled here, such as, the legal basis of a GOCC assuming the indebtedness incurred by a private entity for a private purpose, the validity of the enforcement of a guarantee by a GOCC of a private corporation's foreign debt which did not pass through the usual controls, restrictions, and the conditions imposed by law and the rules of the monetary authority for the validity of a government guarantee of such foreign borrowing or indebtedness considering the change in the situation of the parties, and so on.

I likewise cannot agree with the dissenting opinion that the Court, in *PNCC v. Dy*,[3] had already substantially denied PNCC's affirmative defenses, such as prescription, among others. Indeed, all the Court held in that earlier case was that the alleged errors of the trial court in its resolution of PNCC's Motion to Dismiss were not correctible by *certiorari* but this did not preclude PNCC from proving its affirmative defenses during trial. To quote the relevant portion of that decision:

> If error had been committed by the trial court, it was not of the character of grave abuse that relief through the extraordinary remedy of *certiorari* may be availed. **Indeed, the grounds relied upon by PNCC are matters that are better threshed out during the trial since they can only be considered after evidence has been adduced and weighed**.[4] (emphasis supplied)

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[3] G.R. No. 156887, October 3, 2005, 472 SCRA 1.

[4] *Id.* at 9.

Subject to the foregoing discussions, I agree with the conclusions reached in the *ponencia* of Justice Carpio and vote to (1) grant the petition in G.R. No. 180428 and (2) to set aside (a) PNCC Board Resolution Nos. BD-092-2000 and BD-099-2000 and (b) the Compromise Agreement for being null and void.

DISSENT

BERSAMIN, *J.*:

I hereby register my dissent to the majority opinion of Justice Carpio that grants the petition in G.R. No. 180428, and declares (1) PNCC Board Resolution Nos. BD-092-2000 and BD-099-2000 (recognizing liability for the Marubeni Corporation (Marubeni) loans) void *ab initio* for causing undue injury to the Government and giving unwarranted benefits to a private party; and (2) the *compromise agreement* between the Philippine National Construction Corporation (PNCC) and Radstock Securities Limited (Radstock) inexistent and void *ab initio* for being contrary to Section 29(1), Article VI and Sections 3 and 7, Article XII of the *Constitution*; Section 20(1), Chapter IV, Subtitle B, Title I, Book V of the *Administrative Code of* 1987; Sections 4(2), 79, 84 and 85 of the *Government Auditing Code*; Section 3(g) of the *Anti-Graft and Corrupt Practices Act*; Article 217 of the *Revised Penal Code*; and Articles 2241, 2242, 2243 and 2244 of the *Civil Code*; and that grants the intervention of Asiavest Merchant Bankers Berhad in G.R. No. 178158.

The majority opinion declares that Strategic Alliance Development Corporation has no legal standing to sue.

I humbly submit that the PNCC Board resolutions and the *compromise agreement* entered into by and between PNCC and Radstock were valid and effective, and did not violate any provision of the *Constitution* or any other law; and that the intervention of Asiavest Merchant Bankers Berhad in G.R. No. 178158 has no legal and factual bases.

Let me justify this submission.

The Case, in a Nutshell

Respondent Radstock had sued for collection and damages respondent PNCC in the Regional Trial Court (RTC) in Mandaluyong City (Civil Case No. MC 01-1398). The RTC rendered judgment in favor of Radstock, mandating PNCC to pay to Radstock the amount of ₱13,151,956,528.00, plus interests and attorney's fees. PNCC appealed to the Court of Appeals (CA).[1] On August 18, 2006, after negotiations held while the appeal (CA-GR CV No. 87971) was still pending in the CA, PNCC and Radstock entered into a *compromise agreement*, agreeing to reduce PNCC's adjudged liability in the amount of ₱17,040,843,968.00 as of July 31, 2006 to ₱6,185,000,000.[2]

Considering that at the time of the execution of the *compromise agreement*, G.R. No. 156887 (*i.e.*, the appeal of PNCC from the CA's affirmance of the RTC's denial of PNCC's *motion to dismiss* in Civil Case No. MC 01-1398) was still also pending in this Court, PNCC and Radstock submitted the *compromise agreement* for approval of the Court, which saw fit to require said parties to refer the *compromise agreement* to the Commission on Audit (COA) for study and recommendation. On its part, COA recommended the approval of the *compromise agreement*.

Thereafter, on November 22, 2006, the Court instructed PNCC and Radstock to submit the *compromise agreement* to the CA for approval because CA-GR CV No. 87971 was still pending.[3] On January 25, 2007, the CA approved it.[4]

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[1] *Philippine National Construction Corporation v. Hon. Amalia F. Dy, et al.*, G.R. No. 156887, October 3, 2005, 472 SCRA 1, 5. Penned by Associate Justice Azcuna and concurred in by Chief Justice Davide, Jr., Associate Justice Quisimbing, Associate Justice Ynares-Santiago, and Associate Justice Carpio.

[2] *Rollo*, G.R. No. 178158, pp. 31- 43 (CA decision dated January 25, 2007; penned by Associate Justice Del Castillo (now a Member of the Court) and concurred in by Presiding Justice Reyes (now retired Member of the Court) and Associate Justice Romilla-Lontok.

[3] *Rollo*, G.R. No. 178158, pp. 259-271 (the resolution in G.R. No. 156887 dated November 22, 2006).

[4] *Id.*, pp. 31- 43.

The approval of the *compromise agreement* quickly invited adverse reaction from several quarters, none of whom had been parties up to that point in the litigation. One of them was Strategic Alliance Development Corporation (STRADEC), the petitioner in G.R. No. 178185.[5] Another was Rodolfo Cuenca. STRADEC and Cuenca wanted to intervene in order to assail the *compromise agreement* between PNCC and Radstock as null and void. The CA rejected their proposed interventions.[6] On the other hand, Luis Sison (Sison), the petitioner in G.R. No. 180428,[7] filed a *petition for annulment of judgment approving the compromise agreement,*[8] which was raffled to another division of the CA. The CA dismissed the petition.[9]

Before the Court now are the appeals of STRADEC and Sison. Cuenca did not pursue his cause after the rejection of his intervention.

Common Antecedents[10]

In the period between 1978 and 1980, Marubeni, a corporation organized under the laws of Japan, had extended two loan accommodations to PNCC for the following purposes: (1) the sum of US$5 million to finance the purchase of copper concentrates by Construction Development Corporation of the Philippines (CDCP) Mining Corporation (a subsidiary of PNCC), which PNCC had guaranteed to pay jointly and severally up to the amount of ₱20 million; and (2) ¥5.46 billion, or its equivalent in Philippine Pesos of ₱2,099,192,619.00, to finance the

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[5] *Id.*, pp. 3-26.

[6] *Id.*

[7] *Rollo*, G.R. No. 180428, pp. 3-42.

[8] *Id.*, pp. 107-140.

[9] *Id.*, pp. 45-46 (CA decision in CA-G.R. SP No. 97982, penned by Justice Pizarro, and concurred in by Justice Cruz and Justice Lampas-Peralta).

[10] The narrative contained in the section *Common Antecedents* is partly derived from the background facts rendered in *Philippine National Construction Corporation v. Hon. Amalia F. Dy, et al.*, G.R. No. 156887, October 3, 2005, 472 SCRA 1.

completion of the expansion project of CDCP Mining Corporation in Basay, and as working capital, which PNCC had also guaranteed to pay jointly and severally. By a *deed of assignment* dated January 10, 2001, Marubeni assigned the credit to Radstock, a corporation organized under the laws of the British Virgin Islands, with office address at Suite 602, 76 Kennedy Road, Hong Kong. After due date of the obligation, Marubeni and Radstock had demanded payment, but PNCC failed and refused to pay the obligation.

Upon default of PNCC, Radstock sued PNCC in the RTC in Mandaluyong City to recover the debt and consequential damages, praying for the issuance of a writ of preliminary attachment. The suit was docketed as Civil Case No. MC 01-1398.

On January 23, 2001, the RTC issued a writ of preliminary attachment, the service of which led to the garnishment of PNCC's bank accounts and the attachment of several of PNCC's real properties. On February 14, 2001, PNCC moved to set aside the order of January 23, 2001, and to discharge the writ of attachment. Two weeks later, PNCC filed a *motion to dismiss*. The RTC denied both motions. After the RTC denied PNCC's corresponding motions for reconsideration, PNCC instituted a special civil action for *certiorari* in the CA (C.A.-G.R. SP No. 66654).

Notwithstanding the pendency of C.A.-G.R. SP No. 66654, Civil Case No. MC 01-1398 proceeded in the RTC. In its answer in Civil Case No. MC 01-1398, PNCC reiterated the grounds of its *motion to dismiss* as affirmative defenses, namely: 1) that the plaintiff had no legal capacity to sue; 2) that the loan obligation had already prescribed because no valid demand had been made; and 3) that the letter of guarantee had been signed by a person not authorized to do so by a valid board resolution.

In C.A.-G.R. SP No. 66654, PNCC argued similar grounds to assail the denial of its *motion to dismiss*, to wit: 1) that the cause of action was barred by prescription; 2) that the pleading asserting the claim stated no cause of action; 3) that the condition precedent for filing of the instant suit had not been complied with; and 4) that the plaintiff had no legal capacity to sue.

PNCC further argued that the RTC had committed grave abuse of discretion in issuing the writ of attachment, for there had been no valid grounds to grant the writ.

On August 30, 2002, the CA decided C.A.-G.R. SP No. 66654. It held that the RTC did not act with grave abuse of discretion; and that the denial of the *motion to dismiss*, being interlocutory, could not be questioned through a special civil action for *certiorari*. The CA denied PNCC's *motion for reconsideration* on January 22, 2003.

Soon after the CA had rendered its decision in C.A.-G.R. SP No. 66654, the RTC promulgated its judgment in Civil Case No. MC 01-1398, declaring PNCC liable to Radstock in the amount of ₱13,151,956,528, plus interest and attorney's fees. The RTC also threw out all of PNCC's affirmative defenses for being inconsistent with the evidence presented.

PNCC appealed the judgment to the CA (C.A.-G.R. CV No. 87971).

Even with the main case (Civil Case No. MC 01-1398) having been meanwhile decided, PNCC still appealed by petition for review on *certiorari* the CA decision in C.A.-G.R. SP No. 66654, alleging that the CA gravely erred by holding that *certiorari* was not available against the denial of a *motion to dismiss;* and insisting that the RTC had not gravely abused its discretion in issuing its assailed orders. The appeal was docketed as G.R. No. 156887.

On October 3, 2005, the Court resolved G.R. No. 156887, *viz*:

WHEREFORE, the petition is partly GRANTED and insofar as the Motion to Set Aside the Order and/or Discharge the Writ of Attachment is concerned, the Decision of the Court of Appeals on August 30, 2002 and its Resolution of January 22, 2003 in CA-G.R. SP No. 66654 are REVERSED and SET ASIDE. The attachments over the properties by the writ of preliminary attachment are hereby ordered LIFTED effective upon the finality of this Decision. The Decision and Resolution of the Court of Appeals are AFFIRMED in all other respects. The Temporary Restraining Order is DISSOLVED

immediately and the Court of Appeals is directed to PROCEED forthwith with the appeal filed by PNCC.

No costs.

SO ORDERED.

After receiving the decision in G.R. No. 156887, the representatives and counsel of PNCC and Radstock met for a number of times in order to discuss a possible settlement between them. They reached a final settlement on August 17, 2006. They submitted to the Court their *compromise agreement* on August 18, 2006.[11] In the *compromise agreement*, PNCC and Radstock agreed to reduce PNCC's adjudged liability as of July 31, 2006 from ₱17,040,843,968.00 to ₱6,185,000,000.

On December 4, 2006, the Court in G.R. No. 156887 referred the *compromise agreement* to the COA for comment. In due time, COA submitted its *compliance*, whereby it recommended the approval of the *compromise agreement*.[12]

On November 22, 2006, the Court instructed PNCC and Radstock to submit the *compromise agreement* to the CA because the appeal of the RTC decision was still pending thereat.[13]

On January 25, 2007, the CA rendered its decision approving the *compromise agreement*.[14]

Alleging a claim against PNCC arising from the rejection of its bid during the bidding conducted in 2000 by the Privatization and Management Office (PMO) for the privatization of the Government's PNCC shares,[15] STRADEC sought reconsideration of the decision of January 25, 2007.

Cuenca, a stockholder of PNCC and its former President and Chairman of the Board of Directors, filed a *motion for*

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[11] *Rollo*, G.R. No. 178158, p. 416.

[12] *Id.*, pp. 259-271.

[13] *Id.*, p. 270.

[14] *Id.*, pp. 31-43.

[15] *Id.*, pp. 113-117.

intervention, maintaining that PNCC had no obligation to pay Radstock.[16]

On May 31, 2007, however, the CA denied STRADEC's *motion for reconsideration* and Cuenca's *motion for intervention*.[17]

In the meanwhile, on February 20, 2007, Sison also joined the legal fray in the CA by filing his *petition for annulment of judgment approving the compromise agreement* (C.A.-G.R. SP No. 97982).[18]

Asiavest Merchant Bankers Berhad (Asiavest), representing itself as a judgment creditor of PNCC, manifested its intention to participate in C.A.-G.R. SP No. 97982 through its *urgent motion for leave to intervene and to file the attached opposition and motion-in-intervention*.

On June 12, 2007, the CA (Ninth Division) promulgated a resolution in C.A.-G.R. SP No. 97982 dismissing Sison's *petition for annulment of judgment approving the compromise agreement* and denying Asiavest's *urgent motion for leave to intervene*.[19]

Sison moved for reconsideration of the dismissal, but the CA denied his *motion for reconsideration*.[20]

On June 20, 2007, STRADEC came to the Court to seek a review on *certiorari* (G.R. No. 178158), praying that the *compromise agreement* be declared void for violating the law and public policy. It sought a temporary restraining order or writ of preliminary injunction.[21]

Cuenca did not appeal.

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[16] *Id.*, p. 48.

[17] *Id.*, pp. 46-54.

[18] *Rollo*, G.R. No. 180428, pp. 107-140.

[19] *Rollo*, G.R. No. 180428, at pp. 45-46 (penned by Justice Pizarro, and concurred in by Justice Cruz and Justice Lampas-Peralta).

[20] *Id.*, pp. 47-49.

[21] *Rollo*, G.R. No. 178158, pp. 3-26.

On July 2, 2007, the Court directed PNCC and Radstock, their officers, agents, representatives and other persons acting under their orders to maintain the *status quo ante*.[22]

On September 21, 2007, Asiavest presented its *urgent motion for leave to intervene and to file the attached opposition and motion-in-intervention* in G.R. No. 178158.[23]

On November 26, 2007, Sison also came to the Court *via* his own petition for review on *certiorari* to appeal the CA decision (G.R. No. 180428).[24]

On February 18, 2008, the Court consolidated G.R. No. 180428 and G.R. No. 178158.[25]

Additional Antecedents in G.R. No. 178158

In 2000, STRADEC and Dong-A Pharmaceutical Co., Ltd., a Korean corporation, formed a consortium to participate in the bidding for the shares and other interests of the Philippine Government in PNCC. The consortium was named Dong-A Consortium.[26] Dong-A Consortium's bid of ₱1,228,888,800.00 was the highest.[27] On October 30, 2000, during the bidding process, the representative of the Assets Privatization Trust (APT) conducting the bidding announced that the indicative price for the Government's shares, receivables and other interests in PNCC was ₱7 billion.[28] All the bids, including that of Dong-A Consortium, were thus rejected.[29] In several communications thereafter, Dong-A Consortium demanded that APT issue the notice of award to it. However, APT did not comply, denying any irregularity in the bidding and informing Dong-A Consortium

[22] *Id.*, pp. 142-145.

[23] *Id.*, pp. 237-241.

[24] *Rollo*, G.R. No. 180428, pp. 3-42.

[25] *Rollo*, G.R. No. 178158, p. 358.

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

[27] *Id.*, p. 11.

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

[29] *Id.*, p. 11.

that its Board of Directors had confirmed the decision to reject Dong-A Consortium's bid.[30]

On October 3, 2005, STRADEC commenced an action for the declaration of its right to the notice of award and for damages in the RTC in Makati (docketed as Civil Case No. 05-882) against the PMO (formerly APT) and PNCC.[31]

On October 6, 2006, STRADEC filed a *motion for intervention* in this Court, seeking to intervene in order to seek the nullification of the *compromise agreement*.[32] After the CA had approved the *compromise agreement* through the decision in C.A.-G.R. CV No. 87971, STRADEC filed a *motion for reconsideration*. The CA denied the *motion for reconsideration* on May 31, 2007, resulting in STRADEC's present appeal in G.R. No. 178158.

Arguments of the Parties

In G.R. No. 178158, STRADEC contends that:

I. THE COURT OF APPEALS NOT ONLY COMMITTED SERIOUS REVERSIBLE ERROR BUT MAY HAVE ALSO GRAVELY ABUSED ITS DISCRETION IN REFUSING TO ALLOW PETITIONER STRADEC TO INTERVENE IN THE CASE.

II. THE COMPROMISE AGREEMENT BETWEEN RESPONDENTS RADSTOCK AND PNCC IS VOID FOR BEING CONTRARY TO LAW AND PUBLIC POLICY.

III. IN THE EVENT THE COMPROMISE AGREEMENT BETWEEN RESPONDENTS RADSTOCK AND PNCC IS UPHELD, SAID COMPROMISE AGREEMENT SHOULD BE MADE SUBJECT TO THE OUTCOME OF CIVIL CASE NO. 05-882.

In G.R. No. 180428, Sison submits the following arguments in support of his petition:[33]

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[30] *Id.*, pp. 11-13.

[31] *Id.*, pp. 55-69.

[32] *Id.*, pp. 113-134.

[33] *Rollo*, G.R. 180428, p. 17.

I. AN ACTION TO ANNUL A FINAL AND EXECUTORY JUDGMENT OF THE COURT OF APPEALS WHERE SUCH JUDGMENT WAS PROCURED THROUGH FRAUD, AND WITHOUT FAULT, NEGLIGENCE OR PARTICIPATION OF THE PARTY CONCERNED, CAN BE FILED AND MAINTAINED BEFORE THE COURT OF APPEALS. HENCE, THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE PETITION FOR ANNULMENT OF JUDGMENT FOR SUPPOSED LACK OF JURISDICTION.

II. RESOLVING THE JURISDICTION ISSUES PRESENTED IN THIS CASE WILL ENRICH JURISPRUDENCE.

III. PETITIONER HAS A MERITORIOUS CAUSE OF ACTION, AND THE INSTANT PETITION WARRANTS JUDICIAL REVIEW DUE TO COMPELLING REASONS.

On their part, Radstock and PNCC similarly argued in their respective memoranda that:[34]

1. THE COMPROMISE AGREEMENT DOES NOT VIOLATE PUBLIC POLICY.

2. THE SUBJECT MATTER DOES NOT INVOLVE AN ASSUMPTION BY THE GOVERNMENT OF A PRIVATE ENTITY'S OBLIGATION IN VIOLATION OF THE LAW AND/OR THE CONSTITUTION.

3. THE PNCC BOARD RESOLUTION OF OCTOBER 20, 2000 IS NOT DEFECTIVE OR ILLEGAL.

4. THE COMPROMISE AGREEMENT IS VIABLE AND DOES NOT INCLUDE ALL OR SUBSTANTIALLY ALL OF PNCC'S ASSETS.

5. THE DECISION OF THE COURT OF APPEALS IS NOT ANNULLABLE AS THERE WAS NO FRAUD PRACTICED HERE.

On January 13, 2009, the Court conducted oral arguments in both appeals, and limited the matters to be covered to the following:

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[34] *Rollo*, G.R. 178158, pp. 402-443; pp. 444-540.

1. Does the Compromise Agreement violate public policy?
2. Does the subject matter involve an assumption by the government of a private entity's obligation in violation of the law and/or the Constitution? Is the PNCC Board Resolution of October 20, 2000 defective or illegal?
3. Is the Compromise Agreement viable in light of the non-renewal of PNCC's franchise by Congress and its inclusion of all or substantially all of PNCC's assets?
4. Is the Decision of the Court of Appeals annullable even if final and executory on the grounds of fraud, public policy and the Constitution?[35]

Submissions

I
G.R. No. 178158

STRADEC seeks the reversal of the CA's denial of its *motion for intervention* to enable it to have the *compromise agreement* between Radstock and PNCC declared void, or, alternatively, to have the *compromise agreement* made subject to the outcome of Civil Case No. 05-882.

I believe and submit that STRADEC's position is untenable. Thus, I join the majority opinion in its rejection of STRADEC's intervention.

A
CA Committed No Grave Abuse of Discretion in denying STRADEC's Motion for Intervention

Section 2, Rule 19 of the 1997 *Rules of Civil Procedure* requires that the *motion for intervention* "may be filed at any time before the rendition of judgment by the trial court."

The CA found that STRADEC had filed its *motion for intervention* only after the CA and the RTC had promulgated their respective decisions. Worthy to note, indeed, is that as of the time when the *joint motion for judgment based on compromise*

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[35] *Id.,* between pp. 393 and 394.

agreement was submitted by PNCC and Radstock to the CA for consideration and approval, no *motion for intervention* was as yet attached to the CA *rollo*.[36] Consequently, the CA held that STRADEC's *motion for intervention* had been filed out of time.

Yet, STRADEC insists that the requirement for its intervention to be made prior to the rendition of judgment by the RTC should not apply considering that it had no legal interest in the subject matter of the litigation until upon the execution of the *compromise agreement*. It asserts that it became imbued with a legal interest in the subject matter in litigation due to its being the winning bidder during the public bidding on October 30, 2000, by which it came to have the right to acquire the Government's shares, receivables, securities and other interests in PNCC, only after the execution of the *compromise agreement*, because its right would be defeated if the *compromise agreement* were approved considering that the *compromise agreement* provided for the transfer to Radstock of the Government's properties, rights, securities and other interests in PNCC.

STRADEC's insistence is untenable. The CA's rejection of STRADEC's intervention was proper and in accord with the *Rules of Court* and pertinent jurisprudence.

Rule 19 of the 1997 *Rules of Civil Procedure,* which regulates the procedure for permitting an intervention, relevantly provides:

> Section 1. *Who may intervene*. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding. (2[a], [b]a, R12)

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[36] *Rollo*, G.R. No. 178158, pp. 265-269 (CA decision dated January 25, 2007).

To be able to intervene in an action, therefore, the prospective intervenor must show an interest in the litigation that is of such direct and material character that he will either gain or lose by the direct legal operation and effect of judgment.[37]

STRADEC did not demonstrate sufficiently enough that it had the requisite legal interest in the subject matter of the litigation between Radstock and PNCC. On the contrary, STRADEC's interest, if any, was far from direct and material, but was, at best, a mere expectancy, contingent and purely inchoate, due to such interest being dependent on a favorable outcome of Civil Case No. 05-882, which was then still pending in the RTC. Therein lay the weakness of STRADEC's position.

Intervention is a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining the plaintiff in claiming what is sought by the complaint, or uniting with the defendant in resisting the claims of the plaintiff, or demanding something adverse to both of them. It is the act or proceeding by which a third person becomes a party to a suit pending between two others. It is the admission, by leave of court, of a person not an original party to pending legal proceedings, by which such person becomes a party for the protection of some alleged right or interest to be affected by such proceedings.[38]

I contend that the right to intervene is not absolute, for intervention is merely permissive; and that the conditions for the right of intervention to be exercised must be shown by the party proposing to intervene. The procedure to secure the right to intervene is fixed by a statute or rule, and intervention can be secured only in accordance with the terms of the applicable statutory or reglementary provision. Under the rules on intervention, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court or judge.[39]

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[37] *Garcia v. David*, 67 Phil. 279.

[38] *Nieto, Jr. v. Court of Appeals*, G.R. No. 166984, August 7, 2007, 529 SCRA 285; citing *Garcia v. David*, 67 Phil. 279, 282-283.

[39] *Big Country Ranch Corporation v. Court of Appeals,* G.R. No. 102927, October 12, 1993, 227 SCRA 161, 165.

B

Allowance of STRADEC's Intervention Will Unduly Delay Adjudication of the Rights of the Original Parties

The decision of the RTC pronouncing PNCC liable to Radstock for ₱13,151,956,528.00, plus interests and attorney's fees, for an obligation incurred between 1978 and 1980, was promulgated as early as on December 10, 2002. Matters involved in the case have also already reached this Court (G.R. No. 156887), with the Court upholding the denial of PNCC's *motion to dismiss*. Allowing STRADEC to intervene would mean having to remand the case to the CA or the RTC for the reception of evidence and the introduction of new issues. Under such circumstances, the intervention would give birth to the unwanted prospect of letting this case drag on for a few more years.

I submit that the petition fails because the Court cannot permit a further delay.

The purpose of intervention — never an independent action, but ancillary and supplemental to the existing litigation — is not to obstruct or to unnecessarily delay the placid operation of the machinery of trial, but merely to afford one not an original party, yet having a certain right or interest in the pending case, the opportunity to appear and be joined so he can assert or protect such right or interest.[40] Accordingly, as a general guide for determining whether a party may be allowed to intervene or not, the trial court, in the exercise of its sound discretion, shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.[41]

C

STRADEC's Rights Are Fully Protected in Civil Case No. 05-882

STRADEC apprehends that its right cannot be fully protected in Civil Case No. 05-882 because it would have nothing to

[40] *Garcia v. David*, *supra*, note 37, pp. 282-283.

[41] Sec. 1, Rule 19, 1997 *Rules of Civil Procedure*.

acquire except worthless shares should the *compromise agreement* be upheld, considering that the assets of PNCC were being conveyed to Radstock under the *compromise agreement*.

STRADEC's apprehensions are unwarranted.

STRADEC's apprehensions would not be assuaged through its intervention in the action between Radstock and PNCC or through the nullification of the *compromise agreement*. STRADEC was a stranger in relation to the transaction by which PNCC had incurred the obligations subject of the *compromise agreement*. Indeed, it would be irregular to subordinate to STRADEC's unsettled claim the right of Radstock to collect as PNCC's creditor. The alleged possibility that STRADEC might be left with worthless shares was no reason to allow its intervention in order only to assail the *compromise agreement*, for such intervention would not enable PNCC to avoid its liability to Radstock, or to save PNCC from being liable with its own assets for its obligations to Radstock, should the courts ultimately find that the obligations were justly due and demandable. On the other hand, STRADEC could still hold PNCC's remaining assets liable should it prevail in Civil Case No. 05-882. Based on COA's earlier cited *compliance*, PNCC had remaining assets by which it could start anew and pursue its plans to revitalize its operation.[42]

II

G.R. No. 180428

I disagree with the majority opinion in respect of Sison's petition for annulment of judgment approving the *compromise agreement*.

Let me give my reasons for my dissent.

A

CA's Denial of Sison's *Petition for Annulment of Judgment Approving the Compromise Agreement* Was Correct

Sison assails the resolution dated November 5, 2007 in C.A.-G.R. SP No. 97982, whereby the CA, Ninth Division, denied

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[42] *Rollo*, G.R. No. 178158, p. 266.

his *motion for reconsideration* of the decision promulgated on June 12, 2007 dismissing his *petition for annulment of judgment approving the compromise agreement*, and also denied Asiavest's *urgent motion for leave to intervene and to file the attached opposition and motion-in-intervention.*[43]

Sison contends that the CA thereby gravely erred in holding that it had no jurisdiction over his petition for annulment in C.A.-G.R. SP No. 97982 respecting the final disposition of the CA in C.A.-G.R. CV NO. 87971.[44]

The CA rationalized its dismissal of Sison's petition thuswise:[45]

> Stripped to its barest essential, the petition should be dismissed. The Court of Appeals has no jurisdiction to annul its own final and executory judgment.
>
> The Court's jurisdiction over actions for annulment of judgment, as in the instant case, pertains only to those rendered by the Regional Trial Courts (Sec. 9[2], BP Blg. 129; Sec. 1 Rule 47, 1997 Rules of Civil Procedure).

Sison's contention is untenable and erroneous. We should instead sustain the CA, whose ruling was correct and in accord with the *Rules of Court* and applicable jurisprudence.

The jurisdiction to annul a judgment rendered by the Regional Trial Court is expressly granted to the CA by Section 9 (2) of *Batas Pambansa Blg*. 129, otherwise known as the *Judiciary Reorganization Act*. The procedure for the purpose is governed by Rule 47, 1997 *Rules of Civil Procedure*, whose Section 1 provides:

> Section 1. *Coverage*. — This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary

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[43] *Rollo*, G.R. No. 180428, pp. 45-46 (CA Resolution in CA-GR SP No. 97982).

[44] *Id.*, pp. 3-44.

[45] *Id.*, p 46.

remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

Explaining the coverage of the procedure under Rule 47 in *Grande v. University of the Philippines,*[46] the Court definitely ruled out the application of Rule 47 to the nullification of a decision of the CA, *viz*:

> The annulment of judgments, as a recourse, is equitable in character, allowed only in exceptional cases, as where there is no available or other adequate remedy. It is generally governed by Rule 47 of the 1997 Rules of Civil Procedure. Section 1 thereof expressly states that the Rule "shall govern the annulment by the Court of Appeals of judgments of final orders and resolutions in civil action of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner." Clearly, Rule 47 applies only to petitions for the nullification of judgments rendered by regional trial courts filed with the Court of Appeals. It does not pertain to the nullification of decisions of the Court of Appeals.

Still, Sison supports his choice of remedy by citing the ruling in *Conde v. Intermediate Appellate Court.*[47]

I find Sison's reliance on *Conde* to be misplaced.

The error attributed to the Intermediate Appellate Court in *Conde* was not its refusal to exercise jurisdiction, but rather its declaration that the complaint for annulment of judgment should be filed with the Supreme Court. Such declaration was erroneous, considering that the Supreme Court has no original jurisdiction to look into allegations of fraud upon which the complaint for annulment is based.[48] The reasoning in *Conde* emphasized the principle that the Supreme Court decides only questions of law, because it is not its function to analyze or weigh evidence,[49] especially if newly introduced. By virtue of the Supreme Court's

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[46] G.R. No. 148456, September 15, 2006, 502 SCRA 67, 70.

[47] G.R. No. 70443, September 15, 1986, 144 SCRA 144.

[48] *Id.*, pp 148-151.

[49] *Id.*, p. 149.

remanding the case to the Intermediate Appellate Court, however, it then behooved the Intermediate Appellate Court in *Conde* to take cognizance of the remanded case. Its hesitation to follow the order of remand merited for the Intermediate Appellate Court an admonition.

In dismissing Sison's petition for annulment of the approval of the *compromise agreement*, the CA was simply applying the pertinent law and rules. Thereby, the CA did not err, because the CA could not, on its own accord, take cognizance of his petition to annul its own judgment absent any specific directive from the Supreme Court, as in *Conde*.

Sison then points out the lack of any remedy under the *Rules of Court* in instances wherein a *compromise agreement* was entered into late in the litigation process, such as during the appeal, by which persons aggrieved by the *compromise agreement* were prevented from filing an action to annul the judgment based on a *compromise agreement* or from resorting to other remedies. He posits that the *Rules of Court* must now be given a liberal interpretation, thereby warranting the allowance of his petition *vis-à-vis* the *compromise agreement*.

Again, I cannot side with Sison. That he now finds himself bereft of any available remedy is not due to the lack of any remedies under the law or the *Rules of Court*, but rather due to his wrong choice of remedy. Also, his lack of standing to assail the *compromise agreement*, which we shall shortly delve on, militated against his position.

B
Sison Has No Standing to Assail the Compromise Agreement

Sison alleges in his petition that he is a stockholder of record of PNCC by virtue of his holding 52,000 common shares.[50] Even as a stockholder of PNCC, however, he lacks the requisite standing to assail the *compromise agreement* executed between PNCC and Radstock.

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[50] *Rollo*, G.R. 18042, p. 7.

A corporation is vested by law with a personality separate and distinct from that of each person composing or representing it.[51] This legal personality of the corporation gives rise to the proposition that a stockholder may not generally bring a suit to repudiate the actions of the corporation, unless it is a stockholder's suit, more commonly known as a derivative suit. Although Sison does not allege that he filed a derivative suit, it can be fairly deduced that he was assailing the *compromise agreement* based on his being a stockholder of PNCC.

Did Sison's action qualify as a stockholder's suit?

In this jurisdiction, the stockholder must comply with the essential requisites for the filing of a derivative suit. The requisites are set forth in Section 1, Rule 8 of the *Interim Rules of Procedure Governing Intra-Corporate Controversies,*[52] namely:

1. That he was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;
2. That he exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain

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[51] Sec. 2, *Corporation Code*; *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, G.R. No. 153535, July 28, 2005, 464 SCRA 409, 420.

[52] Section 1. *Derivative action.* — A stockholder or member may bring an action in the name of a corporation or association, as the case may be, provided, that:

(1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;

(2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;

(3) No appraisal rights are available for the act or acts complained of; and

(4) The suit is not a nuisance or harassment suit.

In case of nuisance or harassment suit, the court shall forthwith dismiss the case.

the relief he desires, and alleges the same with particularity in the complaint;

3. No appraisal rights are available for the act or acts complained of; and

4. The suit is not a nuisance or harassment suit.

Sison's petition did not qualify as a stockholder's suit. To begin with, he did not allege that he had exhausted all remedies available under the articles of incorporation, by-laws, or rules governing the corporation to obtain the relief he desired. And, secondly, he did not allege that no appraisal rights were available for the act or acts complained of.

A stockholder's suit is always one in equity, but it cannot prosper without first complying with the legal requisites for its institution.[53] Consequently, Sison's petition was correctly disallowed.

III
The Compromise Agreement
Was Not Prejudicial to PNCC

The decision of PNCC to enter into the *compromise agreement* with Radstock did not prejudice PNCC and its stockholders for several reasons.

Firstly, the *compromise agreement* reduced PNCC's probable liability from the staggering starting sum of ₱13,151,956,528.00, as the RTC had adjudged, to the much lesser sum of ₱6,196,000,000.00. Considering that it was highly probable for the CA, as the appellate forum, to affirm the higher liability given its frequency of upholding, rather than reversing or modifying, the RTC on appeal, PNCC thereby effectively avoided the much greater liability. The result was certainly favorable to PNCC and its stockholders.

Secondly, the chances of PNCC for success in its appeal against Radstock were realistically very low. This was because by the time of the execution of the *compromise agreement,* the

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[53] *Yu v. Yukayguan*, G.R. No. 177549, June 18, 2009.

CA, in C.A.-G.R. SP No. 66654, and the Court, in G.R. No. 156887, had already passed upon the merits of PNCC's *motion to dismiss* by denying substantially *all* the affirmative defenses that PNCC had raised against Radstock. Specifically, the CA affirmed the RTC's denial of PNCC's *motion to dismiss.* In G.R. No. 156887,[54] the Court affirmed the CA's ruling, holding as follows:

> We have carefully reviewed the Motion to Dismiss and the action taken by the court *a quo* and we find nothing that may constitute a grave abuse. The Order of April 19, 2001 which first denied the Motion to Dismiss meticulously explained the legal and factual basis for the trial court's rejection of the four grounds raised by PNCC:
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>> With respect to the first issue of whether or not the instant action had already been barred by prescription, the Court, after judicious examination of the environmental circumstances of this case and upon examination of the pertinent jurisprudence, is inclined to rule in the NEGATIVE. The averment on the pleadings submitted by the parties had so far revealed that the above-entitled case instituted by plaintiff Radstock Securities Limited for a sum of money and damages against defendant Philippine National Construction Corporation is not barred by prescription in light of the several demand letters and correspondences exchanged by the parties up to July 25, 1996. Further, it is interesting to note that defendant had, in the Board meeting held last October 20, 2000, clearly acknowledged the subject indebtedness to Marubeni. . . .
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>> Regarding the issue of whether or not the plaintiff has a valid cause of action against the defendant, the Court notes that the defendant heavily relies on the argument that the subject letter of guarantee executed by Alfredo Asuncion is void for lack of authority from the PNCC Board of Directors. This is misplaced in light of the fact that when a corporation such as the defendant in this case presents an officer to be the duly authorized signatory to a document coupled with submission of a duly notarized Secretary's Certificate said third party has every right to rely on the regularity of actions done by said corporation. . . .

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[54] *PNCC v. Dy*, G.R. No. 156887, October 3, 2005, 472 SCRA 1, 8-9.

> x x x x x x x x x
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> As regards the issue of whether or not the condition precedent for filing the instant suit has not been complied with, the [C]ourt finds the contention asserted by defendant to be bereft of merit. In setting up this ground of prematurity, defendant argues that plaintiff failed to comply with the provisions on arbitration embodied in the advance agreement executed on August 9, 1978 and loan Agreement executed on May 19, 1980. Apparently however, this case is being filed against defendant PNCC under the letters of guarantee [sic]. [P]laintiff is not filing this case against CDCP-M under the loan agreement and the advance payment agreement entered between Marubeni and CDPM wherein [sic] arbitration clauses are provided.
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> x x x x x x x x x
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> Lastly, the defendant contended that the plaintiff has no legal capacity to sue and in support thereof it claims that RADSTOCK is engaged in business in the Philippines without any proof that it has a required license. This argument is erroneous. The plaintiff in this case is suing on an isolated transaction…. As correctly stated by the Plaintiff, it does not intend to engage in any other business in the Philippines except to sue and collect what has been assigned to it by Marubeni Corporation.

If error had been committed by the trial court, it was not of the character of grave abuse that relief through the extraordinary remedy of *certiorari* may be availed. Indeed, the grounds relied upon by PNCC are matters that are better threshed out during the trial since they can only be considered after evidence has been adduced and weighed.

With its affirmative defenses thus disposed of, the settlement by means of the *compromise agreement* would surely work to the benefit of PNCC and its stockholders.

IV
Compromise Agreement Was Not Contrary to Law, Morals, Good Customs, Public Order and Public Policy

Was the *compromise agreement* between PNCC and Radstock contrary to law, morals, good customs, public order and public policy?

A
Compromise Agreement Did Not Require Congressional Approval

During the oral arguments held on January 13, 2009, a concern about the validity of the *compromise agreement* due to the lack of presidential or congressional approval was raised. Allegedly, the lack of presidential or congressional approval contravened the law, particularly Section 20, Chapter 4, Sub-Title B, Title 1, Book 5, of Executive Order No. 292,[55] which required such approval in the disposition of properties valued at more than ₱100,000.00.[56]

I contend and hold that the cited law did not apply, considering that the liability of PNCC to Radstock was *not yet settled* at the time of the execution of the *compromise agreement.*

In *Benedicto v. Board of Administrators of Television Stations* and *Guingona, Jr. v. PCGG*,[57] the Court clarified that Section 20, Chapter 4, Sub-Title B, Title 1, Book 5, of Executive Order No. 292, was applicable only to a *settled claim or liability*, to wit:

> Prior congressional approval is not required for the PCGG to enter into a *compromise agreement* with persons against whom it has filed actions for recovery of ill-gotten wealth. Section 20, Chapter 4, Subtitle B, Title I, Book V of the Revised Administrative Code of 1987 (E.O. No. 292) cited by Senator Guingona is inapplicable as it refers to a settled claim or liability. The provision reads:
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> > Section 20. *Power to Compromise Claims*. —
> > (1) When the interest of the Government so requires, the Commission may compromise or release, in whole or in part, any settled claim or liability to any government agency not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand

[55] *Revised Administrative Code of* 1987.

[56] TSN, January 13, 2009, pp. 269-278.

[57] G.R. No. 87710 & G.R. No. 96087, March 31, 1992, 207 SCRA 659, 667-668.

> pesos. In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the President, with their recommendations, to the Congress;
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> x x x x x x x x x
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> The Government's claim against Benedicto is not yet settled, and the ownership of the alleged ill-gotten assets is still being litigated in the Sandiganbayan. Hence, the PCGG's *compromise agreement* with Benedicto need not be submitted to the Congress for approval. (Underline supplied for emphasis)

The exception of a compromise or release of a claim or liability *yet to be settled* from the requirement for presidential and congressional approval is realistic and practical. In a settlement by *compromise agreement*, the negotiating party must have the freedom to negotiate and bargain with the other party. Otherwise, tying the hands of the Government representative by requiring him to submit each step of the negotiation to the President and to Congress will unduly hinder him from effectively entering into any *compromise agreement*.

The majority opinion stresses that *Benedicto v. Board of Administrators of Television Stations* is inapplicable, arguing that the claim in *Benedicto* was *not yet settled* because no party therein ever admitted liability, while the claim subject of this case was already settled upon the PNCC Board's recognition of PNCC's obligation to Marubeni.

I cannot agree with the majority, considering that the recognition by PNCC of its obligation to Marubeni did not signify that the claim was already settled. On the contrary, the claim of Marubeni was far from settled, inasmuch as it still became the subject of litigation in the courts in which PNCC resisted liability by pleading various defenses. In fact, the PNCC Board's resolution dated June 19, 2001 essentially revoked the previous resolutions (*i.e.*, Resolution No. BD-092-2000 and Resolution No. BD-099-2000) recognizing PNCC's debts to Marubeni.

The majority hold that the PNCC Board had no autonomous power to compromise. They cite Section 36(2) of Presidential

Decree (P.D.) 1445 (*Government Auditing Code of the Philippines*), which requires the express grant by the charters of the government-owned or government-controlled corporations (GOCCs) involved of the power to enter into compromise agreements, and insist that nowhere in P.D. 1113, as amended, was the PNCC's Board given the authority to enter into *compromise agreements*. Thus, they conclude that the *compromise agreement* was illegal.

With all due respect, I believe that the majority err.

Firstly, it is incorrect to state that P.D. 1113 and its amendatory law, P.D. 1894, constituted the charter of PNCC, because said laws merely granted to PNCC a *secondary* franchise. The existence of PNCC was independent of the operation of said laws. Hence, the silence of P.D. 1113 and P.D. 1894 on the grant to PNCC of the power to enter into *compromise agreements* was irrelevant.

It becomes appropriate to stress, for purposes of clarity, that the *primary franchise* of a corporation should not be confused with its *secondary franchise,* if any. According to *J.R.S. Business Corp. v. Imperial Insurance, Inc.*:[58]

> For practical purposes, franchises, so far as relating to corporations, are divisible into (1) **corporate or general franchises**; and (2) **special or secondary franchises**. **The former is the franchise to exist as a corporation, while the latter are certain rights and privileges conferred upon existing corporations, such as the right to use the streets of a municipality to lay pipes or tracks, erect poles or string wires**.

The distinction between the two franchises of a corporation should always be delineated. The *primary franchise* (or the right to exist as such) is vested in the individuals composing the corporation, not in the corporation itself, and cannot be conveyed in the absence of a legislative authority to do so; but the special or secondary franchise of a corporation is vested in the corporation itself, and may ordinarily be conveyed or mortgaged under a general power granted to the corporation to dispose of its property,

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[58] G.R. No. L-19891, July 31, 1964, 11 SCRA 634.

except such special or secondary franchises as are charged with a public use.[59]

The general law under which a private corporation is formed or organized is the *Corporation Code*, whose requirements must be complied with by individuals desiring to incorporate themselves. Only upon such compliance will the corporation come into being and acquire a juridical personality, as to give rise to its right to exist and to act as a legal entity. This right is a corporation's *primary franchise*. In contrast, a government corporation is normally created by special law, often referred to as its charter.[60]

And, secondly, PNCC, prior to its acquisition by the Government, was a private corporation organized under the *Corporation Code*, and, as such, it was governed by the *Corporation Code* and its own articles of incorporation. This fact has been judicially recognized in *PNCC v. Pabion*,[61] to wit:

> x x x GOCCs may either be (1) with original charter or created by special law; or (2) incorporated under general law, via either the Old Corporation Code or the New Corporation Code.
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> x x x x x x x x x
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> x x x, **we have no doubt that over GOCCs established or organized under the Corporation Code, SEC can exercise jurisdiction. These GOCCs are regarded as private corporations despite common misconceptions. That the government may own the controlling shares in the corporation does not diminish the fact that the latter owes its existence to the Corporation Code.** More pointedly, Section 143 of the Corporation Code gives SEC the authority and power to implement its provisions, specifically for the purpose of regulating the entities created pursuant to such provisions. These entities include corporations in which the controlling shares are owned by the government or its agencies.

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[59] Villanueva, C., *Philippine Corporate Law*, Rex Bookstore, Inc., p. 18 (2003).

[60] I Campos and Lopez-Campos, *The Corporation Code, Central Lawbook Publishing, Co., Inc*., p. 2 (1990).

[61] G.R. No. 131715, December 8, 1999, 320 SCRA 188.

Glaringly erroneous, therefore, is petitioner's reliance on *Quimpo v. Tanodbayan* and its theory that it is immaterial "whether a corporation is acquired by purchase or through the conversion of the loans of the GFIs into equity in a corporation [because] such corporation loses its status as a private corporation and attains a new status as a GOCC." *First*, based on the discussion above, **PNCC does not "lose" its status as a private corporation, even if we were to assume that it is a GOCC. Second, neither would such loss of status prevent it from being further classified into an acquired asset corporation, as will be discussed below.**

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Lest the focus of our disposition of this case be lost in the maze of arguments strewn before us, **we stress that PNCC is a corporation created in accordance with the general corporation statute. Hence, it is essentially a private corporation, notwithstanding the government's interest therein through the debt-to-equity conversion imposed by PD 1295.** Being a private corporation, PNCC is subject to SEC regulation and jurisdiction.

Not being a government corporation created by special law, PNCC does not owe its creation to some charter or special law, but to the *Corporation Code*. Its powers are enumerated in the *Corporation Code*[62] and its articles of incorporation. As

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[62] Section 36, *Corporation Code*, enumerates *some* of the powers of a private corporation:

Sec. 36. *Corporate powers and capacity.* — Every corporation incorporated under this Code has the power and capacity:

1. To sue and be sued in its corporate name;
2. Of succession by its corporate name for the period of time stated in the articles of incorporation and the certificate of incorporation;
3. To adopt and use a corporate seal;
4. To amend its articles of incorporation in accordance with the provisions of this Code;
5. To adopt by-laws, not contrary to law, morals, or public policy, and to amend or repeal the same in accordance with this Code;
6. In case of stock corporations, to issue or sell stocks to subscribers and to sell stocks to subscribers and to sell treasury stocks in accordance with

an autonomous entity, it undoubtedly has the power to compromise and to enter into a settlement through its Board of Directors, just like any other private corporation organized under the *Corporation Code*. To maintain otherwise is to ignore the character of PNCC as a corporate entity organized under the *Corporation Code,* by which it was vested with a personality and an identity distinct and separate from those of its stockholders or members.[63]

B
Public Bidding Was not Required

Sison opposes the disposition of PNCC's assets through the *compromise agreement* as against public policy for lack of a public bidding.

I cannot agree with Sison.

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the provisions of this Code; and to admit members to the corporation if it be a non-stock corporation;

7. **To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution**;

8. To enter into merger or consolidation with other corporations as provided in this Code;

9. To make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes: Provided, That no corporation, domestic or foreign, shall give donations in aid of any political party or candidate or for purposes of partisan political activity;

10. To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers and employees; and

11. **To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation**.

[63] Section 2, *Corporation Code*, provides:

Sec. 2. *Corporation defined.* — A corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence.

The rationale for requiring a public bidding is the need to prevent the Government from being shortchanged by minimizing the occasions for corruption and the temptations to commit abuse of discretion on the part of government authorities.[64]

As a rule, divestment or disposal of government property should be undertaken primarily through public bidding. The mode of disposition of Government properties and assets is not limited to public bidding, however, because there are recognized exceptions, including when public bidding is not the most advantageous means for the Government to divest or dispose of its properties.

The *compromise agreement* was not entered into one-sidedly in favor of Radstock, for, as in all compromises, it involved reciprocal concessions from both parties. PNCC's decision to enter into the *compromise agreement* was apparently an exercise of a business judgment to advance its interests. The obvious direct consequence of the *compromise agreement* was to limit PNCC's adjudged liability of ₱13,151,956,528 (which *would be* higher due to increments from interest charges) to a lesser liability of ₱6,185,000,000. Under the circumstances, the *compromise agreement* could not be considered as disadvantageous to PNCC and the National Government.

The Court itself referred the *compromise agreement* to the COA, the primary guardian of public accountability. In due time, the COA recommended the approval of the *compromise agreement,* stating in its *compliance* dated October 3, 2006 submitted to the Court,[65] thus:

> The Government Accounting and Auditing Manual (GAAM) Volume I, prescribed under COA Circular No. 91-368 dated January 1, 1992, specifically under Title 7, Chapter 3 thereof, primarily governs the disposal/divestment of government assets. Section 501 of the said Chapter states:

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[64] *Manila International Airport Authority v. Olongapo Maintenance Services, Inc.*, G.R. No. 146184-85, January 31, 2008, 543 SCRA 269, 275.

[65] *Rollo*, G.R. No. 178158, pp. 265-269.

> Sec. 501. *Authority or responsibility for property disposal/ divestment*. — The full and sole authority and responsibility for the divestment and disposal of property and other assets owned by the national government agencies or instrumentalities, local government units and government-owned and/or controlled corporations and their subsidiaries shall be lodged in the heads of the departments, bureaus, and offices of the national government, the local government units and the governing bodies or managing heads of government-owned or controlled corporations and their subsidiaries conformably to their respective corporate charters or articles of incorporation, who shall constitute the appropriate committee or body to undertake the same.

The sale or disposal of the properties of the government is based on their assessed value and not just on a percentage thereof. Admittedly, and as discussed earlier, the audit guidelines under COA Circular No. 89-296 as reiterated in the Government Accounting and Auditing Manual are not applicable in the herein case. Nonetheless, consistent with the objective of public bidding, COA favors the disposal of government properties in the amount most advantageous to the government. It is noted that the transfer value of 70% of assessed value still falls within the standards set by government financial institutions which invariably range from 70% to 100% of the appraised value for properties situated in urban areas. The maximum percentage prescribed in Section 37 of Republic Act No. 8791, the Banking Law of 2000, provides that loans and other credit accommodations against real estate shall not exceed 75% of the appraised value of the respective real estate security. Taking this into account and the declared policy that the authority to dispose its assets is lodged with the head of the entity, COA deems the herein transfer valuation reasonable.

Under the regular procedure involving disposal of government property, COA would have initially conducted an appraisal of the property to determine its valuation. However, considering the exceptional circumstances in the instant case, the appraisals performed by the established independent appraisers are allowable. The parties engaged the services of Royal Asia Appraisal Corporation, Cuervo Appraisers, Inc., Asian Appraisal Co., Inc. and Valencia Appraisal Corporation which are reputable appraisal firms. Even COA has had occasions to engage the services of the last three independent appraisers mentioned above to help ensure that the government will

not be disadvantaged in any manner. Hence, COA finds no reason to doubt the reasonableness of their appraisal.

The other terms and conditions of the compromise agreement appear to be fair and above board and COA finds no compelling grounds to oppose the same. Accordingly, COA recommends the approval of the parties' compromise agreement appended in their "Joint Motion for Judgment Based on Compromise."[66]

COA Circular No. 89-296 (dated January 27, 1989) relevantly provides:

III. DEFINITION AND SCOPE: — These audit guidelines shall be observed and adhered to in the divestment or disposal of property and other assets of all government entities/instrumentalities, whether national, local or corporate, including the subsidiaries thereof but shall not apply to the disposal of merchandise or inventory held for sale in the regular course of business nor to the disposal by government financial institutions of foreclosed assets or collaterals acquired in the regular course of business and not transferred to the National Government under Proclamation No. 50. They shall not also cover dation in payment as contemplated under Article 1245 of the New Civil Code.[67]

In this regard, it is well to point out that the majority also invoke COA Circular No. 89-296, citing Part V thereof entitled *Modes of Disposal/Divestment*.

The cited rule does provide an exception. According to COA's *compliance*, *supra*, the audit guidelines under COA Circular No. 89-296 did not apply to the *compromise agreement* due to its being akin to a *dacion en pago*. Under Article 1245 of the *Civil Code,* a *dacion en pago* or a dation in payment involves the alienation of property to the creditor in satisfaction of a debt in money. The modern concept of dation in payment considers it as a novation by change of the object.[68] Thus, the *compromise agreement* was a *dacion en pago*, in that a novation by a change of the object took place due to the original obligation

[66] Underline supplied for emphasis.

[67] Underline supplied for emphasis.

[68] IV Tolentino, *Civil Code of the Philippines*, p. 293 (1997).

of PNCC to pay its liability (adjudged in the amount of ₱13,151,956,528) being thereby converted into another obligation whereby PNCC would transfer the real properties listed in the *compromise agreement* to the qualified assignees nominated by Radstock. Regardless of the pegging of the values of the listed properties at specified amounts, the transfer to Radstock's assignees would already constitute a performance of PNCC's obligations. In other words, the obligation of PNCC to Radstock would be deemed fulfilled, although Radstock might realize a lesser value from the assignees for the properties.

Verily, the dispositions made in the *compromise agreement,* being in the nature of a *dacion en pago*, did not require public bidding. This conclusion accords with the holding in *Uy v. Sandiganbayan,*[69] where the Court sustained the argument of PCGG that the *dacion en pago* transactions were beyond the ambit of COA Circular No. 89-296.

C
Expiration of PNCC'S Legislative Franchise
Did Not Affect the Compromise Agreement

Sison argues that the legislative franchise granted to PNCC already expired on May 1, 2007 and was not extended or renewed by Congress; that upon the expiration of the legislative franchise of PNCC, all its assets, including those derived from its operations, reverted to the National Government; and that the disposition of PNCC funds under the *compromise agreement*, being beyond the expiration of PNCC's franchise, would violate the constitutional provision requiring an appropriation law for the expenditure of National Government funds.

I consider Sison's submissions not well-taken.

Section 5 of Presidential Decree (P.D.) No. 1894,[70] amendatory of P.D. No. 1113, PNCC's legislative franchise, provides:

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[69] G.R. No. 1115444, July 6, 2004, 433 SCRA 424.

[70] Entitled *Amending the Franchise of the Philippine National Construction Corporation to Construct, Maintain and Operate Toll Facilities in the North Luzon and South Luzon Expressways to include the Metro*

Section 5. In consideration of this franchise, the GRANTEE shall:

(a) Construct, operate and maintain at its own expense the Expressways; and

(b) Turn over, without cost, the toll facilities and all equipment, directly related thereto to the Government upon expiration of the franchise period.[71]

The law is clear enough. The mandated reversion applied only to the "toll facilities and all equipment directly related thereto," and did not extend to *all* the assets of PNCC. Sison's interpretation was plainly at war with what the law itself explicitly contemplated. Worse, his interpretation would nullify PNCC's right to due process as to its other assets, and even tended to thwart the national policy to encourage the private sector to invest and participate in public works involving toll operations.

P.D. No. 1894 likewise contemplated the continuance of PNCC's tollways operations beyond the expiration of its legislative franchise on May 1, 2007. That is clear from Section 2 of P.D. No. 1894, which states:

Section 2. The term of the franchise provided under Presidential Decree No. 1113 for the North Luzon Expressway and the South Luzon Expressway which is thirty (30) years from 1 May 1977 shall remain the same; provided that, the franchise granted for the Metro Manila Expressway and all extensions linkages, stretches and diversions that may be constructed after the date of approval of this decree shall likewise have a term of thirty (30) years commencing from the date of completion of the project.

If the reversion covered *all* assets, PNCC would be unable to exist and to continue to operate upon the expiration of its legislative franchise under P.D. No. 1113.

Yet, the majority pointedly assert that Radstock's counsel already admitted during the oral argument that all of PNCC's assets and properties had reverted to the National Government.

Manila Expressway to serve as an Additional Artery in the Transportation of Trade and Commerce in Metro Manila.

[71] Underline supplied for emphasis.

The assertion of the majority is too sweeping. It ignores that the so-called *admission* of Radstock's counsel was not, properly speaking, a judicial admission that bound Radstock on the matter of reversion.

To begin with, the statements in question made by Radstock's counsel did not relate to facts, but to conclusions of law. Indeed, a judicial admission is an admission made in the course of the proceeding in the same case, verbal or written, by a party accepting for the purposes of the suit the truth of some alleged fact, which said party cannot thereafter disprove.[72] Clearly, the rule on admissions does not apply to a *wrong* interpretation and *mistaken* application of the laws, and the Court is not to be bound by a mistaken interpretation of the law made by a counsel, even if said interpretation is adverse to the client.

Even granting, *arguendo*, that PNCC's secondary franchise expired, *all* the properties and funds of PNCC might not automatically revert to the National Government, to the detriment and in violation of the right to due process of PNCC's private creditors, particularly those that transacted with it when it was still a purely private corporation. We have always sustained the view that a GOCC has a personality of its own, distinct and separate from that of the National Government; and has all the powers of the corporation under the *Corporation Law* pursuant to which it has been established.[73] To accord with our precedent rulings, we should not declare the PNCC's funds to be beyond reach for being by nature public funds of the National Government.[74]

Secondly, the majority thereby sweep aside the principle of parity between contracting parties. We ought to remember that when the National Government enters into a commercial transaction, it abandons its sovereign capacity and descends to

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[72] Section 4, Rule 129, *Rules of Court*; 5 Herrera, *Remedial Law*, Rex Book Store, p. 107 (1999).

[73] *PNCC v. Pabion, supra*, at footnote 61; also *National Shipyard & Steel v. Court of Industrial Relations*, 118 Phil. 782, 789.

[74] *National Shipyard & Steel v. Court of Industrial Relations, supra.*

the level of the other party, to be treated like the latter. By engaging in a particular business through the instrumentality of a corporation (*that is*, PNCC), therefore, the National Government should be considered as divesting itself *pro hac vice* of its sovereign character, so as to render the corporation subject to the rules of law governing private corporations.[75] This is only fair.

Thirdly, to have *all* the properties and assets of PNCC deemed reverted to the Government upon expiration of PNCC's franchise to operate the tollways would definitely violate the right to due process of PNCC's private creditors. Such a sudden change in the characterization of PNCC's properties and assets from private to public would leave PNCC's private creditors with very limited recourses, despite their valid claims.

Incidentally, the *compromise agreement* listed the properties to be affected by the agreement between PNCC and Radstock, as follows:

1. PNCC's right over that parcel of land located in Pasay City with a total area of 129,548 square meters, more or less, particularly described in Transfer Certificate of Title No. T-34997 of the Registry of Deeds for Pasay City. The transfer value is ₱3,817,779,000.00;
2. T-452587 (T-23646) – Parañaque (5,123 square meters) subject to the clarification of the PMO claims thereon. The transfer value is ₱45,000,900.00;
3. T-49499 (529715 including T-68146-G (S-29716) (1,9747-A)-Parañaque (107 square meters) (54 square meters) subject to the clarification of the PMO claims thereon. The transfer value is ₱1,409,100.00;
4. 5(sic)-29716-Parañaque (27,762 square meters) subject to the clarification of the PMO claims thereon. The transfer value is ₱242,917,500.00;
5. P-169 – Tagaytay (49,107 square meters). The transfer value is ₱13,749,400.00;

[75] *Philippine National Bank v. Court of Industrial Relations*, G.R. No. L-32667, January 31, 1978, 81 SCRA 314, 319.

6. P-170 – Tagaytay (49,100 square meters). The transfer value is ₱13,749,400.00;
7. N-3320–Town and Country Estate; Antipolo (10,000 square meters). The transfer value is ₱16,800,000.00;
8. N-7424 – Antipolo (840 square meters). The transfer value is ₱940,800.00;
9. N-7425 – Antipolo (850 square meters) The transfer value is ₱952,000.00;
10. N-7426 – Antipolo (958 square meters). The transfer value is ₱1,073,100.00;
11. T-485276 – Antipolo (741 square meters) The transfer value is ₱830,200.00;
12. T-485277 – Antipolo (741 square meters). The transfer value is ₱761,600.00;
13. T-485278 – Antipolo (701 square meters). The transfer value is ₱785,400.00;
14. T-131500-Bulacan (CDCP Farms Corp.) (4,945 square meters). The transfer value is ₱6,475,000.00;
15. T-131501-Bulacan (678 square meters). The transfer value is ₱887,600.00;
16. T-26,154 (M) – Bocaue, Bulacan (2,841 square meters) The transfer value is ₱3,779,300.00;
17. T-29,308 (M) – Bocaue, Bulacan (733 square meters). The transfer value is ₱974,400.00;
18. T-29,309 (M) – Bocaue, Bulacan (1,141 square meters). The transfer value is ₱1,517,600.00; and
19. T- 260578 (R. Bengzon) Sta. Rita, Guiguinto, Bulacan (20,000 square meters). The transfer value is ₱25,2000,0000.00.

Rather than generalizing that all the aforecited properties reverted to the National Government upon the expiration of PNCC's legislative franchise, Sison should first establish in proceedings appropriate for the purpose a premise for his jealously argued interpretation that such properties were directly related to the operation and maintenance of the tollways covered by its

expired secondary franchise. Before that is done, it is not reasonable to generalize on the matter. Consequently, Sison's insistence that PNCC became a mere trustee of the National Government upon the expiration of the legislative franchise is dismissed for being unfounded.

D

Toll Operation Certificate from TRB to PNCC Was Legal Basis for PNCC to Collect and Appropriate Revenues Generated from PNCC-operated Tollways and Its Share in Gross Receipts of NLEX Tollway Development

Sison insists that upon the expiration of its legislative franchise, PNCC could not validly dispose of the revenues collected from its operated tollways and of its share in the gross receipts of the tollway development and operation contractors, because such revenues and receipts already belonged to the National Government.

However, the fact is that the Manila North Tollway Corporation (MNTC), a joint-venture company between PNCC and Metro Pacific Group, was granted a toll operation certificate (TOC) by the Toll Regulatory Board (TRB) authorizing MNTC to operate and maintain the NLEX from 2005 to 2035 through its operations and maintenance company, the Tollway Management Corporation (TMC).[76]

Sison counters that the TOC was not the equivalent of and could not replace the legislative franchise of PNCC under P.D. No. 1849.

Sison's arguments are not persuasive.

Under P.D. No. 1112,[77] TRB has the following powers, among others:

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[76] *Rollo*, G.R. No. 178185, p. 511.

[77] Entitled *Authorizing the Establishment Of Toll Facilities On Public Improvements, Creating A Board For The Regulation Thereof And For Other Purposes*.

Section 3. *Powers and Duties of the Board.* The Board shall have in addition to its general powers of administration the following powers and duties:

(a) Subject to the approval of the President of the Philippines, to enter into contracts in behalf of the Republic of the Philippines with persons, natural or juridical, for the construction, operation and maintenance of toll facilities such as but not limited to national highways, roads, bridges, and public thoroughfares. Said contract shall be open to citizens of the Philippines and/or to corporations or associations qualified under the Constitution and authorized by law to engage in toll operations;

(b) Determine and decide the kind, type and nature of public improvement that will be constructed and/or operated as toll facilities;

x x x x x x x x x

(e) To grant authority to operate a toll facility and to issue therefore the necessary "Toll Operation Certificate" subject to such conditions as shall be imposed by the Board including *inter alia* the following:[78]

x x x x x x x x x

Undoubtedly, TRB had the statutory authority to enter in behalf of the National Government into a contract for the construction, operation and maintenance of toll facilities; to determine and decide the kind, type, and nature of public improvement to be constructed and operated as toll facilities; and to issue a TOC to authorize a grantee to operate a toll facility.

In addition, P.D. No. 1894, amending P.D. No. 1113, invested TRB with the jurisdiction and supervision over PNCC as the grantee with respect to the Expressways, and the toll facilities necessarily appurtenant thereto. Its Section 4 states, *viz*:

Section 4. The Toll Regulatory Board is hereby given jurisdiction and supervision over the GRANTEE with respect to the Expressways, the toll facilities necessarily appurtenant thereto and, subject to the provisions of Section 8 and 9 hereof, the toll that the GRANTEE will charge the users thereof.

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[78] Underlines supplied for emphasis.

By its issuance of the TOC, therefore, TRB was simply exercising its powers under P.D. No. 1112. It did not thereby extend PNCC's legislative franchise, which it could not legally do. Its issuance of the TOC was proper, not *ultra vires*, even if the effect was to permit PNCC, through MNTC, to continue to operate the toll facilities.

In this jurisdiction, the power of administrative agencies to issue operating permits or franchises to public utilities has long been recognized. In *Philippine Airlines v. Civil Aeronautics Board*,[79] for instance, the Court pronounced:

Given the foregoing postulates, we find that the Civil Aeronautics Board has the authority to issue a Certificate of Public Convenience and Necessity, or Temporary Operating Permit to a domestic air transport operator, who, though not possessing a legislative franchise, meets all the other requirements prescribed by law. Such requirements were enumerated in Section 21 of R.A. 776.

There is nothing in the law nor in the Constitution, which indicates that a legislative franchise is an indispensable requirement for an entity to operate as a domestic air transport operator. Although Section 11 of Article XII recognizes Congress' control over any franchise, certificate or authority to operate a public utility, it does not mean Congress has exclusive authority to issue the same. Franchises issued by Congress are not required before each and every public utility may operate. In many instances, Congress has seen it fit to delegate this function to government agencies, specialized particularly in their respective areas of public service.

A reading of Section 10 of the same reveals the clear intent of Congress to delegate the authority to regulate the issuance of a license to operate domestic air transport services:

SECTION 10. *Powers and Duties of the Board*. (A) Except as otherwise provided herein, the Board shall have the power to regulate the economic aspect of air transportation, and shall have general supervision and regulation of, the carriers, general sales agents, cargo sales agents, and air freight forwarders as well as their property rights, equipment, facilities and franchise,

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[79] G.R. No. 119528, March 26, 1997, 270 SCRA 538, 550-551.

> insofar as may be necessary for the purpose of carrying out the provision of this Act.[80]

Likewise, we said in *Metropolitan Cebu Water District v. Adala*:[81]

> Moreover, this Court, in *Philippine Airlines, Inc. vs. Civil Aeronautics Board*, has construed the term "franchise" broadly so as to include, not only authorizations issuing directly from Congress in the form of statute, but also those granted by administrative agencies to which the power to grant franchises has been delegated by Congress, to wit:
>
> > Congress has granted certain administrative agencies the power to grant licenses for, or to authorize the operation of certain public utilities. With the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is constantly growing tendency towards the delegation of greater powers by the legislature, and towards the generally recognized that a franchise may be derived indirectly from the state through a duly designated agency, and to this extent, the power to grant franchises has frequently been delegated, even to agencies other than those of legislative in nature. In pursuance of this, it has been held that privileges conferred by grant by local authorities as agents for the state constitute as much a legislative franchise as though the grant had been made by an act of the Legislature.[82]

For its part, the Executive Department has also recognized the power of TRB to issue the TOC to PNCC independently of the legislative franchise that was due to expire on May 1, 2007. This recognition was reflected in the opinion dated November 24, 1995 of then Justice Secretary Teofisto T. Guingona, Jr., to wit:[83]

> Upon re-examination of P.D. No. 1113 (PNCC Charter), as amended by P.D. No. 1894, we reiterate the view expressed in Opinion No.

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[80] Underlines supplied for emphasis.

[81] G.R. No. 168914, July 4, 2007, 526 SCRA 465, 476.

[82] Underlines supplied for emphasis.

[83] DOJ Opinion No. 122, s. 1995.

45, s. 1995 that TRB has no authority to extend the legislative franchise of PNCC over the existing NSLE. However, TRB is not precluded under Section 3(e) of P.D. No. 1112 (TRB Charter) to grant PNCC and its joint venture partner the authority to operate the existing toll facility of the NSLE and to issue therefore the necessary "Toll Operation Certificate" for a period coinciding with the term of the proposed Metro Manila Skyway.

x x x x x x x x x

It should be noted that the existing franchise of PNCC over the NSLE, which will expire on May 1, 2007, gives it the "right, privilege and authority to construct, maintain and operate" the NSLE. The Toll Operation Certificate which TRB may issue to the PNCC and its joint venture partner after the expiration of its franchise on May 1, 2007 is an entirely new authorization, this time for the operation and maintenance of the NSLE, which is already an existing toll facility. In other words, the right of PNCC and its joint venture partner, after May 1, 2007, to operate and maintain the existing NSLE will no longer be founded on its legislative franchise which is not thereby extended, but on the new authorization to be granted by the TRB pursuant to Section 3(e), abovequoted, of P.D. 1112.[84]

It serves well to note, too, that the TOC was not for the same project covered by PNCC's legislative franchise under P.D. No. 1894, but for a new project, the rehabilitation of the NLEX, which was completed in 2005. In the effort to rehabilitate the NLEX, the MNTC incurred substantial costs. The authority to collect reasonable toll fees from users of that expressway was the consideration given to the MNTC as the tollway operator to enable it to recoup the investment.

In this connection, the claim of the majority that Radstock's counsel admitted during the oral arguments that an appropriation law was needed to authorize the payment by PNCC out of the toll fees is unwarranted. The supposed admission was apparently counsel's response to the query of whether the collection of toll fees went to the general fund of the National Government. As such, the response was an expression of counsel's interpretation of the law, which, albeit sounding like an admission,

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[84] Underlines supplied for emphasis.

has no legal significance for purposes of this resolution. It hardly requires clarification that an opinion on a matter of law given in the course of the proceedings is not binding on the party on whose behalf it is made, because the question of law is best left to the determination of the court.

Besides, the interpretation that the TRB could not contract out the rehabilitation and expansion of existing government-owned public works, particularly our national roads and highways, is unacceptable, because it will wreak havoc to the operations and maintenance not only of the NLEX, but also of other and future public constructions and developments. Similarly unacceptable is an interpretation that the expiration of the franchise of PNCC *vis-à-vis* the NLEX operated to bar PNCC or any other participating private entity from collecting toll fees from the operations of the NLEX, because it would unfairly outlaw the current operation of the MNTC, a joint-venture company between PNCC and the Metro Pacific Group, which had spent substantially for the rehabilitation and expansion works of the NLEX.

At any rate, the majority's interpretation will hinder the efforts of the National Government, through the TRB, of effecting improvements in existing national highways through the private sector, which will surely hesitate to involve itself in projects in which it will not be permitted to recoup or recover the substantial costs entailed in construction and development.

Lastly, Sison's plea for the nullification of the *compromise agreement,* on the ground of the invalidity of the assignment to Radstock of the share of PNCC in the toll operation for the NLEX, has no basis. The right of PNCC, through MNTC, to the revenues from the operation of the tollways is to be deemed settled for purposes of these cases. We cannot delve into whether or not the TOC issued to PNCC for the years from 2007 until 2035 was valid or not, because that is not a proper issue for the Court to consider and decide herein. We should not forget that the issue was not presented to the CA at the time it considered and approved the *compromise agreement*. Besides, PNCC continued to have the right to the revenues from the toll operation by authority of the TOC.

E
Compromise Agreement Is Not In Fraud of the National Government

Another submission of Sison is that the disposition of PNCC's assets through the *compromise agreement* would be in fraud of the National Government, because Radstock would be thereby preferred to the National Government in relation to the assets of PNCC, in violation of the credit preference provided in the *Civil Code*. He avers that "*the satisfaction of the PNCC obligation to the State or the National Government clearly takes preference and has priority over the satisfaction of the obligation to RADSTOCK*"; and that *"the terms of the compromise agreement which call for the transfer of PNCC assets xxx to Radstock is in contravention of the order and preference of credits under the New Civil Code, hence void.*"[85]

However, Sison's submission does not really show how the *compromise agreement* would contravene the credit preference in favor of the National Government.

To begin with, the credit preference set by the *Civil Code* may not be invoked herein to assail the *compromise agreement*, considering that these cases were neither proceedings for bankruptcy or insolvency, nor general judicial liquidation proceedings. Cogently, the Court explained when preference of credit may be invoked in *Development Bank of the Philippines v. Secretary of Labor*,[86] thus:

x x x A preference of credit bestows upon the preferred creditor an advantage of having his credit satisfied first ahead of other claims which may be established against the debtor. Logically, it becomes material only when the properties and assets of the debtor are insufficient to pay his debts in full; for if the debtor is amply able to pay his various creditors in full, how can the necessity exist to determine which of his creditors shall be paid first or whether they shall be paid out of the proceeds of the sale of the debtor's specific

[85] *Rollo*, G.R. No. 178158, p. 247.

[86] G.R. No. 79351, November 28, 1989, 179 SCRA 630, 634-635.

property? Indubitably, the preferential right of credit attains significance only after the properties of the debtor have been inventoried and liquidated, and the claims held by his various creditors have been established.

In this jurisdiction, bankruptcy, insolvency and general judicial liquidation proceedings provide the only proper venue for the enforcement of a creditor's preferential right xxx for these are *in rem* proceedings binding against the whole world where all persons having interest in the assets of the debtors are given the opportunity to establish their respective credits.[87]

Nor will it be automatic for the National Government to be preferred as to the assets of any individual or corporation in financial straits. In *In Re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., Philippine Deposit Insurance Corporation v. Bureau of Internal Revenue*,[88] the Court clarifies:

x x x The Government, in this case, cannot generally claim preference of credit, and receive payments ahead of the other creditors of RBBI. Duties, taxes, and fees due the Government enjoy priority only when they are with reference to a specific movable property, under Article 2241 (1) of the Civil Code, or immovable property, under Article 2242 (1) of the same Code. However, with reference to the other real and personal property of the debtor, sometimes referred to as "free property," the taxes and assessments due the National Government, other than those in Articles 2241(1) and 2242 (1) of the Civil Code will come only in ninth place in the order of the preference.[89]

Verily, any creditor who may feel aggrieved by the *compromise agreement* (such that his rights over PNCC's assets may be prejudiced by the *compromise agreement*) should initiate the *proper* proceedings to protect his rights. Yet, no bankruptcy, insolvency, or general judicial liquidation proceedings have been initiated or filed by any of PNCC's creditors. With none, including

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[87] Underlines supplied for emphasis.

[88] G.R. No. 158261, December 18, 2006, 511 SCRA 123, 147.

[89] Underlines supplied for emphasis.

the Government, having done so as yet, it is improper and premature for Sison to cry *fraud against the Government*.

Secondly, Sison insists that PNCC was "technically insolvent."[90]

Sison's insistence cannot be given any significance in relation to the *compromise agreement*. The meanings of the terms *insolvent* and *insolvency* have not been fixed, their definitions being dependent upon the business or factual situation to which the terms are applied.[91] Ordinarily, a person is *insolvent* when all his properties are not sufficient to pay all of his debts.[92] This definition is the general and popular meaning of the term *insolvent*. In this jurisdiction, the state of insolvency is governed by special laws to the extent that they are not inconsistent with the *Civil Code*.[93] In other words, the state of insolvency is primarily governed by the *Civil Code* and subsidiarily by the *Insolvency Law* (Act No. 1956, as amended).[94]

Under Act No. 1956, there are two distinct proceedings by which to declare a person insolvent, namely: a) the voluntary or debtor-initiated proceedings;[95] and b) the involuntary or creditor-initiated proceedings, which require that the petition be filed by three or more creditors.[96] The judicial declaration that a person (either natural or juridical) is insolvent produces legal effects, particularly on the disposition of the debtor's assets.[97] Until

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[90] *Rollo,* G.R. No. 180428, p. 248.

[91] 21A *Words and Phrases*, p. 397; citing *Howell v. Knox,* Tex.Civ.App., 211 S.W.2d 324, 328.

[92] *Id.*, p. 396; citing *Sturgill v. Lovell Lumber Co*., 67 S.E. 2d 321, 323, 13 W. Va. 259.

[93] Article 2237, *Civil Code*.

[94] De Leon, *The Law on Insurance (with Insolvency Law)*, p. 254 (2003).

[95] Section 14, Act No. 1956.

[96] Section 20, Act No. 1956.

[97] Section 52, Act No. 1956, provides in part that:

SECTION 52. *Corporations and sociedades anonimas; Banking*. — The provisions of this Act shall apply to corporations and *sociedades anonimas*

and unless there is an insolvency proceeding or a judicial declaration that a person is insolvent, however, any state of insolvency of a debtor remains legally insignificant as far as his capacity to dispose of his properties is concerned. This capacity to dispose is not in itself iniquitous or questionable, for the creditor is not meanwhile left without recourse. There are remedies for the creditor in case any disposition of the debtor's assets is in fraud of creditors.

Should the creditors not feel that an insolvency or even rehabilitation proceeding (in the case of corporations like PNCC) is appropriate or beneficial for them, their decision to desist from commencing such proceeding is a business judgment that fully lies within their discretion. Without any proceeding being initiated by either the debtor or the creditors, no court has the power to declare that a debtor is insolvent and to bring to bear upon the debtor the legal consequences of the *Insolvency Law*. A court that does so risks meddling in business affairs or policies that are best left to those who know the appropriate actions to take and decide what action or actions to take. A unilateral court intervention can result in a premature cessation of business that can produce untoward and unexpected effects on either or both the debtor and the creditors.

The Court may not even try to determine whether PNCC was insolvent or not, considering that the original jurisdiction to take cognizance of such issue does not pertain to the Court. Neither was such issue properly raised in the lower courts. For sure, the term *technically insolvent* as applied to PNCC cannot be competently ascertained in these cases. It is relevant to note, however, that only the COA report has been made available to show the financial condition of PNCC to the Court, but even said report favored the approval of the *compromise agreement*.[98]

Thirdly, Sison argues that with the *compromise agreement*, PNCC's business would wind down to "merely the operation

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x x x. Whenever any corporation is declared insolvent, its property and assets shall be distributed to the creditors; x x x

[98] *Rollo*, G.R. No. 178158, pp. 265-269.

of the South Luzon Expressway, the holding of shares in investee subsidiaries and affiliates, and the minor participation in the gross receipt of the tollway development and operation contractors."[99] He then concludes that the *compromise agreement* would amount to transferring or disposing of substantially all of the assets of PNCC, in violation of the requirement under Section 40 of the *Corporation Code* for stockholders' approval thereof.

The argument is fallacious, because it is based on a mistaken premise.

Section 40 of the *Corporation Code* provides:

Sec. 40. *Sale or other disposition of assets.* — Subject to the provisions of existing laws on illegal combinations and monopolies, a corporation may, by a majority vote of its board of directors or trustees, sell, lease, exchange, mortgage, pledge or otherwise dispose of all or substantially all of its property and assets, including its goodwill, upon such terms and conditions and for such consideration, which may be money, stocks, bonds or other instruments for the payment of money or other property or consideration, as its board of directors or trustees may deem expedient, when authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or in case of non-stock corporation, by the vote of at least to two-thirds (2/3) of the members, in a stockholder's or member's meeting duly called for the purpose. Written notice of the proposed action and of the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally: Provided, That any dissenting stockholder may exercise his appraisal right under the conditions provided in this Code.

A sale or other disposition shall be deemed to cover substantially all the corporate property and assets if thereby the corporation would be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated.

After such authorization or approval by the stockholders or members, the board of directors or trustees may, nevertheless, in

[99] *Rollo*, G.R. 180428, p. 249.

its discretion, abandon such sale, lease, exchange, mortgage, pledge or other disposition of property and assets, subject to the rights of third parties under any contract relating thereto, without further action or approval by the stockholders or members.

Nothing in this section is intended to restrict the power of any corporation, without the authorization by the stockholders or members, to sell, lease, exchange, mortgage, pledge or otherwise dispose of any of its property and assets if the same is necessary in the usual and regular course of business of said corporation or if the proceeds of the sale or other disposition of such property and assets be appropriated for the conduct of its remaining business.

In non-stock corporations where there are no members with voting rights, the vote of at least a majority of the trustees in office will be sufficient authorization for the corporation to enter into any transaction authorized by this section. (28 1/2a)[100]

The law defines a *sale or disposition of substantially all assets and property* as one by which the corporation "would be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated." Any disposition short of this will not need stockholder action.[101] The text and tenor of Section 40, *supra*, are clear and do not require interpretation, that the Court must not read any other meaning to the law.

Sison himself admitted that even after the *compromise agreement* was approved, PNCC still had assets by which to continue its businesses.[102] Thus, because the assets to be covered by the *compromise agreement* were not substantially all the assets of PNCC within the context of Section 40, *supra*, the stockholders' approval was not required. The disposition through the *compromise agreement*, although involving a substantial portion of the total assets, would not amount to the sale or disposition of substantially all assets and property as to render

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[100] Underlines supplied for emphasis.

[101] II Campos and Lopez-Campos, *The Corporation Code*, p. 464 (1990).

[102] *Rollo*, G.R. No. 180428, p. 249.

PNCC incapable of continuing the business or accomplishing the purpose for which it was incorporated.

Fourthly, Sison contends that PNCC would be reduced to a holding company, which would constitute an abandonment of the business for which it was organized.

The contention is unfounded.

For one, the records before us show that PNCC is not abandoning the business for which it was organized. PNCC sought a legislative franchise to operate the NLEX, but it was not granted the franchise. PNCC was granted the TOC by TRB, which authorized PNCC, through MNTC, to operate the rehabilitated and extended NLEX.[103] PNCC currently operates tollways and plans to enter into other tollways development projects.[104]

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[103] *Rollo*, G.R. No. 178185, p. 511.

[104] *Rollo*, G.R. No. 180428, p. 423 (COA's *Audit Report on PNCC For the Year End[ing] 31 December 2005).* The report summarizes PNCC's ongoing and projected projects, thus:

TOLLWAYS DEVELOPMENT CONTRACTS

The company has entered into Joint Venture Partnerships with internationally notable engineering companies and other reputable local corporations, under the Build-Operate-Transfer scheme, for the construction, rehabilitation, refurbishment, modernization, and expansion of the existing Expressways.

A product of this partnership is the Metro Manila Skyway Project, the first elevated tollway in the country built in joint partnership with the Indonesian firm P.T. Citra Gung Persada (CITRA). Another project of the joint undertaking efforts is the Manila North Tollway Project with First Philippine Infrastructure Development Corporation (FPIDC), which involves the rehabilitation of the North Luzon Tollway and its expansion to the special economic zones in Zambales, Clark Pampanga, Bataan, and Subic, Olongapo City. The rehabilitation and extension of the South Luzon Tollway has been entered into by the Company through a Joint Venture Agreement (JVA) and subsequently an amended JVA with Hopewell Crown Infrastructure, Inc. (HCII). The objective of which is to refurbish the Alabang to Calamba, Laguna segment of the South Luzon Expressway and extend the same to Lucena City in Quezon Province.

An Alternative to the JVA with HCII, if the same does not materialize, is an on-going negotiation with the NDC to develop design, construct, finance, operate, and maintain the SLEX Project. The proposed Project involves the rehabilitation

It is noteworthy that the COA, in its *compliance* submitted to the Court,[105] recognized the efforts of PNCC to improve the latter's operations:

> It is the assessment of the Government Corporate Counsel that PNCC has only a 50-50 chance of winning the case, thus, entering into a *compromise agreement* will spare the corporation from losing at least ₱13 billion of its assets. COA shares the view that with this settlement, the PNCC, armed with its remaining assets can start anew and pursue its plans to revitalize its operations.[106]

Also, the investing corporation assumes risks in every business venture. There may be many factors affecting the business that may force the corporation to reduce or downsize its operations in the meanwhile. Nonetheless, the downsizing of the operations does not mean the abandonment of the business for which the corporation has been organized. Accordingly, the wisdom of the execution of the *compromise agreement* should not be questioned, absent any clear and convincing proof establishing that the *compromise agreement* would truly render PNCC incapable of continuing its business.

G

Compromise Agreement Does Not Violate Constitutional Ban on Foreign Ownership of Land

The c*ompromise agreement* between PNCC and Radstock provides:

> 2. This Compromise amount shall be paid by PNCC to RADSTOCK in the following manner:
>
> a. PNCC shall assign to a third party assignee to be designated by RADSTOCK all its rights and interests to the following real properties provided the assignees shall be duly qualified to own real properties in the Philippines:

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of the Alabang Viaduct and the extension of the SLEX from Calamba, Laguna to Sto. Tomas, Batangas. This will be documented likewise by a JVA.

[105] *Rollo*, G.R. No. 178158, p. 256.

[106] Underlines supplied for emphasis.

x x x x x x x x x

Sison holds that this provision in the *compromise agreement* would vest in Radstock, a foreign corporation, the rights of ownership over the 19 parcels of land listed in the *compromise agreement* and thereby violate the constitutional provision prohibiting ownership by foreign entities of land in the Philippines; that the right to assign rights and interests in real property is an attribute of ownership; that Radstock would be, for all intents and purposes, the beneficial owner of the real properties during the period from the execution of the *compromise agreement* until the actual transfer of the ownership of the properties to third parties designated by Radstock; and that in the meantime PNCC would be holding the properties only in trust.

Section 7, Article XII of the 1987 *Constitution* reads:

Section 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

Sison's submissions are unacceptable.

In interpreting the aforecited provision of the *Constitution*, the following instruction given in *J.M. Tuason & Co. Inc. v. Land Tenure Administration*[107] is useful:

We look to the language of the document itself in search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language, as much as possible, should be understood in the sense they have in common use. What it says according to the text of the provision construed compels acceptance and negates the power of the courts to alter it,

[107] G.R. No. L-21064, February 18, 1970, 31 SCRA 413, 422-423.

based on the postulate that the framers and the people mean what they say. Thus there are cases where the need for construction is reduced to a minimum.

Well-settled principles of constitutional construction are also firm guides for interpretation. These principles are reiterated in *Francisco v. The House of Representatives*,[108] to wit:

First, *verba legis*, that is, wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed. x x x.

x x x x x x x x x

Second, where there is ambiguity, *ratio legis et anima*. The words of the Constitution should be interpreted in accordance with the intent of the framers. x x x.

Finally, *ut magis valeat quam pereat*. The Constitution is to be interpreted as a whole.

A plain reading of the aforecited provision of the *Constitution* and the *compromise agreement* does not support the conclusion that the latter violates the former. The *compromise agreement* nowhere stated that any lands or real properties are to be transferred to Radstock, or any non-qualified person. Indeed, the transfer of any lands or real properties contemplated by the *compromise agreement* is in favor of a party duly qualified to own and hold real properties under the *Constitution*. The arrangement would not give to Radstock any right other than to designate *qualified* assignees, who should only be a Filipino citizen, or a corporation organized under the Philippine law, but with at least 60% Filipino equity. During the time that Radstock would be looking for qualified assignees, ownership over the real properties subject of the *compromise agreement* would not be transferred to it, but would remain with PNCC.

Although it may be argued that the "right to designate the qualified assignee to the property" is an attribute of ownership,

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[108] G.R. Nos. 160261, 160262, 160263, 160277, 160292, 160295, 160310, 160318, 160342, 160343, 160360, 160365, 160370, 160376, 160392, 160397, 160403, and 160405, November 10, 2003; 415 SCRA 44.

it does not necessarily follow that the presence of such right already means that the person holding the right has become the owner of the property. There is more to ownership than being able to designate an assignee for the property. The attributes of ownership are: *jus utendi* (right to possess and enjoy), *jus fruendi* (right to the fruits), *jus abutendi* (right to abuse or consume), *jus disponendi* (right to dispose or alienate), and *jus vindicandi* (right to recover or vindicate).[109] An owner of a thing or property may agree to transfer, assign, or limit the rights attributed to his ownership, but this does not mean that he loses his ownership over the thing. Accordingly, one may lease his property to others without affecting his title over it; or he may enter into a contract limiting his enjoyment or use of the property; or he may bind himself to first offer a thing for sale to a particular person before selling it to another; or he may agree to let another person designate an assignee to whom the property will be transferred or sold in consideration of an obligation. In any of such situations, there is no actual or legal transfer of ownership, for ownership still pertains, legally and for all intents and purposes, to the owner, not to the other person to whom *an* attribute of ownership has been transferred.

Nowhere in the *compromise agreement* is Radstock given any of the attributes of ownership, like the right to control and use the properties, or the right to benefit from the properties (*e.g.*, rent), or the right to exclude others from the properties, or, for that matter, any other right of an owner. Neither is Radstock thereby put in any position to demand or to ask PNCC to lease the properties to an assignee. What it has under the *compromise agreement* is only the right to designate a qualified assignee for the property.

It is also wrong for Sison to insist that the *compromise agreement* would create a trust relationship between PNCC and Radstock. Trust is the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties

[109] *Samartino v. Raon*, 433 Phil. 173, 189 (July 3, 2002).

and the exercise of certain powers by the latter.[110] By definition, trust relations between parties are either express or implied.[111] Express trusts are created by the direct and positive acts of the parties, by some writing or deed, or will, or by words evincing an intention to create a trust.[112]

The *compromise agreement* would not vest in Radstock any equitable ownership over the property. The required performance of certain duties by PNCC (mainly the transfer of the real properties to the qualified assignees nominated by Radstock) under the *compromise agreement* would not emanate from Radstock's equitable ownership, which Radstock would not have. The performance of such duty would not arise either upon the approval of the *compromise agreement*, but upon the fulfillment by Radstock of its obligation to nominate the qualified assignees. PNCC and Radstock had no intention to create a trust, because the circumstances of the transaction negated the formation of a trust agreement between them resulting from the *compromise agreement*.

On the assumption, for the sake of argument, that the *compromise agreement* gives Radstock a right that is an attribute of ownership, such grant may still be justified nonetheless by the totality of the circumstances as the end result of the whole operation of the *compromise agreement*; and, as such, it would still be consistent with, not violative of, the constitutional ban on foreign ownership of lands. In *La Bugal-B'Laan Tribal Association, Inc. v. Ramos*,[113] the Court ratiocinated:

> Petitioners sniff at the citation of *Chavez v. Public Estates Authority*, and *Halili v. C.A.*, claiming that the doctrines in these cases are wholly inapplicable to the instant case.

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[110] *Morales v. Court of Appeals,* G.R. No. 117228, June 19, 1997, 274 SCRA 282, 297-300; IV Tolentino, *Civil Code of the Philippines*, p. 669 (1997).

[111] Article 1441, *Civil Code*.

[112] *Ramos v. Ramos*, No. L-19872, December 3, 1974, 61 SCRA 284.

[113] G.R. No. 127882, December 1, 2004, 445 SCRA 1, 91-93.

Chavez clearly teaches: "Thus, **the Court has ruled consistently that where a Filipino citizen sells land to an alien who later sells land to a Filipino, the invalidity of the first transfer is corrected by the subsequent sale to a citizen.** Similarly, where the alien who buys the land subsequently acquires Philippine citizenship, the sale is validated since the purpose of the constitutional ban to limit land ownership to Filipinos has been achieved. In short, **the law disregards the constitutional disqualification of the buyer to hold land if the land is subsequently transferred to a qualified party, or the buyer himself becomes a qualified party.**"

In their Comment, petitioners contend that in *Chavez* and *Halili*, the object of the transfer (the land) was not what was assailed for alleged unconstitutionality. Rather, it was the transaction that was assailed; hence subsequent compliance with constitutional provisions would cure its infirmity. In contrast, the instant case it is the FTAA itself, the object of the transfer, that is being assailed as invalid and unconstitutional. So, petitioners claim that the subsequent transfer of a void FTAA to a Filipino corporation would not cure the defect.

Petitioners are confusing themselves. The present Petition has been filed, precisely because the grantee of the FTAA was a wholly owned subsidiary of a foreign corporation. It cannot be gainsaid that anyone would have asserted that the same FTAA was void if it had at the outset been issued to a Filipino corporation. The FTAA, therefore, is not per se defective or unconstitutional. It was questioned only because it has been issued to an allegedly non-qualified, foreign-owned corporation.

We believe that this case is clearly analogous to *Halili*, in which the land acquired by a non-Filipino was re-conveyed to a qualified vendee and the original transaction was thereby cured. **Paraphrasing *Halili*, the same rationale applies to the instant case: assuming arguendo the invalidity of its prior grant to a foreign corporation, the disputed FTAA — being now held by a Filipino corporation — can no longer be assailed; the objective of the constitutional provision — to keep the exploration, development and utilization of our natural resources in Filipino hands — has been served.**

More accurately speaking, **the present situation is one degree better than obtaining in *Halili*, in which the original sale to a non-Filipino was clearly and indisputably violative of the constitutional prohibition and thus *void ab initio*. In the present**

case, the issuance/grant of the subject FTAA to the foreign-owned WMCP was not illegal, void or unconstitutional at the time. The matter had to be brought to court, precisely for adjudication as to whether the FTAA and the Mining Law had indeed violated the Constitution. Since up to this point, the decision of this Court declaring the FTAA void has yet to become final, to all intents and purposes, the FTAA must be deemed valid and constitutional.

The situation herein is even more favorable than that in *La Bugal*. *Firstly*, the *compromise agreement* does not attempt to transfer any of the subject real properties to any non-qualified person. The title or ownership of the lands is to be transferred only upon designation by Radstock of a qualified assignee, and the transfer is to be effected by PNCC directly to the assignee, without the title passing to Radstock in the interim. *Secondly*, the *compromise agreement* does not attempt to create any kind of title over the properties in favor of Radstock. It simply allows Radstock to designate a qualified assignee to whom the properties may be assigned or transferred. It does not give any other right to Radstock. *Thirdly*, the arrangement may even be more beneficial to PNCC, considering that PNCC gets to settle its much lessened obligation for a definite and sure amount of 75% of the assessed values of the subject properties, regardless of the price that Radstock gets from its designated assignee. Incidentally, this is a better bargain for PNCC (and ultimately for the Government), compared to a bidding out of the properties in which there are ever-present risks of recovering a much lower value). *Fourthly*, the arrangement transfers from PNCC to Radstock the obligation and task of looking for a qualified assignee of the properties. And, *lastly*, the present case involves a series of interrelated and dependent transactions that will always result in a situation not inconsistent with the *Constitution,* considering that the assignee will always be a qualified person or entity.

H
The Obligation of PNCC to Marubeni Was Established

In the RTC, PNCC urged the following grounds as affirmative defenses, namely: 1) that the plaintiff had no capacity to sue;

2) that the loan obligation had already prescribed, because no valid demand had been made; and 3) that the letter of guarantee had been signed by a person not authorized by a valid board resolution.

On appeal (C.A.-G.R. SP No. 66654), PNCC raised the same grounds, to wit: 1) that the cause of action was barred by prescription; 2) that the pleading asserting the claim stated no cause of action; 3) that the condition precedent for the filing of the instant suit had not been complied with; and 4) that the plaintiff had no legal capacity to sue.

As the excerpts of the Court's decision in G.R. No. 156887 show,[114] the defense of prescription of the claim and the other defenses of PNCC were passed upon, and the Court upheld the CA's affirmance of the RTC's denial of PNCC's *motion to dismiss* based on such defenses. The ruling in G.R. No. 156887 bars the re-litigation in these consolidated cases of the same issues, particularly a bar by prescription, because of the application of the doctrine of *law of the case*.

Law of the case is defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be facts of the case before the court,[115] notwithstanding that the rule laid down may have been reversed in other cases.[116] Indeed, after the appellate court has issued a pronouncement on a point presented to it with a full opportunity to be heard having been accorded to the parties, that pronouncement should be regarded as the law of the case and should not be reopened on a remand of the case.[117]

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[114] *Supra*, at pp. 22-23.

[115] 21 C.J.S. 330.

[116] *Zarate v. Director of Lands*, 39 Phil. 747.

[117] *Bachrach Motor Co. v. Esteva*, 67 Phil 16.

The concept of the *law of the case* is explained in *Mangold v. Bacon*,[118] thus:

> The general rule, nakedly and badly put, is that legal conclusions announced on a first appeal, whether on the general law or the law as applied to the concrete facts, not only prescribe the duty and limit the power of the trial court to strict obedience and conformity thereto, but they become and remain the law of the case in all after steps below or above on subsequent appeal. The rule is grounded on convenience, experience, and reason. Without the rule there would be no end to criticism, re-agitation, re-examination, and reformulation. In short, there would be endless litigation. It would be intolerable if parties litigant were allowed to speculate on changes in the personnel of a court, or on the change of our rewriting propositions once gravely ruled on solemn argument and handed down as the law of a given case. An itch to reopen questions foreclosed on a first appeal would result in the foolishness of the inquisitive youth who pulled up his corn to see how it grew. Courts are allowed, if they so choose, to act like ordinary sensible persons. The administration of justice is a practical affair. The rule is a practical and a good one of frequent and beneficial use.

Resultantly, the liability of PNCC to Radstock was established, rendering the decision to enter into a compromise agreement a wise move on the part of PNCC. The same result cannot be contemplated if the nullification of the *compromise agreement* were decreed herein, because PNCC would probably lose by an adjudgment against it of a larger liability.

I

The Resolution of PNCC's Board Recognizing Its Obligation to Marubeni Bound PNCC

Board Resolution No. BD-092-2000 dated October 20, 2000 proves that PNCC incurred an obligation in favor of Marubeni. PNCC's Board of Directors would not have issued the resolution if the obligation was unfounded, considering that the resolution admitted its liability, to wit:

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[118] 237 Mo. 496; cited in *Zarate v. Director of Lands*, *supra.*

RESOLUTION NO. BD-09202000

RESOLVED, That the Board recognizes, acknowledges and confirms PNCC's obligations as of September 30, 1999 with the following entities, exclusive of interests and other charges that may subsequently accrue and still become due therein, to wit:

a). the Government of the Republic of the Philippines in the amount of ₱36,023,784,751.00; and

b). **Marubeni Corporation in the amount of ₱10,743,103,388.00.**

Yet, the majority would have the Court strike down the resolution, and not give it effect, because it was null and void. They opine that the PNCC Board approved a transaction that was manifestly and grossly disadvantageous to the National Government, and that such transaction was even a corrupt and unlawful act. They conclude that the resolution, being unlawful and a criminal act, was void *ab initio* and could not be implemented or in any way given effect by the Executive or Judicial Branch of the Government.

I am not persuaded.

That its issuance might have been unwise or disadvantageous to PNCC, which I do not concede, did not invalidate Resolution No. BD-092-1000. The resolution, being simply a recognition of a prior indebtedness in favor of Marubeni and the Government, was clearly issued within the corporation's powers; hence, it was neither illegal nor *ultra vires.* Indeed, had PNCC remained a purely private corporation, no issue would be raised against the propriety of its Board of Directors thereby recognizing an indebtedness.

The majority rely heavily on the transcripts of the Senate Committee hearings to buttress the imputation of bad faith behind the passage of the board resolution that recognized PNCC's debts to Marubeni. They copiously quote the privilege speech of Senator Franklin Drilon delivered during the plenary session of December 21, 2006; and the transcripts of the Senate Committee hearings held on December 14, 2006.

To me, the reliance on the privilege speech and the transcripts of the Senate Committee hearings is unwarranted and misplaced.

The speeches of legislators delivered on the floor and the testimonies of resource persons given in Congressional committee hearings, like those quoted in the majority opinion, have no probative value in judicial adjudication, for they are not recognized as evidence under the *Rules of Court*. Even the rule on judicial notice embodied in Section 1,[119] Rule 129, of the *Rules of Court* does not accord probative value to such speeches and testimonies, because the rule extends only to the *official acts* of the Legislative Department. The term *official acts*, in its general sense, may encompass all activities of the Congress, like the laws enacted and resolutions adopted, but the statements of the legislators and testimonies cannot be regarded, by any stretch of legal understanding, as the "official act of the legislative department." At best, the courts can only take judicial notice of the fact that such statements or speeches were made by such persons, or that such hearings were conducted.

Although this Court can take cognizance of the proceedings of the Senate, as acts of a department of the National Government, the testimonies or statements of the persons during the hearings or sessions may not be used to prove disputed facts in the courts of law. They cannot substitute actual testimony as basis for making findings of fact necessary for the determination of a controversy by the courts. In other words, they are incompetent for purposes of judicial proceedings.

Moreover, in *Bengzon, Jr. v. Senate Blue Ribbon Committee*,[120] the Court defined the limitation on the power of the Legislative

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[119] Section 1. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, **the official acts of the legislative, executive and judicial departments of the Philippines**, the laws of nature, the measure of time, and the geographical divisions. (1a)

[120] G.R. No. 89914, November 20, 1991, 203 SCRA 767, 784.

Department to investigate a controversy exclusively pertaining to the Judicial Department, and regarded as an *encroachment* into the exclusive domain of judicial jurisdiction any probe or inquiry by the Senate Blue Ribbon Committee into the same justiciable controversy already before the Sandiganbayan, declaring:

> In fine**, for the respondent [Senate Blue Ribbon] Committee to probe and inquire into that same justiciable controversy already before the Sandiganbayan, would be an encroachment into the exclusive domain of judicial jurisdiction** that had much earlier set in. In *Baremblatt v. United States*, it was held that:
>
>> Broad as it is, the power is not, however, without limitations. Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of the government. **Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are exclusively the concern of the Judiciary.** Neither can it supplant the Executive in what exclusively belongs to the Executive. x x x.

Indeed, the distinctions between court proceedings, on one hand, and legislative investigations in aid of legislation, on the other hand, derive from their different purposes. Courts conduct hearings to settle, through the application of law, actual controversies arising between adverse litigants and involving demandable rights.[121] In court proceedings, the person's rights to life, liberty and property may be directly and adversely affected. The *Rules of Court* prescribes procedural safeguards consistent with the principles of due process and equal protection guaranteed by the *Constitution*. The manner in which disputed matters can be proven in judicial proceedings as provided in the *Rules of Court* must be followed. In contrast, the legislative bodies conduct their inquiries under less safeguards and restrictions, because inquiries in aid of legislation are undertaken as tools to gather information, in order to enable the legislators to act wisely and effectively, and in order to determine whether there is a

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[121] *Romero v. Senator Estrada*, G.R. No. 174105, April 2, 2009.

need to improve existing laws, or to enact new or remedial legislation.[122]

In particular, the Senate is not bound by the *Rules of Court*. Its inquiries permit witnesses to relate matters that are hearsay, or to give mere opinion, or to transmit information considered incompetent under the *Rules of Court*. The witnesses serve as resource persons, often unassisted by counsel, and appear before the legislators, who are the inquisitors. The latter have no obligation to act as impartial judges during the proceedings. The inquiries do not include direct examinations and cross-examinations, and leading questions are frequent.

Cogently, the proper treatment of the findings of congressional committees by courts of law became the subject of the following observations made in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*:[123]

> Finally, the respondent Congressmen assert that at least two (2) committee reports by the House of Representatives found the PIATCO contracts valid and contend that this Court, by taking cognizance of the cases at bar, reviewed an action of a co-equal body. They insist that the Court must respect the findings of the said committees of the House of Representatives. With due respect, we cannot subscribe to their submission. **There is a fundamental difference between a case in court and an investigation of a congressional committee. The purpose of a judicial proceeding is to settle the dispute in controversy by adjudicating the legal rights and obligations of the parties to the case. On the other hand, a congressional investigation is conducted in aid of legislation**. Its aim is to assist and recommend to the legislature a possible action that the body may take with regard to a particular issue, specifically as to whether or not to enact a new law or amend an existing one. **Consequently, this Court cannot treat the findings in a congressional committee report as binding because the facts elicited in congressional hearings are not subject to the rigors of the Rules of Court on admissibility of evidence.** The Court in assuming jurisdiction over the petitions at bar simply performed its constitutional duty as the

[122] *Id.*

[123] G.R. No. 155001, January 21, 2004, 420 SCRA 575, 606.

arbiter of legal disputes properly brought before it, especially in this instance when public interest requires nothing less.

V
Asiavest's Intervention
Had No Leg to Stand On

Asiavest was a judgment creditor of PNCC by virtue of the Court's judgment in G.R. No. 110263. After 5 years from the issuance of a writ of execution in its favor, Asiavest's judgment award is yet to be satisfied.[124]

In G.R. No. 178158, Asiavest filed its *urgent motion for leave to intervene and to file the attached opposition and motion-in-intervention*, claiming that it had a legal interest as an unpaid judgment creditor of PNCC, nay a superior right, over the properties subject of the *compromise agreement*.[125] It prayed, if allowed to intervene, that the *compromise agreement* be nullified because, otherwise, PNCC might no longer have properties sufficient to satisfy the judgment in favor of the former.

The Court granted the *urgent motion* of movant-intervenor Asiavest for *leave to intervene and to file opposition and motion in intervention [re: judgment based on compromise].*[126] However, Asiavest was not required to file a *comment*.

The position of Asiavest cannot be sustained.

To start with, Asiavest has no direct and material interest in the approval (or disapproval) of the *compromise agreement* between PNCC and Radstock.

Secondly, Asiavest's request to intervene was made too late in the proceedings. Under Section 2, Rule 19, 1997 *Rules of Civil Procedure*, an intervention, to be permitted, must be sought prior to the rendition of the judgment by the trial court.

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[124] *Rollo*, G.R. No. 178158, pp. 237-238.

[125] *Id.*, pp. 238-239.

[126] *Rollo*, G.R. No. 178158, p. 291.

Thirdly, the avowed interest of Asiavest in PNCC's assets emanated from its being a creditor of PNCC by final judgment, and was not related to the personal obligations of PNCC in favor of Marubeni (that is, the guarantees for the loans) that were the subject of the *compromise agreement*. Such interest did not entitle Asiavest to attack the *compromise agreement* between PNCC and Radstock. The interest that entitles a person to intervene in a suit already commenced between other persons must be in the matter in litigation and of such character that the intervenor will either gain or lose by direct legal operation and effect of the judgment.[127] The conditions for a proper intervention in relation to Asiavest simply did not exist. Moreover, sustaining Asiavest's posture may mean allowing other creditors to intervene in an action involving their debtor brought by another creditor against such debtor upon the broad pretext that they were thereby prejudiced. The absurdity of Asiavest's posture, being plain, can never be permitted under the rules on intervention.[128]

Fourthly, that Asiavest is yet to recover from PNCC under the final judgment rendered in G.R. No. 110263 gave the former *no* standing to intervene in the action Radstock brought against PNCC to enforce the latter's guarantees. Asiavest was an absolute stranger to the juridical situation arising between Radstock and PNCC. The proper recourse of Asiavest was, instead, to pursue the execution of the judgment until satisfaction, a remedy that is amply provided for in Rule 39 of the Rules of Court.

Lastly, Asiavest's argument that the *compromise agreement* might be in fraud of it as a judgment creditor of PNCC, in support of which newspaper reports are cited,[129] is unpersuasive. The allegation of fraud remains unsupported by admissible and credible evidence presented by Asiavest, considering that mere newspaper reports are incompetent and inadmissible hearsay.[130]

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[127] *Nordic Asia Limited v. Court of Appeals*, 451 Phil. 482, 492-493.

[128] *Batama Farmer's Cooperative Marketing Association, Inc. v. Hon. Rosal*, 149 Phil. 514, 524.

[129] *Rollo*, G.R. 178158, pp. 254-258.

[130] *People v. Fajardo*, 373 Phil. 915, 925.

IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, I vote to dismiss the petitions in G.R. No. 178158 and G.R. No. 180428; to disallow the intervention of Asiavest Merchant Bankers Berhad; to affirm the decision dated January 25, 2007, the resolution dated May 31, 2007 promulgated in C.A.-G.R. CV No. 87971, and the resolution dated June 12, 2007 promulgated in C.A.-G.R. SP No. 97982.

THIRD DIVISION

[G.R. No. 179505. December 4, 2009]

FIRST PHILIPPINE HOLDINGS CORPORATION, *petitioner, vs.* **TRANS MIDDLE EAST (PHILS.) EQUITIES, INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; ESSENTIAL REQUISITES. —** A contract is void if one of the essential requisites of contracts under Article 1318 of the New Civil Code is lacking. Article 1318 provides: Art. 1318. There is no contract unless the following requisites concur: (1) Consent of the contracting parties; (2) Object certain which is the subject matter of the contract; (3) Cause of the obligation which is established. All these elements must be present to constitute a valid contract. Consent is essential to the existence of a contract; and where it is wanting, the contract is non-existent.

2. **ID.; ID.; SALE; REQUISITES; EXPLAINED. —** In a contract of sale, its perfection is consummated at the moment there is a meeting of the minds upon the thing that is the object of the contract and upon the price. Consent is manifested by the meeting of the offer and the acceptance of the thing and the cause, which are to constitute the contract. To enter into a valid contract of sale, the parties must have the capacity to do

so. Every person is presumed to be capacitated to enter into a contract until satisfactory proof to the contrary is presented. The burden of proof is on the individual asserting a lack of capacity to contract, and this burden has been characterized as requiring for its satisfaction clear and convincing evidence.

3. **ID.; ID.; VOIDABLE CONTRACTS; CONSTRUED. —** These circumstances surrounding the questioned transaction fit in with what Article 1390 of the Civil Code contemplates as voidable contracts, *viz*: Art. 1390. The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties: x x x (2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence, or **fraud**. Thus, contracts where consent is given through fraud, are voidable or annullable. These are not void *ab initio* since voidable or anullable contracts are existent, valid, and binding, although they can be annulled because of want of capacity or the vitiated consent of one of the parties. However, before such annulment, they are considered effective and obligatory between parties.

4. **ID.; ID.; ID.; ACTION FOR ANNULMENT THEREOF SHALL BE FILED WITHIN FOUR YEARS FROM THE DISCOVERY OF FRAUD; SUSTAINED. —** Under Article 1391 of the Civil Code, a suit for the annulment of a voidable contract on account of fraud shall be filed within four years from the discovery of the same, thus: Article 1391. An action for annulment shall be brought within four years. This period shall begin: In case of intimidation, violence or undue influence, from the time the defect of the consent ceases. In case of mistake or **fraud, from the time of the discovery of the same**.

5. **COMMERCIAL LAW; CORPORATION CODE; CORPORATIONS; ALL CORPORATE POWERS SHALL BE EXERCISED AND ALL CORPORATE BUSINESS SHALL BE CONDUCTED BY THE BOARD OF DIRECTORS; CLARIFIED. —** While a corporation is a juridical person, it cannot act except through its board of directors as a collective body, which is vested with the power and responsibility to decide whether the corporation should enter into a contract that will bind the corporation, subject to the articles of incorporation, by-laws, or relevant provisions of law. This grant to the board of all corporate powers is explicit under Section 23 of the Corporation Code, stating: "*All corporate powers shall be*

exercised, and all corporate business shall be conducted by the board of directors."

6. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; DISMISSAL OF ACTION; PRESCRIPTION AS A GROUND; WHEN PROPER. —** A complaint may be dismissed when the facts establishing prescription are apparent in the complaint or from the records. In *Gicano v. Gegato,* this Court held that: **[T]rial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred;** and it may do so on the basis of a motion to dismiss, or an answer which sets up such ground as an affirmative defense; or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration; or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings; or where a defendant has been declared in default. What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period be otherwise sufficiently and satisfactorily apparent on the record; either in the averments of the plaintiff's complaint, or otherwise established by the evidence.

APPEARANCES OF COUNSEL

Migallos & Luna Law Offices for petitioner.

Andrea Rigonan Dela Cueva & Otilia Dimayuga-Molo for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for Review under Rule 45 of the Rules of Court seeks to reverse and set aside the 22 February 2007 Resolution[1] of the Sandiganbayan, Fifth Division in Civil Case No. 0035 granting respondent Trans Middle East (Phils.) Equities Inc.'s

[1] Penned by Associate Justice Teresita V. Diaz-Baldos with Associate Justices Ma. Cristina G. Cortes-Estrada and Roland B. Jurado, concurring. *Rollo,* pp. 41-52.

(TMEE's) Motion to Dismiss on the ground of prescription, petitioner First Philippine Holdings Corporation's (FPHC's) Complaint-in-Intervention, and its 6 September 2007 Resolution denying petitioner's motion for reconsideration.

FPHC, formerly known as Meralco Securities Corporation, which was incorporated in 30 June 1961 by Filipino entrepreneurs led by Eugenio Lopez, Sr., is a holding company engaged in power generation and distribution, property development and manufacturing.[2] FPHC's controlling interest is owned by the Lopez family. TMEE, on the other hand, is also a domestic corporation, allegedly owned by Benjamin (Kokoy) Romualdez.

On 24 May 1984, FPHC allegedly sold its 6,299,179 shares of common stock in Philippine Commercial International Bank (PCIB), now Equitable-PCI Bank, to TMEE.

The 6,299,179 shares of common stock in PCIB are part of the sequestered properties that were allegedly illegally amassed by Benjamin Romualdez during the twenty-year reign of former President Ferdinand E. Marcos, and are among the purported ill-gotten wealth sought to be recovered by the Presidential Commission on Good Government (PCGG) *via* a civil case docketed as Civil Case No. 0035 before the Sandiganbayan.

According to FPHC, said shares were obtained by TMEE through fraud and acts contrary to law, morals, good customs and public policy.[3] Such being the case, their acquisition is either voidable or void or unenforceable.

On 28 December 1988, claiming ownership of said shares as well as the corresponding rights appurtenant to ownership, FPHC filed before the Sandiganbayan its "Motion for Leave to Intervene and to Admit Complaint in Intervention" in Civil Case No. 0035. Although the Sandiganbayan denied FPHC's motion for intervention, this Court on 1 February 1996, in *First Philippine Holdings Corporation v. Sandiganbayan*,[4] reversed the

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[2] http://www.fphc.com/AboutFphc.php?ArticleID=12, 23 September 2009.

[3] *Rollo*, p. 17, FPHC's Petition For Review.

[4] 323 Phil. 36 (1996).

Sandiganbayan and ruled that FPHC had the legal right to intervene in Civil Case No. 0035 and directed the said court to admit the proposed Complaint- in-Intervention of FPHC.

On 27 June 2006, TMEE filed a Motion to Dismiss the Complaint-in-Intervention of FPHC on the ground, among other things, that the action of FPHC had already prescribed. TMEE argued that under Article 1391 of the Civil Code, FPHC only had four years from 24 May 1984, the date of the sale or until 24 May 1988 within which to annul the validity of the sale transaction on the ground of fraud. Since FPHC filed the Complaint-in-Intervention only on 28 December 1988, it meant that the action was seven months late from the prescriptive period.

FPHC disagreed. It maintained that the counting of four (4) years should commence from the time the intimidation or the defect of consent ceased, *i.e.*, when former President Ferdinand E. Marcos was deposed and left the country on 24 February 1986, and not from 24 May 1984. It argued that before 24 February 1986, the Lopez family could not have asserted their ownership over the contested shares. FPHC then concluded that when it assailed the questioned sale on 24 May 1988, the same was filed within the four-year prescriptive period.

On 22 February 2007, the Sandiganbayan ruled in TMEE's favor by granting its motion to dismiss. The Sandiganbayan, citing *Philippine Free Press, Inc. v. Court of Appeals,*[5] found no credible reason why FPHC could not institute the complaint to annul the sale of the disputed shares of stock, simply for the alleged fear engendered by the Marcos rule since, in 1984 when the sale was consummated, martial rule was already lifted; and that, in the same year, protests against the then president were already mounting and boisterous. The Sandiganbayan opined that since FPHC's effort to recover the PCIB shares would have to be addressed by the court, the element of fear would have been neutralized since the judiciary did not lack gallant magistrates who refused to be cowed into silence by the dictator.

[5] G.R. No. 132864, 24 October 2005, 473 SCRA 639.

The Sandiganbayan likewise found suspect FPHC's late pursuit of the recovery of the subject shares taking, in fact, two years after the late dictator was deposed.

FPHC filed a motion for reconsideration. In support thereof, FPHC maintained that the sale of the PCIB shares was void *ab initio,* since the said transaction was allegedly approved by the dummy board and signed by the dummy officers of FPHC. Since the subject sale contract was null and void, the action for the declaration of its nullity was imprescriptible.

FPHC alternatively argued that even if the case were dismissible on the ground of prescription, the rule was that the facts demonstrating the lapse of the prescriptive period must be apparent in the complaint. Since its complaint-in-intervention did not show that there were averments that would demonstrate the lapse of the prescriptive period, FPHC insisted that trial should be had before the resolution of the issue of prescription and whether the governing board of FPHC was so circumstanced that it was impossible for it to successfully institute an action during the Marcos regime.

According to FPHC, even assuming that Article 1391 of the Civil Code applied, the four-year prescriptive period should be reckoned from 26 February 1986, when former President Ferdinand E. Marcos was deposed from power and left the country, for it was only from that date onwards that the cause of vitiation of consent, *i.e.*, intimidation, violence and threats, ceased.

In its Resolution dated 6 September 2007, the Sandiganbayan denied FPHC's motion for reconsideration stressing anew that the subject sale was not void *ab initio,* but merely voidable.

Hence, the instant petition.

A contract is void if one of the essential requisites of contracts under Article 1318 of the New Civil Code is lacking. Article 1318 provides:

Art. 1318. There is no contract unless the following requisites concur:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established.

All these elements must be present to constitute a valid contract. Consent is essential to the existence of a contract; and where it is wanting, the contract is non-existent. In a contract of sale, its perfection is consummated at the moment there is a meeting of the minds upon the thing that is the object of the contract and upon the price. Consent is manifested by the meeting of the offer and the acceptance of the thing and the cause, which are to constitute the contract. To enter into a valid contract of sale, the parties must have the capacity to do so. Every person is presumed to be capacitated to enter into a contract until satisfactory proof to the contrary is presented.[6] The burden of proof is on the individual asserting a lack of capacity to contract, and this burden has been characterized as requiring for its satisfaction clear and convincing evidence.

While a corporation is a juridical person, it cannot act except through its board of directors as a collective body, which is vested with the power and responsibility to decide whether the corporation should enter into a contract that will bind the corporation, subject to the articles of incorporation, by-laws, or relevant provisions of law.[7] This grant to the board of all corporate powers is explicit under Section 23 of the Corporation Code, stating: "*All corporate powers shall be exercised, and all corporate business shall be conducted by the board of directors*."

In the case under consideration, the dispute centers on the element of consent, which FPHC claimed to be lacking since the supposed board of directors that composed the FPHC was allegedly a "dummy board" of Benjamin Romualdez, the members of which were allegedly installed after the management and control of FPHC were supposedly fraudulently wrested from

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[6] *Vitalista v. Perez*, G.R. No. 164147, 16 June 2006, 491 SCRA 127, 143.

[7] *Associated Bank v. Pronstroller*, G.R. No. 148444, 14 July 2008, 558 SCRA 113, 128.

its true owners. The Sandiganbayan, however, differed. It stood pat in its ruling that the consent by the board of directors, who had the legal capacity to enter into said contract with a third person, was duly obtained. This Court finds no reason to diverge from the disquisition of the anti-graft court on this matter:

> With respect to the insistence of FPHC that the Sale of Shares of Stock and Escrow Agreement executed on May 24, 1984 is void since it was approved by a dummy board that had no capacity to give consent, it must be stressed that one of the requisites of a valid contract under Article 1318 of the Civil Code is consent and the capacity of the parties to give consent. The legal capacity of the parties is an essential element for the existence of consent. There is no effective consent in law without the capacity to give such consent. In other words, legal consent presupposes capacity. Thus, there is said to be no consent, and consequently, no contract when the agreement is entered into by one in behalf of another who has never given him authorization therefore unless he has by law a right to represent the latter.
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> Under Section 23 of B.P. 68, otherwise known as the Corporation Code of the Philippines, a corporation can act only through its board of directors. The law is settled that contracts between a corporation and third persons must be made by or under the authority of its board of directors and not by its stockholders. FPHC, for its part, was represented by its board that had the legal right to act on behalf of the corporation and gave its approval and consent to the Sale of Shares of Stock and Escrow Agreement entered into on May 24, 1984. From that standpoint therefore it is clear that the essential element of consent for the existence of a valid contract was complied with in the transaction in question.
>
> The mere allegation of FPHC that the persons who composed the Board of Directors of FPHC that approved the contract were mere dummies of the Marcos and Romualdez group does not make the said contract void. If that allegation of vitiated consent be true so as to incapacitate the Board from giving its consent freely, the defect if at all only renders the contract voidable.[8]

Indeed, a reading of the allegations of FPHC's Complaint-in-Intervention and Petition for Review unveils the recurrent

[8] *Rollo*, pp. 57-59.

and persistent asseveration that fraud or devious financial schemes and techniques attended the change of control and management of the corporation. It can be seen therefore that the supposed fraud employed by Benjamin Romualdez and alleged cohorts on the Lopezes constitutes the root cause of the alleged nullity of the sale of the PCIB shares, thus:

15. Defendants Benjamin (Kokoy) Romualdez and his wife Juliette Gomez Romualdez, acting by themselves and/or in unlawful concert with defendants Ferdinand E. Marcos and Imelda R. Marcos, and taking undue advantage of their relationship, influence and connection with the latter defendant spouse, **engaged in devices, schemes and stategems** to unjustly enrich themselves at the expense either of plaintiff and the Filipino people or their private individual victims. Thus –

They obtained, with the active collaboration of defendants Senen J. Gabaldon, Mario D. Camacho, Mamerto Nepomuceno, Carlos J. Valdez, Delia S. Tantuico, Cesar Zalamea, and Atty. Jose F. S. Benzon, Jr. and his law partners, namely: Edilberto S. Narciso, jr. and Leonardo C. Cruz; Jose S. Sandejas and his fellow senior managers of FMMC/ FNI Holdings groups such as Leonardo Gamboa, Vicente T. Mills, jr., Jose M. Mantecon, Abelardo S. Termulo, Rex C. Drillon II and Kurt Bachmann, jr. — control of the Manila Electric Company (Meralco), Pilipinas Shell Corporation and the Philippine Commercial International Bank (PCI Bank) (formerly Philippine Commercial and Industrial Bank) by **employing devious financial schemes and techniques** (See Part V, par. 14(a) Second Amended Complaint); formed the Meralco Froundation, Inc. (MFI) to gain control of the Meralco group of companies upon the **false commitment**, among others, to free Eugenio Lopez, Jr. from detention. (Part V, par. 14(d) Second Amended Complaint); effected, with the active collaboration of, among others, defendants Edilberto S. Narciso, Jr., Jose F. S. Bengzon, Jr., Jose Vicente E. Jimenez, Amando V. Faustino, Jr. and Leonardo C. Cruz, the sale of share holdings of the First Philippine Holdings Corporation in the Philippine Commercial and Industrial Bank (PCIB) to Trans Middle East Philippine Equities, Inc., a front organization of defendant Benjamin (Kokoy) Romualdez, in order to gain control of PCIB with minimum, or negligible "cash-out" from said defendant. The manner by which PCIB in effect funded the purchase of shares of its own capital stock was done in violation of banking laws, rules and regulations (Part V, par. 14(j) Second

Amended Complaint); and at the onset of the present administration and/or within the week following the February 1986 People's revolution, with the support, assistance and collaboration of the aforenamed lawyers of the Bengzon Law Offices, cleverly hid behind the veil of corporation entity, the ill-gotten wealth of defendant Benjamin (Kokoy) Romualdez, including, among others, the 6,299,177 shares in PCIB registered in the names of Trans Middle East Philippines, Equities, Inc. and defendant Edilberto S. Narciso, Jr. which they refused to surrender to the PCGG (Part V, par. 14-q Second Amended Complaint) despite defendant E. S. Narciso Jr.'s admission/disclosure that the beneficial owner of said shares is defendant Benjamin (Kokoy) Romualdez (Part V, par. 17-a Second Amended Complaint).[9]

31. The PCGG discovered and the plaintiff Republic of the Philippines alleged that the sale of the PCIB shares of plaintiff-intervenor First Philippine Holdings Corporation in the Philippine Commercial and Industrial Bank (PCIB) to defendant-intervenor Trans Middle East (Phils.) Equities, Inc. and defendant Edilberto S. Narciso, Jr. was packaged and financed by PCIB and the Philippine Commercial Capital, Inc. thru loans extended to Southern Leyte Oil Mills, Inc. (SOLOIL, INC.) for and in behalf of Trans Middle East (Phils.) Equities, Inc., in violation of banking laws, rules and regulations; and was effected with the active collaboration of, among others, defendants Edilberto S. Narciso, Jr., Jose F. S. Bengzon, Jr., Jose Vicente E. Jimenez, Armando Faustino, Jr., and Leonardo C. Cruz, by reason of which later discovery plaintiff had to amend and accordingly filed its Second Amended Complaint dated November 4, 1987 with this Court. **Said sale**, is therefore, void or voidable on said ground, in addition to **having been obtained fraudulently** with the connivance of defendant Kokoy Romualdez's dummy directors and officers in plaintiff-intervenors' Board and Executive Committee, in breach of their fiduciary obligations to plaintiff-intervenor and its stockholders under the Corporation Code. x x x.[10]

Undoubtedly, the entirety of the allegations in the complaint-in-intervention makes up a case of a voidable contract of sale — not a void one.

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[9] Records, pp. 5161-5163.

[10] Records, p. 5174.

These circumstances surrounding the questioned transaction fit in with what Article 1390 of the Civil Code contemplates as voidable contracts, *viz*:

> Art. 1390. The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties:
>
> x x x x x x x x x
>
> (2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence, or **fraud**.

Thus, contracts where consent is given through fraud, are voidable or annullable. These are not void *ab initio* since voidable or anullable contracts are existent, valid, and binding, although they can be annulled because of want of capacity or the vitiated consent of one of the parties. However, before such annulment, they are considered effective and obligatory between parties.[11]

While FPHC's complaint prayed for the declaration of nullity of the disputed sale transaction, such prayer does not determine the nature of the action at hand. It is the material allegations of fact in the complaint, not the legal conclusion made therein or the prayer that determines the nature of the case.[12] As ruled by this Court, it is the body and not the caption or the prayer of the complaint that determines the nature of the action.[13]

As the complaint-in-intervention substantially alleged that the contract was voidable, the four-year prescriptive period under Art. 1391 of the New Civil Code will apply.

Unyielding, FPHC invites this Court's attention to the applicability of the *Islamic Directorate of the Philippines v. Court of Appeals*[14] to the instant controversy.

In *Islamic Directorate*, there were several groups claiming to be the legitimate board of trustees of Islamic Directorate of

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[11] *Metropolitan Waterworks and Sewerage System v. Court of Appeals*, 357 Phil. 966, 978 (1998).

[12] *Sandel v. Court of Appeals*, 330 Phil. 653, 660-661 (1996).

[13] *Id.*

[14] 338 Phil. 970 (1997).

the Philippines (IDP). Two groups, the Carpizo Group and the Abbas Group, separately contended that they were the lawful board of trustees of IDP. This dispute reached the Securities and Exchange Commission (SEC). The SEC, however, ruled that the election of both groups as IDP board members was null and void. This declaration became final since none of them bothered to question the SEC ruling. Subsequently, despite its lack of authority, the Carpizo Group sold two parcels of land belonging to IDP. This sale was assailed by the Tamano Group as null and void. This Court sustained the stance of the Tamano Group and went on to explain that the questioned transaction was null and void because the Carpizo Group was bereft of any authority to bind IDP in any kind of transaction including the sale of the IDP property. The sale was therefore null and void *ab initio,* because the consent of IDP was absolutely absent.

The pivotal fact that separates the instant case from *Islamic Directorate* is that in the latter, the properties were alienated by an unauthorized body, the Carpizo Group, whose election was previously voided by the SEC; while in the former, the disposition of the disputed shares were sold by a legitimate and authorized corporate officers, absent any declaration by the SEC or by any court or tribunal against its legitimacy. Not a single stockholder even bothered to question the election of the then board of directors of FPHC, much less objected to the disputed sale. This being the situation, *Islamic Directorate* finds no application in the instant case.

Also unavailing is FPHC's insistence that the issue of prescription cannot be resolved on the basis of its complaint as the facts establishing prescription do not appear on the face thereof.

A complaint may be dismissed when the facts establishing prescription are apparent in the complaint or from the records.[15] In *Gicano v. Gegato,*[16] this Court held that:

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[15] *Gicano v. Gegato*, G.R. No. 63575, 20 January 1988, 157 SCRA 140.

[16] *Id.* at 145-146.

[T]rial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred; (*Francisco v. Robles*, Feb. 15, 1954; *Sison v. McQuaid*, 50 O.G. 97; *Bambao v. Lednicky*, Jan. 28, 1961; *Cordova v. Cordova*, Jan. 14, 1958; *Convets, Inc. v. NDC*, Feb. 28, 1958; 32 SCRA 529; *Sinaon v. Sorongan*, 136 SCRA 408); and it may do so on the basis of a motion to dismiss, or an answer which sets up such ground as an affirmative defense; or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration; or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings; or where a defendant has been declared in default. What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period be otherwise sufficiently and satisfactorily apparent on the record; either in the averments of the plaintiff's complaint, or otherwise established by the evidence.

Here, the pleadings filed before the anti-graft court are replete with averments and proof that PCIB shares of stock were sold on 24 May 1984, and that FPHC filed its complaint-in-intervention on 28 December 1988. From the execution of the sale to the filing of the complaint, it is readily apparent that four years and seven months had lapsed. Certainly the complaint was filed beyond the four-year prescriptive period.

FPHC, however, contends that the four-year prescriptive period should be reckoned from 24 February 1986, the date when former President Marcos left the country, as it was only then that the threat and intimidation against the Lopezes ceased.

This argument is unconvincing. Based on FPHC's Petition for Review and its Complaint-in-Intervention, the ground relied upon by petitioner is fraud. FPHC's petition partly reads:

PCIBank shares were obtained x x x by means of fraud and acts contrary to law, morals and public policy x x x.[17]

In its Complaint-in-Intervention, it is alleged:

32. **Said sale**, is therefore, void or voidable on said ground, in addition to **having been obtained fraudulently** with the connivance

[17] *Rollo*, p. 17.

of defendant Kokoy Romualdez's dummy directors and officers in plaintiff-intervenors' Board and Executive Committee, in breach of their fiduciary obligations to plaintiff-intervenor and its stockholders under the Corporation Code. x x x.[18]

Under Article 1391 of the Civil Code, a suit for the annulment of a voidable contract on account of fraud shall be filed within four years from the discovery of the same, thus:

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

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

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

Here, from the time the questioned sale transaction on 24 May 1984 took place, FPHC did not deny that it had actual knowledge of the same. Simply, petitioner was fully aware of the sale of the PCIB shares to TMEE. Despite all this knowledge, petitioner did not question the said sale from its inception and some time thereafter. It was only after four years and seven months had lapsed following the knowledge or discovery of the alleged fraudulent sale that petitioner assailed the same. By then, it was too late for petitioner to beset the same transaction, since the prescriptive period had already come into play. As ruled in *Philipppine Free Press, Inc. v. Court of Appeals*[19] —

Be that as it may, the Locsin's mistrust of the courts and of judicial processes is **no excuse for their non-observance of the prescriptive period set down by law.**

If indeed the subject transaction was, to Lopezes' point of view, questionable, the Lopezes would have at least exerted a token effort to assail the validity of the transaction, which they did not. Instead of immediately availing themselves of the courts to retrieve said shares, the Lopezes gave them up without a fight

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[18] Records, p. 5174.

[19] G.R. No. 132864, 24 October 2005, 473 SCRA 639, 652.

and discounted judicial recourse, as they looked upon the judiciary with indifference and distrust. This attitude is certainly inconsistent with that of a person who strongly believes in the veracity of his proprietary rights.

Based on the foregoing, the Sandiganbayan need not go through trial on the merits to determine whether the fact of prescription has set in. As already said earlier, the Sandiganbayan has the authority and discretion to dismiss an action on the ground of prescription on the basis of a motion to dismiss alone. Moreover, FPHC cannot successfully claim that it was denied due process, since the motion to dismiss was set for hearing; and the parties, including FPHC, were given all the opportunities to be heard through their numerous pleadings and counter-pleadings filed before the Sandiganbayan.

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

WHEREFORE, the instant petition is *DENIED*. The Resolutions of the Sandiganbayan dated 22 February 2007 and 6 September 2007 dismissing FPHC's Complaint-in-Intervention, are hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

FIRST DIVISION

[G.R. No. 179952. December 4, 2009]

METROPOLITAN BANK AND TRUST COMPANY (formerly ASIANBANK CORPORATION), *petitioner, vs.* **BA FINANCE CORPORATION and MALAYAN INSURANCE CO., INC.,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; DEFINED. —** Section 41 of the *Negotiable Instruments Law* provides: Where an instrument is payable to the order of two or more payees or indorsees who are not partners, **all must indorse** unless the one indorsing has authority to indorse for the others.

2. **ID.; ID.; AS A RULE, JOINT PAYEES WHO INDORSE ARE DEEMED TO INDORSE JOINTLY AND SEVERALLY; APPLICATION IN CASE AT BAR. —** Granting petitioner's appeal for partial liability would run counter to the existing principles on the liabilities of parties on negotiable instruments, particularly on Section 68 of the *Negotiable Instruments Law* which instructs that joint payees who indorse are deemed to *indorse jointly and severally*. Recall that when the maker dishonors the instrument, the holder thereof can turn to those secondarily liable — the indorser — for recovery. And since the law explicitly mandates a solidary liability on the part of the joint payees who indorse the instrument, the holder thereof (assuming the check was further negotiated) can turn to either Bitanga or BA Finance for full recompense.

3. **CIVIL LAW; QUASI-DELICT; GRANT OF EXEMPLARY DAMAGES IF THE DEFENDANT ACTED WITH GROSS NEGLIGENCE; SUSTAINED. —** To reiterate, petitioner's liability is based not on contract or quasi-contract but on *quasi-delict* since there is no pre-existing contractual relation between the parties. Article 2231 of the Civil Code, which provides that in *quasi-delict*, exemplary damages may be granted if the defendant acted with gross negligence, thus applies. For "gross negligence" implies a want or absence of or failure to exercise even slight care or diligence, or the entire absence of care, evincing a thoughtless disregard of consequences without exerting any effort to avoid them. x x x The law allows the grant of exemplary damages to set an example for the public good. The business of a bank is affected with public interest; thus it makes a sworn profession of diligence and meticulousness in giving irreproachable service. For this reason, the bank should guard against in injury attributable to negligence or bad faith on its part. The award of *exemplary* damages is proper as a warning to [the petitioner] and all concerned not to recklessly

disregard their obligation to exercise the highest and strictest diligence in serving their depositors.

4. **ID.; DAMAGES; LEGAL INTEREST OF 12% SHOULD BE GRANTED ONLY FOR AN OBLIGATION WHICH ARISE OUT OF LOAN OR FORBEARANCE OF MONEY; NOT PRESENT IN CASE AT BAR. —** The Court takes exception, however, to the appellate court's affirmance of the trial court's grant of legal interest of 12% per annum on the value of the check. For the obligation in this case did not arise out of a loan or forbearance of money, goods or credit. While Article 1980 of the Civil Code provides that: Fixed savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan, said provision does not find application in this case since the nature of the relationship between BA Finance and petitioner is one of *agency* whereby petitioner, as collecting bank, is to collect for BA Finance the corresponding proceeds from the check. Not being a loan or forbearance of money, the interest should be 6% per annum computed from the date of extrajudicial demand on September 25, 1992 until finality of judgment; and 12% per annum from finality of judgment until payment, conformably with *Eastern Shipping Lines, Inc. v. Court of Appeals*.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioner.
Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero Law Offices for BA Finance Corporation.
Antonio de Vera & Associates for Malayan Insurance Company, Inc.

D E C I S I O N

CARPIO MORALES, *J.*:

Lamberto Bitanga (Bitanga) obtained from respondent BA Finance Corporation (BA Finance) a ₱329,280[1] loan to secure

[1] Exhibit "A", records, pp. 210-211.

which, he mortgaged his car to respondent BA Finance.[2] The mortgage contained the following stipulation:

> The MORTGAGOR covenants and agrees that he/it will cause the property(ies) hereinabove mortgaged to be insured against loss or damage by accident, theft and fire for a period of one year from date hereof with an insurance company or companies acceptable to the MORTGAGEE in an amount not less than the outstanding balance of mortgage obligations and that he/it will make all loss, if any, under such policy or policies, **payable to the MORTGAGEE** or its assigns as its interest may appear x x x.[3] (emphasis and underscoring supplied)

Bitanga thus had the mortgaged car insured by respondent Malayan Insurance Co., Inc. (Malayan Insurance)[4] which issued a policy stipulating that, *inter alia,*

> Loss, if any shall be **payable to BA FINANCE CORP.** as its interest may appear. It is hereby expressly understood that this policy or any renewal thereof, shall not be cancelled without prior notification and conformity by BA FINANCE CORPORATION.[5] (emphasis and underscoring supplied)

The car was stolen. On Bitanga's claim, Malayan Insurance issued a check payable to the order of "B.A. Finance Corporation and Lamberto Bitanga" for ₱224,500, drawn against China Banking Corporation (China Bank). The check was crossed with the notation "For Deposit Payees' Account Only."[6]

Without the indorsement or authority of his co-payee BA Finance, Bitanga deposited the check to his account with the Asianbank Corporation (Asianbank), now merged with herein petitioner Metropolitan Bank and Trust Company (Metrobank). Bitanga subsequently withdrew the entire proceeds of the check.

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[2] Exhibit "B", *id.* at 212-215.

[3] *Id.* at 213.

[4] Exhibit "D", *id.* at 217.

[5] Exhibit "D-1", *ibid.*

[6] Exhibit "F", *id.* at 219.

In the meantime, Bitanga's loan became past due, but despite demands, he failed to settle it.

BA Finance eventually learned of the loss of the car and of Malayan Insurance's issuance of a crossed check payable to it and Bitanga, and of Bitanga's depositing it in his account at Asianbank and withdrawing the entire proceeds thereof.

BA Finance thereupon demanded the payment of the value of the check from Asianbank[7] but to no avail, prompting it to file a complaint before the Regional Trial Court (RTC) of Makati for sum of money and damages against Asianbank and Bitanga,[8] alleging that, *inter alia*, it is entitled to the entire proceeds of the check.

In its Answer with Counterclaim,[9] Asianbank alleged that BA Finance "instituted [the] complaint in bad faith to coerce [it] into paying the whole amount of the CHECK knowing fully well that its rightful claim, if any, is against Malayan [Insurance]."[10]

Asianbank thereafter filed a cross-claim against Bitanga,[11] alleging that he fraudulently induced its personnel to release to him the full amount of the check; and that on being later informed that the entire amount of the check did not belong to Bitanga, it took steps to get in touch with him but he had changed residence without leaving any forwarding address.[12]

And Asianbank filed a third-party complaint against Malayan Insurance,[13] alleging that Malayan Insurance was grossly negligent in issuing the check payable to both Bitanga and BA Finance and delivering it to Bitanga without the consent of BA Finance.[14]

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[7] Exhibits "H", *id.* at 221-222.

[8] *Id.* at 1-4.

[9] *Id.* at 40-45.

[10] *Id.* at 43.

[11] *Id.* at 53-63.

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

[13] *Id.* at 69-72.

[14] *Id.* at 82.

Bitanga was declared in default in Asianbank's cross-claim.[15]

Branch 137 of the Makati RTC, finding that Malayan Insurance was not privy to the contract between BA Finance and Bitanga, and noting the claim of Malayan Insurance that it is its policy to issue checks to both the insured and the financing company, held that Malayan Insurance cannot be faulted for negligence for issuing the check payable to both BA Finance and Bitanga.

The trial court, holding that Asianbank was negligent in allowing Bitanga to deposit the check to his account and to withdraw the proceeds thereof, without his co-payee BA Finance having either indorsed it or authorized him to indorse it in its behalf,[16] found Asianbank and Bitanga jointly and severally liable to BA Finance following Section 41 of the *Negotiable Instruments Law* and *Associated Bank v. Court of Appeals*.[17]

Thus the trial court disposed:

WHEREFORE, premises considered, judgment is hereby rendered ordering defendants Asian Bank Corporation and Lamberto Bitanga:

1) To pay plaintiff jointly and severally the sum of ₱224,500.00 with interest thereon at the rate of 12% from September 25, 1992 until fully paid;
2) To pay plaintiff the sum of ₱50,000.00 as exemplary damages; ₱20,000.00 as actual damages; ₱30,000.00 as attorney's fee; and
3) To pay the costs of suit.

Asianbank's and Bitanga's [*sic*] counterclaims are dismissed. The third party complaint of defendant/third party plaintiff against third-party defendant Malayan Insurance, Co., Inc. is hereby dismissed. Asianbank is ordered to pay Malayan attorney's fee of ₱50,000.00 and a per appearance fee of ₱500.00.

On the cross-claim of defendant Asianbank, co-defendant Lamberto Bitanga is ordered to pay the former the amounts the

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[15] *Id.* at 142-143; Order of May 23, 1994.

[16] *Id.* at 306.

[17] G.R. No. 89802, May 7, 1992, 208 SCRA 465.

latter is ordered to pay the plaintiff in Nos. 1, 2 and 3 above-mentioned.

SO ORDERED.[18] (emphasis and underscoring supplied)

Before the Court of Appeals, Asianbank, in its Appellant's Brief, submitted the following issues for consideration:

3.01.1.1 Whether BA Finance has a cause of action against Asianbank.

3.01.1.2 Assuming that BA Finance has a valid cause of action, may it claim from Asianbank more than one-half of the value of the check considering that it is a mere co-payee or joint payee of the check?

3.01.1.3 Whether BA Finance is liable to Asianbank for actual and exemplary damages for wrongfully bringing the case to court.

3.01.1.4 Whether Malayan is liable to Asianbank for reimbursement of any sum of money which this Honorable Court may award to BA Finance in this case.[19] (underscoring supplied)

And it proffered the following arguments:

A. BA Finance has no cause of action against Asianbank as it has no legal right and title to the check considering that the check was not delivered to BA Finance. Hence, BA Finance is not a holder thereof under the Negotiable Instruments Law.

B. Asianbank, as collecting bank, is not liable to BA Finance as there was no privity of contract between them.

C. Asianbank, as collecting bank, is not liable to BA Finance, considering that, as the intermediary between the payee and the drawee Chinabank, it merely acted on the instructions of drawee Chinabank to pay the amount of the check to Bitanga, hence, the consequent damage to BA Finance was due to the negligence of Chinabank.

D. Malayan's act of issuing and delivering the check solely to Bitanga in violation of the "loss payee" clause in the Policy, is the proximate cause of the alleged damage to BA Finance.

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[18] Records, p. 307.

[19] CA *rollo*, pp. 39-40.

E. Assuming Asianbank is liable, BA Finance can claim only his proportionate interest on the check as it is a joint payee thereof.

F. Bitanga alone is liable for the amount to BA Finance on the ground of unjust enrichment or *solutio indebiti*.

G. BA Finance is liable to pay Asianbank actual and exemplary damages.[20] (underscoring supplied)

The appellate court, "summarizing" the errors attributed to the trial court by Asianbank to be "whether…BA Finance has a cause of action against [it] even if the subject check had not been delivered to…BA Finance by the issuer itself," held in the affirmative and accordingly affirmed the trial court's decision but deleted the award of ₱20,000 as actual damages.[21]

Hence, the present Petition for Review on *Certiorari*[22] filed by Metrobank (hereafter petitioner) to which Asianbank was, as earlier stated, merged, faulting the appellate court

I. *x x x in applying the case of Associated Bank v. Court of Appeals, in the absence of factual similarity and of the legal relationships necessary for the application of the desirable shortcut rule. x x x*

II. *x x x in not finding that x x x the general rule that the payee has no cause of action against the collecting bank absent delivery to him must be applied.*

III. *x x x in finding that all the elements of a cause of action by BA Finance Corporation against Asianbank Corporation are present.*

IV. *x x x in finding that Article 1208 of the Civil Code is not applicable.*

V. *x x x in awarding of exemplary damages even in the absence of moral, temperate, liquidated or compensatory damages*

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

[21] Decision of May 18, 2007, penned by Court of Appeals Associate Justice Ramon M. Bato, Jr. with the concurrence of Associate Justices Andres B. Reyes, Jr. and Jose C. Mendoza.

[22] *Rollo*, pp. 10-57.

> *and a finding of fact that Asianbank acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.*
>
> *x x x* *x x x* *x x x*
>
> *VII. x x x in dismissing Asianbank's counterclaim and Third Party complaint [against Malayan Insurance].*[23] (italics in the original; underscoring supplied)

Petitioner proffers the following arguments against the application of *Associated Bank v. CA* to the case:

> x x x [T]he rule established in the *Associated Bank* case has provided a speedier remedy for the payee to recover from erring collecting banks despite the absence of delivery of the negotiable instrument. However, the application of the rule demands careful consideration of the factual settings and issues raised in the case x x x.
>
> One of the relevant circumstances raised in *Associated Bank* is the existence of forgery or unauthorized indorsement. x x x
>
> x x x x x x x x x
>
> In the case at bar, Bitanga is authorized to indorse the check as the drawer names him as one of the payees. Moreover, his signature is not a forgery nor has he or anyone forged the signature of the representative of BA Finance Corporation. No unauthorized indorsement appears on the check.
>
> x x x x x x x x x
>
> Absent the indispensable fact of forgery or unauthorized indorsement, the desirable shortcut rule cannot be applied,[24] (underscoring supplied)

The petition fails.

Section 41 of the *Negotiable Instruments Law* provides:

> Where an instrument is payable to the order of two or more payees or indorsees who are not partners, **all must indorse** unless the one

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[23] *Id.* at 20-22.

[24] *Id.* at 23-25.

indorsing has authority to indorse for the others. (emphasis and underscoring supplied)

Bitanga alone endorsed the crossed check, and petitioner allowed the deposit and release of the proceeds thereof, despite the absence of authority of Bitanga's co-payee BA Finance to endorse it on its behalf.[25]

Denying any irregularity in accepting the check, petitioner maintains that it followed normal banking procedure. The testimony of Imelda Cruz, Asianbank's then accounting head, shows otherwise, however, *viz*:

Q Now, could you be familiar with a particular policy of the bank with respect to checks with joined (sic) payees?

A Yes, sir.

Q And what would be the particular policy of the bank regarding this transaction?

A **The bank policy and procedure regarding the joint checks. Once it is deposited to a single account, we are *not* accepting joint checks for single account, depositing to a single account** (sic).

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[25] TSN, May 30, 1995, pp. 7-8; The testimony of John Agbayani, vice president of BA Finance, reads as follows:

Q Thereafter what happened next, if you know?

A Upon further verification, we were informed by Malayan Insurance Company that in deed a check, a cross check was issued to BA Finance Corporation and Lamberto Bitanga and the check was delivered to Lamberto Bitanga.

Q So, after the said check was delivered to Mr. Lamberto Bitanga, do you have any knowledge Mr. witness, if you know, what happened to the check?

A Yes, sir, the check was deposited into the personal account of Mr. Lamberto Bitanga only, with Asian Savings Bank without the knowledge and endorsement of the joint payee of the said check, which is the plaintiff here, BA Finance.

x x x x x x x x x

We immediately send a formal letter communication to Asian Bank in order to discuss the possibility of reimbursement of banking on the premise that our check was irregular accepted for deposit into the personal account of Lamberto Bitanga without our endorsement.

Q What happened to the bank employee who allowed this particular transaction to occur?

A Once the branch personnel, the bank personnel (sic) accepted it, he is liable.

Q What do you mean by the branch personnel being held liable?

A **Because since (sic) the bank policy, we are *not* supposed to accept joint checks to a [single] account, so we mean that personnel would be held liable in the sense that (sic) once it is withdrawn or encashed, it will not be allowed**.

Q In your experience, have you encountered any bank employee who was subjected to disciplinary action by not following bank policies?

A The one that happened in that case, since I really don't know who that personnel is, he is no longer connected with the bank.

Q **What about in general, do you know of any disciplinary action, Madam witness?**

A **Since there's a negligence on the part of the bank personnel, it will be a ground for his separation [from] the bank.**[26] (emphasis, italics and underscoring supplied)

Admittedly, petitioner dismissed the employee who allowed the deposit of the check in Bitanga's account.

Petitioner's argument that since there was neither forgery, nor unauthorized indorsement because Bitanga was a co-payee in the subject check, the dictum in *Associated Bank v. CA* does not apply in the present case fails. The payment of an instrument over a missing indorsement is the equivalent of payment on a forged indorsement[27] or an unauthorized indorsement in itself in the case of joint payees.[28]

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[26] TSN, October 18, 1995, pp. 5-7.

[27] *Kelly v. Central Bank and Trust Co.* (Colo App), 794 P2d 1037, 12 UCCRS2d 1089; *Humberto Decorators, Inc. v. Plaza Nat'l Bank,* 180 NJ Super 170, 434 A2d 618, 32 UCCRS 494; *Vide*: 11 Am Jur 2d, Bills and Notes, §224, at p. 557.

[28] *Beyer v. First Nat'l Bank*, 188 Mont 208, 612 P2d 1285, 29 UCCRS 563; *Vide*: 11 Am Jur 2d, Bills and Notes, §224, at p. 557.

Clearly, petitioner, through its employee, was negligent when it allowed the deposit of the crossed check, despite the lone endorsement of Bitanga, ostensibly ignoring the fact that the check did not, it bears repeating, carry the indorsement of BA Finance.[29]

As has been repeatedly emphasized, the banking business is imbued with public interest such that the highest degree of diligence and highest standards of integrity and performance are expected of banks in order to maintain the trust and confidence of the public in general in the banking sector.[30] Undoubtedly, BA Finance has a cause of action against petitioner.

Is petitioner liable to BA Finance for the *full* value of the check?

Petitioner, at all events, argue that its liability to BA Finance should only be one-half of the amount covered by the check as there is no indication in the check that Bitanga and BA Finance are solidary creditors to thus make them presumptively joint creditors under Articles 1207 and 1208 of the Civil Code which respectively provide:

> Art. 1207. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestations. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.
>
> Art. 1208. If from the law, or the nature or wording of the obligations to which the preceding article refers to the contrary does not appear, the credit or debt shall be presumed to be divided into as many equal shares as there are creditors or debtors, the debts or credits being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits.

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[29] *Gempesaw v. Court of Appeals*, G.R. No. 92244, Feb. 9, 1993, 218 SCRA 682, 695.

[30] *Philippine Commercial International Bank v. Court of Appeals,* G.R. No. 121413, January 29, 2001, 350 SCRA 446.

Petitioner's argument is flawed.

The provisions of the Negotiable Instruments Law and underlying jurisprudential teachings on the black-letter law provide definitive justification for petitioner's *full* liability on the value of the check.

To be sure, a collecting bank, Asianbank in this case, where a check is deposited and which indorses the check upon presentment with the drawee bank, is an indorser.[31] This is because in indorsing a check to the drawee bank, a collecting bank stamps the back of the check with the phrase "all prior endorsements and/or lack of endorsement guaranteed"[32] and, for all intents and purposes, treats the check as a negotiable instrument, hence, assumes the warranty of an indorser.[33] Without Asianbank's warranty, the drawee bank (China Bank in this case) would not have paid the value of the subject check.

Petitioner, as the collecting bank or last indorser, generally suffers the loss because it has the duty to ascertain the genuineness of all prior indorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of prior indorsements.[34]

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[31] *Associated Bank v. Court of Appeals*, 322 Phil. 677, 697 (1996).

[32] Section 17 of the Philippine Clearing House Corporation Rules states that: "BANK GUARANTEE. All checks cleared through the PCHC shall bear the guarantee affixed thereto by the Presenting Bank/Branch which shall read as follows: 'Cleared thru the Philippine Clearing House Corporation. All prior endorsements and/or lack of endorsement guaranteed.'"

[33] *Banco de Oro v. Equitable Banking Corp*., 241 Phil. 187, 196-197 (1988).

[34] Sections 65 and 66 of the Negotiable Instruments Law state that:

Sec. 65. — Every person negotiating an instrument by delivery or by a qualified indorsement warrants:

(a) That the instrument is genuine and in all respects what it purports to be;
(b) That he has good title to it;
(c) That all prior parties had capacity to contract;
(d) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

Accordingly, one who credits the proceeds of a check to the account of the indorsing payee is liable in conversion to the non-indorsing payee for the *entire* amount of the check.[35]

It bears noting that in petitioner's cross-claim against Bitanga, the trial court ordered Bitanga to return to petitioner the entire value of the check — ₱224,500.00 — with interest as well as damages and cost of suit. Petitioner never questioned this aspect of the trial court's disposition, yet it now prays for the modification of its liability to BA Finance to only one-half of said amount. To pander to petitioner's supplication would certainly amount to unjust enrichment at BA Finance's expense. Petitioner's remedy — which is the reimbursement for the *full* amount of the check from the perpetrator of the irregularity — lies with Bitanga.

Articles 1207 and 1208 of the Civil Code cannot be applied to the present case as these are completely irrelevant. The drawer, Malayan Insurance in this case, issued the check to answer for an underlying contractual obligation (payment of insurance proceeds). The obligation is merely reflected in the instrument

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But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision (c) of this section do not apply to a person negotiating public or corporation securities other than bills and notes.

Sec. 66. Liability of general indorser. — Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

(a) The matters and things mentioned in subdivisions (a), (b), and (c) of the next preceding section; and

(b) That the instrument is, at the time of his indorsement, valid and subsisting;

And in addition, he engages that, on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

[35] Vide *Peoples Nat. Bank v. American Fidelity Fire Ins. Co.*, 39 Md. App. 614, 386 A.2d 1254, 24 U.C.C. Rep. Serv. 362 (1978); *Middle States Leasing Corp. v. Manufacturers Hanover Trust Co.,* 62 A.D.2d 273, 404 N.Y.S.2d 846, 23 U.C.C. Rep. Serv. 1215 (1st Dep't 1978); Vide 11 Am Jur 2d, Bills and Notes, §225, at p. 557.

and whether the payees would jointly share in the proceeds or not is beside the point.

Moreover, granting petitioner's appeal for partial liability would run counter to the existing principles on the liabilities of parties on negotiable instruments, particularly on Section 68 of the *Negotiable Instruments Law* which instructs that joint payees who indorse are deemed to *indorse jointly and severally*.[36] Recall that when the maker dishonors the instrument, the holder thereof can turn to those secondarily liable — the indorser — for recovery.[37] And since the law explicitly mandates a solidary liability on the part of the joint payees who indorse the instrument, the holder thereof (assuming the check was further negotiated) can turn to either Bitanga or BA Finance for full recompense.

Respecting petitioner's challenge to the award by the appellate court of exemplary damages to BA Finance, the same fails. Contrary to petitioner's claim that no moral, temperate, liquidated or compensatory damages were awarded by the trial court,[38] the RTC did in fact award compensatory or actual damages of ₱224,500, the value of the check, plus interest thereon.

Petitioner argues, however, that assuming *arguendo* that compensatory damages had been awarded, the same contravened Article 2232 of the Civil Code which provides that in contracts or quasi-contracts, the court may award exemplary damages only if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. Since, so petitioner concludes, there was no finding that it acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner,[39] it is not liable for exemplary damages.

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[36] Sec. 68. *Order in which indorsers are liable.* — As respect one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that, as between or among themselves, they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

[37] Section 66 of the NIL, *supra* note 35.

[38] *Rollo*, pp. 46-47.

[39] *Id.* at 47.

The argument fails. To reiterate, petitioner's liability is based not on contract or quasi-contract but on *quasi-delict* since there is no pre-existing contractual relation between the parties.[40] Article 2231 of the Civil Code, which provides that in *quasi-delict*, exemplary damages may be granted if the defendant acted with gross negligence, thus applies. For "gross negligence" implies a want or absence of or failure to exercise even slight care or diligence, or the entire absence of care,[41] evincing a thoughtless disregard of consequences without exerting any effort to avoid them.[42]

> x x x The law allows the grant of exemplary damages to set an example for the public good. The business of a bank is affected with public interest; thus it makes a sworn profession of diligence and meticulousness in giving irreproachable service. For this reason, the bank should guard against in injury attributable to negligence or bad faith on its part. The award of *exemplary* damages is proper as a warning to [the petitioner] and all concerned not to recklessly disregard their obligation to exercise the highest and strictest diligence in serving their depositors.[43] (Italics and underscoring supplied)

As for the dismissal by the appellate court of petitioner's third-party complaint against Malayan Insurance, the same is well-taken. Petitioner based its third-party complaint on Malayan Insurance's alleged gross negligence in issuing the check payable to both BA Finance and Bitanga, despite the stipulation in the mortgage and in the insurance policy that liability for loss shall be payable to BA Finance.[44] Malayan Insurance countered, however, that it

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[40] Article 2176 of the Civil Code states: "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."

[41] *Acebedo Optical v. National Labor Relations Commission*, G.R. No. 150171, July 17, 2007, 527 SCRA 655, 675.

[42] *Ibid.*

[43] *BPI Family Bank v. Buenaventura,* G.R. No. 148196, September 30, 2005, 471 SCRA 431, 445.

[44] *Vide* records, p. 82; *rollo*, p. 50.

x x x paid the amount of ₱224,500 to 'BA Finance Corporation and Lamberto Bitanga' in compliance with the decision in the case of "*Lamberto Bitanga versus Malayan Insurance Co., Inc.*, Civil Case No. 88-2802, RTC-Makati Br. 132, and affirmed on appeal by the Supreme Court [3rd Division], G.R. no. 101964, April 8, 1992 x x x.[45] (underscoring supplied)

It is noted that Malayan Insurance, which stated that it was a matter of company policy to issue checks in the name of the insured and the financing company, presented a witness to rebut its supposed negligence.[46] Perforce, it thus wrote a *crossed* check with joint payees so as to serve warning that the check was issued for a definite purpose.[47] Petitioner never ever disputed these assertions.

The Court takes exception, however, to the appellate court's affirmance of the trial court's grant of legal interest of 12% per annum on the value of the check. For the obligation in this case did not arise out of a loan or forbearance of money, goods or credit. While Article 1980 of the Civil Code provides that:

> Fixed savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan,

said provision does not find application in this case since the nature of the relationship between BA Finance and petitioner is one of *agency* whereby petitioner, as collecting bank, is to collect for BA Finance the corresponding proceeds from the check.[48]

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[45] *Id.* at 100-101.

[46] Testimony of Michael Yap, Malayan Insurance's first vice president.

[47] Vide *Bataan Cigar and Cigarette Factory v. Court of Appeals*, G.R. No. 93048, March 3, 1994, 230 SCRA 643, 648-649, where the Court held that crossing of checks should put the holder on inquiry and upon him or her devolves the duty to ascertain the indorser's title to the check or the nature of his possession. Failing in this respect, the holder is declared guilty of gross negligence amounting to legal absence of good faith, contrary to Section 52 (c) of the Negotiable Instruments Law. (Underscoring supplied)

[48] *Jai Alai Corp. of the Phils. v. BPI*, G.R. No. L-29432, August 6, 1975, 66 SCRA 29, 34.

Not being a loan or forbearance of money, the interest should be 6% per annum computed from the date of extrajudicial damand on September 25, 1992 until finality of judgment; and 12% per annum from finality of judgment until payment, conformably with *Easter Shipping Lines, Inc. v. Court of Appeals*.[49]

WHEREFORE, the Decision of the Court of Appeals dated May 18, 2007 is *AFFIRMED* with *MODIFICATION* in that the rate of interest on the judgment of obligation of ₱224,500 should be 6% per annum, computed from the time of extrajudicial demand on September 25, 1992 until its full payment before finality of judgment; thereafter, if the amount adjudged remains unpaid, the interest rate shall be 12% per annum computed from the time the judgment becomes final and executory until fully satisfied.

Costs against petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 181174. December 4, 2009]

MA. CRISTINA TORRES BRAZA, PAOLO JOSEF T. BRAZA and JANELLE ANN T. BRAZA, *petitioners, vs.* **THE CITY CIVIL REGISTRAR OF HIMAMAYLAN CITY, NEGROS OCCIDENTAL, minor PATRICK ALVIN TITULAR BRAZA, represented by LEON TITULAR, CECILIA TITULAR and LUCILLE C. TITULAR,** *respondents.*

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

SYLLABUS

REMEDIAL LAW; SPECIAL PROCEEDINGS; CANCELLATION OR CORRECTION OF ENTRIES IN THE ORIGINAL REGISTRY; THE PROCEEDINGS CONTEMPLATED THEREIN MAY GENERALLY BE USED ONLY TO CORRECT CLERICAL, SPELLING, TYPOGRAPHICAL AND OTHER INNOCUOUS ERRORS. — Rule 108 of the Rules of Court *vis a vis* Article 412 of the Civil Code charts the procedure by which an entry in the civil registry may be cancelled or corrected. The proceeding contemplated therein may generally be used only to correct clerical, spelling, typographical and other innocuous errors in the civil registry. A clerical error is one which is visible to the eyes or obvious to the understanding; an error made by a clerk or a transcriber; a mistake in copying or writing, or a harmless change such as a correction of name that is clearly misspelled or of a misstatement of the occupation of the parent. Substantial or contentious alterations may be allowed only in adversarial proceedings, in which all interested parties are impleaded and due process is properly observed. x x x It is well to emphasize that, doctrinally, validity of marriages as well as legitimacy and filiation can be questioned only in a direct action seasonably filed by the proper party, and not through collateral attack such as the petition filed before the court *a quo*.

APPEARANCES OF COUNSEL

Masculino Ariño Abanil and Valencia Law Office for petitioners.

Jerry P. Basiao for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner Ma. Cristina Torres (Ma. Cristina) and Pablo Sicad Braza, Jr. (Pablo), also known as "Pablito Sicad Braza," were married[1] on January 4, 1978. The union bore Ma. Cristina's

[1] Marriage Contract, records, p. 8.

co-petitioners Paolo Josef[2] and Janelle Ann[3] on May 8, 1978 and June 7, 1983, respectively, and Gian Carlo[4] on June 4, 1980.

Pablo died[5] on April 15, 2002 in a vehicular accident in Bandung, West Java, Indonesia.

During the wake following the repatriation of his remains to the Philippines, respondent Lucille Titular (Lucille) began introducing her co-respondent minor Patrick Alvin Titular Braza (Patrick) as her and Pablo's son. Ma. Cristina thereupon made inquiries in the course of which she obtained Patrick's birth certificate[6] from the Local Civil Registrar of Himamaylan City, Negros Occidental with the following entries:

> Name of Child: PATRICK ALVIN CELESTIAL TITULAR
> Date of Birth: 01 January 1996
> Mother: Lucille Celestial Titular
> Father: Pablito S. Braza
> Date Received at the
> Local Civil Registrar: January 13, 1997
> Annotation: "Late Registration"
> Annotation/Remarks: **"Acknowledge (sic) by the father Pablito Braza on January 13, 1997"**
> Remarks: **Legitimated by virtue of subsequent marriage of parents on April 22, 1998 at Manila**. Henceforth, the child shall be known as **Patrick Alvin Titular Braza** (Emphasis and underscoring supplied)

Ma. Cristina likewise obtained a copy[7] of a marriage contract showing that Pablo and Lucille were married on April 22, 1998, drawing her and her co-petitioners to file on December 23,

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[2] Certificate of Live Birth, *id.* at 9.

[3] *Id.* at 10.

[4] *Id.* at 11.

[5] Report of Death, *id.* at14-15.

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

[7] Certificate of Marriage, *id.* at 19-20.

2005 before the Regional Trial Court of Himamaylan City, Negros Occidental a petition[8] to correct the entries in the birth record of Patrick in the Local Civil Register.

Contending that Patrick could not have been legitimated by the supposed marriage between Lucille and Pablo, said marriage being bigamous on account of the valid and subsisting marriage between Ma. Cristina and Pablo, petitioners prayed for (1) the *correction of the entries* in Patrick's birth record with respect to his legitimation, the name of the father and his acknowledgment, and the use of the last name "Braza"; 2) a directive to Leon, Cecilia and Lucille, all surnamed Titular, as guardians of the minor Patrick, to *submit Parick to DNA testing* to determine his paternity and filiation; and 3) the declaration of nullity of the legitimation of Patrick as stated in his birth certificate and, for this purpose, the *declaration of the marriage of Lucille and Pablo as bigamous*.

On Patrick's Motion to Dismiss for Lack of Jurisdiction, the trial court, by Order[9] of September 6, 2007, dismissed the petition without prejudice, it holding that in a special proceeding for correction of entry, the court, which is not acting as a family court under the Family Code, has no jurisdiction over an action to annul the marriage of Lucille and Pablo, impugn the legitimacy of Patrick, and order Patrick to be subjected to a DNA test, hence, the controversy should be ventilated in an ordinary adversarial action.

Petitioners' motion for reconsideration having been denied by Order[10] of November 29, 2007, they filed the present petition for review.

Petitioners maintain that the court *a quo* may pass upon the validity of marriage and questions on legitimacy even in an action to correct entries in the civil registrar. Citing *Cariño v. Cariño,*[11]

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[8] *Id.* at 1-7.

[9] Penned by Presiding Judge Nilo M. Sarsaba; *id.* at 93-101.

[10] Penned by Presiding Judge Nilo M. Sarsaba; *id.* at 122-123.

[11] G.R. No. 132529, February 2, 2001, 351 SCRA 127.

Lee v. Court of Appeals[12] and *Republic v. Kho*,[13] they contend that even substantial errors, such as those sought to be corrected in the present case, can be the subject of a petition under Rule 108.[14]

The petition fails. In a special proceeding for correction of entry under Rule 108 (Cancellation or Correction of Entries in the Original Registry), the trial court has no jurisdiction to nullify marriages and rule on legitimacy and filiation.

Rule 108 of the Rules of Court *vis a vis* Article 412 of the Civil Code[15] charts the procedure by which an entry in the civil registry may be cancelled or corrected. The proceeding contemplated therein may generally be used only to correct clerical, spelling, typographical and other innocuous errors in the civil registry. A clerical error is one which is visible to the eyes or obvious to the understanding; an error made by a clerk or a transcriber; a mistake in copying or writing, or a harmless change such as a correction of name that is clearly misspelled or of a misstatement of the occupation of the parent. Substantial or contentious alterations may be allowed only in adversarial proceedings, in which all interested parties are impleaded and due process is properly observed.[16]

The allegations of the petition filed before the trial court clearly show that petitioners seek to nullify the marriage between

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[12] G.R. No. 118387, October 11, 2001, 367 SCRA 110.

[13] G.R. No. 170340, June 29, 2007, 526 SCRA 177.

[14] SEC. 2. *Entries subject to cancellation or correction*. — Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) change of name.

[15] Art. 412 of the Civil Code. No entry in a civil registrar shall be changed or corrected without a judgment order.

[16] *Republic v. Benemerito*, G.R. No. 146963. March 15, 2004, 425 SCRA 488.

Pablo and Lucille on the ground that it is bigamous and impugn Patrick's filiation in connection with which they ask the court to order Patrick to be subjected to a DNA test.

Petitioners insist, however, that the main cause of action is for the correction of Patrick's birth records[17] and that the rest of the prayers are merely incidental thereto.

Petitioners' position does not lie. Their cause of action is actually to seek the declaration of Pablo and Lucille's marriage as void for being bigamous and impugn Patrick's legitimacy, which causes of action are governed not by Rule 108 but by A.M. No. 02-11-10-SC which took effect on March 15, 2003, and Art. 171[18] of the Family Code, respectively, hence, the petition should be filed in a Family Court as expressly provided in said Code.

It is well to emphasize that, doctrinally, validity of marriages as well as legitimacy and filiation can be questioned only in a direct action seasonably filed by the proper party, and not through collateral attack such as the petition filed before the court *a quo*.

Petitioners' reliance on the cases they cited is misplaced.

Cariño v. Cariño was an action filed by a second wife against the first wife for the return of one-half of the death benefits received by the first after the death of the husband. Since the second wife contracted marriage with the husband while the latter's marriage to the first wife was still subsisting, the Court ruled on the validity of the two marriages, it being essential to the determination of who is rightfully entitled to the death benefits.

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[17] See p. 11 of petition, *rollo*, p. 21.

[18] Art. 171.

"The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

"(1) If the husband should die before the expiration of the period fixed for bringing this action;

"(2) If he should die after the filing of the complaint, without having desisted therefrom; or

"(3) If the child was born after the death of the husband."

In *Lee v. Court of Appeals*, the Court held that contrary to the contention that the petitions filed by the therein petitioners before the lower courts were actions to impugn legitimacy, the prayer was not to declare that the petitioners are illegitimate children of Keh Shiok Cheng as stated in their records of birth but to establish that they are not the latter's children, hence, there was nothing to impugn as there was no blood relation at all between the petitioners and Keh Shiok Cheng. That is why the Court ordered the cancellation of the name of Keh Shiok Cheng as the petitioners' mother and the substitution thereof with "Tiu Chuan" who is their biological mother. Thus, the collateral attack was allowed and the petition deemed as adversarial proceeding contemplated under Rule 108.

In *Republic v. Kho*, it was the petitioners themselves who sought the correction of the entries in their respective birth records to reflect that they were illegitimate and that their citizenship is "Filipino," not Chinese, because their parents were never legally married. Again, considering that the changes sought to be made were substantial and not merely innocuous, the Court, finding the proceedings under Rule 108 to be adversarial in nature, upheld the lower court's grant of the petition.

It is thus clear that the facts in the above-cited cases are vastly different from those obtaining in the present case.

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 181455-56. December 4, 2009]

SANTIAGO CUA, JR., SOLOMON S. CUA and EXEQUIEL D. ROBLES, in their capacity as Directors of PHILIPPINE RACING CLUB, INC., *petitioners, vs.* **MIGUEL OCAMPO TAN, JEMIE U. TAN and ATTY. BRIGIDO J. DULAY,** *respondents.*

[G.R. No. 182008. December 4, 2009]

SANTIAGO CUA, SR., in his capacity as Director of PHILIPPINE RACING CLUB, INC., *petitioners, vs.* **COURT OF APPEALS, MIGUEL OCAMPO TAN, JEMIE U. TAN, ATTY. BRIGIDO J. DULAY, and HON. CESAR UNTALAN, Presiding Judge, Makati Regional Trial Court, Br. 149,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING; DEFINED AND CONSTRUED. —** Forum shopping is the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. It is an act of malpractice and is prohibited and condemned as trifling with courts and abusing their processes. In determining whether or not there is forum shopping, what is important is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative bodies to rule on the same or related causes and/or grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different bodies upon the same issues. Forum shopping is present when, in two or more cases pending, there is identity of (1) parties (2) rights or causes of action and reliefs prayed for, and (3) the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

2. **ID.; ID.; ID.; PARTIES; INDISPENSABLE PARTY; DEFINED AND CONSTRUED. —** Under Rule 3, Section 7 of the Rules of Court, an indispensable party is a party-in-interest, without whom there can be no final determination of an action. The interests of such indispensable party in the subject matter of the suit and the relief are so bound with those of the other parties that his legal presence as a party to the proceeding is an absolute necessity. As a rule, an indispensable party's interest in the subject matter is such that a complete and efficient determination of the equities and rights of the parties is not possible if he is not joined.

3. **ID.; APPEALS; PETITION FOR *CERTIORARI*; DISTINGUISHED FROM SPECIAL CIVIL ACTION FOR *CERTIORARI*; APPLICATION IN CASE AT BAR. —** The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45, which is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45. Accordingly, when a party adopts an improper remedy, as in this case, his Petition may be dismissed outright. However, in the interest of substantial justice, the strict application of procedural technicalities should not hinder the speedy disposition of this case on the merits. Thus, while the instant Petition is one for *certiorari* under Rule 65 of the Rules of Court, the assigned errors are more properly addressed in a petition for review under Rule 45.

4. **COMMERCIAL LAW; CORPORATION CODE; BOARD OF DIRECTORS; POWERS AND FUNCTIONS; CLARIFIED.** — A corporation, such as PRCI, is but an association of individuals, allowed to transact under an assumed corporate name, and with a distinct legal personality. In organizing itself as a collective body, it waives no constitutional immunities and perquisites appropriate to such body. As to its corporate

and management decisions, therefore, the State will generally not interfere with the same. Questions of policy and of management are left to the honest decision of the officers and directors of a corporation, and the courts are without authority to substitute their judgment for the judgment of the board of directors. The board is the business manager of the corporation, and so long as it acts in good faith, its orders are not reviewable by the courts. The governing body of a corporation is its board of directors. Section 23 of the Corporation Code provides that "[u]nless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees x x x." The concentration in the board of the powers of control of corporate business and of appointment of corporate officers and managers is necessary for efficiency in any large organization. Stockholders are too numerous, scattered and unfamiliar with the business of a corporation to conduct its business directly. And so the plan of corporate organization is for the stockholders to choose the directors who shall control and supervise the conduct of corporate business.

5. **ID.; ID.; ID.; ID.; EXTENT OF POWERS, DISCUSSED. —** The following discourse on the corporate powers of the board of directors under Section 23 of the Corporation Code establishes the extent thereof: Under the above provision, it is quite clear that, except in the instances where the Code expressly grants a specific power to the stockholders or member, the board has the sole power and responsibility to decide whether a corporation should sue, purchase and sell property, enter into any contract, or perform any act. Stockholders' or members' resolutions dealing with matters other than the exceptions are not legally effective nor binding on the board, and may be treated by it as merely advisory, or may even be completely disregarded. Since the law has vested the responsibility of managing the corporate affairs on the board, the stockholders must abide by its decisions. If they do not agree with the policies of the board, their remedy is to wait for the next election of the directors and choose new ones to take their place. The theory of the law is that although stockholders are to have all the profit, the complete management of the enterprise shall be with the board. The board of directors of a corporation is a creation of the stockholders. The board

of directors, or the majority thereof, controls and directs the affairs of the corporation; but in drawing to itself the power of the corporation, it occupies a position of trusteeship in relation to the minority of the stock. The board shall exercise good faith, care, and diligence in the administration of the affairs of the corporation, and protect not only the interest of the majority but also that of the minority of the stock. Where the majority of the board of directors wastes or dissipates the funds of the corporation or fraudulently disposes of its properties, or performs *ultra vires* acts, the court, in the exercise of its equity jurisdiction, and upon showing that intracorporate remedy is unavailing, will entertain a suit filed by the minority members of the board of directors, for and in behalf of the corporation, to prevent waste and dissipation and the commission of illegal acts and otherwise redress the injuries of the minority stockholders against the wrongdoing of the majority. The action in such a case is said to be brought derivatively in behalf of the corporation to protect the rights of the minority stockholders thereof.

6. **ID.; ID.; ID.; ID.; WHEN MAY A STOCKHOLDER INSTITUTE A SUIT IN BEHALF OF HIMSELF AND OTHER STOCKHOLDERS AND FOR THE BENEFIT OF THE CORPORATION. —** It is well settled in this jurisdiction that where corporate directors are guilty of a breach of trust — not of mere error of judgment or abuse of discretion — and intracorporate remedy is futile or useless, a stockholder may institute a suit in behalf of himself and other stockholders and for the benefit of the corporation, to bring about a redress of the wrong inflicted directly upon the corporation and indirectly upon the stockholders.

7. **ID.; ID.; ID.; ID.; DERIVATIVE SUIT; DISTINGUISHED FROM INDIVIDUAL AND REPRESENTATIVE OR CLASS SUITS. —** A derivative suit must be differentiated from individual and representative or class suits, thus: Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits. Where a stockholder or member is denied the right of inspection, his suit would be **individual** because the wrong is done to him personally and not to the other stockholders or the corporation. Where the wrong is done to a group of stockholders, as where

preferred stockholders' rights are violated, a **class or representative suit** will be proper for the protection of all stockholders belonging to the same group. But where the acts complained of constitute a wrong to the corporation itself, the cause of action belongs to the corporation and not to the individual stockholder or member. Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer. Otherwise, not only would the theory of separate entity be violated, but there would be multiplicity of suits as well as a violation of the priority rights of creditors. Furthermore, there is the difficulty of determining the amount of damages that should be paid to each individual stockholder. However, in cases of mismanagement where the wrongful acts are committed by the directors or trustees themselves, a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue, and they will never be willing to sue themselves. The corporation would thus be helpless to seek remedy. Because of the frequent occurrence of such a situation, the common law gradually recognized the right of a stockholder to sue on behalf of a corporation in what eventually became known as a "**derivative suit**." It has been proven to be an effective remedy of the minority against the abuses of management. Thus, an individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party in interest. x x x Indeed, the Court notes American jurisprudence to the effect that a derivative suit, on one hand, and individual and class suits, on the other, are mutually exclusive, *viz*: As the Supreme Court has explained: "A shareholder's derivative suit seeks to recover for the benefit of the corporation and its whole body of shareholders when injury is caused to the corporation that may not otherwise be redressed because of failure of the corporation to act. Thus, 'the action is derivative, *i.e.*, in the corporate right,

if the gravamen of the complaint is injury to the corporation, or to the whole body of its stock and property without any severance or distribution among individual holders, or it seeks to recover assets for the corporation or to prevent the dissipation of its assets.' In contrast, "a *direct* action [is one] filed by the shareholder individually (or on behalf of a *class* of shareholders to which he or she belongs) for injury to his or her interest as a *shareholder*. . . . [¶] . . . **[T]he two actions are mutually exclusive: *i.e.*, the right of action and recovery belongs to either the *shareholders* (direct action)** *651 **or the *corporation* (derivative action)."** Thus, in *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 84 Cal.Rptr.2d 753, the **289 minority shareholder alleged that the other shareholder of the corporation negligently managed the business, resulting in its total failure. The appellate court concluded that the plaintiff could not maintain the suit as a direct action: "Because the gravamen of the complaint is injury to the whole body of its stockholders, it was for the corporation to institute and maintain a remedial action. A derivative action would have been appropriate if its responsible officials had refused or failed to act." The court went on to note that the damages shown at trial were the loss of corporate profits. Since "[s]hareholders own neither the property nor the earnings of the corporation," any damages that the plaintiff alleged that resulted from such loss of corporate profits "were incidental to the injury to the corporation."

8. **ID.; ID.; ID.; ID.; ID.; WHEN PROPER; REQUIREMENTS. —** The Court has recognized that a stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties. In effect, the suit is an action for specific performance of an obligation, owed by the corporation to the stockholders, to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to adopt suitable measures for its protection. The basis of a stockholder's suit is always one of equity. **However, it cannot prosper without first complying with the legal requisites for its institution.** Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies (IRPICC) lays

down the following requirements which a stockholder must comply with in filing a derivative suit: Sec. 1. *Derivative action.* — A stockholder or member may bring an action in the name of a corporation or association, as the case may be, provided, that: (1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed; (2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires; **(3) No appraisal rights are available for the act or acts complained of;** and (4) The suit is not a nuisance or harassment suit.

9. **ID.; ID.; STOCKHOLDERS; APPRAISAL RIGHTS; PROHIBITION AGAINST NUISANCE AND HARASSMENT SUITS; REQUIREMENTS. —** The import of establishing the availability or unavailability of appraisal rights to the minority stockholder is further highlighted by the fact that it is one of the factors in determining whether or not a complaint involving an intra-corporate controversy is a nuisance and harassment suit. Section 1(b), Rule 1 of IRPICC provides: (b) *Prohibition against nuisance and harassment suits.* — Nuisance and harassment suits are prohibited. In determining whether a suit is a nuisance or harassment suit, the court shall consider, among others, the following: (1) The extent of the shareholding or interest of the initiating stockholder or member; (2) Subject matter of the suit; (3) Legal and factual basis of the complaint; **(4) Availability of appraisal rights for the act or acts complained of;** and (5) Prejudice or damage to the corporation, partnership, or association in relation to the relief sought. In case of nuisance or harassment suits, the court may, *motu proprio* or upon motion, forthwith dismiss the case. The availability or unavailability of appraisal rights should be objectively based on the subject matter of the complaint, *i.e.*, the specific act or acts performed by the board of directors, without regard to the subjective conclusion of the minority stockholder instituting the derivative suit that such act constituted mismanagement, misrepresentation, fraud, or bad faith.

10. **ID.; ID.; ID.; ID.; DEFINED AND CONSTRUED. —** The *raison d'etre* for the grant of appraisal rights to minority stockholders has been explained thus: x x x [Appraisal right] means that a

stockholder who dissented and voted against the proposed corporate action, may choose to get out of the corporation by demanding payment of the fair market value of his shares. When a person invests in the stocks of a corporation, he subjects his investment to all the risks of the business and cannot just pull out such investment should the business not come out as he expected. He will have to wait until the corporation is finally dissolved before he can get back his investment, and even then, only if sufficient assets are left after paying all corporate creditors. His only way out before dissolution is to sell his shares should he find a willing buyer. If there is no buyer, then he has no recourse but to stay with the corporation. **However, in certain specified instances, the Code grants the stockholder the right to get out of the corporation even before its dissolution because there has been a major change in his contract of investment with which he does not agree and which the law presumes he did not foresee when he bought his shares. Since the will of two-thirds of the stocks will have to prevail over his objections, the law considers it only fair to allow him to get back his investment and withdraw from the corporation.** x x x

11. ID.; ID.; ID.; ID.; INSTANCES WHEN AVAILABLE. — The Corporation Code expressly made appraisal rights available to the dissenting stockholder in the following instances: Sec. 42. *Power to invest corporate funds in another corporation or business or for any other purpose.* — Subject to the provisions of this Code, a private corporation may invest its funds in any other corporation or business or for any purpose other than the primary purpose for which it was organized when approved by a majority of the board of directors or trustees and ratified by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or by at least two-thirds (2/3) of the members in case of non-stock corporations, at a stockholders' or members' meeting duly called for the purpose. Written notice of the proposed investment and the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally; *Provided*, **That any dissenting stockholder shall have appraisal right** as provided in this Code: *Provided, however*, That where the investment by the corporation is reasonably necessary to

accomplish its primary purpose as stated in the articles of incorporation, the approval of the stockholders or members shall not be necessary. Sec. 81. *Instances of appraisal right.* — Any stockholder of a corporation shall have the **right to dissent and demand payment of the fair value of his shares** in the following instances: 1. In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholders or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence; 2. In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in this Code; and 3. In case of merger or consolidation.

12. **ID.; ID.; ID.; RIGHT TO INSPECT CORPORATE BOOKS AND RECORDS; REQUIREMENTS TO BE STATED IN THE COMPLAINT. —** Rule 7 of the IRPICC shall apply to disputes exclusively involving the rights of stockholders or members to inspect the books and records and/or to be furnished with the financial statements of a corporation, under Sections 74 and 75 of the Corporation Code. Rule 7, Section 2 of IRPICC enumerates the requirements particular to a complaint for inspection of corporate books and records: Sec. 2. *Complaint.* — In addition to the requirements in Section 4, Rule 2 of these Rules, the complaint must state the following: (1) The case is for the enforcement of plaintiff's right of inspection of corporate orders or records and/or to be furnished with financial statements under Sections 74 and 75 of the Corporation Code of the Philippines; **(2) A demand for inspection and copying of books and records and/or to be furnished with financial statements made by the plaintiff upon defendant;** (3) The refusal of defendant to grant the demands of the plaintiff and the reasons given for such refusals, if any; and (4) The reasons why the refusal of defendant to grant the demands of the plaintiff is unjustified and illegal, stating the law and jurisprudence in support thereof.

13. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PARTIES; INDISPENSABLE PARTY; THE REAL PARTY IN INTEREST IN A DERIVATIVE SUIT IS THE CORPORATION; SUSTAINED. —** In *Chua v. Court of Appeals*, the Court stresses that the corporation is the real

party in interest in a derivative suit, and the suing stockholder is only a nominal party: An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stocks in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold the control of the corporation. In such actions, **the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest.** x x x For a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that **he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit.** It is a condition *sine qua non* that the corporation be impleaded as a party because not only is the corporation an indispensable party, but it is also the present rule that it must be served with process. The judgment must be made binding upon the corporation in order that the corporation may get the benefit of the suit and **may not bring subsequent suit against the same defendants for the same cause of action.** In other words, the corporation must be joined as party because **it is its cause of action that is being litigated and because judgment must be a *res adjudicata* against it.** The more extensive discussion by the Court of the nature of a derivative suit in *Asset Privatization Trust v. Court of Appeals* is presented below: Settled is the doctrine that in a derivative suit, the corporation is the real party in interest while the stockholder filing suit for the corporation's behalf is only a nominal party. The corporation should be included as a party in the suit. An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest. x x x. It is a condition *sine qua non* that the corporation be impleaded as a party because — x x x. Not only is the corporation an indispensable party, but it is also the present rule that it must be served with process. The reason given is that the judgment must be made binding upon the corporation and in order that the corporation may get the benefit of the suit and may not bring a subsequent suit

against the same defendants for the same cause of action. In other words the corporations must be joined as party because it is its cause of action that is being litigated and because judgment must be a *res ajudicata* against it. The reasons given **for not allowing direct individual suit** are: (1) x x x "the universally recognized doctrine that a stockholder in a corporation has **no title legal or equitable to the corporate property;** that both of these are in the corporation itself for the benefit of the stockholders." In other words, **to allow shareholders to sue separately would conflict with the separate corporate entity principle;** (2) x x x that the prior rights of the creditors may be prejudiced. Thus, our Supreme Court held in the case of *Evangelista v. Santos*, that "the stockholders may not directly claim those damages for themselves for that would result in the appropriation by, and the distribution among them of part of the corporate assets before the dissolution of the corporation and the liquidation of its debts and liabilities, something which cannot be legally done in view of Section 16 of the Corporation Law x x x;" (3) the filing of such suits would conflict with the duty of the management to sue for the protection of all concerned; (4) it would **produce wasteful multiplicity of suits;** and (5) it would involve confusion in ascertaining the effect of partial recovery by an individual on the damages recoverable by the corporation for the same act. As established in the foregoing jurisprudence, in a derivative suit, it is the corporation that is the indispensable party, while the suing stockholder is just a nominal party. Under Rule 7, Section 3 of the Rules of Court, an indispensable party is a party-in-interest, without whom no final determination can be had of an action without that party being impleaded. Indispensable parties are those with such an interest in the controversy that a final decree would necessarily affect their rights, so that the court cannot proceed without their presence. "Interest," within the meaning of this rule, should be material, directly in issue, and to be affected by the decree, as distinguished from a mere incidental interest in the question involved. On the other hand, a nominal or *pro forma* party is one who is joined as a plaintiff or defendant, not because such party has any real interest in the subject matter or because any relief is demanded, but merely because the technical rules of pleadings require the presence of such party on the record.

14. ID.; ID.; ID.; ID.; ID.; ID.; EFFECT OF FILING TWO DERIVATIVE SUITS ARISING FROM THE SAME FACTUAL BACKGROUND, EXPLAINED. — With the corporation as the real party-in-interest and the indispensable party, any ruling in one of the derivative suits should already bind the corporation as *res judicata* in the other. Allowing two different minority stockholders to institute separate derivative suits arising from the same factual background, alleging the same causes of action, and praying for the same reliefs, is tantamount to allowing the corporation, the real party-in-interest, to file the same suit twice, resulting in the violation of the rules against a multiplicity of suits and even forum-shopping. It is also in disregard of the separate-corporate-entity principle, because it is to look beyond the corporation and to give recognition to the different identities of the stockholders instituting the derivative suits.

APPEARANCES OF COUNSEL

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Dulay Pagunsan & Ty Law Offices for Miguel Ocampo Tan, *et al.*

Saguisag Carao, & Associates for Aris Prime Resources, Inc.

D E C I S I O N

CHICO-NAZARIO, *J*.:

Before this Court are two Petitions: (1) a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioners Santiago Cua, Jr. (Santiago Jr.), Solomon S. Cua (Solomon), and Exequiel D. Robles (Robles), in their capacity as directors of the Philippine Racing Club, Inc. (PRCI), with Miguel Ocampo Tan (Miguel), Jemie U. Tan (Jemie) and Atty. Brigido J. Dulay (Dulay) as respondents, docketed as G.R. No.

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[1] *Rollo* of G.R. Nos. 181455-56, pp. 45-115.

181455-56; and (2) a Petition for *Certiorari* and Prohibition[2] under Rule 65 of the Rules of Court filed by petitioner Santiago Cua, Sr. (Santiago Sr.), also in his capacity as PRCI director, likewise naming Miguel, Jemie, and Dulay as respondents, together with the Court of Appeals and Presiding Judge Cesar Untalan (Judge Untalan) of the Regional Trial Court (RTC), Branch 149 of Makati City, docketed as G.R. No. 182008.

Both Petitions assail the Decision[3] dated 6 September 2007 and Resolution[4] dated 22 January 2008 of the Court of Appeals in the consolidated cases CA-G.R. SP No. 99769 and No. 99780. In its 6 September 2007 Decision, the Court of Appeals dismissed for lack of merit, mootness, and prematurity, the Petition for *Certiorari* of petitioners Santiago Jr., Solomon, and Robles (Santiago Jr., *et al.*); and the Petition for *Certiorari* and Prohibition of petitioner Santiago Sr., which sought the nullification of the Resolution[5] dated 16 July 2007 of the RTC in Civil Case No. 07-610 granting the Temporary Restraining Order (TRO) prayed for by respondents Miguel, Jemie, and Dulay (Miguel, *et al.*). In its 22 January 2008 Resolution, the appellate court denied the Motions for Reconsideration of petitioners and the Motion to Admit Supplemental Petition for *Certiorari* of petitioner Santiago Jr., *et al*. The same Resolution did not consider the Supplemental Petition for *Certiorari* and Prohibition filed by petitioner Santiago Sr. for the latter's failure to seek leave of court for its filing and admittance. Petitioners would have wanted to challenge in their Supplemental Petitions the Resolution[6] dated

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[2] *Rollo* of G.R. No. 182008, pp. 3-94.

[3] Penned by Associate Justice Noel G. Tijam, with Associate Justices Martin S. Villarama, Jr. and Sesinando E. Villon, concurring, *rollo* of G.R. Nos. 181455-56, pp. 20-42; *rollo* of G.R. No. 182008, pp. 95-116.

[4] Penned by Associate Justice Noel G. Tijam, with Associate Justices Martin S. Villarama, Jr. and Sesinando E. Villon, concurring, *rollo* of G.R. Nos. 181455-56, pp. 11-19; *rollo* of G.R. No. 182008, pp. 118-126.

[5] Penned by Presiding Judge Cesar O. Untalan, *rollo* of G.R. Nos. 181455-56, pp. 216-223; *rollo* of G.R. No. 182008, pp. 159-166.

[6] Penned by Presiding Judge Cesar O. Untalan, *rollo* of G.R. Nos. 181455-56, pp. 482-486; *rollo* of G.R. No. 182008, pp. 318-322.

8 October 2007 of the RTC in Civil Case No. 07-610 granting the issuance of a "permanent injunction" against petitioners and the other PRCI directors until the said case was resolved.

I
FACTUAL AND PROCEDURAL ANTECEDENTS

PRCI is a corporation organized and established under Philippine laws to: (1) carry on the business of a race course in all its branches and, in particular, to conduct horse races or races of any kind, to accept bets on the results of the races, and to construct grand or other stands, booths, stablings, paddocks, clubhouses, refreshment rooms and other erections, buildings, and conveniences, and to conduct, hold and promote race meetings and other shows and exhibitions; and (2) promote the breeding of better horses in the Philippines, lend all possible aid in the development of sports, and uphold the principles of good sportsmanship and fair play.[7] To pursue its avowed purposes, PRCI holds a franchise granted under Republic Act No. 6632, as amended by Republic Act No. 7953, to operate a horse racetrack and manage betting stations. Under its franchise, PRCI may operate only one racetrack.

In 1999, the Articles of Incorporation of PRCI was amended to include a secondary purpose, *viz*:

> To acquire real properties and/or develop real properties into mix-use realty projects including but not limited to leisure, recreational and memorial parks and to own, operate, manage and/or sell these real estate projects.[8]

PRCI is publicly listed with the Philippine Stock Exchange (PSE). In 2006, PRCI had an authorized capital stock of ₱1,000,000,000.00 divided into 1,000,000,000 shares, with a par value of ₱1.00 each; of which a total of ₱569,857,749.00, representing 569,857,749 shares, had been subscribed and paid up.[9]

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[7] *Rollo* of G.R. Nos. 181455-56, p. 166; *rollo* of G.R. No. 182008, p. 199.

[8] *Rollo* of G.R. No. 182008, p. 445.

[9] Of the subscribed and paid-up capital of PRCI, ₱335,817,485.00 (335,817,485 shares) is owned by Filipinos and ₱234,040,264.00 (234,040,264

PRCI owns only two real properties, each covered by several transfer certificates of title. One is known as the Sta. Ana Racetrack, located along A. P. Reyes Avenue, Makati City (Makati property), measuring around 21.2 hectares; and the other is located in the towns of Naic and Tanza in the province of Cavite (Cavite property).

Following the trend in the development of properties in the same area,[10] PRCI wished to convert its Makati property from a racetrack to urban residential and commercial use. Given the location and size of its Makati property, PRCI believed that said property was severely under-utilized. Hence, PRCI management decided to transfer its racetrack from Makati to Cavite. PRCI began developing its Cavite property as a racetrack, scheduled to be completed by April 2008.

Now as to its Makati property, PRCI management decided that it was best to spin off the management and development of the same to a wholly owned subsidiary, so that PRCI could continue to focus its efforts on pursuing its core business competence of horse racing. Instead of organizing and establishing a new corporation for the said purpose, PRCI management opted to acquire another domestic corporation, JTH Davies Holdings, Inc. (JTH).[11]

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shares) is owned by foreigners. (*rollo* of G.R. Nos. 181455-56, p. 175; *rollo* of G.R. No. 182008, p. 207).

[10] Such as the old Rockwell Power Plant and the former campus of the International School of Manila.

[11] JTH was formerly engaged in a range of activities such as the distribution of agri-chemical products, construction supplies and middle income housing through former wholly owned units, subsidiaries and affiliates. After undergoing an internal reorganization, the company amended its primary purpose in October 2004 from wholesale distribution to that of a holding company. [http://jthdavies.com/index.php?option=com_content&task=view&id=12&Itemid=26].

A *holding company* is a corporation that limits its business to the ownership of stock in and the supervision of management of, other corporations. It is organized specifically to hold the stock of other companies and ordinarily owns such a dominant interest in the other company or companies that it can dictate policy. [http://legal-dictionary.thefreedictionary.com/ Holding+ Company]. It has also been defined as a company that earns income from the payment

JTH was then owned by Jardine Matheson Europe B.V. (JME).[12] It had an authorized capital stock of ₱25,000,000.00, divided into 50,000,000 common shares with a par value of ₱0.50 each. JTH was publicly listed with the PSE. Its tangible assets substantially consisted of cash. To determine the value of JTH, PRCI engaged the services of the accounting firm Sycip Gorres Velayo & Co. (SGV) to conduct a due diligence study.[13]

Using the results of the SGV study, PRCI management determined that PRCI could initially acquire 41,928,290 shares, or 95.55% of the outstanding capital stock of JTH, for the price of ₱10.71 per share, or for a total of ₱449,250,000.00; in this case, PRCI would be paying a premium of ₱42,410,450.00 for the said JTH shares, computed as follows:

Total price for all of the issued and subscribed JTH shares (at ₱10.71/share)	₱ 470,418,848.00
Less: Unaudited net worth of JTH (purely cash)	- 426,010,000.00
Total premium for 100% of JTH	44,408,848.00
Multiply: Interest in JTH to be initially acquired by PRCI (95.5%)	x 0.955
Premium for the 95.5% interest in JTH to be acquired by PRCI	₱ 42,410,450.00

The PRCI Board of Directors held a meeting on 26 September 2006. Among the directors present were petitioners Santiago Sr., Santiago Jr., and Solomon, as well as respondent Dulay. After discussing and deliberating on the matter of the acquisition of JTH by PRCI, all the directors present, except respondent

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of dividends, rent or interest. The investment holding company does not produce goods or offer services itself, and instead acts as a holding company by owning shares of other companies. [http://www.businessdictionary.com/ definition/ investment-holding-company.html].

[12] A corporation organized and established according to the laws of the Netherlands. It is one of the principal subsidiaries of Jardine Matheson Holdings Limited, an international group of companies with operations mainly in Asia, centered around Hong Kong and China.[http://companies. jrank.org/pages/ 2216/Jardine- Matheson-Holdings-Limited.html]

[13] Involved the examination of books, records, documents, assets, liabilities, and equity of JTH.

Dulay, voted affirmatively to pass and approve the following resolutions:

1. Declaration of Intention to Acquire and Purchase Shares of Stock of Another Company —

RESOLVED, as it is hereby resolved, that the Corporation intends to acquire up to one hundred percent (100%) of the common shares of stock of JTH Davies Holdings, Inc. by way of negotiated sale;

RESOLVED FURTHER, That Management and the Corporate Secretary shall prepare and submit the Tender Offer, as well as, to file all the necessary disclosures and notices in compliance with the Securities Regulation Code, its implementing rules, and other prevailing regulations;

RESOLVED FURTHERMORE, That the Corporation authorizes its President, Mr. Solomon S. Cua, to sign and execute any purchase agreements, memoranda, and such other deeds, and to deliver any documents and papers, perform any acts, necessary and incidental to implement the foregoing, as well as to source the funds to implement the same.

2. Special Stockholders' Meeting —

RESOLVED, That a Special Stockholders' Meeting of PRCI shall be held on October 26, 2006 at 10:00 A.M., or at such later date as may be practicable under the circumstances, in the principal place of business of PRCI at Santa Ana Park, A.P. Reyes Avenue, Makati City;

RESOLVED FURTHER, That only those stockholders of record as of end of business day of October 11, 2006 shall be entitled to notice, to vote and/or to be voted upon, in accordance with the laws, regulations and by-laws of PRCI;

RESOLVED FURTHERMORE, That the Corporate Secretary shall be authorized to issue the required notices, set the time for the submission of, and to receive and validate proxies, as well as, to order publication of notices and undertake such appropriate and necessary steps, including the filing of the required disclosures to the regulating agencies, to effect the foregoing.

3. Authorized Attorney-In-Fact and Proxy —

In the event of a successful acquisition of the shares of JTH Davies Holdings, Inc., the Board passed and approved the following resolutions:

RESOLVED, that the Corporation shall hereby authorize **SANTIAGO CUA**, or in his absence, **EXEQUIEL ROBLES**, or in his absence, **SOLOMON S. CUA**, or in his absence, **SANTIAGO CUA, JR.**, or in his absence, **DATUK SURIN UPATKOON**, or in his absence, Laurence Lim Swee Lim, or in his absence, **LIM TEONG LEONG**, to act as its attorney-in-fact/proxy and to vote all shares as may be registered in the name of the Corporation/lodged with the PCD System, and to exercise all rights appurtenant thereto during the Annual Stockholders' Meeting/s and all regular/special meeting/s of JTH DAVIES HOLDINGS, INC. (formerly JARDINE DAVIES, INC.);

RESOLVED FURTHER, That these Directors, in the said order of priority, shall have full power and authority and discretion to nominate, appoint, and/or vote into office such directors and/or officers during the said Annual Stockholders' Meeting/s and regular/special meeting/s of JTH HOLDINGS, INC. (formerly JARDINE DAVIES, INC.);

RESOLVED FINALLY, That these Directors be, as they are hereby granted full power and authority whatsoever requisite or necessary or proper to be done in these matters.[14]

The next day, 27 September 2006, PRCI entered into a Sale and Purchase Agreement for the acquisition from JME of 41,928,290 common shares or 95.55% of the outstanding capital stock of JTH. Among the principal terms of the Sale and Purchase Agreement were:

(a) The consideration for the acquisition was ₱10.71 per share or ₱449,250,000.00;

(b) Upon the signing of the [A]greement, the [PRCI] shall pay ₱20 Million to an Escrow Agent as deposit; and

(c) The sale and purchase transaction contemplated in the Agreement shall be consummated at a closing not later than November 30, 2006 or the 50th day from the start of the JTH Offer or such date which shall in no case be later than December 11, 2006.[15]

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[14] *Rollo* of G.R. Nos. 181455-56, pp. 122-123; *rollo* of G.R. No. 182008, pp. 233-234.

[15] *Rollo* of G.R. Nos. 181455-56, pp. 56-57.

PRCI also made a tender offer for the remaining 4.45% or 1,954,883 issued and outstanding common shares of JTH at ₱10.71 each.

In the Special Stockholders' Meeting held on 7 November 2006, attended by stockholders with 481,045,887 shares or 84.42% of the outstanding capital stock of PRCI, the acquisition by PRCI of JTH was presented for approval. The events during said meeting were duly recorded in the Minutes, to wit:

V. APPROVAL OF THE ACQUISITION OF THE SHARES OF STOCK OF JTH DAVIES HOLDINGS, INC.

Thereafter, the Corporate Secretary informed that the President will present to the stockholders the rationale for the acquisition of the shares of JTH Davies Holdings, Inc.

According to the President PRCI is intending to acquire up to 100% of the shares of JTH Davies Holdings, Inc. another listed company in the PSE. For reference, the President informed that the latest Annual Report of JTH has been appended to the Information Statement for guidance. Also copies of the Board's resolution presented for approval and ratification by the stockholders has been posted in the room for convenient reading of the stockholders.

The President explained that JTH is one of the oldest holdings company and the name JTH Davies is an internationally acclaimed name with a reputation for solid and sound financial standing. With PRCI's acquisition of JTH, it gives PRCI the necessary vehicle within which to enlarge and broaden the business and operational alternatives or options of our company. PRCI believes that this JTH will complement the direction of PRCI in fast tracking the development of PRCI's plans and provide it investment opportunities. It is for this reason that we call this special meeting so you may know soonest the present opportunity faced by PRCI without need for you to wait until next year's annual meeting.

The Vice-Chairman then informed that the resolution approving the purchase of JTH Davies Holdings, Inc. as presented in the Information Statement which were furnished to the stockholders is presented for approval to the body. A stockholder thereafter moved that the the (sic) resolution be approved which was duly seconded by another stockholder. The Vice-Chairman declared the resolution approved.

Thereafter, Atty. Pagunsan took the floor and informed that he is the proxy of various stockholders (10%) and would like to manifest his vote as "NO" which the Vice-Chairman duly noted. Notwithstanding the objection of Atty. Pagunsan, considering the more than 2/3 of the outstanding capital stock of PRCI has approved and ratified the resolution, (74%) the Corporate Secretary declared the resolution as duly approved and ratified.

Thereafter, another stockholder, Mr. Ngo, asked the President what are the plans of PRCI on the assets of JTH. The President informed that as of now, JTH has no material hard assets other than its retained earnings. Mr. Ngo asked again what will be the direction of PRCI on the substantial retained earnings of JTH to which the President replied that there are several options being considered once the purchase is complete one of which is the declaration of cash dividend.

Another stockholder took the floor and informed the Management that he is happy with the transaction of PRCI and the purchase by PRCI of the JTH shares is a good deal since the value of the goodwill of JTH is substantial by his estimate. He proceeded to thank the President and shook hands with him.[16]

By 22 November 2006, PRCI was able to additionally acquire 1,160,137 common shares of JTH from the minority stockholders of the latter, giving PRCI ownership of 98.19% of the outstanding capital stock of JTH.

PRCI prepared consolidated financial statements for itself and for JTH for the fiscal year ending 31 December 2006. The financial statements were audited by the accounting firm Punongbayan & Araullo which gave the following unqualified opinion of the same: "In our opinion, based on our audit and the report of other auditors, the consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Philippine Racing Club, Inc. and Subsidiary as of December 31, 2006, and their consolidated financial performance and their cash flows for the year then ended in accordance with Philippine Financial Reporting Standards." The audited financial statements of PRCI and JTH for 2006 were presented to the stockholders of PRCI and submitted to the

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[16] *Rollo* of G.R. Nos. 181455-56, pp. 126-127.

Securities and Exchange Commission (SEC), the Bureau of Internal Revenue (BIR), and the Philippine Stock Exchange (PSE).

Thereafter, PRCI again engaged the assistance of SGV in executing its intended spin-off to JTH of the management and development of PRCI's Makati property. It was then determined that the Makati property, with a total zonal value of ₱3,817,242,000.00, could be transferred to JTH in exchange for the unissued portion of the latter's recently increase authorized capital stock,[17] amounting to ₱397,908,894.50, divided into 795,817,789 shares with a par value of ₱0.50 per share. The difference of ₱3,419,333,105.50 between the total zonal value of the Makati property and the aggregate par value of the JTH shares to be issued in exchange for the same, would be reflected as additional paid-in capital of PRCI in JTH.

The matter of the proposed exchange was taken up and approved by the PRCI Board of Directors in its meeting held on 11 May 2007, again with the lone dissent of respondent Dulay. According to the Minutes of the said meeting, the following occurred:

A. Exchange of the Corporation's Makati Property with Shares of JTH Davies Holdings, Inc.

President Cua reported on certain essential matters regarding the Corporation's Makati Property. After doing so, President Cua proposed the exchange of this Property with shares of JTH Davies Holdings, Inc. He then presented to the Board financial facts and figures heavily favoring the transaction.

After due discussion and deliberation, all the Directors present approved and passed the following resolution, except Director Brigido Dulay who registered a negative vote:

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[17] The authorized capital stock of JTH was increased from ₱25,000,000.00 (divided into 50,000,000 common shares with a par value of ₱0.50 each) to ₱551,000,000.00 (divided into 1,103,000,000 common shares with a par value of ₱0.50 per share). Out of the increase, ₱131,649,519.00 (consisting of 263,299,038 shares) were subscribed and paid in full by way of stock dividends. The remaining unissued portion of the increased authorized capital stock of JTH would be subscribed and paid for by PRCI using its Makati property.

> **RESOLVED**, That the Corporation hereby approves and authorizes the exchange of its Makati property with shares of JTH Davies Holdings, Inc.;
>
> **RESOLVED FURTHER**, That, for this purpose, the Corporation hereby authorizes its Executive Committee to determine and approve the terms and conditions governing the exchange as it shall consider for the best interest of the Corporation subject to approval by the stockholders in compliance with the Corporation Code;
>
> **RESOLVED FURTHER**, That the Executive Committee, be, as it is hereby granted full power and authority whatsoever requisite or necessary or proper to accomplish these;
>
> **RESOLVED FINALLY**, That **SOLOMON CUA**, President & CEO, be, as he is hereby authorized to negotiate with JTH Davies Holdings, Inc. and to execute, sign, and/or deliver any and all documents covering the exchange in accordance with the terms and conditions of the Executive Committee.[18]

Subsequently, the Annual Stockholders' Meeting of PRCI was scheduled on 17 July 2007, the Agenda for which is reproduced below:

> I. Call to Order;
>
> II. Proof of Notice;
>
> III. Certification of Quorum;
>
> IV. Approval of the Minutes of the Annual Stockholders' Meeting held last June 19, 2006 and of the Special Stockholders' Meeting held last November 7, 2006;
>
> V. Report of the President;
>
> VI. Approval of the Audited Financial Statement for the year ended December 31, 2006;
>
> VII. Approval and Ratification of the acts of the Board of Directors, the Executive Committee and the Management of the Corporation for the Fiscal Year 2006;

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[18] *Rollo* of G.R. Nos. 181455-56, pp. 129-130; *rollo* of G.R. No. 182008, pp. 464-465.

VIII. Approval of the Planned Exchange of PRCI's Makati property for shares of stock;

IX. Approval of the Amendments of the By-Laws to conform with the Manual of Corporate Governance;

X. Election of the members of the Board of Directors;

XI. Appointment of Independent External Auditors;

XII. Other Matters;

XIII. Adjournment.[19]

The 11 May 2007 Resolution of the PRCI Board of Directors on the property-for-shares exchange between PRCI and JTH was supposed to be presented for approval by the stockholders under the afore-quoted Items No. VII and No. VIII of the Agenda.

However, on 10 July 2007, respondents Miguel, *et al*., as minority stockholders of PRCI, with the following shareholdings:

Stockholder	No. of Shares	Percentage
Miguel Ocampo-Tan	16,380,000	2.87
Jemie U. Tan	15,972,720	2.80
Atty. Brigido J. Dulay[20]	1	0.00
Total	32,352,721	5.67

filed before the RTC a Complaint, denominated as a Derivative Suit with prayer for Issuance of TRO/Preliminary Injunction, against the rest of the directors of PRCI and/or JTH. The Complaint was docketed as Civil Case No. 07-610.

The Complaint was based on three causes of action: (1) the approval by the majority directors of PRCI of the Board Resolutions dated 26 September 2006 and 11 May 2007 — with undue haste and deliberate speed, despite the absence of any disclosure and information — was not only anomalous and fraudulent, but also extremely prejudicial and inimical to interest of PRCI, committed in violation of their fiduciary duty as directors

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[19] *Rollo* of G.R. Nos. 181455-56, p. 277; *rollo* of G.R. No. 182008, p. 21.

[20] Also in his capacity as PRCI director.

of the said corporation; (2) respondent Solomon, as PRCI President, with the acquiescence of the majority directors of PRCI, maliciously refused and resisted the request of respondents Miguel, *et al*., for complete and adequate information relative to the disputed Board Resolutions, brazenly and unlawfully violating the rights of the minority stockholders to information and to inspect corporate books and records; and (3) without being officially and formally nominated, the majority directors of PRCI illegally and unlawfully constituted themselves as members of the Board of Directors and/or Executive Officers of JTH, rendering all the actions they have taken as such null and void *ab initio*. In the end, respondents Miguel, *et al*., prayed to the RTC, after notice and hearing, that:

1. A temporary restraining order and/or writ of preliminary injunction be issued restraining and enjoining the holding of the Annual Stockholders' Meeting scheduled on 17 July 2007 and restraining and enjoining the defendants [PRCI directors] from enforcing, implementing, "railroading", or taking any further action in reliance upon or in substitution or in furtherance of the Disputed Resolutions, which would inflict grave and irreparable injury in fraud of the Corporation.

2. A receiver and/or management committee be constituted and appointed to undertake the management and operations of the Corporation and to take over its assets to prevent its further loss, wastage and dissipation.

3. To compel the defendant Majority Directors to render a complete and adequate disclosure of all documents and information relating to the subject matter of the Disputed Resolutions as well as the business and affairs of the Corporation and its wholly-owned subsidiary from the time of the latter's acquisition until final judgment.

4. After trial on the merits, that judgment be rendered in favor of the plaintiffs and against the defendants, as follows:

(a) Permanently enjoining and prohibiting defendants from enforcing, implementing, or taking any action in reliance upon the Disputed Resolutions.

(b) Declaring the Disputed Resolutions dated 26 September 2006 and 11 May 2007 and the approval by the Executive Committee of the exchange of the Corporation's Makati Property for JTH shares,

as well as any and all actions taken in reliance upon or pursuant to or in furtherance of the Disputed Resolutions and/or approval of the Executive Committee, as null and void *ab initio*.

(c) Declaring the assumption by defendant Majority Directors as Directors and/or officers of JTH, including all acts done by defendant Majority Directors as such Directors and/or officers of JTH, as null and void *ab initio*.

(d) Ordering defendants to pay plaintiffs the sum of ₱500,000.00, and by way of attorney's fees, plus ₱10,000.00 per court appearance, plus costs of suit.

Other reliefs just and equitable under the premises are likewise prayed for.[21]

After conducting hearings on the prayer for the issuance of a TRO, RTC Judge Untalan issued a Resolution on 16 July 2007, the dispositive portion of which reads:

WHEREFORE, premises considered, this court hereby partially grants the prayer of PRCI for the issuance of Temporary Restraining Order upon the herein defendants subject to the posting of Php100,000.00 bond on condition that such bond shall answer to any damage that the Defendants may sustain by reason of this TRO if the court should finally decide that the applicants are not entitled thereto. This TRO shall be effective for TWENTY (20) DAYS only from service of the same upon the Defendants after posting of the bond.

Therefore, the Defendants, their agents, proxies and representatives are hereby enjoined, prohibited and forbidden to present to, discuss, much more to approve the same, at the 2007 Annual Stockholders' Meeting of PRCI to be held on July 17, 2007 at 8:00 A.M. at the VIP Room, Santa Ana Park, A.P. Reyes Ave., Makati City, the following Agenda included in the Notice of said stockholders' meeting:

1. Agenda Roman No. IV — Approval of the Minutes of the Annual Stockholders' Meeting held last June 19, 2006 and the Special Stockholders' meeting held last November 7, 2006.

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[21] *Rollo* of G.R. Nos. 181455-56, pp. 160-163; *rollo* of G.R. No. 182008, pp. 194-196.

2. Agenda Roman No. VII —Approval and Ratification of the acts of the Board of Directors, the Executive Committee and the Management of the Corporation for the Fiscal Year 2006.

3. Agenda Roman No. VIII — Approval of the Planned Exchange of PRCI's Makati property for shares of stock.

Thus, in order that these subject matters and items of the Agenda of the aforesaid Stockholders' Meeting shall not be taken up, the herein Defendants, their agents, proxies and representatives, jointly and severally, are hereby ordered to delete and remove from the Agenda said three (3) above stated items of the Agenda before the start and conduct of the said stockholders' meeting. Therefore, in case herein Defendants, their agents, proxies and representatives defy and disobey this mandate, they have committed already four (4) distinct contemptuous acts: delete, present, discuss and approve.

This Court appealed to the Corporate Secretary as Officer of the Court, to please make sure that this mandate is obeyed and observed by the Defendants, their agents, proxies and representatives, before and during the conduct of said stockholders' meeting.

Let the hearing of the main injunction be set on July 23 and 24, 2007 and August 2, 2007, all at two o'clock in the afternoon.[22]

The Annual Stockholders' Meeting of PRCI scheduled the next day, 17 July 2007, failed to push through for lack of quorum.

On 19 July 2007, petitioners Santiago Jr., *et al*., as PRCI directors filed a Petition for *Certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 99769. On 20 July 2007, Santiago Sr., also as PRCI director, filed his own Petition for *Certiorari* and Prohibition, docketed as CA-G.R. SP No. 99780. Both Petitions assailed the RTC Resolution dated 16 July 2007, granting the issuance of a TRO, for being rendered with grave abuse of discretion amounting to lack or excess of jurisdiction. CA-G.R. SP No. 99769 and No. 99780 were subsequently consolidated.

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[22] *Rollo* of G.R. Nos. 181455-56, pp. 222-223; *rollo* of G.R. No. 182008, pp. 165-166.

The Court of Appeals promulgated its Decision on 6 September 2007 dismissing the Petitions in CA-G.R. SP No. 99769 and No. 99780 for lack of merit, mootness, and prematurity.

According to the Court of Appeals, the TRO issued by the RTC enjoined the presentation, discussion, and approval of only three of the 13 items on the Agenda of the 2007 Annual Stockholders' Meeting. There is no evidence that the TRO issued by the RTC legally impaired the holding of the scheduled stockholders' meeting. Indeed, the lack of quorum during the said meeting was due to the absence of petitioners themselves who comprised the majority interest in PRCI. Consequently, the appellate court found no grave abuse of discretion in the issuance by the RTC of the TRO.

The Court of Appeals also noted that the Petitions in CA-G.R. SP No. 99769 and No. 99780 as regards the issuance of the TRO already became moot when the 20-day period of effectivity of said restraining order expired on 5 August 2007, even before the Petitions were submitted for resolution.

Lastly, the Court of Appeals held that the issues raised by petitioners were factual and evidentiary in nature which must be threshed out before the RTC as the designated commercial court in Makati. The appellate court would not interfere with the proceedings *a quo* considering that Civil Case No. 07-610 had not yet gone to trial and had not yet been resolved or terminated by the RTC. Therefore, for being premature, the Court of Appeals could not prohibit the continuance of the RTC proceedings in Civil Case No. 07-610.

The Court of Appeals ruled that there was no reason to dismiss the Complaint in Civil Case No. 07-610. Although the Complaint contained mere allegations, which had yet to be supported by evidence, it was sufficient in form and substance, and the RTC properly took cognizance of the same. The Court of Appeals reasoned that:

Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies (Interim Rules) provides:

"**SECTION 1. Derivative action.** – A stockholder or member may bring an action in the name of a corporation or association, as the case may be, provided, that:

(1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;

(2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;

(3) No appraisal rights are available for the act or acts complained of; and

(4) The suit is not a nuisance or harassment suit.

In case of nuisance or harassment suit, the court shall forthwith dismiss the case."

A reading of the Complaint reveals that the same sufficiently alleges the foregoing requirements. Complainants essentially allege that they are PRCI stockholders, that they have opposed the issuance and approval of the questioned resolutions during the board stockholders' (sic) meetings, that prior resort to intra-corporate remedies are futile, that nevertheless, they have asked for copies of the pertinent documents pertaining to the questioned transactions which the board has declined to furnish, that they have instituted the derivative suit in the name of the corporation, that they are questioning the acts of the majority of the board of directors believing that the herein petitioners have committed a wrong against the corporation and seeking a nullification of the questioned board resolutions on the ground of wastage of the corporate assets.

Thus, contrary to petitioners' averment, the Complaint does state a cause of action.[23]

Petitioners in CA-G.R. SP No. 99769 and No. 99780 filed their respective Motions for Reconsideration of the foregoing Decision of the Court of Appeals.

[23] *Rollo* of G.R. Nos. 181455-56, pp. 36-37; *rollo* of G.R. No. 182008, pp. 111-112.

In the meantime, upon the expiration of the TRO issued by RTC Judge Untalan in Civil Case No. 07-610, the Annual Stockholders' Meeting of PRCI was again scheduled on 10 October 2007. However, Judge Untalan issued on 8 October 2007 a Resolution with the following decree:

> **WHEREFORE**, premises considered, this court hereby **GRANTS** the issuance of **PERMANENT INJUNCTION** against the defendants until the instant case is finally resolved, subject to the posting by plaintiffs of a Php 100,000.00 bond, on condition that such bond shall answer to any damage that the Defendants may sustain by reason of this injunction if the court should finally decide that the applicants are not entitled thereto. This injunction shall be effective from service of the same upon the Defendants after posting of the bond.
>
> Therefore, the Defendants, their agents, proxies and representatives are hereby enjoined, prohibited and forbidden to present to, discuss, much more to approve the same, at any stockholders' meeting, whatsoever kind and nature, of PRCI of the following Agenda:
>
> 1. Approval of the Minutes of the Annual Stockholders' Meeting held last June 19, 2006 and the Special Stockholders' meeting held last November 7, 2006 of PRCI.
> 2. Approval and Ratification of the acts of the Board of Directors, the Executive Committee and the Management of PRCI for the Fiscal Year 2006, as far as the acquisition of JTH and the planned exchange of PRCI's Makati property for shares of stock of JTH are concerned.
> 3. Approval of the Planned Exchange of PRCI's Makati property for shares of stock of JTH.[24]

As a result, the Annual Stockholders' Meeting of PRCI proceeded as scheduled on 10 October 2007 without taking up the matters covered by the permanent injunction issued by the RTC.

Petitioners Santiago Jr., *et al.* filed in CA-G.R. SP No. 99769 their Motion to Admit Supplemental Petition for *Certiorari* with

[24] *Rollo* of G.R. Nos. 181455-56, pp. 485-486; *rollo* of G.R. No. 182008, pp. 321-322.

the attached Supplemental Petition for *Certiorari*;[25] and petitioner Santiago Sr. filed in CA-G.R. SP No. 99780 a Supplemental Petition for *Certiorari* and Prohibition,[26] to be followed shortly thereafter by a Motion to Admit (Supplemental Petition).[27] Petitioners intended to additionally assail in their Supplemental Petitions the 8 October 2007 Resolution of the RTC granting the issuance of the permanent injunction.

In its Resolution dated 22 January 2008, the Court of Appeals denied the Motions for Reconsideration of petitioners and the Motion to Admit Supplemental Petition for *Certiorari* of petitioners Santiago Jr., *et al*.

The Court of Appeals found that petitioners' Motions for Reconsideration merely reiterated the issues and arguments which were raised in the Petitions and/or which the appellate court already discussed and passed upon. The Court of Appeals reiterated its ruling that it was premature to prohibit the continuance of the proceedings in Civil Case No. 07-610 before the RTC; and that the Complaint therein sufficiently stated a cause of action.

The Court of Appeals likewise refused to admit petitioners' Supplemental Petitions for *Certiorari*. It noted that Santiago Sr. filed his Supplemental Petition without asking for leave to file the same. Apparently, the appellate court disregarded the Motion to Admit (Supplemental Petition) which petitioner Santiago filed separately from and at a later date than his Supplemental Petition. In addition, the Court of Appeals adjudged that the Supplemental Petitions which petitioners hoped to be admitted involved a subject matter not covered in their original Petitions. Although the TRO and the permanent injunction were both issued by the RTC in Civil Case No. 07-610, the two issuances were independent of each other, and only the TRO was the subject of the original Petitions. Hence, the Supplemental Petitions

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[25] *Rollo* of G.R. Nos. 181455-56, pp. 442-481.

[26] *Rollo* of G.R. No. 182008, pp. 268-314.

[27] *Ibid.*, pp. 323-326.

assailing the permanent injunction granted by the RTC could not be considered as merely augmenting the matters, issues, and causes of action of the original Petitions; and should be challenged in a separate petition for *certiorari*.

Failing to obtain any relief from the Court of Appeals, petitioners turned to this Court.

Petitioners Santiago Jr., *et al*., filed a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, docketed as G.R. No. 181455-56; while petitioner Santiago Sr. filed a Petition for *Certiorari* under Rule 65 of the Rules of Court, docketed as G.R. No. 182008. According to petitioners, the appellate court committed reversible errors of law and grave abuse of discretion in its Decision dated 6 September 2007 and Resolution dated 22 January 2008 in CA-G.R. SP No. 99769 and No. 99780.

Petitioners insisted that Civil Case No. 07-610 pending before the RTC did not constitute a valid derivative suit. Respondents Miguel, *et al*., failed to allege in their Complaint that they had no appraisal rights for the acts they were complaining of. In fact, the very allegations made by respondents Miguel, *et al*. in their Complaint supported the availability of appraisal rights to them. The Complaint in Civil Case No. 07-610 was nothing more than a nuisance or harassment suit against petitioners and the other PRCI directors.

Petitioners averred that, by finding no grave abuse of discretion on the part of the RTC in issuing the TRO against petitioners and the other PRCI directors, the Court of Appeals substituted its own judgment for that of the PRCI Board of Directors, arbitrarily and capriciously disregarding the business judgment made by the said Board and approved by PRCI stockholders. The TRO issued by the RTC was not for the benefit of the PRCI stockholders. Furthermore, the expiration of the 20-day TRO did not make their Petitions for *Certiorari* in CA-GR SP No. 99769 and No. 99780 moot. Said Petitions included the prayer that the RTC be restrained from proceeding with Civil Case No. 07-610 in view of the fatally defective Complaint, the grant or denial of which the appellate court should have still determined despite the expiration of the TRO.

Petitioners also challenged the refusal by the Court of Appeals to admit their Supplemental Petitions in CA-GR SP No. 99769 and No. 99780. They asserted that the issues in their Supplemental Petitions were closely intertwined with those in their original Petitions.

The prayer of petitioners Santiago Jr., *et al.,* in their Petition in G.R. No. 181455-56 reads:

PRAYER

WHEREFORE, in view of the foregoing and in the interest of justice, it is most respectfully prayed of the Honorable Supreme Court that:

A. The Decision of the Court of Appeals dated 06 September 2007 **(Annex "I")** and the Resolution of the Court of Appeals dated 22 January 2008 **(Annex "M")** be NULLIFIED, REVERSED and SET ASIDE for having been issued on the basis of reversible error of law and with grave abuse of discretion amounting to lack of jurisdiction.

B. The Resolutions of Judge Cesar Untalan of Makati Regional Trial Court, Branch 149 dated 16 July 2007 **(Annex "F")** and 08 October 2007 **(Annex "G")** be accordingly NULLIFIED, REVERSED and SET ASIDE for having been issued with grave abuse of discretion amounting to lack of jurisdiction.

C. The complaint of Respondents be DISMISSED outright for lack of jurisdiction and cause of action.

D. Such further reliefs just and equitable under the circumstances be GRANTED.[28]

Petitioners Santiago Jr., *et al.,* subsequently filed in G.R. No. 181455-56 an Urgent Motion for Issuance of a Temporary Restraining Order (Status Quo Ante) and/or Writ of Preliminary Injunction, in which they additionally asked the Court that "a Temporary Restraining Order (Status Quo Ante) and/or Writ of Preliminary Injunction be immediately issued restraining the implementation (sic) Judge Cesar Untalan's Resolutions dated

[28] *Rollo* of G.R. Nos. 181455-56, p. 109.

16 July 2007 and 08 October 2007 so as not to render inutile this Most Honorable Court's exercise of jurisdiction over this action and to prevent the decision on this case from being rendered ineffectual and academic."[29]

Meanwhile, petitioner Santiago Sr. sought the following reliefs from this Court in his Petition in G.R. No. 182008:

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that the petition be given due course, and that:

1. Upon the filing of this petition, a temporary restraining order and/or writ of preliminary injunction be immediately issued restraining and enjoining the enforcement or execution of the assailed Court of Appeals' Decision and Resolution, and the assailed trial court's resolutions, particularly that which mandates the continued enforcement of the Writ of PERMANENT Injunction issued by the trial, which prevents the stockholders of the corporation from acting on matters that have to be submitted to them for approval and/ ratification at the regular annual stockholders' meetings.

2. Thereafter, a writ of prohibition be issued and/or the preliminary injunction be made permanent and continuing, during the pendency of the instant case before the Honorable court.

3. After due hearing, that the Honorable Court:

(a) Declare null and void the Honorable Court of Appeals' 06 September 2007 Decision and 22 January 2008 Resolution, in CA-G.R. SP No. 99780, as well as the Trial Court's 16 July 2007 and 8 October 2007 Resolutions in Civil Case No. 07-610 of the Makati Regional Trial Court, and

(b) Order the dismissal of the Complaint filed by the private respondents against petitioner, *et al.*, docketed as Civil Case No. 07-610 of the RTC of Makati City.

Other reliefs just and equitable in the premises are likewise prayed for.[30]

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[29] *Id.* at 502.

[30] *Rollo* of G.R. No. 182008, pp. 86-88.

In a Resolution dated 9 April 2008 in G.R. No. 182008, the Court granted petitioner Santiago Sr.'s prayer for the issuance of a TRO, to wit:

> Acting on the prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction dated 24 March 2008, the Court likewise resolves to ***ISSUE* a *TEMPORARY RESTRAINING ORDER*** enjoining respondents from enforcing or executing the assailed Court of Appeals' decision and resolution and the assailed trial court's resolutions particularly that which mandates the continued enforcement of the writ of permanent injunction issued by the trial court, until further orders from this Court, and to require petitioner to ***POST* a *CASH BOND*** or a ***SURETY BOND*** from a reputable bonding company of indubitable solvency with terms and conditions acceptable to the Court, in the amount of ***TWO HUNDRED THOUSAND PESOS* (₱200,000.00)**, within five (5) days from notice, **otherwise, the temporary restraining order herein issued shall automatically be lifted**. Unless and until the Court directs otherwise, the bond shall be effective from its approval by the Court until this case is finally decided, resolved or terminated.[31]

Accordingly, the Court issued the TRO[32] on even date, directed against the respondents of G.R. No. 182008, namely, respondents Miguel, *et al*., and Judge Untalan.

On 21 April 2008, respondents Miguel, *et al*. filed with the Court their Comment with Prayer for the Immediate Lifting or Dissolution of the Temporary Restraining Order in G.R. No. 182008.

Respondents Miguel, *et al*., argued that the Petition for *Certiorari* in G.R. No. 182008 was dismissible due to several procedural errors. Petitioner Solomon, who signed the Petition in G.R. No. 182008 on behalf of Santiago Sr., was guilty of forum shopping for failing to inform the Court of the Petition for Review in G.R. No. 181455-56, of which he was one of the petitioners. Both Petitions involved the same transactions, essential facts, and circumstances, as well as identical causes of action,

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[31] *Id.* at 327.

[32] *Id.* at 329-331.

subject matter, and issues. The Petition for *Certiorari* in G.R. No. 182008 was also not personally verified by petitioner Santiago Sr. as required by rules and jurisprudence. Moreover, the Petition for *Certiorari* was not a proper remedy, since it was only proper when there was no other plain, speedy, and adequate remedy in the ordinary course of law. Petitioner Cua himself admitted the availability of other remedies, except that he was "avoiding the tortuous manner offered by other remedies." In fact, petitioners Santiago Jr., *et al.,* filed a Petition for Review in G.R. No. 181455-56. Lastly, errors of judgment could not be remedied by a Petition for *Certiorari*. Petitioner Santiago Sr.'s Petition in G.R. No. 182008 raised issues that were factual and evidentiary in nature, on which the RTC has yet to make finding.

On substantial grounds, respondents Miguel, *et al*., explained that their Complaint in Civil Case No. 07-610 was comprised of several causes of action. It was not merely a derivative suit, but was also an intra-corporate action arising from devices or schemes employed by the PRCI Board of Directors amounting to fraud or misrepresentation and were detrimental to the interest of the PRCI stockholders. Additionally, the fraudulent acts and breach of fiduciary duties by the PRCI directors had already been established by *prima facie* factual evidence, which warranted the continuation of the proceedings in Civil Case No. 07-610 before the RTC for adjudication on the merits. It was also established that there were no appraisal rights available for the acts complained of, since (1) the PRCI directors were being charged with mismanagement, misrepresentation, fraud, and breach of fiduciary duties, which were not subject to appraisal rights; (2) appraisal rights would only obtain for acts of the Board of Directors in good faith; and (3) appraisal rights may be exercised by a stockholder who had voted against the proposed corporate action, and no corporate action had yet been taken herein by PRCI stockholders, who still had not voted on the intended property-for-shares exchange between PRCI and JTH. Furthermore, the Court of Appeals correctly denied admission of the Supplemental Petitions in CA-GR SP No. 99769 and No. 99780. A new and independent cause of action could not be set by supplemental complaint. The issues raised in the original

Petitions pertain to the grave abuse of discretion committed by the RTC in issuing the TRO and in taking cognizance of Civil Case No. 07-610, by setting the same for hearing on the main injunction; in contrast, the issues in the Supplemental Petitions referred to the issuance of the Writ of Preliminary Injunction.

In support of their prayer for the immediate lifting or dissolution of the TRO issued by this Court, respondents Miguel, *et al.*, contended that:

I

THE TEMPORARY RESTRAINING ORDER ISSUED BY THIS HONORABLE COURT HAS IMPELLED HEREIN PETITIONER AND HIS CO-MAJORITY DIRECTORS TO SCHEDULE A STOCKHOLDERS' MEETING WITH THE VIEW TO RENDER MOOT AND ACADEMIC THE ACTION AND PROCEEDINGS BEFORE THE REGIONAL TRIAL COURT OF MAKATI, BRANCH 149.

II

THE PETITIONER HEREIN, HAVING BEEN IMPLEADED AS DIRECTOR AND FIDUCIARY OF PRCI, DOES NOT STAND TO SUFFER ANY IRREPARABLE INJURY.

III

TO THE CONTRARY, IT IS PRCI WHO STAND TO SUFFER GRAVE AND IRREPARABLE INJURY IF THE TRO IS NOT LIFTED AND/OR DISSOLVED.

IV

THE PETITIONER HEREIN HAS FAILED TO ESTABLISH ANY CLEAR LEGAL RIGHT THAT ENTITLES HIM TO THE ISSUANCE OF A TRO AND/OR WRIT OF PRELIMINARY INJUNCTION.

V

THE TRO WAS IMPROPERLY ISSUED AS PETITIONER HAS FAILED TO SHOW ANY EXTREME URGENCY TO NECESSITATE THE ISSUANCE THEREOF.[33]

In the end, respondents Miguel, *et al.*, prayed:

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[33] *Id.* at 428-429.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Supreme Court that the Temporary Restraining Order be LIFTED or DISSOLVED IMMEDIATELY, and that the instant Petition be DISMISSED.

Other just and equitable reliefs are likewise prayed for.[34]

Only two days later, on 23 April 2008, respondents Miguel, *et al.*, again urgently moved[35] for the lifting and/or dissolution of the TRO issued by this Court. They informed the Court that the PRCI Board of Directors passed and approved on 22 April 2008 a Resolution setting the Annual Stockholders' Meeting of PRCI on 18 June 2008, including in the proposed Agenda therefor the following items:

(d) Approval of the Minutes of the Special Stockholders' Meeting held on 7 November 2006, and the Minutes of the Annual Stockholders' Meeting held on 10 October 2007;

x x x x x x x x x

(g) Approval and ratification of the acts of the Board of Directors, the Executive Committee, and Management of the Corporation for Fiscal Years 2006 and 2007;

(h) Approval of the Planned Exchange of PRCI's Makati Property for shares of stock of JTH Davies Holdings, Inc.[36]

On the same day, 23 April 2008, the Court issued a Resolution[37] consolidating G.R. No. 181455-56 and No. 182008.

Thereafter, on 16 June 2008, Aris Prime Resources, Inc. (APRI), a minority stockholder of PRCI — with 5,000,000.00 shares or 0.88% of the outstanding capital stock of PRCI — filed a Very Respectful Motion for Leave to Intervene as Co-Respondent in the Petition with the attached Very Respectful

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[34] *Id.* at 441.

[35] *Id.* at 517-538.

[36] *Id.* at 523.

[37] *Rollo* of G.R. Nos. 181455-56, p. 499; *rollo* of G.R. No. 182008, p. 352.

Urgent Motion to Lift Restraining Order.[38] It relayed to the Court that it received Notice of the Annual Stockholders' Meeting of PRCI set on 18 June 2008, where the items on the property-for-shares exchange between PRCI and JTH were included in the Agenda.

Considering that the validity of the acts of the PRCI Board of Directors concerning the property-for-shares exchange are the very issues raised in the Petitions presently before the Court, while the factual issues relating to the same are still being litigated before the RTC in Civil Case No. 07-610, the submission of the exchange to the PRCI stockholders for their approval will render the aforementioned proceedings before this Court and the RTC moot and academic. It will amount to a denial of the right of APRI and of respondents Miguel, *et al*., to be heard before the RTC where they are still to present their evidence on the factual issues. It will likewise unduly pave the way for the validation of the abuse committed by the majority directors of PRCI in denying the right of the minority directors and stockholders of the corporation to information, and for the sanction of the blatant disregard by the majority directors of their duties of fidelity and transparency. Unless the TRO is lifted forthwith, APRI, respondents Miguel, *et al.*, and all other minority stockholders stand to suffer prejudice. Expectedly, petitioners seek the dismissal, while respondents Miguel, *et al*., pray for the grant of the motion to intervene of APRI.

Pending action on the foregoing incidents, petitioners Santiago Jr., *et al*., filed before the Court a Manifestation and Motion to Set Case for Oral Arguments.[39]

In their Manifestation, petitioners Santiago Jr., *et al*., admitted that the PRCI Board of Directors had already called and set the Annual Stockholders' Meeting on 18 June 2008, and among the items on the Agenda for confirmation and approval by the stockholders was the property-for-shares exchange between PRCI and JTH.

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[38] *Rollo* of G.R. No. 182008, pp. 557-569.

[39] *Rollo* of G.R. Nos. 181455-56, pp. 673-724.

Petitioners Santiago Jr., *et al*., brought to the attention of the Court the fact that on 5 June 2008, another set of minority stockholders of PRCI, namely, Jalane Christie U. Tan, Marilou U. Pua, Aristeo G. Puyat, and Ricardo S. Parreno (Jalane, *et al.*) filed with the RTC of Makati a Complaint against petitioners and the other directors of PRCI and/or JTH, docketed as Civil Case No. 08-458. Jalane, *et al*., have the following shareholdings in PRCI:

Stockholder	No. of Shares	Percentage
Jalane Christie U. Tan	16,927,560	2.97
Marilou U. Pua	3,884,400	0.68
Artisteo G. Puyat	1,633,666	0.29
Ricardo S. Pareño	5,850	0.00
Total	22,451,476	3.94

Jalane, *et al*., claimed in their Complaint in Civil Case No. 08-458 that "[a]part from being a derivative suit, this suit is also filed based on devices or schemes employed by the Board of Directors amounting to fraud or misrepresentation which is detrimental to the interest of the corporation, the public and/or stockholders as provided for under Section 1(a)(1) of the Interim Rules of Procedure for Intra-Corporate Controversies (A.M. No. 01-2-04-SC)."[40] The Complaint was based on four causes of action: (1) the acquisition of JTH by PRCI; (2) sale of 29.92% of JTH shares by PRCI;[41] (3) exchange of the Makati property of PRCI for JTH shares; and (4) interlocking of Directors of PRCI and JTH. The Complaint of Jalane, *et al*., contained the following prayer:

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[40] *Rollo* of G.R. Nos. 181455-56, p. 732.

[41] As regards the second cause of action, Jalane, *et al*. alleged that after PRCI acquired 41,928,290 shares or 98.19% of the outstanding capital stock of JTH for ₱10.71 per share, the PRCI Board of Directors suddenly authorized the following sales: (1) the sale to undisclosed persons of 2,271,508 shares or 5.18% of the outstanding capital stock of JTH in April 2007 for ₱6.60 per share; and (2) the sale again to undisclosed persons of 10,726,000 shares or 24.44% of the outstanding capital stock of JTH on 7 May 2007 for ₱6.65 per share. As a result of such sales, the ownership of PRCI in JTH was reduced to only 69.57%; the remaining 31.43% interest in JTH now belonged to "other" stockholders.

PRAYER

WHEREFORE, it is respectfully prayed of this Honorable Court, after due notice and hearing, that:

1. A Temporary Restraining Order and/or Writ of Preliminary Mandatory Injunction be issued enjoining the presentation, discussion and ratification of portions of the Agenda of the Annual Stockholders Meeting of PRCI scheduled on June 18, 2008, particularly items IV, VII and VIII;

2. An order be issued nullifying the Sale and Purchase Agreement dated September 27, 2006 for the acquisition of JTH Davies Holdings, Inc.

3. An order be issued nullifying the sale of PRCI shares in JTH in April 2007 and May 7, 2007;

[Paragraph crossed-out.]

5. An order be issued directing defendants to pay plaintiffs the sum of ₱500,000.00 as and by way of attorney's fees, plus cost of suit.

Other reliefs, just and equitable under the premises are likewise prayed for.[42]

Acting on the Complaint of Jalane, *et al*. in Civil Case No. 08-458, Executive Judge Winlove Dumayas (Executive Judge Dumayas) of the Makati City RTC issued a 72-hour TRO, enjoining PRCI directors from presenting, discussing, and ratifying the items in the Agenda for the Annual Stockholders' Meeting set on 18 June 2008 related to the property-for-shares exchange between PRCI and JTH. However, upon being apprised of the TRO issued by this Court on 9 April 2008 in G.R. No. 182008, in relation to Civil Case No. 07-610 pending before the Makati City RTC, Branch 149, Executive Judge Dumayas gave verbal advice that the Annual Stockholders' Meeting of PRCI should proceed on 18 June 2008 as if the 72-hour TRO had not been issued. Consequently, the Annual Stockholders' Meeting of PRCI proceeded on 18 June 2008.

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[42] *Rollo* of G.R. Nos. 181455-56, p. 748.

The Annual Stockholders' Meeting of PRCI, held on 18 June 2008, was attended by stockholders with a total of 493,017,509 shares or 86.52% of the outstanding capital stock of PRCI, more than the necessary 2/3 to constitute a quorum. Discussed in the meeting were the same items, whose presentation to the stockholders was sought to be enjoined by respondents Miguel, *et al*., in Civil Case No. 07-610 and by Jalane, *et al*., in Civil Case No. 08-458. The actions taken by the stockholders on the controversial items were duly recorded in the Minutes of the meeting, as follows:

IV. APPROVAL OF THE MINUTES OF THE PREVIOUS STOCKHOLDERS' MEETINGS

> Before the next agenda was tackled in the meeting, a stockholder, Atty. Benjamin Santos asked to be recognized on the floor. The Chairman gave Atty. Santos permission to speak. Atty. Santos inquired from the Corporate Secretary if there has already been official notice of service on him regarding a **72-hour temporary restraining order which was issued by the Executive Judge of the Makati Regional Trial Court (RTC)**. The Corporation (sic) Secretary answered in the negative.
>
> For the information of the stockholders present, Atty. Santos mentioned that a case has been filed by certain minority shareholders, namely, Jalane Christie U. Tan, Marilou U. Pua, Aristeo G. Puyat and Ricardo S. Parreno, against the Board of Directors of PRCI (Civil Case No. 08-458, Makati RTC), and a 72-hour TRO was issued on 17 June 2008 "enjoining defendants (directors of PRCI), their representatives, employees and/or all those acting for and in their behalf to refrain from the presentation, discussion and ratification of portions of the Agenda of the Annual Stockholders' Meeting of PRCI scheduled on June 18, 2008 particularly items IV, VII and VIII." x x x.
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> x x x x x x x x x
>
> According to Atty. Santos, the TRO enjoins them in their capacity as Directors of PRCI. He further stated that the attendance of all the directors present in the stockholders' meeting, is in their capacity as stockholders of PRCI and not as directors of PRCI. The Chairman is present merely to preside over the meeting, and the Corporate Secretary is not a member of the Board of Directors.

Atty. Santos likewise informed the stockholders present of the existence of a **temporary restraining order issued by the Supreme Court dated 09 April 2008** (in SC G.R. No. 182008) which *"enjoin(ed) respondents from enforcing or executing the assailed Court of Appeals' decision and resolution, and the assailed trial court's resolutions particularly that which mandates the continued enforcement of the writ of permanent injunction issued by the trial court, until further orders from this Court."* Thereafter, Atty. Santos moved that Agenda Item IV as well as the rest of the items to be taken up since the TRO of the Makati RTC is defective and should not prevail over the TRO of the Supreme Court.

Atty. Santos added that the case recently filed by the abovementioned minority shareholders is a duplicate of another pending case filed by other minority shareholders also in the Makati RTC. It was pointed out that the shareholders in the recent case are guilty of forum shopping since they primarily have the same interests as those who had earlier filed a suit against PRCI. Atty. Santos clarified that the pending case is currently the subject of a Petition to the Supreme Court wherein the aforementioned TRO was issued. With this Comment, the Corporate Secretary took note of the Petition filed with the Supreme Court and the TRO issued by the Supreme Court.

x x x x x x x x x

x x x With all the foregoing comments, Atty. Santos moved that the stockholders proceed with the meeting and that the item under Agenda IV be approved, which are the following: the Minutes of the Annual Stockholders' Meeting held on June 19, 2006, the Minutes of the Special Stockholders' Meeting held on November 7, 2006 and the Minutes of the Annual Stockholders' Meeting held on October 10, 2007.

Thereafter, Atty. Alexander Carandang asked to be given permission to speak. The Chairman asked Atty. Carandang his name and authority to speak, to which, he answered his name and said he was stockholder of record and a proxy of Aristeo Puyat and Jose L. Santos. After Atty. Carandang was recognized, he stated that, contrary to Atty. Santos' earlier actuations, the recent complaint filed is different from the complaint earlier filed by the Dulay group. He also mentioned that the case which Puyat earlier filed is different because it is a case for inspection and photocopying

of PRCI documents. He thereafter warned against the tackling of Agenda Item No. 4.

Atty. Brigido Dulay, as a stockholder and proxy to the Tan group (Miguel Ocampo Tan, Jemie U. Tan, JUT Holdings, Inc., Jalane Christie U. Tan, *etc.*) likewise took the floor to manifest his continuing objection to the proceedings.

Atty. Amado Paolo Dimayuga also took the floor as a proxy to Marilou Pua and manifested that the complainants in the recent case filed are not guilty of forum shopping and also manifested his objection to the taking up of Item IV in the agenda and the continuance of the proceedings in the stockholders' meeting. Atty. Pelagio Ricalde also took the floor as proxy for Aries Prime Resources, Inc. and also manifested objection to the proceedings. Both Atty. Dimayuga and Atty. Ricalde manifested continuing objections.

Atty. Dimayuga also mentioned that he received word that a Motion to Lift was just filed by the PRCI Directors regarding the recent TRO issued by the Makati RTC. As a reply, the Corporate Secretary asked that the counsel for the PRCI directors be allowed to explain such allegations. Atty. Garbriel Q. Enriquez, the counsel for PRCI Directors Cua, Cua, Jr., De Villa and Robles informed the stockholders of the wrong information being given by Atty. Dimayuga. They had filed a manifestation before the Executive Judge of the RTC which issued the TRO and informed him of the facts mentioned by Atty. Santos. The Executive Judge said that today's meeting should proceed because the plaintiffs therein suppressed the existing TRO in the Supreme Court, and the TRO of the RTC cannot rise above the Supreme Court TRO. There is therefore no legal obstacle to holding the Annual Stockholders' Meeting, which should proceed so as not to prejudice the stockholders.

The Corporate Secretary stated that all the objections are duly noted. There being an earlier motion for the approval of the Minutes, a stockholder seconded said motion. The motion having been duly seconded, the Chairman declared all the minutes for approval as duly approved.

x x x x x x x x x

VI. RATIFICATION OF THE ACTS OF THE BOARD OF DIRECTORS, THE EXECUTIVE COMMITTEE AND THE

MANAGEMENT OF THE CORPORATION FOR FISCAL YEARS 2006 AND 2007

The Chairman then proceeded by stating that the next item on the agenda is the ratification by the Stockholders of the acts of the **Board of Directors, the Executive Committee, and the Management during the last fiscal years 2006 and 2007**. The Chairman then explained that as to all other matters and action affecting the operations, financial performance and strategic posture of the Corporation, all have been subsumed and discussed in the Annual Report of the President and likewise reflected in the Information Statement sent to all stockholders of record and to the SEC.

Once more, Atty. Dulay, Atty. Carandang, Atty. Dimayuga and Atty. Ricalde all took the floor successively and objected to this item in the agenda and the Corporate Secretary duly noted these objections.

A stockholder later moved that all the acts of the Board of Directors, the Executive Committee, and the corporate management be confirmed, ratified and approved by the stockholders. The said motion was duly seconded, thus, the stockholders thereafter approved and ratified all the said acts.

At this juncture, Atty. Dulay requested that the stockholders who moved and seconded the aforementioned acts be named and their authority to speak be made known. Atty. Carandang likewise inquired about the same information about a lady stockholder who earlier seconded the motion. With this, Atty. Jose Miguel Manalo stated his name and said he was a stockholder of record. The other stockholders stated that they were proxies of Mr. Santiago Cualoping III.

VII. APPROVAL OF THE EXCHANGE OF PRCI'S MAKATI PROPERTY FOR SHARES OF STOCK OF JTH DAVIES HOLDINGS, INC.

When asked by the Chairman as to the next item in the agenda, the Corporate Secretary informed all present that the next item is the **approval of the exchange of PRCI's Makati property for shares of stock of JTH Davies Holdings** which was duly approved by the Board of Directors during its 11 May 2007 meeting. The exchange was duly reported and disclosed to the

SEC and the information thereof was included in the Information Statements mailed to all stockholders of PRCI.

Yet again, Atty. Dulay, Atty. Carandang, Atty. Dimayuga and Atty. Ricalde all took the floor successively and objected to this item in the agenda which were duly noted by the Corporate Secretary.

The Chairman then called the President of PRCI, Mr. Solomon Cua to officiate on this matter. At this point, one stockholder moved that the exchange of PRCI's Makati property for JTH shares be approved by the stockholders, which was duly seconded by another stockholder. President Cua then asked that the total percentage of those who are in favor of the exchange be taken. Mr. Santiago Cua, Jr., a stockholder and a proxy of approximately 31.39% of the shareholdings voted in favor of the exchange. Then, Mr. Lawrence Lim Swee Lin, representing Magnum Investment Ltd. and Leisure Management Ltd. who own 39.15% of the shareholdings, also voted in favor of the exchange. Mr. Exequiel D. Robles also voted in favor of the exchange, as proxy of Sta. Lucia Realty & Development, Inc. owning 4.19% of the shares. Lastly, Atty. Santos also wanted his vote of approval be counted whi his shares of stock of 117 shares.

With 75.23% of the outstanding capital stock of PRCI voting in favor of the exchange of its Makati property for shares of stock of JTH Davies, the Chairman then declared said motion as carried and approved.[43]

Hence, at their annual meeting on 18 June 2008, the PRCI stockholders had already confirmed and approved the actions and resolutions of the PRCI Board of Directors, which were to subject matters of Civil Cases No. 07-610 and No. 08-458. Resultantly, on 7 July 2008, PRCI and JTH duly signed and executed a Deed of Transfer with Subscription Agreement, covering the exchange of the Makati property of PRCI for shares of stock of JTH. Paragraph 4 of said Deed expressly provides:

4. The parties understand, acknowledge and agree that this Deed is **executed with the intention of availing of the benefits of Sections 40(C)(2) of the National Internal Revenue Code of 1997 (NIRC), as amended**, where, upon subscription of shares hereunder,

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[43] *Rollo* of G.R. No. 182008, pp. 632-637.

the Subscriber shall gain further control of the Company. The parties **obtained a ruling from the Bureau of Internal Revenue** to the effect that **no gain or loss will be recognized** on the part of each of the parties, pursuant to this Deed, in accordance with Sections 40(C)(2) of the NIRC, as amended. The ruling confirmed that the transfer of the Subscriber's parcels of land to the Company in exchange for the shares of stock of the latter is **not subject to income tax, capital gains tax, donor's tax, value-added tax and documentary stamp tax**, except for documentary stamp tax on the original issuance of the Company's shares of stock to the Subscriber.[44] (Emphases ours.)

However, in a letter dated 15 July 2008, the BIR reversed/ revoked its earlier ruling that the property-for-shares exchange between PRCI and JTH was a tax-free transaction under Section 40(C)(2) of the National Internal Revenue Code of 1997; and subjected the exchange to value-added tax. As a result, PRCI and JTH executed on 22 August 2008 a Disengagement Agreement,[45] by virtue of which, effective immediately, PRCI and JTH would disengaged and would no longer implement the Deed of Transfer with Subscription Agreement dated 7 July 2008. For all intents and purposes, the said Deed of Transfer with Subscription Agreement was rescinded. PRCI disclosed the Disengagement Agreement to the SEC on 26 August 2008.

Civil Case No. 08-458 was eventually also assigned to the only commercial court of Makati City, *i.e.*, RTC, Branch 149, presided over by Judge Untalan. Petitioners Santiago Jr., *et al.* averred that Judge Untalan refused to dismiss Civil Case No. 08-458 on the ground of forum shopping, even when it was no different from Civil Case No. 07-610. They further asserted that Judge Untalan showed evident partiality in favor of Jalane, *et al.*, during the hearings in Civil Case No. 08-458, openly making hasty conclusions as to certain marked exhibits and demonstrating his pre-judgment of the case. On 25 September 2008 and 30 September 2008, the PRCI directors filed before the RTC a Motion to Inhibit[46] and a Supplemental Motion to

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[44] *Id.* at 672.

[45] *Id.* at 678-679.

[46] *Rollo* of G.R. Nos. 181455-56, pp. 765-772.

Inhibit,[47] respectively, urging Judge Untalan to inhibit himself from Civil Case No. 08-458, since he had revealed in several instances his utter bias and prejudice against the PRCI directors and admitted his being a relative by affinity of Atty. Amado Paulo Dimayuga,[48] the initial counsel of Jalane, *et al*. Judge Untalan has yet to act on such motions.

At the end of their Manifestation, petitioners Santiago Jr., *et al*., asked that this Court grant them the following reliefs:

PRAYER

WHEREFORE, it is respectfully prayed that the foregoing Manifestation be noted, and that the First Suit [Civil Case No. 07-610] as well as the Second Suit [Civil Case No. 08-458] should now be dismissed for being moot and academic, without need of remand to the trial (sic) Court for further proceedings.

It is further respectfully prayed that should the Honorable Court find it proper and necessary, the instant cases be set for oral arguments on such date and time as it may deem convenient to its calendar.

Herein petitioners furthermore pray for such other reliefs as may be just and equitable in the premises.[49]

Petitioner Santiago Sr. also filed his own Manifestation (To Update the Honorable Court on Relevant Supervening Proceedings and Incidents) with Motion to Resolve Merits of Petition and of the Case in the Lower Court (In View of Supervening Proceedings and Incidents),[50] essentially recounting the same events in the Manifestation of petitioners Santiago Jr., *et al*. The prayer of Santiago Sr. in his Manifestation and Motion reads:

P R A Y E R

WHEREFORE, it is respectfully prayed that the Honorable Court:

1. TAKE COGNIZANCE of the instant Manifestation on relevant supervening proceedings and incidents in this case, especially and

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[47] *Id.* at 773-781.

[48] Atty. Dimayuga is related to Judge Untalan's daughter-in-law.

[49] *Rollo* of G.R. Nos. 181455-56, p. 691.

[50] *Rollo* of G.R. No. 182008, pp. 594-626.

specifically, after the issuance by the Honorable Court on 09 April 2008 of a temporary restraining order, addressed to the Court of Appeals, the presiding judge of the Regional Trial Court, Branch 149, Makati City, and the private respondents, and their agents, representatives and/or any person or persons acting upon their orders or in their place of stead, who are:

> "ENJOINED from enforcing or executing the assailed Court of Appeals' decision and resolution, and the assailed trial court's resolutions particularly that which mandates the continued enforcement of the writ of permanent injunction issued by the trial court, until further orders from this Court."

2. ORDER the dismissal of the complaint below on the ground that the same is not a legitimate and valid derivative suit.

3. ORDER the dismissal of the complaint below, in any case, on the ground that the issues raised in the complaint, specifically with respect to the so-called "disputed" resolutions, have been mooted and/or no longer subsist.

4. ORDER the private respondents to explain why they should not be cited for contempt of court for violation of the temporary restraining order issued by the Court on 09 April 2008.

5. ORDER the private respondents to explain why they should not be cited for contempt of court for engaging in forum-shopping.

6. ORDER that the temporary restraining order issued by the Court on 09 April 2008 be made PERMANENT.

Other reliefs just and equitable in the premises are likewise prayed for.[51]

II
ISSUES

The Court identifies the following fundamental issues for its resolution in the Petitions at bar:

(1) Whether the Petition of Santiago Sr. in G.R. No. 180028 should be dismissed for its procedural infirmities?

(2) Whether Civil Case No. 07-610 instituted by respondents Miguel, *et al*. before the RTC should be ordered dismissed?

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[51] *Id.* at 622-623.

(3) Whether Civil Case No. 08-458 instituted by Jalane, *et al.*, before the RTC should be ordered dismissed?

(4) Whether APRI should be allowed to intervene in the instant Petitions?

III
RULING OF THE COURT

Procedural infirmities of Petition in G.R. No. 180028

Respondents Miguel, *et al.*, call attention to two procedural infirmities of the Petition for *Certiorari* of petitioner Santiago Sr. in G.R. No. 180028: (1) the failure to inform the Court of the pendency of the Petition in G.R. No. 181455-56, thus, violating the rule against forum-shopping; and (2) its being the wrong mode of appeal.

The Verification and Certification of Non-Forum Shopping attached to the Petition for *Certiorari* of petitioner Santiago Sr. in G.R. No. 180028 was actually signed by his attorney-in-fact, Solomon,[52] who is also a petitioner in G.R. Nos. 181455-56. It contains the following paragraph:

> 4. In compliance with the 1997 Rules of Civil Procedure, I hereby certify that the petitioner, by himself personally and/or acting through his attorneys-in fact, has not heretofore commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency, and that to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency. If I should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, Court of Appeals, or different Divisions thereof, or any other tribunal or agency, I undertake to promptly inform this Honorable Court, the aforesaid courts and other tribunal or agency within five (5) days therefrom.[53]

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[52] By virtue of a Special Power of Attorney executed by petitioner Santiago Sr. in favor of petitioners Santiago Jr. and/or Solomon, notarized on 25 August 2007.

[53] *Rollo* of G.R. No. 182008, p. 89.

Respondents Miguel, *et al.,* maintain that the failure of Solomon, as petitioner Santiago Sr.'s attorney-in-fact, to inform the Court as regards the pendency of the Petition for Review in G.R. No. 181455-56, of which Solomon is one of the petitioners, is in violation of the rule against forum-shopping and warrants the summary dismissal of the Petition in G.R. No. 182008.

Forum shopping is the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. It is an act of malpractice and is prohibited and condemned as trifling with courts and abusing their processes. In determining whether or not there is forum shopping, what is important is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative bodies to rule on the same or related causes and/or grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different bodies upon the same issues.[54]

Forum shopping is present when, in two or more cases pending, there is identity of (1) parties (2) rights or causes of action and reliefs prayed for, and (3) the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[55]

It is evident that Santiago Sr., the petitioner in G.R. No. 182008, is not a party to G.R. No. 181455-56. Even though Solomon is admittedly a petitioner in G.R. No. 181455-56, he is only acting in G.R. No. 182008 as the attorney-in-fact of Santiago Sr., the actual petitioner in the latter case. Thus, the very first element for forum shopping, identity of parties, is lacking.

Respondents Miguel, *et al*., cannot insist on identity of interests between petitioner Santiago Sr. in G.R. No. 182008 and petitioners

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[54] *MSF Tire and Rubber, Inc. v. Court of Appeals*, 370 Phil. 824, 832 (1999).

[55] *La Campana Development Corporation v. See*, G.R. No. 149195, 26 June 2006, 492 SCRA 584, 588-589.

Santiago Jr., *et al.,* in G.R. No. 181455-56, when the Complaint itself of respondents Miguel, *et al*., before the RTC, docketed as Civil Case No. 07-610, impleads the petitioners Santiago Sr. and Santiago Jr., *et al*., as defendants *a quo* in their **individual capacities as PRCI directors**, and not collectively as the PRCI Board of Directors. Each individual PRCI director, therefore, is not precluded from hiring his own counsel, presenting his own arguments and defenses, and resorting to his own procedural remedies, apart and independent from the other PRCI directors. In addition, the consolidation of G.R. No. 181455-56 and G.R. No. 182008 has already eliminated the danger of conflicting decisions being issued in said cases.

Assuming *arguendo* that Solomon did have the legal obligation to inform the Court in G.R. No. 182008 of the pendency of G.R. No. 181455-56, his failure to do so does not necessarily result in the dismissal of the former. Although the submission of a certificate against forum shopping is deemed obligatory, it is not jurisdictional.[56] Hence, in this case in which such a certification was in fact submitted — only, it was defective — the Court may still refuse to dismiss and may, instead, give due course to the Petition in light of attendant exceptional circumstances.[57]

Santiago Sr. committed another procedural *faux pas* by filing before this Court a Petition for *Certiorari* under Rule 65 of the Rules of Court to assail the Decision dated 6 September 2007 and Resolution dated 22 January 2008 of the Court of Appeals in CA-G.R. SP No. 99769 and No. 99780.

The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45, which is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings

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[56] See *Ateneo de Naga University v. Manalo*, G.R. No. 160455, 9 May 2005, 458 SCRA 325, 336-337.

[57] *In-N-Out Burger, Inc. v. Sehwani, Incorporated*, G.R. No. 179127, 24 December 2008, 575 SCRA 535, 559.

involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45.[58]

Accordingly, when a party adopts an improper remedy, as in this case, his Petition may be dismissed outright. However, in the interest of substantial justice, the strict application of procedural technicalities should not hinder the speedy disposition of this case on the merits. Thus, while the instant Petition is one for *certiorari* under Rule 65 of the Rules of Court, the assigned errors are more properly addressed in a petition for review under Rule 45.[59]

The merits of the Petitions in both G.R. No. 181455-56 and No. 182008 compel this Court to give more weight to substantive justice, instead of technical rules. Indeed, where, as here, there is a strong showing that a grave miscarriage of justice would result from the strict application of the Rules, the Court will not hesitate to relax the same in the interest of substantial justice. It bears stressing that the rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that, on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within the power of the Court to suspend the Rules, or except a particular case from its operation.[60]

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[58] *Fortune Guarantee and Insurance Corporation v. Court of Appeals*, 428 Phil. 783, 791 (2002).

[59] *Id.*

[60] *Coronel v. Desierto*, 448 Phil. 894, 903 (2003).

Derivative suits, in general

A corporation, such as PRCI, is but an association of individuals, allowed to transact under an assumed corporate name, and with a distinct legal personality. In organizing itself as a collective body, it waives no constitutional immunities and perquisites appropriate to such body. As to its corporate and management decisions, therefore, the State will generally not interfere with the same. Questions of policy and of management are left to the honest decision of the officers and directors of a corporation, and the courts are without authority to substitute their judgment for the judgment of the board of directors. The board is the business manager of the corporation, and so long as it acts in good faith, its orders are not reviewable by the courts.[61]

The governing body of a corporation is its board of directors. Section 23 of the Corporation Code provides that "[u]nless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees x x x." The concentration in the board of the powers of control of corporate business and of appointment of corporate officers and managers is necessary for efficiency in any large organization. Stockholders are too numerous, scattered and unfamiliar with the business of a corporation to conduct its business directly. And so the plan of corporate organization is for the stockholders to choose the directors who shall control and supervise the conduct of corporate business.[62]

The following discourse on the corporate powers of the board of directors under Section 23 of the Corporation Code establishes the extent thereof:

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[61] *Philippine Stock Exchange v. Court of Appeals*, 346 Phil. 218, 234 (1997).

[62] *Filipinas Port Services, Inc. v. Go*, G.R. No. 161886, 16 March 2007, 518 SCRA 453, 464.

Under the above provision, it is quite clear that, except in the instances where the Code expressly grants a specific power to the stockholders or member, the board has the sole power and responsibility to decide whether a corporation should sue, purchase and sell property, enter into any contract, or perform any act. Stockholders' or members' resolutions dealing with matters other than the exceptions are not legally effective nor binding on the board, and may be treated by it as merely advisory, or may even be completely disregarded. Since the law has vested the responsibility of managing the corporate affairs on the board, the stockholders must abide by its decisions. If they do not agree with the policies of the board, their remedy is to wait for the next election of the directors and choose new ones to take their place. The theory of the law is that although stockholders are to have all the profit, the complete management of the enterprise shall be with the board.[63]

The board of directors of a corporation is a creation of the stockholders. The board of directors, or the majority thereof, controls and directs the affairs of the corporation; but in drawing to itself the power of the corporation, it occupies a position of trusteeship in relation to the minority of the stock. The board shall exercise good faith, care, and diligence in the administration of the affairs of the corporation, and protect not only the interest of the majority but also that of the minority of the stock. Where the majority of the board of directors wastes or dissipates the funds of the corporation or fraudulently disposes of its properties, or performs *ultra vires* acts, the court, in the exercise of its equity jurisdiction, and upon showing that intracorporate remedy is unavailing, will entertain a suit filed by the minority members of the board of directors, for and in behalf of the corporation, to prevent waste and dissipation and the commission of illegal acts and otherwise redress the injuries of the minority stockholders against the wrongdoing of the majority. The action in such a case is said to be brought derivatively in behalf of the corporation to protect the rights of the minority stockholders thereof.[64]

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[63] Jose Campos, Jr. and Maria Clara L. Campos, *The Corporation Code: Comments*, *Notes and Selected Cases* (1990 ed.), Vol. I, p. 341.

[64] *Angeles v. Santos*, 64 Phil. 697, 707 (1937).

It is well settled in this jurisdiction that where corporate directors are guilty of a breach of trust — not of mere error of judgment or abuse of discretion — and intracorporate remedy is futile or useless, a stockholder may institute a suit in behalf of himself and other stockholders and for the benefit of the corporation, to bring about a redress of the wrong inflicted directly upon the corporation and indirectly upon the stockholders.[65]

A derivative suit must be differentiated from individual and representative or class suits, thus:

Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits. Where a stockholder or member is denied the right of inspection, his suit would be **individual** because the wrong is done to him personally and not to the other stockholders or the corporation. Where the wrong is done to a group of stockholders, as where preferred stockholders' rights are violated, a **class or representative suit** will be proper for the protection of all stockholders belonging to the same group. But where the acts complained of constitute a wrong to the corporation itself, the cause of action belongs to the corporation and not to the individual stockholder or member. Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer. Otherwise, not only would the theory of separate entity be violated, but there would be multiplicity of suits as well as a violation of the priority rights of creditors. Furthermore, there is the difficulty of determining the amount of damages that should be paid to each individual stockholder.

However, in cases of mismanagement where the wrongful acts are committed by the directors or trustees themselves, a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue, and they will never be willing to sue themselves. The corporation would thus be helpless to seek remedy. Because of the

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[65] *Id.*

frequent occurrence of such a situation, the common law gradually recognized the right of a stockholder to sue on behalf of a corporation in what eventually became known as a **"derivative suit."** It has been proven to be an effective remedy of the minority against the abuses of management. Thus, an individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party in interest.[66]

The afore-quoted exposition is relevant considering the claim of respondents Miguel, *et al*., that its Complaint in Civil Case No. 07-610 is not just a derivative suit, but also an intracorporate action arising from devices or schemes employed by the PRCI Board of Directors amounting to fraud or misrepresentation.[67] A thorough study of the said Complaint, however, reveals that the distinction is deceptive. The supposed devices and schemes employed by the PRCI Board of Directors amounting to fraud

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[66] Jose Campos, Jr. and Maria Clara L. Campos, *The Corporation Code: Comments, Notes and Selected Cases* (1990 ed.), Vol. I, pp. 819-820.

[67] The Interim Rules of Procedure on Intra-Corporate Controversies (IRPICC) shall apply to the following cases:

Rule 1.

Section 1. (a) *Cases covered.* — These Rules shall govern the procedure to be observed in civil cases involving the following:

(1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;

(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members or associates, respectively;

(3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;

(4) Derivative suits; and

(5) Inspection of corporate books.

or misrepresentation are the very same bases for the derivative suit. They are the very same acts of the PRCI Board of Directors that have supposedly caused injury to the corporation. From the very beginning of their Complaint, respondents have alleged that they are filing the same "as shareholders, for and in behalf of the Corporation, in order to redress the wrongs committed against the Corporation and to protect or vindicate corporate rights, and to prevent wastage and dissipation of corporate funds and assets and the further commission of illegal acts by the Board of Directors." Although respondents Miguel, *et al*., also aver that they are seeking "redress for the injuries of the minority stockholders against the wrongdoings of the majority," the rest of the Complaint does not bear this out, and is utterly lacking any allegation of injury personal to them or a certain class of stockholders to which they belong.[68]

Indeed, the Court notes American jurisprudence to the effect that a derivative suit, on one hand, and individual and class suits, on the other, are mutually exclusive, *viz*:

> As the Supreme Court has explained: "A shareholder's derivative suit seeks to recover for the benefit of the corporation and its whole body of shareholders when injury is caused to the corporation that may not otherwise be redressed because of failure of the corporation to act. Thus, 'the action is derivative, *i.e*., in the corporate right, if the gravamen of the complaint is injury to the corporation, or to the whole body of its stock and property without any severance or distribution among individual holders, or it seeks to recover assets for the corporation or to prevent the dissipation of its assets.' [Citations.]" (*Jones, supra*, 1 Cal.3d 93, 106, 81 Cal.Rptr. 592, 460 P.2d 464.) In contrast, "a *direct* action [is one] filed by the shareholder individually (or on behalf of a *class* of shareholders to which he or she belongs) for injury to his or her interest as a *shareholder*. . . [¶] . . . **[T]he two actions are mutually exclusive: *i.e*., the right of action and recovery belongs to either the *shareholders* (direct action)** *651 **or the *corporation* (derivative action).**" (Friedman, Cal. Practice Guide: Corporations, *supra,* ¶ 6:598, p. 6-127.)

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Thus, in *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 84 Cal.Rptr.2d 753, the **289 minority shareholder alleged that the other shareholder of the corporation negligently managed the business, resulting in its total failure. (*Id.* at p. 125, 84 Cal.Rptr.2d 753) The appellate court concluded that the plaintiff could not maintain the suit as a direct action: "Because the gravamen of the complaint is injury to the whole body of its stockholders, it was for the corporation to institute and maintain a remedial action. [Citation.] A derivative action would have been appropriate if its responsible officials had refused or failed to act." (*Id.* at pp. 125-126, 84 Cal.Rptr.2d 753) The court went on to note that the damages shown at trial were the loss of corporate profits. (*Id.* at p. 126, 84 Cal.Rptr.2d 753) Since "[s]hareholders own neither the property nor the earnings of the corporation," any damages that the plaintiff alleged that resulted from such loss of corporate profits "were incidental to the injury to the corporation."[69]

Based on allegations in the Complaint of Miguel, *et al.*, in Civil Case No. 07-610, the Court determines that there is only a derivative suit, based on the devices and schemes employed by the PRCI Board of Directors that amounts to mismanagement, misrepresentation, fraud, and bad faith.

At the crux of the Complaint of respondents Miguel, *et al.*, in Civil Case No. 07-610 is their dissent from the passage by the majority of the PRCI Board of Directors of the "disputed resolutions," particularly: (1) the Resolution dated 26 September 2006, authorizing the acquisition by PRCI of up to 100% of the common shares of JTH; and (2) the Resolution dated 11 May 2007, approving the property-for-shares exchange between PRCI and JTH.

<u>Derivative suit (re: acquisition of JTH)</u>

It is important for the Court to mention that the 26 September 2006 Resolution of the PRCI Board of Directors not only authorized the acquisition by PRCI of up to 100% of the common stock of JTH, but it also specifically appointed petitioner Santiago

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[69] *Oakland Raiders v. National Football League*, 131 Cal.App.4th 621, 32 Cal.Rptr.3d 266, Cal. App. 6 Dist., 2005, 28 July 2005.

Sr.[70] to act as attorney-in-fact and proxy who could vote all the shares of PRCI in JTH, as well as nominate, appoint, and vote into office directors and/or officers during regular and special stockholders' meetings of JTH. It was by this authority that PRCI directors were able to constitute the JTH Board of Directors. Thus, the protest of respondents Miguel, *et al*., against the interlocking directors of PRCI and JTH is also rooted in the 26 September 2006 Resolution of the PRCI Board of Directors.

After a careful study of the allegations concerning this derivative suit, the Court rules that it is dismissible for being moot and academic.

That a court will not sit for the purpose of trying moot cases and spend its time in deciding questions, the resolution of which cannot in any way affect the rights of the person or persons presenting them, is well settled. Where the issues have become moot and academic, there is no justiciable controversy, thereby rendering the resolution of the same of no practical use or value.[71]

The Resolution dated 26 September 2006 of the PRCI Board of Directors was **approved and ratified** by the stockholders, holding 74% of the outstanding capital stock in PRCI, during the Special Stockholders' Meeting held on **7 November 2006**.[72]

Respondents Miguel, *et al*., instituted Civil Case No. 07-610 only on **10 July 2007**, against herein petitioners Santiago Sr., Santiago Jr., Solomon, and Robles, together with Renato de Villa, Lim Teong Leong, Lawrence Lim Swee Lin, Tham Ka

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[70] Followed by several other individuals as his substitute, in case he is not available.

[71] *Delgado v. Court of Appeals*, G.R. No. 137881, 19 August 2005, 467 SCRA 418, 428.

[72] Only the approval of the Minutes of the Special Stockholders' Meeting on 7 November 2006 was to be included in the Agenda for the Annual Stockholders' Meeting for 2007, which respondents Miguel, *et al.* sought to enjoin in Civil Case No. 07-610.

Hon, and Dato Surin Upatkoon, **in their capacity as directors** of PRCI and/or JTH. Clearly, the acquisition by PRCI of JTH and the constitution of the JTH Board of Directors are no longer just the acts of the majority of the PRCI Board of Directors, but also of the majority of the PRCI stockholders. By ratification, even an unauthorized act of an agent becomes the authorized act of the principal.[73] To declare the Resolution dated 26 September 2006 of the PRCI Board of Directors null and void will serve no practical use or value, or affect any of the rights of the parties, because the Resolution dated 7 November 2006 of the PRCI stockholders — approving and ratifying said acquisition and the manner in which PRCI shall constitute the JTH Board of Directors — will still remain valid and binding.

In fact, if the derivative suit, insofar as it concerns the Resolution dated 26 September 2006 of the PRCI Board of Directors, is not dismissible for mootness, it is still vulnerable to dismissal for failure to implead indispensable parties, namely, the majority of the PRCI stockholders.

Under Rule 3, Section 7 of the Rules of Court, an indispensable party is a party-in-interest, without whom there can be no final determination of an action. The interests of such indispensable party in the subject matter of the suit and the relief are so bound with those of the other parties that his legal presence as a party to the proceeding is an absolute necessity. As a rule, an indispensable party's interest in the subject matter is such that a complete and efficient determination of the equities and rights of the parties is not possible if he is not joined.[74]

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[73] "Ratification" means that the principal voluntarily adopts, confirms and gives sanction to some unauthorized act of its agent on its behalf. It is this voluntary choice, knowingly made, that amounts to a ratification of what was theretofore unauthorized and becomes the authorized act of the party so making the ratification. The substance of the doctrine is confirmation after conduct, amounting to a substitute for a prior authority. Ratification can be made either expressly or impliedly. (*Yasuma v. Heirs of Cecilio S. De Villa*, G.R. No. 150350, 22 August 2006, 499 SCRA 466, 471-472.)

[74] *Galicia v. Mercado*, G.R. No. 146744, 6 March 2006, 484 SCRA 131, 136-137.

The majority of the stockholders of PRCI are indispensable parties to Civil Case No. 07-610, for they have approved and ratified, during the Special Stockholders' Meeting on 7 November 2006, the Resolution dated 26 September 2006 of the PRCI Board of Directors. Obviously, no final determination of the validity of the acquisition by PRCI of JTH or of the constitution of the JTH Board of Directors can be had without consideration of the effect of the approval and ratification thereof by the majority stockholders.

Respondents Miguel, *et al*., cannot simply assert that the majority of the PRCI Board of Directors named as defendants in Civil Case No. 07-610 are also the PRCI majority stockholders, because respondents Miguel, *et al*., explicitly impleaded said defendants in their capacity as directors of PRCI and/or JTH, not as stockholders.

Derivative suit (re: property-for-shares exchange)

The derivative suit, with respect to the Resolution dated 11 May 2007 of the PRCI Board of Directors, is similarly dismissible for lack of cause of action.

The Court has recognized that a stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties. In effect, the suit is an action for specific performance of an obligation, owed by the corporation to the stockholders, to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to adopt suitable measures for its protection. The basis of a stockholder's suit is always one of equity. **However, it cannot prosper without first complying with the legal requisites for its institution.**[75]

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[75] *Bitong v. Court of Appeals*, 354 Phil. 516, 545 (1998).

Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies (IRPICC) lays down the following requirements which a stockholder must comply with in filing a derivative suit:

Sec. 1. *Derivative action.* — A stockholder or member may bring an action in the name of a corporation or association, as the case may be, provided, that:

(1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;

(2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;

(3) No appraisal rights are available for the act or acts complained of; and

(4) The suit is not a nuisance or harassment suit. (Emphasis ours.)

In their Complaint before the RTC in Civil Case No. 07-610, respondents Miguel, *et al.,* made no mention at all of appraisal rights, which could or could not have been available to them. In their Comment on the Petitions at bar, respondents Miguel, *et al.,* contend that there are no appraisal rights available for the acts complained of, since (1) the PRCI directors are being charged with mismanagement, misrepresentation, fraud, and breach of fiduciary duties, which are not subject to appraisal rights; (2) appraisal rights will only obtain for acts of the Board of Directors in good faith; and (3) appraisal rights may be exercised by a stockholder who shall have voted against the proposed corporate action, and no corporate action has yet been taken herein by PRCI stockholders, who still have not voted on the intended property-for-shares exchange between PRCI and JTH.

The Court disagrees.

It bears to point out that every derivative suit is necessarily grounded on an alleged violation by the board of directors of its fiduciary duties, committed by mismanagement, misrepresentation,

or fraud, with the latter two situations already implying bad faith. If the Court upholds the position of respondents Miguel, *et al*. — that the existence of mismanagement, misrepresentation, fraud, and/or bad faith renders the right of appraisal unavailable — it would give rise to an absurd situation. Inevitably, appraisal rights would be unavailable in any derivative suit. This renders the requirement in Rule 8, Section 1(3) of the IPRICC superfluous and effectively inoperative; and in contravention of an elementary rule of legal hermeneutics that effect must be given to every word, clause, and sentence of the statute, and that a statute should be so interpreted that no part thereof becomes inoperative or superfluous.[76]

The import of establishing the availability or unavailability of appraisal rights to the minority stockholder is further highlighted by the fact that it is one of the factors in determining whether or not a complaint involving an intra-corporate controversy is a nuisance and harassment suit. Section 1(b), Rule 1 of IRPICC provides:

(b) *Prohibition against nuisance and harassment suits.* — Nuisance and harassment suits are prohibited. In determining whether a suit is a nuisance or harassment suit, the court shall consider, among others, the following:

(1) The extent of the shareholding or interest of the initiating stockholder or member;

(2) Subject matter of the suit;

(3) Legal and factual basis of the complaint;

(4) Availability of appraisal rights for the act or acts complained of; and

(5) Prejudice or damage to the corporation, partnership, or association in relation to the relief sought. [Emphasis ours.]

In case of nuisance or harassment suits, the court may, *motu proprio* or upon motion, forthwith dismiss the case.

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[76] *Manila Lodge No. 761 v. Court of Appeals*, 165 Phil. 161, 180 (1976).

The availability or unavailability of appraisal rights should be objectively based on the subject matter of the complaint, *i.e.*, the specific act or acts performed by the board of directors, without regard to the subjective conclusion of the minority stockholder instituting the derivative suit that such act constituted mismanagement, misrepresentation, fraud, or bad faith.

The *raison d'etre* for the grant of appraisal rights to minority stockholders has been explained thus:

x x x [Appraisal right] means that a stockholder who dissented and voted against the proposed corporate action, may choose to get out of the corporation by demanding payment of the fair market value of his shares. When a person invests in the stocks of a corporation, he subjects his investment to all the risks of the business and cannot just pull out such investment should the business not come out as he expected. He will have to wait until the corporation is finally dissolved before he can get back his investment, and even then, only if sufficient assets are left after paying all corporate creditors. His only way out before dissolution is to sell his shares should he find a willing buyer. If there is no buyer, then he has no recourse but to stay with the corporation. **However, in certain specified instances, the Code grants the stockholder the right to get out of the corporation even before its dissolution because there has been a major change in his contract of investment with which he does not agree and which the law presumes he did not foresee when he bought his shares. Since the will of two-thirds of the stocks will have to prevail over his objections, the law considers it only fair to allow him to get back his investment and withdraw from the corporation.** x x x,[77] (Emphasis ours.)

The Corporation Code expressly made appraisal rights available to the dissenting stockholder in the following instances:

Sec. 42. *Power to invest corporate funds in another corporation or business or for any other purpose.* — Subject to the provisions of this Code, a private corporation may invest its funds in any other corporation or business or for any purpose other than the primary

[77] Jose Campos, Jr. and Maria Clara L. Campos, *The Corporation Code: Comments, Notes and Selected Cases* (1990 ed.), Vol. I, pp. 501-502.

purpose for which it was organized when approved by a majority of the board of directors or trustees and ratified by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or by at least two-thirds (2/3) of the members in case of non-stock corporations, at a stockholders' or members' meeting duly called for the purpose. Written notice of the proposed investment and the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally; *Provided*, **That any dissenting stockholder shall have appraisal right** as provided in this Code: *Provided, however*, That where the investment by the corporation is reasonably necessary to accomplish its primary purpose as stated in the articles of incorporation, the approval of the stockholders or members shall not be necessary.

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

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

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

3. In case of merger or consolidation. (Emphasis ours.)

Respondents Miguel, *et al*., themselves admitted that the property-for-shares exchange between PRCI and JTH, approved by majority of the PRCI Board of Directors in the Resolution dated 11 May 2007, involved all or substantially all of the properties and assets of PRCI. They alleged in their Complaint in Civil Case No. 07-610 that:

49. The Corporation's Makati Property, consisting of prime property in the heart of Makati City worth billions of pesos in its current value **constitutes substantially all of the assets of the Corporation** and is the sole and exclusive location on which it conducts its business of a race course.

50. The exchange of the Corporation's property for JTH shares would therefore **constitute a sale of substantially all of the assets of the corporation**. (Emphasis ours.)

Irrefragably, the property-for-shares exchange between PRCI and JTH, involving as it did substantially all of the properties and assets of PRCI, qualified as one of the instances when dissenting stockholders, such as respondents Miguel, *et al*., could have exercised their appraisal rights.

The Court finds specious the averment of respondents Miguel, *et al*., that appraisal rights were not available to them, because appraisal rights may only be exercised by stockholders who had voted against the proposed corporate action; and that at the time respondents Miguel, *et al*., instituted Civil Case No. 07-610, PRCI stockholders had yet to vote on the intended property-for-shares exchange between PRCI and JTH. Respondents Miguel, *et al.,* themselves caused the unavailability of appraisal rights by filing the Complaint in Civil Case No. 07-610, in which they prayed that the 11 May 2007 Resolution of the Board of Directors approving the property-for-shares exchange between PRCI and JTH be declared null and void, even before the said Resolution could be presented to the PRCI stockholders for approval or rejection. More than anything, the argument of respondents Miguel, *et al*., raises questions of whether their derivative suit was prematurely filed for they had failed to exert all reasonable efforts to exhaust **all other remedies** available under the articles of incorporation, by-laws, laws, or rules governing the corporation or partnership, as required by Rule 8, Section 1(2) of the IRPICC. The obvious intent behind the rule is to make the derivative suit the final recourse of the stockholder, after all other remedies to obtain the relief sought have failed.[78]

<u>Personal action for inspection of corporate books and records</u>

Respondents Miguel, *et al.,* allege another cause of action, other than the derivative suit — the violation of their right to

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[78] *Yu v. Yukayguan*, G.R. No. 177549, 18 June 2009.

information relative to the disputed Resolutions, *i.e.*, the Resolutions dated 16 September 2006 and 11 May 2007 of the PRCI Board of Directors.

Rule 7 of the IRPICC shall apply to disputes exclusively involving the rights of stockholders or members to inspect the books and records and/or to be furnished with the financial statements of a corporation, under Sections 74[79] and 75[80] of the Corporation Code.[81]

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[79] Sec. 74. *Books to be kept; stock transfer agent.* — Every corporation shall, at its principal office, keep and carefully preserve a record of all business transactions and minutes of all meetings of stockholders or members, or of the board of directors or trustees, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. Upon the demand of any director, trustee, stockholder or member, the time when any director, trustee, stockholder or member entered or left the meeting must be noted in the minutes; and on a similar demand, the yeas and nays must be taken on any motion or proposition, and a record thereof carefully made. The protest of any director, trustee, stockholder or member on any action or proposed action must be recorded in full on his demand.

The records of all business transactions of the corporation and the minutes of any meetings shall be open to the inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

Any officer or agent of the corporation who shall refuse to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: *Provided*, That if such refusal is pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and *Provided*, *further,* That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

Stock corporations must also keep a book to be known as the "stock and transfer book," in which must be kept a record of all stocks in the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stocks for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe. The stock and transfer book shall be kept in the principal office of the corporation or in the office of its stock transfer agent and shall be open for inspection of any director or stockholder of the corporation at reasonable hours on business days.

No stock transfer agent or one engaged principally in the business of registering transfer of stocks in behalf of a stock corporation shall be allowed to operate in the Philippines unless he secures a license from the Securities and Exchange Commission and pays a fee as may be fixed by the Commission, which shall be renewable annually: *Provided*, That a stock corporation is not precluded from performing or making transfer of its own stocks, in which case all the rules and regulations imposed on stock transfer agents, except the payment of a license fee herein provided, shall be applicable. (51a and 32a; B. P. No. 268.)

[80] Sec. 75. *Right to financial statements.* — Within ten (10) days from receipt of a written request of any stockholder or member, the corporation shall furnish to him its most recent financial statement, which shall include a balance sheet as of the end of the last taxable year and a profit or loss statement for said taxable year, showing in reasonable detail its assets and liabilities and the result of its operations.

At the regular meeting of stockholders or members, the board of directors or trustees shall present to such stockholders or members a financial report of the operations of the corporation for the preceding year, which shall include financial statements, duly signed and certified by an independent certified public accountant.

However, if the paid-up capital of the corporation is less than ₱50,000.00, the financial statements may be certified under oath by the treasurer or any responsible officer of the corporation. (n)

[81] Rule 7, Section 1 of IPRICC.

Rule 7, Section 2 of IRPICC enumerates the requirements particular to a complaint for inspection of corporate books and records:

Sec. 2. *Complaint*. — In addition to the requirements in Section 4, Rule 2 of these Rules, the complaint must state the following:

(1) The case is for the enforcement of plaintiff's right of inspection of corporate orders or records and/or to be furnished with financial statements under Sections 74 and 75 of the Corporation Code of the Philippines;

(2) A demand for inspection and copying of books and records and/or to be furnished with financial statements made by the plaintiff upon defendant;

(3) The refusal of defendant to grant the demands of the plaintiff and the reasons given for such refusals, if any; and

(4) The reasons why the refusal of defendant to grant the demands of the plaintiff is unjustified and illegal, stating the law and jurisprudence in support thereof. (Emphasis ours.)

As has already been previously established herein, the right to information, which includes the right to inspect corporate books and records, is a right personal to each stockholder. After a closer reading of the Complaint in Civil Case No. 07-610, the Court observes that only respondent Dulay actually made a demand for a copy of "all the records, documents, contracts, and agreements, emails, letters, correspondences, relative to the acquisition of JTH x x x." There is no allegation that his co-respondents (who are his co-plaintiffs in Civil Case No. 07-610) made similar demands for the inspection or copying of corporate books and records. Only respondent Dulay complied then with the requirement under Rule 7, Section 2(2) of IRPICC.

Even so, respondent Dulay's Complaint should be dismissed for lack of cause of action, for his demand for copies of pertinent documents relative to the acquisition of JTH shares was not denied by any of the defendants named in the Complaint in Civil Case No. 07-610, but by Atty. Jesulito A. Manalo (Manalo), the Corporate Secretary of PRCI, in a letter dated 17 January 2006. Section 74 of the Corporation Code, the substantive law

on which respondent Dulay's Complaint for inspection and copying of corporate books and records is based, states that:

> Sec. 74. *Books to be kept; stock transfer agent.* —
>
> x x x x x x x x x
>
> Any **officer or agent of the corporation** who shall refuse to allow any director, trustees, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, **shall be liable** to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: Provided, That if such refusal is pursuant to a resolution or order of the Board of Directors or Trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: x x x (Emphasis ours.)

Based on the foregoing, it is Corporate Secretary Manalo who should be held liable for the supposedly wrongful and unreasonable denial of respondent Dulay's demand for inspection and copying of corporate books and records; but, as previously mentioned, Corporate Secretary Manalo is not among the defendants named in the Complaint in Civil Case No. 07-610. There is also utter lack of any allegation in the Complaint that Corporate Secretary Manalo denied respondent Dulay's demand pursuant to a resolution or order of the PRCI Directors, so that the latter (who are actually named defendants in the Complaint) could also be held liable for the denial.

Supervening events

During the pendency of the cases at bar, supervening events took place that further justified the dismissal of Civil Case No. 07-610 for already being moot and academic.

First, during the 2008 Annual Stockholders' Meeting of PRCI, held on 18 June 2008, the following agenda items were finally presented to the stockholders, who approved and ratified the same by a majority vote: (1) the Minutes of the Special Stockholders' Meeting dated 7 November 2006, during which the majority of the stockholders approved and ratified the

acquisition of JTH by PRCI; (2) the acts of the Board of Directors, the Executive Committee, and the Management of PRCI for 2006, which included the acquisition of JTH by PRCI; and (3) the planned property-for-shares exchange between PRCI and JTH. Even respondents Miguel, *et al*., themselves admitted in their Comment with Prayer for the Immediate Lifting or Dissolution of the Temporary Restraining Order in G.R. No. 182008 that:

> 12. Indeed, the approval and/or ratification of the transfer of PRCI's Sta. Ana racetrack property to JTH during the upcoming stockholders' meeting would render nugatory, moot and academic the action and proceedings before the Regional Trial Court of Makati, Branch 149, inasmuch as the acts assailed by private respondents would have already been consummated by such approval and/or ratification.
>
> 13. In the same vein, such approval and/or ratification during the forthcoming PRCI stockholder's (sic) meeting would likewise render moot and academic the proceedings before this Honorable Court in that it would have effectively granted the reliefs sought by herein petitioner even before this Honorable Court could finally rule on the propriety of the Court of Appeals' Decision/Resolution by herein petitioners.[82]

Second, although already approved and ratified by majority vote of the PRCI stockholders, and PRCI and JTH executed a Deed of Transfer with Subscription Agreement on 7 July 2008 to effect the property-for-shares exchange between the two corporations, the controversial transaction will no longer push through. A major consideration for the exchange is that it will be tax-free; but the BIR ruled that such transaction shall be subject to VAT. Resultantly, PRCI and JTH executed on 22 August 2008 a Disengagement Agreement, by virtue of which, both corporations rescinded the Deed of Transfer with Subscription Agreement dated 7 July 2008 and immediately disengaged from implementing the said Deed.

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[82] *Rollo* of G.R No. 182008, p. 366.

Civil Case No. 08-458

The very nature of Civil Case No. 07-610 as a derivative suit bars Civil Case No. 08-458 and warrants the latter's dismissal.

In *Chua v. Court of Appeals*,[83] the Court stresses that the corporation is the real party in interest in a derivative suit, and the suing stockholder is only a nominal party:

An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stocks in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold the control of the corporation. In such actions, **the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest**.

x x x x x x x x x

x x x For a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that **he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit**. It is a condition *sine qua non* that the corporation be impleaded as a party because not only is the corporation an indispensable party, but it is also the present rule that it must be served with process. The judgment must be made binding upon the corporation in order that the corporation may get the benefit of the suit and **may not bring subsequent suit against the same defendants for the same cause of action**. In other words, the corporation must be joined as party because **it is its cause of action that is being litigated and because judgment must be a *res adjudicata* against it.** (Emphases ours.)

The more extensive discussion by the Court of the nature of a derivative suit in *Asset Privatization Trust v. Court of Appeals*[84] is presented below:

Settled is the doctrine that in a derivative suit, the corporation is the real party in interest while the stockholder filing suit for the

[83] G.R. No. 150793, 19 November 2004, 443 SCRA 259, 266-268.

[84] 360 Phil. 768, 804-806 (1998).

corporation's behalf is only a nominal party. The corporation should be included as a party in the suit.

> An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest. x x x.

It is a condition *sine qua non* that the corporation be impleaded as a party because —

> x x x. Not only is the corporation an indispensable party, but it is also the present rule that it must be served with process. The reason given is that the judgment must be made binding upon the corporation and in order that the corporation may get the benefit of the suit and may not bring a subsequent suit against the same defendants for the same cause of action. In other words the corporations must be joined as party because it is its cause of action that is being litigated and because judgment must be a *res ajudicata* against it.

The reasons given **for not allowing direct individual suit** are:

> (1) x x x "the universally recognized doctrine that a stockholder in a corporation has **no title legal or equitable to the corporate property**; that both of these are in the corporation itself for the benefit of the stockholders." In other words, **to allow shareholders to sue separately would conflict with the separate corporate entity principle**;
>
> (2) x x x that the prior rights of the creditors may be prejudiced. Thus, our Supreme Court held in the case of *Evangelista v. Santos*, that "the stockholders may not directly claim those damages for themselves for that would result in the appropriation by, and the distribution among them of part of the corporate assets before the dissolution of the corporation and the liquidation of its debts and liabilities, something which cannot be legally done in view of Section 16 of the Corporation Law x x x;"
>
> (3) the filing of such suits would conflict with the duty of the management to sue for the protection of all concerned;

(4) it would **produce wasteful multiplicity of suits**; and

(5) it would involve confusion in ascertaining the effect of partial recovery by an individual on the damages recoverable by the corporation for the same act.

As established in the foregoing jurisprudence, in a derivative suit, it is the corporation that is the indispensable party, while the suing stockholder is just a nominal party. Under Rule 7, Section 3 of the Rules of Court, an indispensable party is a party-in-interest, without whom no final determination can be had of an action without that party being impleaded. Indispensable parties are those with such an interest in the controversy that a final decree would necessarily affect their rights, so that the court cannot proceed without their presence. "Interest," within the meaning of this rule, should be material, directly in issue, and to be affected by the decree, as distinguished from a mere incidental interest in the question involved. On the other hand, a nominal or *pro forma* party is one who is joined as a plaintiff or defendant, not because such party has any real interest in the subject matter or because any relief is demanded, but merely because the technical rules of pleadings require the presence of such party on the record.[85]

With the corporation as the real party-in-interest and the indispensable party, any ruling in one of the derivative suits should already bind the corporation as *res judicata* in the other. Allowing two different minority stockholders to institute separate derivative suits arising from the same factual background, alleging the same causes of action, and praying for the same reliefs, is tantamount to allowing the corporation, the real party-in-interest, to file the same suit twice, resulting in the violation of the rules against a multiplicity of suits and even forum-shopping. It is also in disregard of the separate-corporate-entity principle, because it is to look beyond the corporation and to give recognition to the different identities of the stockholders instituting the derivative suits.

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[85] *Samaniego v. Aguila*, 389 Phil. 782, 787 (2000).

It is for these reasons that the derivative suit, Civil Case No. 08-458, although filed by a different set of minority stockholders from those in Civil Case No. 07-610, should still not be allowed to proceed.

Furthermore, the highly suspicious circumstances surrounding the institution of Civil Case No. 08-458 are not lost upon the Court. To recall, on 9 April 2008, the Court already issued in G.R. No. 182008 a TRO enjoining the execution and enforcement of the writ of permanent injunction issued by the RTC in Civil Case No. 07-610, which prevented the PRCI Board of Directors from presenting to the PRCI stockholders at the Annual Stockholders' Meeting, for approval and ratification, the agenda items on the acquisition by PRCI of JTH shares and the property-for-shares exchange between PRCI and JTH. The Complaint in Civil Case No. 08-458 was filed with the RTC on 16 June 2008, just two days before the scheduled Annual Stockholders' Meeting on 18 June 2008, where the items subject of the permanent injunction were again included in the agenda. The 72-hour TRO issued by the RTC in Civil Case No. 08-458 enjoined the very same acts covered by the writ of permanent injunction issued by the RTC in Civil Case No. 07-610, the execution and enforcement of which, in turn, was already enjoined by the TRO dated 9 April 2008 of this Court. Considering that it is PRCI which is the real party-in-interest in both Civil Cases No. 07-610 and No. 08-458, then its acquisition in the latter of a TRO exactly similar to the writ of permanent injunction in the former is but an obvious attempt to circumvent the TRO of this Court enjoining the execution and enforcement of the permanent injunction.

Intervention of APRI

It is also the nature of a derivative suit that prompts the Court to deny the intervention by APRI in Civil Case No. 07-610. Once more, the Court emphasizes that PRCI is the real party-in-interest in Civil Case No. 07-610, not respondents Miguel, *et al*., whose participation therein is deemed nominal. APRI, moreover, merely echoes the position of respondents Miguel, *et al.*, and, hence, renders the participation of APRI in Civil Case No. 07-610 redundant.

Also, the main concern of APRI was the lifting of the TRO issued by this Court on 9 April 2008 and the execution and enforcement of the permanent injunction issued by the RTC, enjoining the presentation by the PRCI Board of Directors — at the Annual Stockholders' Meeting scheduled on 18 June 2008, for approval and ratification by the stockholders — of the agenda items on the acquisition by PRCI of JTH shares and the property-for-shares exchange between PRCI and JTH. Given that the Annual Stockholders' Meeting already took place on 18 June 2008, during which the subject agenda items were presented to and approved and ratified by the stockholders, the intervention of APRI is already moot.

As a final note, respondent Miguel, *et al*. made repeated allegations that foreigners were taking over PRCI, and that this must be stopped to protect the Filipino stockholders. They even invoked the ruling of this Court in *Manila Prince Hotel v. Government Service Insurance System (GSIS)*.[86]

Respondents Miguel, *et al*., however, cannot rely on *Manila Prince Hotel* as judicial precedent, for the facts therein are far different from those in the cases at bar. The Government, through GSIS, owned Manila Hotel Corporation (MHC), which, in turn, owned the historic Manila Hotel. The case arose from the efforts of GSIS at privatizing MHC by holding a public bidding for 30-51% of the issued and outstanding shares of MHC. The Court ruled that since the Filipino corporation was able to match the higher bid made by a foreign corporation, then preference should be given to the former, considering that Manila Hotel had become a landmark, a living testimonial to Philippine heritage, and part of Philippine economy and patrimony. This was in accord with the Filipino-first policy in the 1987 Constitution.

In contrast, PRCI is a publicly listed corporation. Its shares can be freely sold and traded to the public, subject to regulation by the PSE and the SEC. Without any legal basis therefor, the Court cannot be expected to allocate or impose limitations on ownership of PRCI shares by foreigners. What is more, PRCI,

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[86] 335 Phil. 82 (1997).

which operates and maintains a horse racetrack and conducts horse racing and betting, can hardly claim to be "a living testimonial of Philippine heritage," like Manila Hotel, that would justify judicial intervention to protect the interests of Filipino stockholders as against foreign stockholders.

WHEREFORE, the Court renders the following judgment:

(1) The Court *GRANTS* the Petitions of petitioners Santiago, *et al.,* and petitioner Santiago Sr. in G.R. No. 181455-56 and G.R. No. 182008, respectively. It *REVERSES* and *SETS ASIDE* the Decision dated 6 September 2007 and Resolution dated 22 January 2008 of the Court of Appeals in CA-G.R. SP No. 99769 and No. 99780;

(2) The Court *LIFTS* the TRO issued on 9 April 2008 in G.R. No. 180028 and *CANCELS* and *RETURNS* the cash bond posted by petitioner Santiago Sr. The permanent injunction issued by the RTC on 8 October 2007, the execution and enforcement of which the TRO dated 9 April 2008 of this Court enjoins, has been rendered moot, since the agenda items subject of said permanent injunction were already presented to, and approved and ratified by a majority of the PRCI stockholders at the Annual Stockholders' Meeting held on 18 June 2008; (3) The Court *ORDERS* the *DISMISSAL* of the Complaint of respondents Miguel, *et al.,* in Civil Case No. 07-610 before the RTC for lack of cause of action, failure to implead indispensable parties, and mootness;

(4) The Court *ORDERS* the *DISMISSAL* of the Complaint of Jalane, *et al.,* in Civil Case No. 08-458, for being in violation of the rules on the multiplicity of suits and forum shopping; and

(5) The Court *DENIES* the Very Respectful Motion for Leave to Intervene as Co-Respondent in the Petition with the attached Very Respectful Urgent Motion to Lift Restraining Order of APRI, for redundancy and mootness.

No costs.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 182013. December 4, 2009]

QUASHA ANCHETA PEÑA & NOLASCO LAW OFFICE, and LEGEND INTERNATIONAL RESORTS, LIMITED, *petitioners, vs.* **THE SPECIAL SIXTH DIVISION of the COURT OF APPEALS, KHOO BOO BOON and the Law Firm of PICAZO BUYCO TAN FIDER & SANTOS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NO GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION COMMITTED BY THE SPECIAL SIXTH DIVISION OF THE COURT OF APPEALS IN NOT GIVING DUE DEFERENCE TO THE DECISION OF ITS CO-DIVISION BECAUSE THE DECISION OF ITS CO-DIVISION IS NOT BINDING ON ITS OTHER DIVISION. —** Grave abuse of discretion means a capricious and whimsical exercise of judgment is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough; it must be so grave as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. In the case at bar, this Court holds that there was no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Special Sixth Division of the Court of Appeals in not giving due deference to the decision of its co-division. As correctly pointed out by the Special Sixth Division of the Court of Appeals, the decision of its co-division is not binding on its other division. Further, it must be stressed that judicial decision that form part of our legal system are only the decisions of the Supreme Court. Moreover, at the time petitioners made the aforesaid Manifestation, the Decision dated 14 December 2007 in CA-G.R. SP No. 96717 of the Special Tenth Division was still on appeal before this Court. Therefore, the Special Sixth Division of the Court of Appeals cannot be faulted for not giving due

deference to the said Decision of its co-division, and its actuation cannot be considered grave abuse of discretion amounting to lack or excess of its jurisdiction.

2. **ID.; ID.; ID.; ISSUE OF WHETHER THE SPECIAL SIXTH DIVISION OF THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN CONSIDERING THE ORDERS OF THE HONG KONG COURT APPOINTING LIQUIDATORS FOR PETITIONER INVOLVED ENFORCEMENT AND RECOGNITION OF A FOREIGN JUDGMENT IS BARRED BY *RES JUDICATA*; TWO CONCEPTS OF *RES JUDICATA*; CONCLUSIVENESS OF JUDGMENT; CONSTRUED; CASE AT BAR. —** As regards the second issue of whether the Special Sixth Division of the Court of Appeals gravely abused its discretion in considering that the Orders of the Hong Kong Court appointing liquidators for petitioner LIRL involved enforcement and recognition of a foreign judgment, we hold that the same is already barred by the principle of *res judicata* — conclusiveness of judgment. The doctrine of *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment. The second concept — conclusiveness of judgment — states that a fact or question, which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies in the same court or any other court of concurrent jurisdiction on either the same or a different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, **it is essential that the issue be identical.** If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. **Identity of cause of action is not required, but merely identity of issues**.

3. ID.; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; RATIONALE FOR RESPECTING CONCLUSIVENESS OF JUDGMENT. — *Legarda v. Savellano* elucidates the rationale for respecting the conclusiveness of judgment, thus — As we have repeatedly enunciated, public policy and sound practice enshrine the fundamental principle upon which the doctrine of *res judicata* rests that parties ought not to be permitted to litigate the same issues more than once. It is a general rule common to all civilized system of jurisprudence, that the solemn and deliberate sentence of the law, pronounced by its appointed organs, upon a disputed fact or a state of facts, should be regarded as a final and conclusive determination of the question litigated, and should forever set the controversy at rest. Indeed, it has been well said that this maxim is more than a mere rule of law; more even than an important principle of public policy; and that it is not too much to say that it is a fundamental concept in the organization of every *jural* system. Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were constituted was to put an end to controversies.

4. ID.; ID.; ID.; FINAL AND EXECUTORY; THE DECISION OF THE SEVENTH DIVISION OF THE COURT OF APPEALS IN CA-G.R. SP NO. 98893 IS FINAL AND EXECUTORY AND CAN NO LONGER BE PASSED UPON BY THE COURT. — The **Decision of the Seventh Division of the Court of Appeals was appealed to this Court *via* a Petition for Review on *Certiorari* under 45 of the 1997 Revised Rules of Civil Procedure, docketed as G.R. No. 189265. On 12 October 2009, this Court rendered a Resolution denying the petition for late filing, for failure to serve a copy of the Petition to the Court of Appeals, for lack of the required number of plain copies of the Petition, and for failure to sufficiently show any reversible error.** Thus, the Decision dated 26 February 2009 of the Seventh Division of the Court of Appeals in CA-G.R. SP No. 98893 became final and executory. It has already been settled in the aforesaid two Decisions that the Orders of the Hong Kong Court appointing liquidators for petitioner LIRL did not involve the enforcement of a foreign judgment. The act of terminating the legal services of private respondent Picazo Law Office and engaging in its place petitioner Quasha Law Office was a

mere exercise of petitioner LIRL's prerogative, through its appointed liquidators, which was an internal affair that required no prior recognition in a separate action. Therefore, this Court can no longer pass upon the said issue.

APPEARANCES OF COUNSEL

Batuhan Blando Concepcion Law Office for petitioners.
Picazo Buyco Tan Fider & Santos for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a special civil action for *Certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure filed by petitioners Quasha Ancheta Peña and Nolasco Law Office (Quasha Law Office) and Legend International Resorts, Limited (LIRL), seeking to reverse and set aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the Resolution[1] dated 22 January 2008 of the Special Sixth Division of the Court of Appeals in CA-G.R. CV No. 87281, which refused to recognize the Entry of Appearance of petitioner Quasha Law Office as the duly authorized counsel of petitioner LIRL in CA-G.R. CV No. 87281.

Petitioner Quasha Law Office is the duly authorized counsel of petitioner LIRL in the Philippines. Petitioner LIRL is a foreign corporation organized under the laws of Hong Kong and licensed to operate a resort casino hotel in Subic Bay, Philippines, on the basis of the 19 March 1993 Agreement it entered into with Philippine Amusement and Gaming Corporation (PAGCOR) and Subic Bay Metropolitan Authority (SBMA), which was later amended in July, 2000. It is doing business in the Philippines through its branch, LIRL-Subic.

Private respondent Khoo Boo Boon was the former Chief Executive Officer of LIRL-Subic. Private respondent Picazo

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[1] Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring; *rollo*, pp. 53-54.

Buyco Tan Fider and Santos Law Office (Picazo Law Office) was the former counsel of petitioner LIRL in the Philippines.

The controversy in this case arose from the following facts:

Petitioner LIRL filed a Complaint for Annulment of Contract, Specific Performance with Damages and Application for Preliminary Injunction and Temporary Restraining Order before the Regional Trial Court (RTC) of Olongapo City, Branch 72, docketed as Civil Case No. 219-0-2004, against PAGCOR and SBMA for amending the 19 March 1993 Agreement, notwithstanding the total absence of any consideration supporting petitioner LIRL's additional obligations imposed under the amended Agreement.

On 28 December 2004, the trial court rendered a Decision[2] annulling the amendment to the 19 March 1993 Agreement executed between petitioner LIRL, PAGCOR and SBMA, as well as all the agreements that may have been entered into by PAGCOR pursuant thereto. The trial court also restrained PAGCOR from enforcing the amendment. It further enjoined PAGCOR from terminating the Agreement dated 19 March 1993 or from otherwise suspending, limiting, reducing or modifying petitioner LIRL's license to operate the Subic Bay Casinos and from entering into or continuing with any agreement with other entities for the operation of other casinos in the Subic Freeport Zone or from any such acts, which would in any way reduce or mitigate petitioner LIRL's right under the aforesaid Agreement.[3]

Resultantly, PAGCOR filed its Notice of Appeal *Ad Cautelam* before the Special Sixth Division of the Court of Appeals, and the case was docketed as CA-G.R. CV No. 87281.

Meanwhile, in relation to petitioner LIRL Companies' Winding-Up No. 1139 of 2004 filed before the Hong Kong Court of First Instance (Hong Kong Court), the said foreign court issued Orders dated 9 June 2006 appointing Kelvin Edward Flynn (Flynn) and Cosimo Borrelli (Borrelli) as the joint and several liquidators

[2] Penned by Judge Eliodoro G. Ubiadas, *id.* at 93-101.

[3] *Id.* at 101.

of petitioner LIRL and granting them the power to carry on and manage the business of petitioner LIRL, including its business in Subic, Philippines. Pursuant to the said Orders, Flynn sent a letter[4] dated 10 July 2006 to private respondent Khoo Boo Boon informing him that he had already been terminated from his position as Chief Executive Officer of LIRL-Subic. On the same date, Flynn also sent a letter[5] to private respondent Picazo Law Office notifying it that its legal services as counsel of petitioner LIRL had also been terminated. Petitioner LIRL later engaged the legal services of petitioner Quasha Law Office as its new counsel to represent it in all proceedings in the Philippines.

Accordingly, petitioner Quasha Law Office filed its Entry of Appearance as counsel for petitioner LIRL in CA-G.R. CV No. 87281 pending before the Special Sixth Division of the Court of Appeals, through a Manifestation and Motion *Ex Abudante Cautelam* attaching thereto a copy of the letter dated 10 July 2006 terminating the services of Picazo Law Office and engaging the services of petitioner Quasha Law Office.

In a Resolution[6] dated 19 October 2007, the Special Sixth Division of the Court of Appeals refused to recognize the Entry of Appearance of petitioner Quasha Law Office as the new counsel of petitioner LIRL. The appellate court ratiocinated that a mere photocopy of a letter dated 10 July 2006, which was sent by one of the appointed liquidators of petitioner LIRL, informing private respondent Picazo Law Office that its legal services as counsel of LIRL had been terminated, had no probative value. Further the appointment of petitioner LIRL's joint and several liquidators were made pursuant to an Order of the Hong Kong Court. Because it was a foreign judgment, our courts could not take judicial notice thereof, as the final orders of foreign tribunals could only be enforced in Philippine courts

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

[5] *Id.* at 117.

[6] Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring. *Rollo*, pp. 119-120.

after appropriate proceedings filed therein. Thus, the appellate court concluded that until the alleged Order of the Hong Kong Court had been validated and recognized in an appropriate proceeding before our local courts, private respondent Picazo Law Office was recognized as the only counsel entitled to represent and file pleadings for and on behalf of petitioner LIRL.[7]

Petitioners moved for the reconsideration of the aforesaid Resolution, but their Motion was denied in a Resolution[8] dated 9 January 2008.

Petitioners filed a Manifestation with the Special Sixth Division of the Court of Appeals that in a related case filed before the Special Tenth Division of the appellate court, docketed as CA-G.R. SP No. 96717, the said Division issued a Decision[9] dated 14 December 2007 recognizing petitioner Quasha Law Office as the duly authorized counsel of petitioner LIRL. In such Manifestation, petitioner Quasha Law Office attached a copy of the aforesaid 14 December 2007 Decision of the Special Tenth Division of the Court of Appeals.

On 22 January 2008, the Special Sixth Division of the Court of Appeals issued the assailed Resolution wherein it simply noted petitioners' aforesaid Manifestation. The appellate court then pointed out that decisions of a division of the Court of Appeals is not binding on the other divisions, for only decisions of the Supreme Court form part of the legal system from which all other inferior courts must take its bearing. The appellate court even directed the petitioners to elevate the matter to this Court to settle who between petitioner Quasha Law Office and private respondent Picazo Law Office can legally represent petitioner LIRL in the instant case.

Hence, this Petition.

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[7] *Id.*

[8] CA *rollo*, pp. 346-348.

[9] Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Bienvenido L. Reyes and Fernanda Lampas Peralta, concurring; *rollo*, pp. 135-147.

The grounds relied upon by the petitioners for the allowance of this Petition are as follows:

I.

WHETHER OR NOT THE SPECIAL SIXTH DIVISION OF THE COURT OF APPEALS COMMITTED PATENT GRAVE ABUSE OF DISCRETION, AMOUNTING TO EXCESS OF JURISDICTION, WHEN IT REFUSED TO GIVE DUE DEFERENCE TO A DECISION OF A CO-DIVISION OF THE SAME COURT.

i.

THE DECISION OF THE COURT OF APPEALS IN CA-G.R. SP NO. 96717 HAS BECOME FINAL AND EXECUTORY CONSIDERING THAT THE PETITION FOR REVIEW ON *CERTIORARI* FILED BY [PRIVATE RESPONDENT PICAZO LAW OFFICE] WAS DISMISSED OUTRIGHT BY THE SECOND DIVISION OF THIS HOROBALE (sic) COURT FOR BEING FILED OUT OF TIME.

II

IN A RELATED CASE WHERE THE ISSUE OF [PETITIONER QUASHA LAW OFFICE'S] AUTHORITY WAS RAISED, THE SEVENTH DIVISION OF THE COURT OF APPEALS SUSTAINED [PETITIONER QUASHA LAW OFFICE'S] STANDING AS THE DULY AUTHORIZED COUNSEL OF [PETITIONER] LIRL.

III

WHETHER OR NOT SECTION 48, RULE 39 OF THE 1997 REVISED RULES OF CIVIL PROCEDURE ON RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENT APPLIES IN THIS CASE.

i

SECTION 48, RULE 39 PRESUPPOSES THAT A FOREIGN JUDGMENT, REPRESENTING A CLAIM, IS SOUGHT TO BE ENFORCED AGAINST A SPECIFIC THING OR AGAINST A PERSON.

ii

COROLLARY TO THE ABOVE, THE ORDERS OF THE HONG KONG COURT DO NOT ASSERT A CLAIM AGAINST LIRL-SUBIC BRANCH, THE APPOINTMENT OF LIQUIDATORS

IS A PURELY INTERNAL MATTER BETWEEN A CORPORATION AND A MERE BRANCH THEREOF.

iii

[PETITIONER] LIRL-SUBIC BRANCH, WHICH [PRIVATE RESPONDENT] MR. KHOO BOO BOON PURPORTEDLY REPRESENTS, CANNOT ASSAIL THE ORDERS OF THE HONG KONG COURT BY INVOKING A RIGHT INDEPENDENT OF ITS MOTHER OFFICE.

IV

[PRIVATE RESPONDENT] PICAZO LAW OFFICE AS COUNSEL DERIVES ITS AUTHORITY FROM [PRIVATE RESPONDENT] MR. KHOO BOO BOON, THE FORMER CHIEF [EXECUTIVE] OFFICER OF [PETITIONER] LIRL.

i

[PRIVATE RESPONDENT] MR. KHOO BOO BOON IS NO LONGER THE CHIEF EXECUTIVE OFFICER, HAVING RECOGNIZED THE APPOINTED LIQUIDATORS OF [PETITIONER] LIRL BY VOLUNTARILY YIELDING CONTROL AND MANAGEMENT OF LIRL-SUBIC BRANCH.

ii

COROLLARY TO THE ABOVE, THE AUTHORITY OF [PRIVATE REPSONDENT] PICAZO LAW [OFFICE] TO REPRESENT [PETITIONER] LIRL HAS BEEN TERMINATED BY THE APPOINTED LIQUIDATORS.[10]

On 16 June 2009, petitioner Quasha Law Office already filed its withdrawal of appearance as counsel for petitioner LIRL. Thus, the issue of petitioner Quasha Law Office's authority or standing as the duly authorized counsel of petitioner LIRL has already become moot and academic.

Even if we are to resolve the issues in the case at bar on their merits, we will nevertheless arrive at the same conclusion.

Basically, the aforesaid grounds are the very arguments of the petitioners. Thus, the issues in this case may be summed

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[10] *Id.* at 19-21.

up into: (1) whether the Special Sixth Division of the Court of Appeals acted with grave abuse of discretion in not giving due deference to a Decision of its co-division, which similarly resolved the issue of proper legal representation of petitioner LIRL; and (2) whether the Special Sixth Division of the Court of Appeals gravely abused its discretion in considering that the Orders of the Hong Kong Court appointing liquidators for petitioner LIRL involved enforcement and recognition of a foreign judgment.

In CA-G.R. SP No. 96717 entitled "In the Matter of Corporate Rehabilitation of Legend International Resorts Limited," which was raffled to the Special Tenth Division of the Court of Appeals, petitioner LIRL's proper legal representation was raised as one of the issues. In the said case, petitioner Quasha Law Office's authority to represent petitioner LIRL was questioned by private respondent Picazo Law Office, petitioner LIRL's former counsel whose legal services had been terminated by petitioner LIRL's appointed liquidators. Private respondent Picazo Law Office argued that the Orders of the Hong Kong Court from which the authority of the liquidators, who engaged the legal services of petitioner Quasha Law Office to be the counsel of petitioner LIRL, was derived, could not be enforced in this jurisdiction, since these foreign orders have not been recognized by Philippine courts.

On 14 December 2007, the said division of the appellate court rendered its Decision resolving the issue of petitioner LIRL's proper legal representation in favor of petitioner Quasha Law Office. The said division of the appellate court ratiocinated that private respondent Picazo Law Office ceased to be the counsel of petitioner LIRL when it received the 10 July 2006 letter of one of the appointed liquidators of LIRL, notifying it that its legal services had been terminated and that petitioner Quasha Law Office's legal services were engaged in its stead. Moreover, there is actually no foreign judgment or order that is being enforced in this jurisdiction because what is involved is the prerogative of petitioner LIRL, through its duly authorized representative, which in this case is its appointed liquidators, to terminate and engage the services of a counsel, which is an internal affair that requires no prior recognition in a separate action. The right of petitioner LIRL to terminate the authority of its counsel includes

the right to cause a change or substitution of counsel at any stage of the proceedings.

The said Decision of the Special Tenth Division of the Court of Appeals was immediately brought by the petitioners to the attention of the Special Sixth Division of the said appellate court where CA-G.R. CV No. 87281 (the subject of this Petition) was pending. However, the Special Sixth Division of the Court of Appeals merely noted the same and still refused to recognize petitioner Quasha Law Office's entry of appearance. It even advised petitioner Quasha Law Office to elevate to this Court the issue of who between petitioner Quasha Law Office and private respondent Picazo Law Office can legally represent petitioner LIRL in the instant case.

Thus, petitioners ascribe grave abuse of discretion on the part of the Special Sixth Division of the Court of Appeals in not giving due deference to the decision of its co-division.

Grave abuse of discretion means a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough; it must be so grave as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[11]

In the case at bar, this Court holds that there was no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Special Sixth Division of the Court of Appeals in not giving due deference to the decision of its co-division. As correctly pointed out by the Special Sixth Division of the Court of Appeals, the decision of its co-division is not binding on its other division. Further, it must be stressed that judicial decisions that form part of our legal system are only the decisions of the Supreme Court.[12] Moreover, at the time petitioners made

[11] *Suliguin v. The Commission on Elections*, G.R. No. 166046, 23 March 2006, 485 SCRA 219, 233.

[12] *Government Service Insurance System v. Cadiz*, 453 Phil. 384, 391 (2003).

the aforesaid Manifestation, the Decision dated 14 December 2007 in CA-G.R. SP No. 96717 of the Special Tenth Division was still on appeal before this Court.

Therefore, the Special Sixth Division of the Court of Appeals cannot be faulted for not giving due deference to the said Decision of its co-division, and its actuation cannot be considered grave abuse of discretion amounting to lack or excess of its jurisdiction.

However, as regards the second issue of whether the Special Sixth Division of the Court of Appeals gravely abused its discretion in considering that the Orders of the Hong Kong Court appointing liquidators for petitioner LIRL involved enforcement and recognition of a foreign judgment, we hold that the same is already barred by the principle of *res judicata*—conclusiveness of judgment.

The doctrine of *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment.

The second concept — conclusiveness of judgment — states that a fact or question, which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies in the same court or any other court of concurrent jurisdiction on either the same or a different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, **it is essential that the issue be identical**. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit.

Identity of cause of action is not required, but merely identity of issues.[13]

Legarda v. Savellano[14] elucidates the rationale for respecting the conclusiveness of judgment, thus —

> As we have repeatedly enunciated, public policy and sound practice enshrine the fundamental principle upon which the doctrine of *res judicata* rests that parties ought not to be permitted to litigate the same issues more than once. It is a general rule common to all civilized system of jurisprudence, that the solemn and deliberate sentence of the law, pronounced by its appointed organs, upon a disputed fact or a state of facts, should be regarded as a final and conclusive determination of the question litigated, and should forever set the controversy at rest. Indeed, it has been well said that this maxim is more than a mere rule of law; more even than an important principle of public policy; and that it is not too much to say that it is a fundamental concept in the organization of every *jural* sytem. Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were constituted was to put an end to controversies.

It must be stressed that the **Decision dated 14 December 2007 in CA-G.R. SP No. 96717 of the Special Tenth Division of the Court of Appeals was appealed to this Court *via* a Petition for Review on *Certiorari* under Rule 45 and was docketed as G.R No. 184463**. The said Decision resolved the issue of petitioner LIRL's proper legal representation in favor of petitioner Quasha Law Office. It also ruled that there was no enforcement of a foreign judgment when one of the appointed liquidators terminated the legal services of private respondent Picazo Law Office and engaged in its stead petitioner Quasha Law Office to be the duly authorized counsel of petitioner LIRL. What is involved is the prerogative of petitioner LIRL, through its duly authorized representative — which, in this case, is its appointed liquidators — to terminate and engage the services

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[13] *Heirs of Clemencia Parasac v. Republic of the Philippines*, G.R. No. 159910, 4 May 2006, 489 SCRA 498, 517-518.

[14] G.R. No. L-38892, 26 February 1988, 158 SCRA 194, 200.

of a counsel, which is an internal affair that requires no prior recognition in a separate action.[15] **On 20 October 2008, this Court issued a Resolution denying the said Petition for Review for being filed out of time and for failure to sufficiently show any reversible error**. Thus, the 14 December 2007 Decision of the Special Tenth Division of the Court of Appeals in CA-G.R. SP No. 96717 became final and executory.

In a related case filed before the **Seventh Division of the Court of Appeals docketed as CA-G.R. SP No. 98893,**[16] petitioner LIRL's proper legal representation and Quasha Law Office's entry of appearance as tantamount to an enforcement of a foreign judgment, were also raised. On 26 February 2009, the said division of the Court of Appeals rendered a Decision stating that no enforcement of a foreign judgment was involved in the said case. It further decreed that petitioner LIRL's appointed liquidators had been duly authorized to manage petitioner LIRL. The authority of the said liquidators extended to all of petitioner LIRL's branches, wherever situated, the branch in the Philippines included. Pursuant to 9 June 2006 Orders of the Hong Kong Court, the appointed liquidators were given the power to, among other powers, "bring or defend any action or other legal proceeding in the name and on behalf of the company or themselves in Hong Kong, the Republic of the Philippines or attorneys in the Republic of the Philippines or elsewhere and appoint a solicitor in Hong Kong and lawyers or assist the Liquidators in the performance of their duties generally." No cogent reason existed to prevent petitioner LIRL from exercising its prerogative in terminating the services of one counsel and in engaging the services of another. Such act was purely an internal affair of the corporation, which did not require prior recognition in a separate action.[17]

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[15] *Rollo*, p. 141.

[16] This case stemmed from a Complaint for Breach of Agreement and Damages filed by PAGCOR against LIRL docketed as Civil Case No. 04-109372.

[17] *Rollo*, pp. 299-300.

The aforesaid **Decision of the Seventh Division of the Court of Appeals was appealed to this Court *via* a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, docketed as G.R. No. 189265**. **On 12 October 2009, this Court rendered a Resolution denying the Petition for late filing, for failure to serve a copy of the Petition to the Court of Appeals, for lack of the required number of plain copies of the Petition, and for failure to sufficiently show any reversible error**. Thus, the Decision dated 26 February 2009 of the Seventh Division of the Court of Appeals in CA-G.R. SP No. 98893 became final and executory.

It has already been settled in the aforesaid two Decisions that the Orders of the Hong Kong Court appointing liquidators for petitioner LIRL did not involve the enforcement of a foreign judgment. The act of terminating the legal services of private respondent Picazo Law Office and engaging in its place petitioner Quasha Law Office was a mere exercise of petitioner LIRL's prerogative, through its appointed liquidators, which was an internal affair that required no prior recognition in a separate action. Therefore, this Court can no longer pass upon the said issue.

WHEREFORE, premises considered, the instant Petition for *Certiorari*, is hereby *DISMISSED*. No costs.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

FIRST DIVISION

[G.R. No. 182216. December 4, 2009]

PLANTATION BAY RESORT and SPA and EFREN BELARMINO, *petitioners, vs.* **ROMEL S. DUBRICO, GODFREY D. NGUJO and JULIUS D. VILLAFLOR,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE NATIONAL LABOR RELATIONS COMMISSION DID NOT ERR IN CONSIDERING THE ISSUE OF THE VERACITY OF THE CONFIRMATORY TESTS EVEN IF THE SAME WAS RAISED ONLY IN RESPONDENTS' MOTION FOR RECONSIDERATION OF ITS DECISION, IT BEING CRUCIAL IN DETERMINING THE VALIDITY OF RESPONDENTS' DISMISSAL FROM THEIR EMPLOYMENT. —** While it is a well-settled rule, also applicable in labor cases, that issues not raised below cannot be raised for the first time on appeal, there are exceptions thereto among which are for reasons of public policy or interest. The NLRC did not err in considering the issue of the veracity of the confirmatory tests even if the same was raised only in respondents' Motion for Reconsideration of its Decision, it being crucial in determining the validity of respondents' dismissal from their employment. Technical rules of procedure are not strictly adhered to in labor cases. In the interest of substantial justice, new or additional evidence may be introduced on appeal before the NLRC. Such move is proper, provided due process is observed, as was the case here, by giving the opposing party sufficient opportunity to meet and rebut the new or additional evidence introduced. The Constitution no less directs the State to afford full protection to labor. To achieve this goal, technical rules of procedure shall be liberally construed in favor of the working class in accordance with the demands of substantial justice.

2. **ID.; ID.; ID.; PETITIONERS FAILED TO INDUBITABLY PROVE THAT RESPONDENTS WERE GUILTY OF DRUG**

USE IN CONTRAVENTION OF ITS DRUG-FREE WORKPLACE POLICY AMOUNTING TO SERIOUS MISCONDUCT. — On the merits, the petition just the same fails. The importance of the confirmatory test is underscored in Plantation Bay's own "Policy and Procedures," in compliance with Republic Act No. 9165, requiring that a confirmatory test must be conducted if an employee is found positive for drugs in the Employee's Prior Screening Test, and that both tests must arrive at the same positive result. Records show the following timeline, based on the reports on respondents' respective drug tests administered by Martell and confirmatory tests undertaken by the Phil. Drug. As reflected in the matrix, the confirmatory tests results were released *earlier* than those of the drug test, thereby casting doubts on the veracity of the confirmatory results. Indeed, how can the presence of *shabu* be confirmed when the results of the initial screening were not yet out? Plantation Bay's arguments that it should not be made liable thereof and that the doubt arising from the time of the conduct of the drug and confirmatory tests was the results of the big volume of printouts being handled by martell do not thus lie. It was Plantation Bay's responsibility to ensure that tests would be properly administered, the results thereof being the bases in terminating the employees' services. Time and again, we have ruled that **where there is no showing of a clear, valid and legal cause for termination of employment, the law considers the case a matter of illegal dismissal. The burden is on the employer to prove that the termination of employment was for a valid and legal cause.** For an employee's dismissal to be valid, (a) the dismissal must be for a valid cause and (b) the employee must be afforded due process. In fine, as petitioners failed to indubitably prove that respondents were guilty of drug use in contravention of its drug-free workplace policy amounting to serious misconduct, respondents are deemed to have been illegally dismissed.

APPEARANCES OF COUNSEL

Danilo R. Go and Caesar A.M. Tabotabo for petitioners.
Dennis Cañete for respondents.

DECISION

CARPIO MORALES, *J.*:

Via petition for review on *certiorari*, petitioners Plantation Bay Resort and Spa (Plantation Bay) and Efren Belarmino (Belarmino) challenge the Court of Appeals August 30, 2007 Decision[1] and March 3, 2008 Resolution[2] dismissing their petition and affirming the March 24, 2006[3] and June 23, 2006[4] Resolutions of the National Labor Relations Commission (NLRC) in Case No. V-000366-2005 in favor of herein respondents.

Respondents are former employees of Plantation Bay located in Cebu, of which Belarmino is the Manager. On several dates in September 2004, after Plantation Bay issued a series of memoranda and conducted seminars[5] relative to its drug-free workplace policy,[6] Plantation Bay, in compliance with Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002), conducted surprise random drug tests on its employees. The drug tests, said to have been carried out with the assistance of the Philippine National Police-Scene of Crime Operations (SOCO), were administered on about 122 employees by the Martell Medical Trade and Lab Services (Martell), a drug testing laboratory. And confirmatory tests were conducted by the Philippine Drug Screening Laboratory, Inc. (Phil. Drug), a Department of Health-accredited laboratory.

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[1] *Rollo*, pp. 40-54. Penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Isaias P. Dicdican and Stephen C. Cruz.

[2] *Id.* at 56-57. Penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Isaias P. Dicdican and Stephen C. Cruz.

[3] CA *rollo*, pp. 27-31. Penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Oscar S. Uy and Aurelio D. Menzon.

[4] *Id.* at 33-34. Penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Oscar S. Uy and Aurelio D. Menzon.

[5] NLRC records, pp. 79 and 87-92.

[6] *Id.* at 81-86.

Respondent Romel Dubrico (Dubrico) failed to take the drug test conducted on September 14, 2004, hence, he was issued a memorandum[7] requiring him to appear in a mandatory conference on September 20, 2004. Before the scheduled conference or on September 19, 2004, Dubrico explained in writing[8] his failure to undergo the drug test, he averring that, *inter alia,* the procedure for the random drug testing was not followed such that he was not informed about his selection; and that he was at the appointed time and place for the pre-test meeting but that the duty manager was not around, hence, he left and failed to be tested.

Dubrico was later tested and found positive for use of methamphetamine hydrochloride (*shabu*).

Twenty other employees were found positive for use of *shabu* including herein respondents Godfrey Ngujo (Ngujo) and Julius Villaflor (Villaflor).

In compliance with separate memoranda[9] issued by the management of Plantation Bay, the employees submitted their explanations on the result of the tests, which explanations were found unsatisfactory, hence, Plantation Bay dismissed them including herein respondents.

Respondents Dubrico, Ngujo and Villaflor and three others thereupon filed on November 18, 2004 their respective complaints[10] for illegal dismissal, questioning the conduct of the drug tests without the presence of the DOLE Regional Director or his representative.

By Decision[11] of April 18, 2005, Labor Arbiter Jose G. Gutierrez dismissed the employees' complaints, holding that in testing positive for the use of *shabu*, they were guilty of serious misconduct, hence, Plantation Bay validly terminated their

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[7] *Id.* at 94.

[8] *Id.* at 95.

[9] *Id.* at 106-109.

[10] *Id.* at 1-10.

[11] *Id.* at 123-131. Penned by Labor Arbiter Jose G. Gutierrez.

employment; and that they were afforded due process, they having been issued memoranda as to the mandatory investigation and given the chance to, as they did refute the results of the drug tests by submitting results of *recent* drug tests.[12]

The Labor Arbiter discredited the drug test results presented by the employees as the tests were taken more than 72 hours *after* the conduct of the random drug tests.

On appeal, the NLRC, by Decision of October 26, 2005, affirmed the Decision of the Labor Arbiter. On respondents' motion for reconsideration, it, however, by Resolution of March 24, 2006, *reversed* its October 26, 2005 Decision and declared that respondents were illegally dismissed.

In finding for respondents, the NLRC held that the results of the *confirmatory* drug tests cannot be given credence since they were conducted *prior* to the conduct by the employer of the drug tests. It ratiocinated:

> Considering the indubitable documentary evidence on record notably submitted by respondents [petitioners herein] themselves, **we agree with complainants that either or both drug tests and confirmatory tests conducted on them were fabricated, farce or sham**. **For how could one "confirm" some thing which was yet to be established or discovered? Needless to say, the drug testing should always come ahead of the confirmatory testing, not the other way around.** We thus agree with complainants that if the drug tests against them were true, the supposed confirmatory tests conducted on them were not based on their urine samples that were the subject of the drug tests. Or that is the confirmatory tests were correct, these could not have been gotten from their urine samples which were yet to undergo drug testing. At any rate, there is not only doubt that on the version of respondents but also their conduct is highly suspicious based on their own evidence. **Thus, we now rule that respondents were not really into drugs.** (Emphasis and underscoring supplied)

On the issue of due process, the NLRC abandoned its earlier statement that it was the SOCO which conducted the drug tests,

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[12] *Id.* at 52-57.

this time declaring that it was Martell which actually administered them. It added that respondents were not given the opportunity to examine the evidence and confront the witnesses against them through their counsel.

The NLRC accordingly reversed the Decision of the Labor Arbiter, disposing as follows:

> WHEREFORE, the Appeal is DISMISSED, and the assailed Decision is AFFIRMED *in toto*.
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> SO ORDERED.[13]

Its motion for reconsideration having been denied by Resolution of June 23, 2006, Plantation Bay appealed to the Court of Appeals, arguing that, *inter alia*, the veracity of the confirmatory tests was raised by respondents only when they filed a belated Motion for Reconsideration of the NLRC Decision, hence, the NLRC gravely abused its discretion when it reversed its findings based on such new issue.

The appellate court affirmed the NLRC March 24, 2006 Resolution with modification by deleting the award of damages. Hence, the present petition, petitioners reiterating the same issues raised in the appellate court. Additionally, they maintain that in terminating the services of respondents, they relied on the results of the random drug tests undertaken by an accredited and licensed drug testing facility, and if the results turned out to be questionable or erroneous, they should not be made liable therefor.

The petition is bereft of merit.

While it is a well-settled rule, also applicable in labor cases, that issues not raised below cannot be raised for the first time on appeal,[14] there are exceptions thereto among which are for reasons of public policy or interest.

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[13] *Id.* at 164.

[14] *Association of Marine Officers and Seamen of Reyes and Lim Co. v. Laguesma,* G.R. No. 107761, December 27, 1994, 239 SCRA 460, 461.

The NLRC did not err in considering the issue of the veracity of the confirmatory tests even if the same was raised only in respondents' Motion for Reconsideration of its Decision, it being crucial in determining the validity of respondents' dismissal from their employment.

Technical rules of procedure are not strictly adhered to in labor cases. In the interest of substantial justice, new or additional evidence may be introduced on appeal before the NLRC. Such move is proper, provided due process is observed, as was the case here, by giving the opposing party sufficient opportunity to meet and rebut the new or additional evidence[15] introduced.

The Constitution no less directs the State to afford full protection to labor. To achieve this goal, technical rules of procedure shall be liberally construed in favor of the working class in accordance with the demands of substantial justice.[16]

On the merits, the petition just the same fails. The importance of the confirmatory test is underscored in Plantation Bay's own "Policy and Procedures," in compliance with Republic Act No. 9165, requiring that a confirmatory test must be conducted if an employee is found positive for drugs in the Employee's Prior Screening Test, and that both tests must arrive at the same positive result.[17]

Records show the following timeline, based on the reports on respondents' respective drug tests[18] administered by Martell and confirmatory tests[19] undertaken by the Phil. Drug:

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[15] *Vide* *Andaya v. National Labor Relations Commission*, G.R. No. 157371, July 15, 2005, 463 SCRA 577, 578.

[16] *PNOC Duckyard and Engineering Corporation v. NLRC*, 353 Phil. 431, 435 (1998).

[17] NLRC records, pp. 81-86.

[18] *Id.* at 97-99.

[19] *Id.* at 101-104.

Name	Drug Test	Confirmatory Test
Romel Dubrico	**Urine sample received on 09/29/04 at 5:14 p.m.**	**Issued on 09/29/04 at 3:57 p.m.**
Godfrey Ngujo	**Urine sample received on 09/29/04 at 5:24 p.m.**	**Issued on 09/29/04 at 3:57 p.m.**
Julius Villaflor	**Urine sample received on 09/29/04 at 5:32 p.m.**	**Issued on 09/29/04 at 4:15 p.m.**

(Underscoring supplied)

As reflected in the above matrix, the confirmatory test results were released *earlier* than those of the drug test, thereby casting doubts on the veracity of the confirmatory results.

Indeed, how can the presence of *shabu* be confirmed when the results of the initial screening were not yet out? Plantation Bay's arguments that it should not be made liable thereof and that the doubt arising from the time of the conduct of the drug and confirmatory tests was the result of the big volume of printouts being handled by Martell do not thus lie. It was Plantation Bay's responsibility to ensure that the tests would be properly administered, the results thereof being the bases in terminating the employees' services.

Time and again, we have ruled that **where there is no showing of a clear, valid and legal cause for termination of employment, the law considers the case a matter of illegal dismissal. The burden is on the employer to prove that the termination of employment was for a valid and legal cause.** For an employee's dismissal to be valid, (a) the dismissal must be for a valid cause and (b) the employee must be afforded due process.[20] (Emphasis supplied)

In fine, as petitioners failed to indubitably prove that respondents were guilty of drug use in contravention of its drug-free workplace policy amounting to serious misconduct, respondents are deemed to have been illegally dismissed.

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[20] *Sevillana v. I.T. (International) Corp./Samir Maddah and Travellers Insurance and Surety Corp.*, 408 Phil. 570, 584.

As to the appellate court's deletion of the award of damages, the same is in order, there being no clear showing that the termination of respondents' services was actuated by bad faith.

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 182430. December 4, 2009]

LEOPOLDO ABANTE, *petitioner, vs.* **KJGS FLEET MANAGEMENT MANILA and/or GUY DOMINGO A. MACAPAYAG, KRISTIAN GERHARD JEBSENS SKIPSRENDERI A/S,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT AUTHORITY (POEA) STANDARD EMPLOYMENT CONTRACT OF 2000; COMPENSATION AND BENEFITS FOR INJURY AND ILLNESS; THE LAW DOES NOT PRECLUDE THE SEAFARER FROM GETTING A SECOND OPINION AS TO HIS CONDITION FOR PURPOSES OF CLAIMING DISABILITY; CASE AT BAR. —** Section 20 (B) (3) of the POEA Standard Employment Contract of 2000 provides: **SECTION 20. COMPENSATION AND BENEFITS FOR INJURY AND ILLNESS** The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows: x x x **If a doctor appointed by the seafarer disagrees with the assessment, a third doctor**

may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. Clearly, the above provision does not preclude the seafarer from getting a second opinion as to his condition for purposes of claiming disability benefits, for as held in *NYK-Fil Ship Management v. Tavalera*: This provision substantially incorporates the 1996 POEA Standard Employment Contract. Passing on the 1996 POEA Standard Employment Contract, this Court held that **"[w]hile it is the company-designated physician who must declare that the seaman suffers a permanent disability during employment**, **it does not deprive the seafarer of his right to seek a second opinion**," **hence, the Contract "recognizes the prerogative of the seafarer to request a second opinion and, for this purpose, to consult a physician of his choice."** In the present case, it is undisputed that petitioner immediately consulted with a physician of his choice after initially having been seen and operated on by a company-designated physician. It was after he got a second opinion and a finding that he is unfit for further work as a seaman that he filed the claim for disability benefits.

2. **ID.; ID.; ID.; THE POEA STANDARD EMPLOYMENT CONTRACT WAS DESIGNED PRIMARILY FOR THE PROTECTION AND BENEFIT OF FILIPINO SEAMEN; ITS PROVISIONS MUST BE CONSTRUED AND APPLIED FAIRLY, REASONABLY AND LIBERALLY IN THEIR FAVOR. —** It bears noting that Dr. Lim's medical findings did not significantly differ from those of Dr. Caja's. In essence, even if Dr. Lim declared petitioner to be fit to resume sea duties, still, the final diagnosis of "foraminal stenosis and central disc protrusion" remained six months post-surgery. It is understandable that a company-designated physician is more positive than that of a physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA Standard Employment Contract to seek a second opinion from his preferred physician. Petitioners are, at this point, reminded that the **POEA standard employment contract for seamen was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. Its provisions must be construed and applied fairly, reasonably and liberally in their favor.** Only then can its beneficent provisions be fully carried into effect. In *HFS Philippines v. Pilar,* where the findings of the

independent physicians were given more credence than those of the company-designated physicians, the Court held: The bottomline is this: **the certification of the company-designated physician would defeat respondent's claim while the opinion of the independent physicians would uphold such claim. In such a situation, we adopt the findings favorable to respondent.** The law looks tenderly on the laborer. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to him, the balance must be tilted in his favor consistent with the principle of social justice.

3. **ID.; ID.; ID.; THE FAILURE OF THE COMPANY-DESIGNATED PHYSICIAN TO PRONOUNCE PETITIONER FIT TO WORK WITHIN THE 120-DAY PERIOD ENTITLES HIM TO TOTAL PERMANENT DISABILITY BENEFIT IN THE AMOUNT OF US$60,000.00. —** As to whether petitioner can claim disability benefits, the Court rules in the affirmative. Permanent disability refers to the inability of a worker to perform his job **for more than 120 days**, regardless of whether he loses the use of any part of his body. What determines petitioner's entitlement to permanent disability benefits is his inability to work for more than 120 days. In the case at bar, it was only on **February 20, 2001** that the Certificate of Fitness for Work was issued by Dr. Lim, more than 6 months from the time he was initially evaluated by the doctor on July 24, 2000 and after he underwent operation on August 18, 2000. It is gathered from the documents emanating from the Office of Dr. Lim that petitioner was seen by him from July 24, 2000 up to February 20, 2001 or a total of 13 times; and except for the medical reports dated February 5, 2001 and February 20, 2001 (when the doctor finally pronounced petitioner fit to work), Dr. Lim consistently recommended that petitioner continue his physical rehabilitation/therapy and revisit clinic on specific dates for re-evaluation, thereby implying that petitioner was not yet fit to work. Given a seafarer's entitlement to permanent disability benefits when he is unable to work for more than 120 days, the failure of the company-designated physician to pronounce petitioner fit to work within the 120-day period entitles him to permanent total disability benefit in the amount of US$60,000.00.

4. ID.; ID.; ID.; MORAL AND EXEMPLARY DAMAGES CANNOT BE GRANTED THERE BEING NO CONCRETE SHOWING OF BAD FAITH OR MALICE ON THE PART OF RESPONDENT; THE AWARD OF ATTORNEY'S FEES IS LIMITED TO TEN PERCENT (10%) OF THE MONETARY AWARD. — Respecting the claim for moral and exemplary damages, the same cannot be granted, there being no concrete showing of bad faith or malice on the part of KJGS. The records show that it shouldered all the expenses incurred in petitioner's surgery and subsequent rehabilitation. And it regularly inquired from Dr. Lim about petitioner's condition. The claim for attorney's fees is granted following Article 2208 of the New Civil Code which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws. The same fees are also recoverable when the defendant's act omission has compelled the plaintiff to incur expenses to protect his interest as in the present case following the refusal by respondent to settle his claims. Pursuant to prevailing jurisprudence, petitioner is entitled to attorney's fees of ten percent (10%) of the monetary award.

APPEARANCES OF COUNSEL

Christopher Lycurgus Q. Morania for petitioner.
*Carag Caballes Jamora & Somera Law Office*s for respondents.

CARPIO MORALES, *J.*:

On January 4, 2000, Leopoldo Abante (petitioner) was hired by respondent KJGS Fleet Management Manila (KJGS) to work as ablebodied seaman aboard *M/T Rathboyne*, for a period of nine months and with a basic salary of US$535.00 per month.

Sometime in June, 2000, while carrying equipment on board the vessel, petitioner slipped and hurt his back. Upon the vessel's arrival in Kaohsiung, Taiwan on July 4, 2000, petitioner was brought to a hospital whereupon he was diagnosed to be suffering from "lower back pain r/o old fracture lesion 4th lumbar body." Nevertheless, he was still declared to be fit for restricted work and was advised to see another doctor in the next port of call.

Unable to bear the pain, petitioner was, on his request, repatriated to the Philippines on July 19, 2000.

On July 21, 2000, petitioner reported to KJGS and was referred to a company-designated physician, Dr. Roberto D. Lim (Dr. Lim), at the Metropolitan Hospital. After a series of tests, he was diagnosed to be suffering from "Foraminal stenosis L3-L14 and central disc protrusion L4-L5" on account of which he underwent Laminectomy and Discectomy on August 18, 2000, the cost of which was borne by KJGS. He was discharged from the hospital 10 days later, but was advised to continue physical therapy. He was seen by Dr. Lim around 10 times from the time he was discharged until February 20, 2001 when he was pronounced fit to resume sea duties. He, however, refused to sign his Certificate of Fitness for Work.[1]

Petitioner later sought the opinion of another doctor, Dr. Jocelyn Myra R. Caja, who diagnosed him to have "failed back syndrome" and gave a grade 6 disability rating[2] — which rating rendered him medically unfit to work again as a seaman and called for the award of US$25,000.00 disability benefits — drawing him to file on April 27, 2001 a Complaint[3] before the National Labor Relations Commission (NLRC), docketed as NLRC OFW Case No. 01-04-0736-00, for disability compensation in the amount of US$25,000.00, moral and exemplary damages and attorney's fees.

By Decision[4] of July 24, 2003, Labor Arbiter Jovencio Ll. Mayor, Jr. dismissed the complaint, holding that under Philippine Overseas Employment Administration (POEA) Memo Circular No. 9, series of 2000, in the event of conflict between the assessment of the company-designated physician and the doctor

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[1] *Vide* letter of Dr. Roberto D. Lim dated February 20, 2001, NLRC records, p. 54.

[2] *Vide* certification of Dr. Jocelyn Myra R. Caja dated March 10, 2001, *id.* at 58.

[3] *Id.* at 2.

[4] *Id.* at 123-129.

chosen by the seafarer, the opinion of a third doctor agreed on by both the employer and the seafarer should be sought. Hence, the Labor Arbiter held that petitioner's immediate filing of the complaint, insisting on his own physician's assessment, was premature and, therefore, the assessment of the company-designated physician that he is still fit to work prevails.

On petitioner's appeal, the NLRC, by Decision[5] of January 31, 2005, ordered the remand of the case to the Labor Arbiter for further proceedings. It held that since there were two conflicting diagnoses as to petitioner's fitness to work, the matter must be referred to a third doctor to determine his entitlement to disability benefits under the new POEA Standard Employment Contract for seafarers. KJGS's Motion for Reconsideration of said Decision was denied by Resolution[6] of November 3, 2006, hence, it appealed to the Court of Appeals.

By Decision[7] of December 10, 2007, the appellate court *reversed* and set aside the NLRC ruling and *reinstated* the Labor Arbiter's Decision. It held that Sec. 20 (B) of POEA Memo Circular No. 9, series of 2000, which requires a third doctor in case of conflicting assessments, is inapplicable.

Noting that the employment contract between KJGS and petitioner was executed on January 4, 2000, the appellate court held that the contract is governed by Memo Circular No. 55, series of 1996, which did not have a similar provision, hence, it is the determination or assessment of the company-designated physician which is deemed controlling. Petitioner's motion for reconsideration having been denied by Resolution[8] of April 1,

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[5] CA *rollo*, pp. 21-25. Penned by Commissioner Ernesto S. Dinopol and concurred in by Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go.

[6] *Id.* at 26-28. Penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Romeo L. Go.

[7] *Id.* at 231- 239. Penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr.

[8] *Id.* at 267. Penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr.

2008, he interposed the present petition, insisting that he is entitled to Grade 6 disability benefits under the new POEA Standard Employment Contract.

The petition is meritorious.

Section 20 (B) (3) of the POEA Standard Employment Contract of 2000 provides:

SECTION 20. COMPENSATION AND BENEFITS FOR INJURY AND ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a **third doctor** may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (emphasis supplied)

Clearly, the above provision does not preclude the seafarer from getting a second opinion as to his condition for purposes of claiming disability benefits, for as held in *NYK-Fil Ship Management v. Talavera*:[9]

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[9] G.R. No. 175894, November 14, 2008 citing *Seagull Maritime Corp. v. Dee*, G.R. No. 165156, April 2, 2007, 520 SCRA 109, 117-119.

This provision substantially incorporates the 1996 POEA Standard Employment Contract. Passing on the 1996 POEA Standard Employment Contract, this Court held that **"[w]hile it is the company-designated physician who must declare that the seaman suffers a permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion," hence, the Contract "recognizes the prerogative of the seafarer to request a second opinion and, for this purpose, to consult a physician of his choice."** (emphasis and underscoring supplied)

In the present case, it is undisputed that petitioner immediately consulted with a physician of his choice after initially having been seen and operated on by a company-designated physician. It was after he got a second opinion and a finding that he is unfit for further work as a seaman that he filed the claim for disability benefits.

Respecting the appellate court's ruling that it is POEA Memo Circular No. 55, series of 1996 which is applicable and not Memo Circular No. 9, series of 2000, *apropos* is the ruling in *Seagull Maritime Corporation v. Dee*[10] involving employment contract entered into in 1999, before the promulgation of POEA Memo Circular No. 9, series of 2000 or the use of the new POEA Standard Employment Contract, like that involved in the present case. In said case, the Court applied the 2000 Circular in holding that while it is the company-designated physician who must declare that the seaman suffered permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion which can then be used by the labor tribunals in awarding disability claims.

Courts are called upon to be vigilant in their time-honored duty to protect labor, especially in cases of disability or ailment. When applied to Filipino seamen, the perilous nature of their work is considered in determining the proper benefits to be awarded. These benefits, at the very least, should approximate the risks they brave on board the vessel every single day.

Accordingly, if serious doubt exists on the company-designated physician's declaration of the nature of a seaman's

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[10] *Id.*

injury and its corresponding impediment grade, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. These evidences will in turn be used to determine the benefits rightfully accruing to him. (emphasis and underscoring supplied)

It bears noting that Dr. Lim's medical findings did not significantly differ from those of Dr. Caja's. In essence, even if Dr. Lim declared petitioner to be fit to resume sea duties, still, the final diagnosis of "foraminal stenosis and central disc protrusion" remained six months post-surgery.[11] It is understandable that a company-designated physician is more positive than that of a physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA Standard Employment Contract to seek a second opinion from his preferred physician.

Petitioners are, at this point, reminded that the **POEA standard employment contract for seamen was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. Its provisions must be construed and applied fairly, reasonably and liberally in their favor.** Only then can its beneficent provisions be fully carried into effect. (emphasis and underscoring supplied)[12]

In *HFS Philippines v. Pilar,*[13] where the findings of the independent physicians were given more credence than those of the company-designated physicians, the Court held:

The bottomline is this: **the certification of the company-designated physician would defeat respondent's claim while the opinion of the independent physicians would uphold such claim. In such a situation, we adopt the findings favorable to respondent.**

The law looks tenderly on the laborer. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and

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[11] *Vide* February 20, 2001 certification of Dr. Roberto Lim, *supra*.

[12] *Seagull Maritime Corp. v. Dee*, *supra* at 121-122.

[13] G.R. No. 168716, April 16, 2009.

the other favorable to him, the balance must be tilted in his favor consistent with the principle of social justice. (emphasis and underscoring supplied)

As to whether petitioner can claim disability benefits, the Court rules in the affirmative. Permanent disability refers to the inability of a worker to perform his job **for more than 120 days**, regardless of whether he loses the use of any part of his body. What determines petitioner's entitlement to permanent disability benefits is his inability to work for more than 120 days.[14] In the case at bar, it was only on **February 20, 2001** that the Certificate of Fitness for Work was issued by Dr. Lim, more than 6 months from the time he was initially evaluated by the doctor on July 24, 2000 and after he underwent operation on August 18, 2000.

It is gathered[15] from the documents emanating from the Office of Dr. Lim that petitioner was seen by him from July 24, 2000 up to February 20, 2001 or a total of 13 times; and except for the medical reports dated February 5, 2001 and February 20, 2001 (when the doctor finally pronounced petitioner fit to work), Dr. Lim consistently recommended that petitioner continue his physical rehabilitation/therapy and revisit clinic on specific dates for re-evaluation, thereby implying that petitioner was not yet fit to work.

Given a seafarer's entitlement to permanent disability benefits when he is unable to work for more than 120 days, the failure of the company-designated physician to pronounce petitioner fit to work within the 120-day period entitles him to permanent total disability benefit in the amount of US$60,000.00.[16]

Respecting the claim for moral and exemplary damages, the same cannot be granted, there being no concrete showing of

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[14] *Palisoc v. Easways Marine Inc.*, G.R. No. 152273, September 11, 2007.

[15] *Vide* medical reports, NLRC records, pp. 42-54.

[16] Sec. 30-A of POEA Standard Employment Contract or Memo Circular No. 5, series of 2000 (Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels).

bad faith or malice on the part of KJGS. The records show that it shouldered all the expenses incurred in petitioner's surgery and subsequent rehabilitation. And it regularly inquired from Dr. Lim about petitioner's condition.

The claim for attorney's fees is granted following Article 2208 of the New Civil Code which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws. The same fees are also recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest[17] as in the present case following the refusal by respondent to settle his claims. Pursuant to prevailing jurisprudence, petitioner is entitled to attorney's fees of ten percent (10%) of the monetary award.

WHEREFORE, the decision and resolution of the Court of Appeals dated December 10, 2007, and April 1, 2008, respectively, are *REVERSED* and *SET ASIDE*. Respondents are held jointly and severally liable to pay petitioner the following: a) permanent total disability benefits of US$60,000.00 at its peso equivalent at the time of actual payment; and b) attorney's fees of ten percent (10%) of the total monetary award at its peso equivalent at the time of actual payment.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[17] *Remigio v. National Labor Relations Commission*, G.R. No. 159887, April 12, 2006. 487 SCRA 190.

FIRST DIVISION

[G.R. No. 182623. December 4, 2009]

DIONISIO M. MUSNIT, *petitioner, vs.* **SEA STAR SHIPPING CORPORATION and SEA STAR SHIPPING CORPORATION, LTD.,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT AUTHORITY (POEA) STANDARD EMPLOYMENT CONTRACT OF 2000; COMPENSATION AND BENEFITS FOR INJURY AND ILLNESS; RECORDS ARE BEREFT OF ANY DOCUMENTARY PROOF THAT PETITIONER HAD REFERRED HIS ILLNESS TO A NURSE OR DOCTOR IN ORDER TO AVAIL OF PROPER TREATMENT; IT CAN BE CONCLUDED THEN THAT HE WAS REPATRIATED NOT ON ACCOUNT OF ANY ILLNESS OR INJURY, BUT IN VIEW OF THE COMPLETION OF HIS CONTRACT. —** Section 20(B) provides for the liabilities of the employer only when the seafarer suffers from a **work-related** injury or illness **during the term of his employment.** Petitioner claims to have reported his illness to an officer once on board the vessel during the course of his employment. The records are bereft, however, of any documentary proof that he had indeed referred his illness to a nurse or doctor in order to avail of proper treatment. It thus becomes apparent that he was repatriated to the Philippines, not on account of any illness or injury, but in view of the completion of his contract.

2. **ID.; ID.; ID.; EVEN ASSUMING THAT PETITIONER WAS REPATRIATED FOR MEDICAL REASONS, HE FAILED TO SUBMIT HIMSELF TO THE COMPANY-DESIGNATED DOCTOR IN ACCORDANCE WITH THE POST-EMPLOYMENT MEDICAL EXAMINATION REQUIREMENT OF THE STANDARD CONTRACT; FAILURE TO COMPLY BARS THE FILING OF CLAIM FOR DISABILITY BENEFITS. —** But even assuming that petitioner was repatriated for medical reasons, he failed to submit himself to the company-designated doctor in accordance

with the post-employment medical examination requirement under the above-quoted paragraph 3 of Section 20(B) of the POEA Standard Employment Contract. Failure to comply with this requirement which is a *sine qua non* bars the filing of claim for disability benefits. All told, **the rule is that under Section 20-B(3) of the 1996 POEA-SEC, it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits.** Without any valid excuse, petitioner did not submit himself to a company-designated physician for medical examination within three days from his arrival in the Philippines. He submitted himself for medical examination to the company-designated physician only on May 26, 2003, or seven months after his repatriation following the completion of his previous contract, only because he was procuring further employment from respondent Sea Star. Petitioner's claim that he immediately reported to Sea Star office upon disembarkation and informed it of his present condition was discredited by the Labor Arbiter, which was affirmed by the NLRC and the appellate court. Such factual determination is a statutory function of the NLRC.

3. **ID.; ID.; ID.; PETITIONER HAD NO VALID EXCUSE FOR NOT COMPLYING WITH THE MANDATORY REPORTORIAL REQUIREMENT UNDER PARAGRAPH 3, SECTION 20(B) OF THE STANDARD CONTRACT. —** As for petitioner's invocation of the ruling in *Wallem Maritime Services, Inc. v. National Labor Relations Commission* in support of his contention that the requirement of post-employment medical examinations within three days from return to the Philippines is not absolute, the same is misplaced. *Wallem's* dictum reads: . . . [T]he seaman shall submit himself to a post-employment medical examination by the company-designated physician within three working days upon his return, except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seaman to comply with the mandatory requirement shall result in his forfeiture of the right to claim the above benefits. Admittedly, Faustino Inductivo did not subject himself to post-employment medical examination within three (3) days from his return to the Philippines, as required by the above provision of the POEA

standard employment contract. But such requirement is not absolute and admits of an exception, *i.e.*, when the seaman is physically incapacitated from complying with the requirement. Indeed, for a man who was terminally ill and in need of urgent medical attention one could not reasonably expect that he would immediately resort to and avail of the required medical examination, assuming that he was still capable of submitting himself to such examination at that time. It is quite understandable that his immediate desire was to be with his family in Nueva Ecija whom he knew would take care of him. Surely, under the circumstances, we cannot deny him, or his surviving heirs after his death, the right to claim benefits under the law. As stated above, petitioner had no valid excuse for not complying with the *sine qua non* requirement.

APPEARANCES OF COUNSEL

Emerson TT. Barrientos & Ed Anthony F. Guerra for petitioner.
Sugay Law for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Dionisio M. Musnit (petitioner) entered into a 3-month contract of employment with respondent Sea Star Shipping Corporation (Sea Star), a local manning agency acting for and in behalf of its co-respondent Sea Star Shipping Corporation, Ltd., as chief cook on board the vessel M/V Navajo Princess with a basic monthly salary of US$ 486.00.[1]

After undergoing a Pre-Employment Medical Examination conducted by a company-designated physician, petitioner was declared "fit for sea service"[2] and commenced working on October 30, 2001.

His contract, which was for three months, was extended by seven months.[3]

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[1] NLRC records, p. 44.

[2] *Id.* at 90.

[3] *Id.* at 27.

Before his contract expired, petitioner, sometime in August 2002, while on board the vessel, felt a throbbing pain in his chest and shortening of breath which made him feel as if he were about to fall. By his claim, he reported his condition to his officer who ignored it, however.[4] As the pain persisted, he resorted to pain relievers.[5]

Upon completion of his contract, petitioner was repatriated to the Philippines on October 31, 2002 following which he, again by his claim, immediately reported to Sea Star's office and informed it of his condition, but that he was never referred to a doctor for consultation.[6]

Seven months after his repatriation, petitioner sought re-employment with Sea Star. During his pre-employment medical examination on May 26, 2003 at the American Outpatient Clinic, petitioner was diagnosed with "error of refraction, hyperglycemia, cardiac dysrhythmia, and atrial fibrillation with rapid value response"[7] on account of which he was declared unfit for sea duties and was denied further deployment.

Petitioner underwent further medical examination at the Jose R. Reyes Medical Center in the course of which he was also diagnosed as having "osteoarthritis, hypertensive cardiovascular disease and acute upper respiratory infection."[8]

On June 9, 2004, petitioner sought a third opinion from Dr. Efren R. Vicaldo who declared him unfit to board ship and work as a seaman in any capacity.[9] Moreover, Dr. Vicaldo assessed his disability with an Impediment Grade IX and considered his illness to be work-aggravated.[10]

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[4] *Id.* at 31.

[5] *Ibid.*

[6] *Id.* at 91.

[7] *Id.* at 47.

[8] *Id.* at 49.

[9] *Id.* at 50.

[10] *Id.* at 51.

Petitioner thereupon lodged a claim for disability benefits from Sea Star which denied the same, however, drawing him to file a complaint against it, docketed as NLRC-OFW Case No. (L) 04-06-01688-00, for Medical Reimbursement, Sickness Allowance, Permanent Disability Benefits, Compensatory Damages, Moral Damages, Exemplary Damages, and Attorney's fees.[11]

By Decision[12] of March 20, 2006, the Labor Arbiter dismissed the complaint for lack of merit,[13] finding that petitioner was "able to finish the term of his employment contract and accordingly repatriated due to 'completion of contract.'"[14] Furthermore, the Arbiter found "no records or evidence or any report of any incident which would show that complainant suffered an illness or injury while on board the vessel"[15] to entitle him to disability benefits in accordance with Section 20(B) of the POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels.[16]

The National Labor Relations Commission (NLRC), by Resolution[17] of August 28, 2006, dismissed petitioner's appeal,

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[11] *Id.* at 2.

[12] *Id.* at 90-101.

[13] *Id.* at 95.

[14] *Id.* at 93.

[15] *Id.* at 94.

[16] 2000 POEA Standard Employment Contract, Section 20(B)(6):

SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

(6) In case of permanent or total disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and rules of compensation applicable at the time the disease or illness was contracted.

[17] *Rollo,* pp. 178-183.

it finding no evidence to support his claim that he suffered the illness during the term of his contract,[18] and "there was nothing to back up his claim that he was repatriated for medical reasons."[19]

Petitioner's Motion for Reconsideration having been denied by the NLRC, he filed a Petition for *Certiorari*[20] before the Court of Appeals which, by Decision of December 26, 2007,[21] dismissed the same, it noting that the medical examination on May 26, 2003, which declared him "unfit to work," was made only *after* the completion of his contract and during his application for re-employment;[22] and that while petitioner claimed that his sickness was a result of his continuous employment, he failed to have himself checked by the company-designated doctor in accordance with the mandatory requirement for post-employment medical examination.[23]

Discrediting petitioner's claim that his complaints, while on board the vessel, were ignored, the Court of Appeals ruled:

> While it may be true that petitioner reported his illness to his officers, as alleged, said officers were not named. Thus, this fact belies his claim that his continuous service with the respondent company resulted to his sickness or that he incurred said illness during the term of contract.[24]

His Motion for Reconsideration having been denied[25] by Resolution of April 22, 2008,[26] petitioner filed this present Petition for Review on *Certiorari*.[27]

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[18] *Id.* at 180.

[19] *Id.* at 181.

[20] *Id.* at 59-77.

[21] Penned by Justice Arturo G. Tayag, with the concurrence of Justices Hakim S. Abdulwahid and Vicente Q. Roxas. *Id.* at 36-47.

[22] *Id.* at 43.

[23] *Ibid.*

[24] *Id.* at 45.

[25] *Id.* at 50.

[26] Penned by Justice Arturo G. Tayag, with the concurrence of Justices Hakim S. Abdulwahid and Vicente Q. Roxas; *id.* at 49-50.

[27] *Id.* at 3-34.

Petitioner argues that, among other things, his illness is reasonably work-related, relying primarily on the earlier assessment made by Dr. Vicaldo.[28] Enumerating the various hazards[29] to which a ship cook may be exposed, he goes on to argue that the term "work-related" entails merely a probability, not certainty, of exposure to the risk of illness.[30] Petitioner thus claims entitlement to sickness allowance and to disability benefits under paragraphs 3 & 6, respectively, of Section 20(B) of the POEA Standard Employment Contract, contending that his affliction falls within the meaning of Occupational Diseases under Section 32-A paragraph 11[31] of the Standard Contract.

Respecting his failure to comply with the mandatory reportorial requirement under paragraph 3, Section 20(B) of the Standard Contract, petitioner advances that the same was due to respondents' refusal to extend him any medical assistance despite his information to them of his condition. Petitioner claims anyway that the requirement is not absolute, citing *Wallem Maritime Services, Inc. v. National Labor Relations Commission.*[32]

The petition fails.

Section 20 (B) of the POEA Standard Employment Contract reads:

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[28] NLRC records, *supra* note 9.

[29] *Rollo,* pp. 22-24.

[30] *Id.* at 25.

[31] **Cardio-Vascular Diseases**. Any of following conditions must be met:

(a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.

(b) The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute casual relationship.

(c) If a person who was apparently a symptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a casual relationship.

[32] *Rollo,* p. 26.

COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return *except* when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits. If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

x x x x x x x x x[33]

(italics and underscoring supplied)

Section 20(B) provides for the liabilities of the employer only when the seafarer suffers from a **work-related** injury or illness **during the term of his employment.**[34]

Petitioner claims to have reported his illness to an officer once on board the vessel during the course of his employment.[35] The records are bereft, however, of any documentary proof that he had indeed referred his illness to a nurse or doctor in order to avail of proper treatment. It thus becomes apparent that he was repatriated to the Philippines, not on account of any illness or injury, but in view of the completion of his contract.

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[33] 2000 POEA Standard Employment Contract, Section 20 (B).

[34] *Nisda v. Sea Serve Maritime Agency,* G.R. No. 179177, July 23, 2009.

[35] *Supra* note 15.

But even assuming that petitioner was repatriated for medical reasons, he failed to submit himself to the company-designated doctor in accordance with the post-employment medical examination requirement under the above-quoted paragraph 3 of Section 20(B) of the POEA Standard Employment Contract. Failure to comply with this requirement which is a *sine qua non* bars the filing of claim for disability benefits.[36]

All told, **the rule is that under Section 20-B(3) of the 1996 POEA-SEC, it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits.**[37] (emphasis and underscoring supplied)

Without any valid excuse, petitioner did not submit himself to a company-designated physician for medical examination within three days from his arrival in the Philippines. He submitted himself for medical examination to the company-designated physician only on May 26, 2003,[38] or seven months after his repatriation following the completion of his previous contract, only because he was procuring further employment from respondent Sea Star.[39]

Petitioner's claim that he immediately reported to Sea Star office upon disembarkation and informed it of his present condition was discredited by the Labor Arbiter, which was affirmed by the NLRC and the appellate court. Such factual determination is a statutory function of the NLRC.[40]

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[36] 2000 POEA Standard Employment Contract, Section 20(B), paragraph 3.

[37] *Maunlad Transport, Inc. v. Manigo, Jr.*, G.R. No. 161416, June 13, 2008, 554 SCRA 446, 459.

[38] NLRC records, p. 47.

[39] *Id.* at 32.

[40] *Masangcay v. Trans-Global Maritime Agency, Inc.*, G.R. No. 172800, October 17, 2008, 569 SCRA 592, 606 citing *CBL Transit, Inc. v. National Labor Relations Commission,* 469 Phil. 363, 371 (2004).

As for petitioner's invocation of the ruling in *Wallem Maritime Services, Inc. v. National Labor Relations Commission*[41] in support of his contention that the requirement of post-employment medical examinations within three days from return to the Philippines is not absolute,[42] the same is misplaced. *Wallem's* dictum reads:

> . . . [T]he seaman shall submit himself to a post-employment medical examination by the company-designated physician within three working days upon his return, except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seaman to comply with the mandatory requirement shall result in his forfeiture of the right to claim the above benefits (underscoring supplied).
>
> Admittedly, Faustino Inductivo did not subject himself to post-employment medical examination within three (3) days from his return to the Philippines, as required by the above provision of the POEA standard employment contract. But such requirement is not absolute and admits of an exception, *i.e.*, when the seaman is physically incapacitated from complying with the requirement. Indeed, for a man who was terminally ill and in need of urgent medical attention one could not reasonably expect that he would immediately resort to and avail of the required medical examination, assuming that he was still capable of submitting himself to such examination at that time. It is quite understandable that his immediate desire was to be with his family in Nueva Ecija whom he knew would take care of him. Surely, under the circumstances, we cannot deny him, or his surviving heirs after his death, the right to claim benefits under the law.[43] (Underscoring supplied)

As stated above, petitioner had no valid excuse for not complying with the *sine qua non* requirement.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[41] 376 Phil. 738 (1999).

[42] *Supra* note 32.

[43] *Supra* note 42 at 748.

THIRD DIVISION

[G.R. No. 182626. December 4, 2009]

HILARIO S. RAMIREZ, *petitioner, vs.* **HON. COURT OF APPEALS, Cebu City, HON. NLRC, 4th Division, Cebu City and MARIO S. VALCUEBA,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION (NLRC); APPEALS INVOLVING MONETARY AWARDS; MANDATORY REQUIREMENTS; POSTING OF A BOND IS NOT ONLY INDISPENSABLE AND MANDATORY BUT ALSO A JURISDICTIONAL REQUIREMENT THAT MUST BE COMPLIED WITH IN ORDER TO CONFER JURISDICTION UPON THE COMMISSION. —** Under the Rules, appeals involving monetary awards are perfected only upon compliance with the following mandatory requisites, namely: (1) payment of the appeal fees; (2) filing of the memorandum of appeal; and (3) payment of the required cash or surety bond. The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the labor arbiter. The intention of the lawmakers to make the bond a mandatory requisite for the perfection of an appeal by the employer is clearly expressed in the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond." The word "only" in Articles 223 of the Labor Code makes it unmistakably plain that the lawmakers intended the posting of a cash or surety bond by the employer to be the essential and exclusive means by which an employer's appeal may be perfected. The word "may" refers to the perfection of an appeal as optional on the part of the defeated party, but not to the compulsory posting of an appeal bond, if he desires to appeal. The meaning and the intention of the legislature in enacting a statute must be determined from the language employed; and where there is no ambiguity in the words used, then there is no room for construction. Clearly, the filing of the bond is not only mandatory but also a jurisdictional requirement that must be

complied with in order to confer jurisdiction upon the NLRC. Non-compliance with the requirement renders the decision of the Labor Arbiter final and executory. This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.

2. **ID.; ID.; ID.; ID.; ID.; NOTHING IN THE LABOR CODE OR THE NLRC RULES OF PROCEDURE AUTHORIZES THE POSTING OF A BOND THAT IS LESS THAN THE MONETARY AWARD IN THE JUDGMENT, OR DEEMS SUCH INSUFFICIENT POSTING AS SUFFICIENT TO PERFECT THE APPEAL. —** In this case, although Ramirez posted an appeal bond, the same was insufficient, as it was not equivalent to the monetary award of the Labor Arbiter. Moreover, when Ramirez sought a reduction of the bond, he merely said that the bond was excessive and baseless without amplifying why he considered it as such. In *Mcburnie v. Guanzon,* the respondents therein filed their memorandum of appeal and motion to reduce bond on the 10th or last day of the reglementary period. Although they posted an initial appeal bond, the same was inadequate compared to the monetary award. The Court found no basis for therein respondent's contention that the awards of the Labor Arbiter were null and excessive. We emphasized in that case that it behooves the Court to give utmost regard to the legislative and administrative intent to strictly require the employer to post a cash or surety bond securing the **full** amount of the monetary award within the 10-day reglementary period. **Nothing in the Labor Code or the NLRC Rules of Procedure authorizes the posting of a bond that is less than the monetary award in the judgment, or deems such insufficient posting as sufficient to perfect the appeal.**

3. **ID.; ID.; ID.; ID.; ID.; THE NLRC HAD NO BASIS UPON WHICH IT COULD ACTUALLY AND COMPLETELY DETERMINE PETITIONER'S MOTION TO REDUCE BOND; NO SUBSTANTIAL COMPLIANCE WITH THE RULES BY MERELY STATING THAT THE BOND IS EXCESSIVE AND BASELESS WITHOUT MORE, AND WITHOUT PROOF THAT MOVANT IS INCAPABLE OF RAISING THE AMOUNT OF THE BOND. —** By stating that

the bond is excessive and baseless without more, and without proof that he is incapable of raising the amount of the bond, Ramirez did not even come near to substantially complying with the requirements of Art. 223 of the Labor Code and NLRC Rule of Procedure. Given that Ramirez is involved in taxi business, he has not shown that he had difficulty raising the amount of the bond or was unable to raise the amount specified in the award of the Labor Arbiter. All given, the NLRC justifiably denied the motion to reduce bond, as it had no basis upon which it could actually and completely determine Ramirez's motion to reduce bond. We have consistently enucleated that a mere claim of excessive bond without more does not suffice. Thus, in *Ong v. Court of Appeals,* this Court held that the NLRC did not act with grave abuse of discretion when it denied petitioner's motion, for the same failed to elucidate why the amount of the bond was either unjustified or prohibitive.

4. ID.; ID.; ID.; ID.; ID.; NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE NLRC IN DENYING PETITIONER'S MOTION TO REDUCE BOND; WHILE A RELAXATION IN THE APPLICATION OF THE RULES TO SET RIGHT AN ERRANT INJUSTICE IS ALLOWED, THE SAME IS NEVER INTENDED TO FORGE A WEAPON FOR ERRING LITIGANTS TO VIOLATE THE RULES WITH IMPUNITY. — In *Calabash Garments, Inc. v. National Labor Relations Commission,* it was held that "a substantial monetary award, even if it runs into millions, does not necessarily give the employer-appellant a 'meritorious case' and does not automatically warrant a reduction of the appeal bond." While in certain instances, we allow a relaxation in the application of the rules to set right an arrant injustice, we never intend to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only to proper cases of demonstrable merit and under justifiable causes and circumstances, but none obtains in this case. The NLRC had, therefore, the full discretion to grant or deny Ramirez's motion to reduce the amount of the appeal bond. The finding of the labor tribunal that Ramirez did not present sufficient justification for the reduction thereof cannot be said to have been done with grave abuse of discretion.

5. ID.; ID.; ID.; ID.; ID.; ARTICLE 223 OF THE LABOR CODE IS A RULE OF JURISDICTION AND NOT OF PROCEDURE;

NON-COMPLIANCE WITH SUCH LEGAL REQUIREMENT IS FATAL AND HAS THE EFFECT OF RENDERING THE JUDGMENT FINAL AND EXECUTORY. — We have always stressed that Article 223, which prescribes the appeal bond requirement, is a rule of jurisdiction and not of procedure. There is little leeway for condoning a liberal interpretation thereof, and certainly none premised on the ground that its requirements are mere technicalities. It must be emphasized that there is no inherent right to an appeal in a labor case, as it arises solely from grant of statute, namely, the Labor Code. For the same reason, we have repeatedly emphasized that the requirement for posting the surety bond is not merely procedural but jurisdictional and cannot be trifled with. Non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory.

6. **ID.; ID.; ID.; NLRC RULES OF PROCEDURE; NO JUSTIFIABLE GROUND TO SET ASIDE TECHNICAL RULES FOR PETITIONER'S FAILURE TO COMPLY WITH THE REQUIREMENT REGARDING VERIFICATION OF PETITIONS. —** On Ramirez's failure to verify his petition, it is true that verification is merely a formal requirement intended to secure an assurance that matters that are alleged are true and correct. Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules. However, this Court invariably sustains the Court of Appeals' dismissal of the petition on technical grounds under this provision, unless considerations of equity and substantial justice present cogent reasons to hold otherwise. In *Moncielcoji Corporation v. National Labor Relations Commission*, the Court states the rationale — Rules of procedure are tools designed to promote efficiency and orderliness as well as to facilitate attainment of justice, such that strict adherence thereto is required. The application of the Rules may be relaxed only when rigidity would result in a defeat of equity and substantial justice. But, petitioner has not presented any persuasive reason for this Court to be liberal, even *pro hac vice*. Thus, we sustain the dismissal of its petition by the Court of Appeals on technical grounds. Again as in the NLRC, Ramirez has not shown any justifiable ground to set aside technical rules for his failure to comply with the requirement regarding the verification of his petition.

7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NO REVERSIBLE ERROR ON THE PART OF THE COURT OF APPEALS IN DISMISSING THE PETITION ON THE GROUND OF FAILURE TO STATE MATERIAL DATES; THREE MATERIAL DATES THAT MUST BE STATED IN THE PETITION. — We also find no reversible error in the assailed resolution of the Court of Appeals dismissing Ramirez's petition on the ground of failure to state material dates, because in filing a special civil action for *certiorari* without indicating the requisite material date therein, Ramirez violated basic tenets of remedial law, particularly Rule 65 of the Rules of Court. There are three material dates that must be stated in a petition for *certiorari* brought under Rule 65. First, the date when notice of the judgment or final order or resolution was received; second, the date when a motion for new trial or for reconsideration was filed; and third, the date when notice of the denial thereof was received. In the case before us, the petition filed with the Court of Appeals failed to indicate when the notice of the NLRC Resolution was received and when the Motion for Reconsideration was filed, in violation of Rule 65, Section 1 (2nd par.) and Rule 46, Section 3 (2nd par.). As explicitly stated in the aforementioned Rule, failure to comply with any of the requirements shall be sufficient ground for the dismissal of the petition. The rationale for this strict provision of the Rules of Court is not difficult to appreciate. In *Santos v. Court of Appeals*, the court explains that the requirement is for purpose of determining the timeliness of the petition, thus: The requirement of setting forth the three (3) dates in a petition for *certiorari* under Rule 65 is for the purpose of determining its timeliness. Such a petition is required to be filed not later than sixty (60) days from notice of the judgment, order or Resolution sought to be assailed. Therefore, that the petition for *certiorari* was filed forty-one (41) days from receipt of the denial of the motion for reconsideration is hardly relevant. The Court of Appeals was not in any position to determine when this period commenced to run and whether the motion for reconsideration itself was filed on time since the material dates were not stated. x x x.

8. ID.; ID.; ID.; PETITIONER'S DESIRED LENIENCY CANNOT BE ACCORDED ABSENT VALID AND COMPELLING REASONS FOR HIS PROCEDURAL LAPSES; THE RELAXATION OF PROCEDURAL RULES CANNOT BE

MADE WITHOUT ANY VALID REASONS PROFERRED FOR OR UNDERPINNING IT. — The petition was bereft of any persuasive explanation as to why Ramirez failed to observe procedural rules properly. Quite apparent from the foregoing is that the Court of Appeals did not err, much less commit grave abuse of discretion, in denying due course to and dismissing the petition for *certiorari* for its procedural defects. Ramirez's failure to verify and state material dates as required under the rules warranted the outright dismissal of his petition. We are not unmindful of exceptional cases where this Court has set aside procedural defects to correct a patent injustice. However, concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least explain its failure to comply with the rules. In sum, we find no sufficient justification to set aside the NLRC and Court of Appeals resolutions. Thus, the decision of the Labor Arbiter is already final and executory and binding upon this Court. The relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it. To merit liberality, Ramirez must show reasonable cause justifying his non-compliance with the rules and must convince the court that the outright dismissal of the petition would defeat the administration of substantive justice. The desired leniency cannot be accorded, absent valid and compelling reasons for such procedural lapse. The appellate court saw no compelling need meriting the relaxation of the rules; neither do we see any.

APPEARANCES OF COUNSEL

Efren V. Ramirez for petitioner.
Vito Minoria for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court assailing the (a) 13 July 2007 Resolution[1] of the Court of

[1] Penned by Associate Justice Agustin S. Dizon with Associate Justices Pampio A. Abarintos and Francisco P. Acosta, concurring. *Rollo*, p. 23.

Appeals which dismissed the Petition for *Certiorari* under Rule 65 filed by petitioner Hilario Ramirez for failure to properly verify his petition and to state material dates and (b) the 7 March 2008 Resolution[2] of the same court denying petitioner's Motion for reconsideration.

The facts are:

Respondent Mario Valcueba (Valcueba) filed a Complaint[3] for illegal dismissal and nonpayment of wage differential, 13th month pay differential, holiday pay, premium pay for holidays and rest days, and service incentive leaves with claims for moral and exemplary damages and attorney's fees, against Hilario Ramirez (Ramirez). Valcueba claimed that Ramirez hired him as mechanic on 28 May 1999. By 2002, he was paid a daily wage of ₱140.00, which was increased to ₱165.00 a day in 2003 and to ₱190.00 in 2005. He was not paid for holidays and rest days. He was not also paid the complete amount of his 13th month pay. On 27 February 2006, Josephine Torres, secretary of Ramirez, informed Valcueba that he would not be allowed to return to work unless he agreed to work on *pakyaw* basis.[4] Aggrieved, he filed this case.

Ramirez, on the other hand, presented a different version of the antecedents, asserting that Valcueba was first hired as construction worker, then as helper of the mechanic, and eventually as mechanic. There were three categories of mechanics at the workplace. First were the mechanics assigned to specific stations. Second were the mechanics paid on *pakyaw* basis; and finally, those who were classified as rescue/emergency mechanics. Valcueba belonged to the last category. As emergency/rescue mechanic, he was assigned to various stations to perform emergency/rescue work. On 26 February 2006, while he was assigned at the Babag station, Ramirez directed him to proceed

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

[3] Records, p. 1.

[4] Or on task basis, paid on the basis of output. (*Cebu Metal Corporation v. Saliling,* G.R. No. 154463, 5 September 2006, 501 SCRA 61.)

to Calawisan, Lapu-lapu City, as a unit had developed engine trouble and the mechanic assigned in that area was absent. Valcueba did not report to the Calawisan station. In fact, he did not report for work anymore, as he allegedly intended to return to Mindanao.[5]

Further, Ramirez insisted that Valcueba was never terminated from his employment. On the contrary, it was the latter who abandoned his job. On 26 February 2006, Valcueba, as rescue or emergency mechanic, temporarily assigned at Babag Station, did not report at Calawisan, Lapu-lapu City when Ramirez ordered him to answer an emergency call, which required him to fix Ramirez's troubled taxi unit. The mechanic assigned in the area was then absent at that time. The refusal of Valcueba to obey the lawful order of Ramirez was bolstered by his failure to report for work the following day, 27 February 2006. Valcueba advanced no reason regarding his failure to answer an emergency call of duty, nor did he file an application for a leave of absence when he failed to report for work that day.

After hearing, the Labor Arbiter rendered her decision, where she pointed out that:

> The allegation of complainant that his refusal to work on *pakiao* basis prompted respondent Hilario Ramirez to dismiss him from the service is not substantiated by any piece of evidence. Not even a declaration under oath by any affiant attesting to the credibility of complainant's allegation is presented. No documentary evidence purporting to clearly indicate that complainant was discharged was submitted for Our judicious consideration. *A fortiori*, there is reason for Us to doubt complainant's submission that he was dismissed from his employment grounded on disobedience to the lawful order of respondent.
>
> On the side of respondent Ramirez, he insisted that complainant was never terminated from his employment. On the contrary, he alleged that it was complainant who abandoned his job. As rescue or emergency mechanic temporarily assigned at Babag Station, on February 26, 2006, complainant did not report at Calawisan, Lapu-

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[5] Records, p. 13.

Lapu City when respondent Ramirez ordered him to answer an emergency call, which required him to fix the respondent's troubled taxi unit. The mechanic assigned in the area was then absent at that time. The refusal of complainant to obey the lawful order of respondent Ramirez is bolstered by his failure to report for work the following day, February 27, 2006. Complainant advanced no reason as to why he failed to answer an emergency call of duty nor did he file an application for a leave of absence when he failed to report for work that day.

Nonetheless, as the records are bereft of any evidence that respondent sent complainant a letter which advised the latter to report for work, We do not rule out a case of abandonment because the overt act of not answering an emergency call is not insufficient to constitute abandonment.

Consequently, there being no dismissal nor abandonment involved in this case, it is best that the parties to this case should be restored to their previous employment relations. Complainant must go back to work within ten (10) days from receipt of this judgment, while respondent must accept complainant back to work, also within ten (10) days from receipt of this decision.[6]

In the end, the Labor Arbiter decreed:

WHEREFORE, VIEWED FROM THE FOREGOING, judgment is hereby rendered declaring respondent HILARIO RAMIREZ, OWNER OF H.R. TAXI, NOT GUILTY of illegally dismissing complainant from the service, it appearing that there is no dismissal to speak of in this case. Consequently, complainant is ordered to report back for work within ten (10) days from receipt hereof, and respondent Hilario Ramirez must complainant (sic) back to work as soon as the latter would express his intention to report for work or within the same period of ten (10) days from receipt hereof, whichever comes first. Proof of compliance hereof, must be submitted within the same period (sic), complainant would be guilty of abandonment and respondent of illegal dismissal.

In addition, respondent HILARIO RAMIREZ, owner of H.R. Taxi, is hereby ordered to pay complainant MARIO S. VALCUEBA the following:

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[6] *Rollo*, pp. 43-44.

a.	Wage Differential	–	₱30,538.00
b.	13th Month Pay	–	15,287.98
	Total Award	–	₱45,825.98

Philippine currency, within ten (10) days from receipt hereof, through the Cashier of this Arbitration Branch.

Other claims are DISMISSED for failure to substantiate.[7]

Records show that Ramirez received the Labor Arbiter's decision on 5 June 2006. He filed a Motion for Reconsideration and/or Memorandum of Appeal with Urgent Motion to Reduce Appeal Bond[8] on the 9th day of the reglementary period or on 14 June 2006 before the National Labor Relations Commission (NLRC).

Resolving the motion, the NLRC issued a Resolution[9] dated 29 September 2006, which reads:

Upon a careful perusal of the motion to reduce bond, however, the Commission found that the same does not comply with Section 6, Rule VI of the NLRC Rules of Procedure.

x x x x x x x x x

Respondent has not offered a meritorious ground for the reduction of the appeal bond and the amount of ₱10,000.00 he posted is not a reasonable amount in relation to the monetary award of ₱45,825.98. Consequently, his motion to reduce appeal bond shall not be entertained and his appeal is dismissed for non-perfection due to lack of an appeal bond.

The NLRC then held:

WHEREFORE, premises considered, the appeal of respondent is hereby DISMISSED for non-perfection due to want of an appeal bond.[10]

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[7] *Id.* at 49.

[8] Ramirez submitted Postal Money Order in the amount of ₱10,000.00 for the appeal bond (*Rollo,* p. 57).

[9] *Rollo*, p. 58.

[10] *Id.* at 59.

Ramirez filed a Motion for Reconsideration, which the NLRC resolved in a Resolution dated 20 December 2006 in this wise:

> The mere filing of a motion to reduce bond without complying with the requisites of meritorious grounds and posting of a bond in a reasonable amount in relation to the monetary award does not stop the running of the period to perfect an appeal. Thus, respondent's failure to abide with the requisites so mentioned has not perfected his appeal. Verily, since the assailed Decision of the Labor Arbiter contains a monetary award in favor of complainant, it behooves upon respondent to post the required bond.
>
> While the filing of a motion to reduce bond can be considered as a motion of preference in case of an appeal, the same holds true only when such motion complies with the requirements stated above. Consequently, respondent's motion to reduce bond which missed to comply with such requisites does not deserve to be entertained nor to be given a preferred resolution.
>
> WHEREFORE, premises considered, the motion for reconsideration of respondent is hereby DENIED for lack of merit.[11]

The decision of the Labor Arbiter became final and executory on 19 February 2007 and was entered in the Book of Entries of Judgment on 4 May 2007.[12]

Ramirez went up to the Court of Appeals. The case was docketed as CA-G.R. SP No. 02614. In a resolution dated 13 July 2007,[13] the Court of Appeals dismissed the Petition outright for failure of Ramirez to properly verify his petition and to state material dates.

Ramirez's Motion for Reconsideration was denied by the Court of Appeals in a resolution dated 7 March 2008;[14] hence, this petition where Ramirez prays that the "dismissal resolution issued by the Court of Appeals be set aside and in its stead to give due course to this petition by dismissing the unwarranted

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

[12] Records, p. 297.

[13] *Rollo*, p. 23.

[14] *Id*. at 25.

claims imposed by the NLRC for being highly speculative, with no evidence to support of (sic)."[15]

The issues are:

I

PUBLIC RESPONDENT COURT OF APPEALS ERRED IN NOT CONSIDERING THE SUBSTANTIAL COMPLIANCE OF THE FILED PETITION.

II

THE DISMISSAL RESOLUTION (ANNEX "A") HAS NOT RESOLVED THE LEGAL ISSUES RAISED IN CA-G.R. SP NO. 02614.[16]

The case presents no novel issue.

We first resolve the propriety of dismissal by the NLRC.

At the outset, it should be stressed that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner prescribed by and in accordance with the provisions of law. The party who seeks to avail himself of the same must comply with the requirements of the rules. Failing to do so, he loses the right to appeal.[17]

Article 223 of the Labor Code provides for the procedure in case of appeal to the NLRC:

Art. 223. *Appeal*. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

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[15] *Id*. at 20.

[16] *Id*. at 14.

[17] *Colby Construction and Management Corporation v. National Labor Relations Commission,* G.R. No. 170099, 28 November 2007, 539 SCRA 159, 168.

a. If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;

b. If the decision, order or award was secured through fraud or coercion, including graft and corruption;

c. If made purely on questions of law; and

d. If serious errors in the finding of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. (Emphasis supplied.)

Sections 4(a) and 6 of Rule VI of the New Rules of Procedure of the NLRC, as amended, reaffirms the explicit jurisdictional principle in Article 223 even as it allows in justifiable cases the reduction of the appeal bond. The relevant provision states:

SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. — (a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; (2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; (3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; for in three (3) legibly type written or printed copies; and 5) accompanied by i) proof payment of the required appeal fee; ii) posting of a cash or surety bond as provided in Section 6 of this Rule; iii) a certificate of non-forum shopping; and iv) proof of service upon the other parties.

x x x x x x x x x

SECTION 6. BOND. — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney’s fees.

x x x x x x x x x

No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.

Under the Rules, appeals involving monetary awards are perfected only upon compliance with the following mandatory requisites, namely: (1) payment of the appeal fees; (2) filing of the memorandum of appeal; and (3) payment of the required cash or surety bond.[18]

The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the labor arbiter. The intention of the lawmakers to make the bond a mandatory requisite for the perfection of an appeal by the employer is clearly expressed in the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond." The word "only" in Articles 223 of the Labor Code makes it unmistakably plain that the lawmakers intended the posting of a cash or surety bond by the employer to be the essential and exclusive means by which an employer's appeal may be perfected. The word "may" refers to the perfection of an appeal as optional on the part of the defeated party, but not to the compulsory posting of an appeal bond, if he desires to appeal. The meaning and the intention of the legislature in enacting a statute must be determined from the language employed; and where there is no ambiguity in the words used, then there is no room for construction.[19]

Clearly, the filing of the bond is not only mandatory but also a jurisdictional requirement that must be complied with in order

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[18] *Ciudad Fernandina Food Corporation Employees Union-Associate Labor Unions v. Court of Appeals,* G.R. No. 166594, 20 July 2006, 495 SCRA 807, 817.

[19] *Mcburnie v. Ganzon,* G.R. Nos. 178034 & 178117 and G.R. Nos. 186984-85, 18 September 2009.

to confer jurisdiction upon the NLRC. Non-compliance with the requirement renders the decision of the Labor Arbiter final and executory. This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal.

It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.[20]

In this case, although Ramirez posted an appeal bond, the same was insufficient, as it was not equivalent to the monetary award of the Labor Arbiter. Moreover, when Ramirez sought a reduction of the bond, he merely said that the bond was excessive and baseless without amplifying why he considered it as such.[21]

Colby Construction and Management Corporation v. National Labor Relations Commission[22] succinctly elucidates that an employer who files a motion to reduce the appeal bond is still required to post the full amount of cash or surety bond within the ten-day reglementary period, even pending resolution of his motion.

Very recently, in *Mcburnie v. Guanzon,* the respondents therein filed their memorandum of appeal and motion to reduce bond on the 10th or last day of the reglementary period. Although they posted an initial appeal bond, the same was inadequate compared to the monetary award. The Court found no basis for therein respondent's contention that the awards of the Labor Arbiter were null and excessive. We emphasized in that case that it behooves the Court to give utmost regard to the legislative and administrative intent to strictly require the employer to post a cash or surety bond securing the **full** amount of the monetary award within the 10-day reglementary period. **Nothing in the**

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[20] *Accessories Specialist, Inc. v. Alabanza,* G.R. No. 168985, 23 July 2008, 559 SCRA 550, 562.

[21] Records, p. 49.

[22] *Supra* note 17.

Labor Code or the NLRC Rules of Procedure authorizes the posting of a bond that is less than the monetary award in the judgment, or deems such insufficient posting as sufficient to perfect the appeal.[23]

By stating that the bond is excessive and baseless without more, and without proof that he is incapable of raising the amount of the bond, Ramirez did not even come near to substantially complying with the requirements of Art. 223 of the Labor Code and NLRC Rule of Procedure. Given that Ramirez is involved in taxi business, he has not shown that he had difficulty raising the amount of the bond or was unable to raise the amount specified in the award of the Labor Arbiter.

All given, the NLRC justifiably denied the motion to reduce bond, as it had no basis upon which it could actually and completely determine Ramirez's motion to reduce bond. We have consistently enucleated that a mere claim of excessive bond without more does not suffice. Thus, in *Ong v. Court of Appeals,*[24] this Court held that the NLRC did not act with grave abuse of discretion when it denied petitioner's motion, for the same failed to elucidate why the amount of the bond was either unjustified or prohibitive.

In *Calabash Garments, Inc. v. National Labor Relations Commission*,[25] it was held that "a substantial monetary award, even if it runs into millions, does not necessarily give the employer-appellant a 'meritorious case' and does not automatically warrant a reduction of the appeal bond."

It is clear from both the Labor Code and the NLRC Rules of Procedure that there is legislative and administrative intent to strictly apply the appeal bond requirement, and the Court should give utmost regard to this intention. There is a concession to the employer, in excluding damages and attorney's fees from the computation of the appeal bond. Not even the filing of a motion to reduce bond is deemed to stay the period for requiring an appeal. **Nothing in the Labor**

[23] *Mcburnie v. Ganzon, supra* note 19.

[24] 482 Phil. 170 (2004).

[25] 329 Phil. 226 (1996).

Code or the NLRC Rules of Procedure authorizes the posting of a bond that is less than the monetary award in the judgment, or would deem such insufficient postage as sufficient to perfect the appeal.

On the other hand, Article 223 indubitably requires that the appeal be perfected only upon the posting of the cash or surety bond which is equivalent to the monetary award in the judgment appealed from. The clear intent of both statutory and procedural law is to require the employer to post a cash or surety bond securing the full amount of the monetary award within the ten (10)-day reglementary period. While the bond may be reduced upon motion by the employer, there is that proviso in Rule VI, Section [6] that the filing of such motion does not stay the reglementary period. **The qualification effectively requires that unless the NLRC grants the reduction of the cash bond within the ten (10)-day reglementary period, the employer is still expected to post the cash or surety bond securing the full amount within the said ten (10)-day period.** If the NLRC does eventually grant the motion for reduction after the reglementary period has elapsed, the correct relief would be to reduce the cash or surety bond already posted by the employer within the ten (10)-day period.[26] (Emphases supplied.)

While in certain instances, we allow a relaxation in the application of the rules to set right an arrant injustice, we never intend to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only to proper cases of demonstrable merit and under justifiable causes and circumstances, but none obtains in this case. The NLRC had, therefore, the full discretion to grant or deny Ramirez's motion to reduce the amount of the appeal bond. The finding of the labor tribunal that Ramirez did not present sufficient justification for the reduction thereof cannot be said to have been done with grave abuse of discretion.[27]

While Section 6, Rule VI of the NLRC's New Rules of Procedure allows the Commission to reduce the amount of the

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[26] *Colby Construction and Management Corporation v. National Labor Relations Commission, supra* note 17.

[27] *Mcburnie v. Ganzon, supra* note 19.

bond, the exercise of the authority is not a matter of right on the part of the movant, but lies within the sound discretion of the NLRC upon a showing of meritorious grounds.[28]

It is daylight-clear from the foregoing that while the bond may be reduced upon motion by the employer, this is subject to the conditions that (1) the motion to reduce the bond shall be based on **meritorious grounds**; and (2) a **reasonable amount** in relation to the monetary award is posted by the appellant; otherwise, the filing of the motion to reduce bond shall not stop the running of the period to perfect an appeal. The qualification effectively requires that unless the NLRC grants the reduction of the cash bond within the 10-day reglementary period, **the employer is still expected to post the cash or surety bond securing the full amount within the said 10-day period**.

We have always stressed that Article 223, which prescribes the appeal bond requirement, is a rule of jurisdiction and not of procedure. There is little leeway for condoning a liberal interpretation thereof, and certainly none premised on the ground that its requirements are mere technicalities. It must be emphasized that there is no inherent right to an appeal in a labor case, as it arises solely from grant of statute, namely, the Labor Code.

For the same reason, we have repeatedly emphasized that the requirement for posting the surety bond is not merely procedural but jurisdictional and cannot be trifled with. Non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory.[29]

That settled, we next resolve the issue of whether or not the Court of Appeals correctly dismissed the petition of Ramirez. The Court of Appeals found that he committed the following fatal defects in his petition:

1. Failure of petitioner to properly verify the petition in accordance with A.M. No. 00-2-10-SC amending Section 4, Rule 7

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[28] *Ong v. Court of Appeals, supra* note 24 at 675.

[29] *Computer Innovations Center v. National Labor Relations Commission,* G.R. No. 152410, 29 June 2005, 462 SCRA 183, 190-193.

in relation to Section 1, Rule 65 of the Rules of Court which now requires that a pleading must be verified by an affidavit that the affiant has read the pleading and the allegations therein are true and correct of his personal knowledge or based on authentic records, as a consequence of which the petition is treated as an unsigned pleading, which under Section 3, Rule 7 of the Rules of Court, produces no legal effect.

2. Petitioner failed to indicate in the petition the material dates showing when notice of the resolution subject hereof was received and when the motion for reconsideration was filed in violation of Section 3, Rule 46 of the Rules of Court.[30]

On Ramirez's failure to verify his petition, it is true that verification is merely a formal requirement intended to secure an assurance that matters that are alleged are true and correct. Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules.[31] However, this Court invariably sustains the Court of Appeals' dismissal of the petition on technical grounds under this provision, unless considerations of equity and substantial justice present cogent reasons to hold otherwise. In *Moncielcoji Corporation v. National Labor Relations Commission*,[32] the Court states the rationale —

Rules of procedure are tools designed to promote efficiency and orderliness as well as to facilitate attainment of justice, such that strict adherence thereto is required. The application of the Rules may be relaxed only when rigidity would result in a defeat of equity and substantial justice. But, petitioner has not presented any persuasive reason for this Court to be liberal, even *pro hac vice.* Thus, we sustain the dismissal of its petition by the Court of Appeals on technical grounds.

Again as in the NLRC, Ramirez has not shown any justifiable ground to set aside technical rules for his failure to comply with the requirement regarding the verification of his petition.

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[30] *Rollo,* pp. 23-24.

[31] *Traveno v. Bobongon Banana Growers,* G.R. No. 164205, 3 September 2009.

[32] 409 Phil. 486, 491-492 (2001).

For the same reasons above, we also find no reversible error in the assailed resolution of the Court of Appeals dismissing Ramirez's petition on the ground of failure to state material dates, because in filing a special civil action for *certiorari* without indicating the requisite material date therein, Ramirez violated basic tenets of remedial law, particularly Rule 65 of the Rules of Court, which states:

SECTION 1. *Petition for certiorari*. — x x x.

x x x x x x 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.

On the other hand, the pertinent provision under Rule 46 is explicit:

Sec. 3. *Contents and filing of petition; effect of non-compliance with requirements*. — x x x.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

x x x x x x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

There are three material dates that must be stated in a petition for *certiorari* brought under Rule 65. First, the date when notice of the judgment or final order or resolution was received; second, the date when a motion for new trial or for reconsideration was filed; and third, the date when notice of the denial thereof was received. In the case before us, the petition filed with the Court of Appeals failed to indicate when the notice of the NLRC Resolution was received and when the Motion for Reconsideration

was filed, in violation of Rule 65, Section 1 (2nd par.) and Rule 46, Section 3 (2nd par.).

As explicitly stated in the aforementioned Rule, failure to comply with any of the requirements shall be sufficient ground for the dismissal of the petition.

The rationale for this strict provision of the Rules of Court is not difficult to appreciate. In *Santos v. Court of Appeals*,[33] the court explains that the requirement is for purpose of determining the timeliness of the petition, thus:

> The requirement of setting forth the three (3) dates in a petition for *certiorari* under Rule 65 is for the purpose of determining its timeliness. Such a petition is required to be filed not later than sixty (60) days from notice of the judgment, order or Resolution sought to be assailed. Therefore, that the petition for *certiorari* was filed forty-one (41) days from receipt of the denial of the motion for reconsideration is hardly relevant. The Court of Appeals was not in any position to determine when this period commenced to run and whether the motion for reconsideration itself was filed on time since the material dates were not stated. x x x.

In the instant case, the petition was bereft of any persuasive explanation as to why Ramirez failed to observe procedural rules properly.[34]

Quite apparent from the foregoing is that the Court of Appeals did not err, much less commit grave abuse of discretion, in denying due course to and dismissing the petition for *certiorari* for its procedural defects. Ramirez's failure to verify and state material dates as required under the rules warranted the outright dismissal of his petition.

We are not unmindful of exceptional cases where this Court has set aside procedural defects to correct a patent injustice. However, concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least explain its failure to comply with the rules.

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[33] 413 Phil. 41, 53-54 (2001).

[34] *Lapid v. Judge Laurea,* 439 Phil. 887, 897 (2002).

In sum, we find no sufficient justification to set aside the NLRC and Court of Appeals resolutions. Thus, the decision of the Labor Arbiter is already final and executory and binding upon this Court.[35]

The relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it. To merit liberality, Ramirez must show reasonable cause justifying his non-compliance with the rules and must convince the court that the outright dismissal of the petition would defeat the administration of substantive justice. The desired leniency cannot be accorded, absent valid and compelling reasons for such procedural lapse. The appellate court saw no compelling need meriting the relaxation of the rules; neither do we see any.[36]

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The Resolutions of the Court of Appeals dated 13 July 2007 and 7 March 2008 and the Resolutions of the NLRC dated 29 September 2006 and 20 December 2006 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[35] *Heritage Hotel Manila v. National Labor Relations Commission*, G.R. Nos. 180478-79, 3 September 2009.

[36] *Daikoku Electronics, Phils. v. Raza,* G.R. No. 181688, 5 June 2009.

THIRD DIVISION

[G.R. No. 182645. December 4, 2009]

IN THE MATTER OF THE HEIRSHIP (INTESTATE ESTATES) OF THE LATE HERMOGENES RODRIGUEZ, ANTONIO RODRIGUEZ, MACARIO J. RODRIGUEZ, DELFIN RODRIGUEZ AND CONSUELO M. RODRIGUEZ AND SETTLEMENT OF THEIR ESTATES, RENE B. PASCUAL, *petitioner, vs.* **JAIME M. ROBLES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATES; PERIOD OF APPEAL FROM ANY DECISION RENDERED THEREIN IS 30 DAYS, A NOTICE OF APPEAL AND A RECORD ON APPEAL BEING REQUIRED. —** In special proceedings, such as the instant proceeding for settlement of estate, the period of appeal from any decision or final order rendered therein is 30 days, a notice of appeal and a **record on appeal being required**. Section 2, Rule 41 of the Rules of Civil Procedure provides: 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. The appeal period may only be interrupted by the filing of a motion for new trial or reconsideration. Once the appeal period expires without an appeal being perfected, the decision or order becomes final, thus: In special proceedings, such as the instant proceeding for settlement of estate, the period of appeal from any decision or final order rendered therein is thirty (30) days, **a notice of appeal and a record on appeal being required.** The appeal period may only be interrupted by the filing of a motion for new trial or reconsideration. **Once the appeal period expires**

without an appeal or a motion for reconsideration or new trial being perfected, the **decision or order becomes final**.

2. **ID.; ID.; ID.; THE COURT OF APPEALS ERRED IN ENTERTAINING RESPONDENT'S APPEAL KNOWING THAT THE APPEAL WAS NOT PERFECTED AND HAD LAPSED INTO FINALITY DUE TO THE ERRONEOUS FILING OF NOTICE OF APPEALS INSTEAD OF A RECORD ON APPEAL AS REQUIRED BY THE RULES OF COURT. —** In the case under consideration, it was on 13 August 1999 that the RTC issued an Amended Decision. On 12 October 1999, Jaime Robles erroneously filed a notice of appeal instead of filing a record on appeal. The RTC, in an order dated 22 November 1999, denied this for his failure to file a record on appeal as required by the Rules of Court. Petitioner failed to comply with the requirements of the rule; hence, the 13 August 1999 Amended Decision of the RTC lapsed into finality. It was therefore an error for the Court of Appeals to entertain the case knowing that Jaime Robles' appeal was not perfected and had lapsed into finality. This Court has invariably ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirement of the rules. Failing to do so, the right to appeal is lost. The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice. Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite date fixed by law. Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions. Thus, we have held that the failure to perfect an appeal within the prescribed reglementary period is not a mere technicality, but jurisdictional. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision. Failure to meet the

requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal. There are exceptions to this rule, unfortunately respondents did not present any circumstances that would justify the relaxation of said rule.

APPEARANCES OF COUNSEL

Larry L. Pernito for petitioner.

Sansaet Masendo Cadiz & Bañosia Law Office for Henry Rodriguez, *et al.*

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for *Certiorari* under Rule 65 of the Rules of Court seeks to declare null and void *ab initio* the 16 April 2002 Decision of the Court of Appeals in CA-G.R. SP No. 57417 and the 21 February 2007 Order of the Regional Trial Court (RTC) of Iriga City, Branch 34 in SP No. IR-1110. The Court of Appeals' decision nullified the entire special proceedings in SP No. IR-1110, while the 21 February 2007 Order of the RTC expunged from the records the proceedings in SP No. IR-1110.

On 14 September 1989 a petition for Declaration of Heirship And Appointment of Administrator and Settlement Of The Estates of the Late Hermogenes Rodriguez (Hermogenes) and Antonio Rodriguez (Antonio) was filed before the RTC.[1] The petition, docketed as Special Proceeding No. IR-1110, was filed by Henry F. Rodriguez (Henry), Certeza F. Rodriguez (Certeza), and Rosalina R. Pellosis (Rosalina). Henry, Certeza and Rosalina sought that they be declared the sole and surviving heirs of the late Antonio Rodriguez and Hermogenes Rodriguez. They alleged they are the great grandchildren of Antonio based on the following genealogy: that Henry and Certeza are the surviving children of Delfin M. Rodriguez (Delfin) who died on 8 February 1981, while Rosalina is the surviving heir of Consuelo M. Rodriguez

[1] Later an Amended Petition was filed to include the estates of Macario J. Rodriguez, Delfin M. Rodriguez and Consuelo M. Rodriguez. (Records, p. 21.)

(Consuelo); that Delfin and Consuelo were the heirs of Macario J. Rodriguez (Macario) who died in 1976; that Macario and Flora Rodriguez were the heirs of Antonio; that Flora died without an issue in 1960 leaving Macario as her sole heir.

Henry, Certeza and Rosalina's claim to the intestate estate of the late Hermogenes Rodriguez, a former *gobernadorcillo*, is based on the following lineage: that Antonio and Hermogenes were brothers and the latter died in 1910 without issue, leaving Antonio as his sole heir.

At the initial hearing of the petition on 14 November 1989, nobody opposed the petition.[2] Having no oppositors to the petition, the RTC entered a general default against the whole world except the Republic of the Philippines. After presentation of proof of compliance with jurisdictional requirements, the RTC allowed Henry, Certeza and Rosalina to submit evidence before a commissioner in support of the petition. After evaluating the evidence presented, the commissioner found that Henry, Certeza and Rosalina are the grandchildren in the direct line of Antonio and required them to present additional evidence to establish the alleged fraternal relationship between Antonio and Hermogenes.

Taking its cue from the report of the commissioner, the RTC rendered a Partial Judgment dated 31 May 1990 declaring Henry, Certeza and Rosalina as heirs in the direct descending line of the late Antonio, Macario and Delfin and appointing Henry as regular administrator of the estate of the decedents Delfin, Macario and Antonio, and as special administrator to the estate of Hermogenes.

Henry filed the bond and took his oath of office as administrator of the subject estates.

Subsequently, six group of oppositors entered their appearances either as a group or individually, namely:

(1) The group of Judith Rodriguez;

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[2] CA *rollo*, p. 145.

(2) The group of Carola Favila-Santos

(3) Jaime Robles;

(4) Florencia Rodriguez;

(5) Victoria Rodriguez; and

(6) Bienvenido Rodriguez.

Only the group of Judith Rodriguez had an opposing claim to the estate of Antonio, while the rest filed opposing claims to the estate of Hermogenes.[3]

In his opposition, Jaime Robles likewise prayed that he be appointed regular administrator to the estates of Antonio and Hermogenes and be allowed to sell a certain portion of land included in the estate of Hermogenes covered by OCT No. 12022 located at Barrio Mangahan, Pasig, Rizal.

After hearing on Jaime Roble's application for appointment as regular administrator, the RTC issued an Order dated 15 December 1994 declaring him to be an heir and next of kin of decedent Hermogenes and thus qualified to be the administrator. Accordingly the said order appointed Jaime Robles as regular administrator of the entire estate of Hermogenes and allowed him to sell the property covered by OCT No. 12022 located at Barrio Manggahan, Pasig, Rizal.

On 27 April 1999, the RTC rendered a decision declaring Carola Favila-Santos and her co-heirs as heirs in the direct descending line of Hermogenes and reiterated its ruling in the partial judgment declaring Henry, Certeza and Rosalina as heirs of Antonio. The decision dismissed the oppositions of Jaime Robles, Victoria Rodriguez, Bienvenido Rodriguez, and Florencia Rodriguez for their failure to substantiate their respective claims of heirship to the late Hermogenes.

On 13 August 1999, the RTC issued an Amended Decision reversing its earlier finding as to Carola Favila-Santos. This time, the RTC found Carola Favila-Santos and company not

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[3] *Id.* at 145.

related to the decedent Hermogenes. The RTC further decreed that Henry, Certeza and Rosalina are the heirs of Hermogenes. The RTC also re-affirmed its earlier verdict dismissing the oppositions of Jaime Robles, Victoria Rodriguez, Bienvenido Rodriguez, and Florencia Rodriguez.

Several of the aggrieved parties questioned the Amended Decision. Florencia Rodriguez appealed to the Court of Appeals to no avail and eventually via petition for review before this Court in G.R. No. 142477, which this Court denied with finality on 5 September 2000.[4] The group of Carola Favila-Santos challenged the Amended Decision in this Court which was docketed as G.R. No. 140271, which was denied with finality on 22 February 2000.[5]

For his part, Jaime Robles assailed the Amended Decision by merely filing a mere notice of appeal on 12 October 1999. The RTC, in an order dated 22 November 1999, denied this for his failure to file a record on appeal as required by the Rules of Court.[6]

Since Jaime Robles' appeal was not perfected, the Amended Decision became final and executory and a Certificate of Finality was issued on 17 January 2000.[7] Apparently, petitioner Rene B. Pascual came into the picture since he is a buyer of a real property belonging to the Rodriguez estate located at San Jose, San Fernardo, Pampanga covered by Transfer Certificate of Title No. 12022. The Absolute Sale of Real Property executed on 19 January 2005, approved by the RTC, was entered into between petitioner Rene B. Pascual and the administrator of the estates, Henry. It is by virtue of this sale that petitioner Rene B. Pascual intervened in this case.

From the denial of his appeal, Jaime Robles erroneously filed directly with this Court a petition for review under Rule 45.

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[4] *Rollo*, p. 136.

[5] *Id.* at 127.

[6] *Id.* at 59.

[7] *Id.* at 10.

This Court did not take cognizance of the petition and instead referred the same to the Court of Appeals, the latter having concurrent jurisdiction over the case and there having no special and important reason cited by Jaime Robles for the Court to exercise jurisdiction over said case.[8]

Although aware that the appeal of Jaime Robles was not perfected, the Court of Appeals nonetheless assumed jurisdiction over the case and on 16 April 2002, it rendered a decision annulling the Amended Decision of the RTC reasoning that the proceeding therein was void.

Having been informed of the Court of Appeals' decision, the RTC in an order dated 21 February 2007, ruled that the case "*be considered expunged from the records.*"[9]

Hence, the instant petition.

The petition is meritorious.

Quite conspicuous from the proceedings below is the issue whether or not the Court of Appeals has jurisdiction over the case.

In special proceedings, such as the instant proceeding for settlement of estate, the period of appeal from any decision or final order rendered therein is 30 days, a notice of appeal and a **record on appeal being required**. Section 2, Rule 41 of the Rules of Civil Procedure provides:

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.

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[8] CA *rollo*, p. 67.

[9] *Rollo*, p. 43.

The appeal period may only be interrupted by the filing of a motion for new trial or reconsideration. Once the appeal period expires without an appeal being perfected, the decision or order becomes final, thus:

> In special proceedings, such as the instant proceeding for settlement of estate, the period of appeal from any decision or final order rendered therein is thirty (30) days, **a notice of appeal and a record on appeal being required.** The appeal period may only be interrupted by the filing of a motion for new trial or reconsideration. **Once the appeal period expires** without an appeal or a motion for reconsideration or new trial being perfected, the **decision or order becomes final**.[10]

In the case under consideration, it was on 13 August 1999 that the RTC issued an Amended Decision. On 12 October 1999, Jaime Robles erroneously filed a notice of appeal instead of filing a record on appeal. The RTC, in an order dated 22 November 1999, denied this for his failure to file a record on appeal as required by the Rules of Court. Petitioner failed to comply with the requirements of the rule; hence, the 13 August 1999 Amended Decision of the RTC lapsed into finality. It was therefore an error for the Court of Appeals to entertain the case knowing that Jaime Robles' appeal was not perfected and had lapsed into finality.

This Court has invariably ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional.[11] The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party

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[10] *Testate Estate of Maria Manuel Vda. de Biascan v. Biascan*, 401 Phil. 49, 58 (2000).

[11] *Rigor v. Court of Appeals*, G.R. No. 167400, 30 June 2006, 494 SCRA 375, 382.

who seeks to avail of the same must comply with the requirement of the rules. Failing to do so, the right to appeal is lost. The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice. Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite date fixed by law. Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions. Thus, we have held that the failure to perfect an appeal within the prescribed reglementary period is not a mere technicality, but jurisdictional. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision. Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal. There are exceptions to this rule, unfortunately respondents did not present any circumstances that would justify the relaxation of said rule.

WHEREFORE, premises considered, the petition is *GRANTED*. The 16 April 2002 Decision of the Court of Appeals in CA-G.R. SP No. 57417 and the 27 February 2007 Order of the Regional Trial Court of Iriga City, Branch 34 are hereby *NULLIFIED*. The 13 August 1999 Amended Decision of that the Regional Trial Court Iriga City in SP No. IR-1110 is hereby *REINSTATED*.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 182735. December 4, 2009]

SPS. ROGELIO MARCELO & MILAGROS MARCELO, *petitioners, vs.* **PHILIPPINE COMMERCIAL INTERNATIONAL BANK (PCIB),** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; ONCE A JUDGMENT HAS BECOME FINAL AND EXECUTORY, IT CAN NO LONGER BE DISTURBED, ALTERED OR MODIFIED EXCEPT FOR CLERICAL ERRORS. —** Revisiting the records of this case would reveal that the case attained its finality as of 26 September 2007, and the same has already been recorded in the Book of Entries of Judgment. This Court, in a long line of cases, has maintained that once the judgment has become final and executory, it can no longer be disturbed, altered or modified. Except for clerical errors or mistakes, all the issues between the parties are deemed resolved and laid to rest. In *Dapar v. Biascan*, this Court reiterates that nothing is more settled in law than that once a judgment attains finality, it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the resolution of his case.

2. **ID.; ID.; ID.; NO COGENT REASON THAT WOULD SWAY THE COURT TO MAKE A RADICAL DEPARTURE FROM ITS HESITANCY TO REOPEN A CASE THAT HAS ATTAINED FINALITY.—** The instant Petition offers no cogent reason that would sway this Court to make a radical departure from its hesitancy to reopen a case that has attained finality. The issues raised in the main by the petitioners are but the same issues that were already passed upon by the Court of Appeals in its Decision dated 31 January 2007. To reopen this

case would mean a crass defiance of our basic procedural rules. Consequently, it will run contrary to the dictates of due process, as it would deprive PCIB from executing the rights vested upon it after the case has been adjudged with finality. The effective and efficient administration of justice requires that once a judgment has become final, the prevailing party should not be deprived of the fruits of the verdict by subsequent suits on the same issues filed by the same parties. Through the ages, courts have been duty-bound to put an end to controversies. Any attempt to prolong, resurrect or juggle them should be firmly struck down. The system of judicial review should not be misused and abused to evade the operation of final and executory judgments.

3. **ID.; ID.; MOTION FOR RECONSIDERATION; MOTIONS FOR EXTENSION OF TIME TO FILE A MOTION FOR NEW TRIAL OR RECONSIDERATION MAY BE FILED ONLY IN CONNECTION WITH CASES PENDING BEFORE THE SUPREME COURT; NO SUCH MOTION MAY BE FILED BEFORE ANY LOWER COURT. —** Motions for extension of time to file a motion for new trial or reconsideration may be filed only in connection with cases pending before this Court, which may in its sound discretion either grant or deny the extension requested. No such motion may be filed before any lower courts. In opting for the liberal application of the rules in the interest of equity and justice, we cannot look with favor on a course of action which would place the administration of justice in a straight jacket for then the result would be a poor kind of justice if there would be justice at all.

4. **CIVIL LAW; ACT NO. 3135 (LAW ON EXTRAJUDICIAL FORECLOSURE OF MORTGAGE); POSTING AND PUBLICATION REQUIREMENT; THE LAW DOES NOT INTEND THAT NOTICES TO PUBLIC BE POSTED IN SPECIFIC BULLETIN BOARDS OR INFORMATION AREAS OF A PUBLIC PLACE; WHAT THE LAW DIRECTS IS FOR NOTICES TO BE PLACED IN AN AREA WHERE THE SAME IS PERCEPTIBLE TO THE PUBLIC. —** A *public place* is a place exposed to the public and where the public gathers together or passes to and fro. As can be gleaned from Sheriff Ipac's Affidavit of Posting, the Notices were posted on the Meralco posts within the vicinities of Baliuag Roman

Catholic Church, Baliuag Public Market and near the chapel of Sabang, Baliuag, Bulacan. The aforementioned vicinities where the Meralco posts were erected are public places, to which the general public has a right to resort. The Meralco posts where the Notices were posted are but component structures of the public place itself. The law does not intend that notices to the public be posted on specific bulletin boards or information areas of a public place. What the law directs is for the notices to be placed in an area where the same is perceptible to the public.

5. **ID.; ID.; ID.; THE NEWSPAPER NEED NOT HAVE THE LARGEST PUBLICATION SO LONG AS IT IS OF GENERAL CIRCULATION. —** The trial court's opinion, that *The Times Newsweekly's* minimal readership made it insufficient to meet the publication requirement is, to our minds, too narrow and limiting as to strip the newspaper of its privilege as one of the authorized publications for the notices of auction sale in Bulacan. As this Court held in many cases, to be a newspaper of general circulation, it is enough that it is published for the dissemination of local news and general information; that it has a bona fide subscription list of paying subscribers; and that it is published at regular intervals. The newspaper need not have the largest circulation, so long as it is of general circulation. As evidenced by the Affidavit of Publication executed by *The Times Newsweekly*'s publisher, Teddy F. Borres, the said newspaper is of general circulation in the Provinces of Bulacan, Pampanga, Bataan, Zambales, Nueva Ecija, Tarlac and other cities. The same is published every Saturday by *The Daily Record, Inc.*

6. **ID.; CONTRACTS; LOAN; THE ACKNOWLEDGMENT BY PETITIONERS OF THE DISCLOSURE STATEMENT PRIOR TO THE CONSUMMATION OF THEIR CREDIT TRANSACTION AND THEIR AGREEMENT WITH THE TERMS AND CONDITIONS THEREOF CONTRADICT THEIR SELF-CLAIMED INNOCENCE OVER THE ALLEGED INCREASE OF INTEREST RATES AND CHARGES WITHOUT THEIR CONSENT. —** As to the last assigned error, the spouses Marcelo claim nullity of the foreclosure sale due to the alleged increase of interest rates and charges without their consent. Again, we find no merit in said allegation. Every promissory note signed by the plaintiffs

has its corresponding Disclosure Statement wherein the interests and charges are stated. The acknowledgment by the plaintiffs of the statement prior to the consummation of the credit transaction and their agreement with the terms and conditions thereof simply contradict their self-claimed innocence over the matter.

APPEARANCES OF COUNSEL

Marcelo G. Aure for petitioners.
Siguion Reyna Montecillo & Ongsiako for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Debts are nowadays like children begot with pleasure, but brought forth in pain.

Moliere

Before this Court is a Petition for Review on *Certiorari*, under Rule 45 of the Rules of Court, filed by spouses Rogelio Marcelo and Milagros Marcelo (spouses Marcelo) assailing the Decision[1] dated 31 January 2007 and the Resolution[2] dated 29 August 2007 of the Court of Appeals in CA-G.R. CV No. 82424, upholding the validity of the extra-judicial foreclosure proceedings initiated by Philippine Commercial International Bank (PCIB) and the subsequent public auction sale conducted against their properties.

The antecedent facts of the case are as follows:

The spouses Marcelo obtained from PCIB several loans in staggered amounts within the period 1996-1997. In turn, they executed promissory notes in favor of PCIB summarized as follows:[3]

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[1] Penned by Associate Rebecca de Guia-Salvador with Associate Justices Magdangal M. de Leon and Ricardo R. Rosario concurring. *Rollo*, pp. 120-135.

[2] *Id.* at 136.

[3] Records, pp. 525-549.

Promissory Note Number	Principal Amount	Date of Instrument	Maturity Date
97-115[4]	₱500, 000.00	2 June 1997	1 December 1997
97-116[5]	₱500, 000.00	4 June 1997	1 December 1997
97-117[6]	₱200, 000.00	9 June 1997	8 December 1997
97-124[7]	₱990, 000.00	16 June 1997	15 December 1997
97-138[8]	₱500, 000.00	14 July 1997	12 January 1998
97-175[9]	₱800, 000.00	20 August 1997	16 February 1998
162/96[10]	₱1,700, 000.00	27 November 1996	26 May 1997

Each Promissory Note had a corresponding Disclosure Statement in compliance with Republic Act No. 3765 signed by spouses Marcelo acknowledging and conforming to the terms and conditions attached to their credit transactions.

On 3 June 1997, to secure the payment of their loans, including any extension or renewal of the credit and all other obligations, whether contracted before, during or after the constitution of a Real Estate Mortgage (REM), amounting to ₱3,990,000.00 representing their entire principal obligations under PN No. 162/96, No. 97-124, No. 97-138 and No. 97-175, the spouses Marcelo executed an REM[11] over six parcels of land all situated in Baliuag, Bulacan with an aggregate area of 2,780 square meters and registered in their names under Transfer Certificates

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[4] Exhibit "4"; *id.* at 466.

[5] Exhibit "5"; *id.* at 468.

[6] *Id.* at 148.

[7] Exhibit "6"; *id.* at 470.

[8] Exhibit "7"; *id.* at 472.

[9] Exhibit "8"; *id.* at 474.

[10] Exhibit "9"; *id.* at 476.

[11] *Id.* at 462-465.

of Title (TCTs) No. T-91170,[12] No. T-93936,[13] No. T-91169,[14] No. T-93935,[15] No. T-2524[16] and No. T-16803.[17]

The REM assured PCIB of the following remedy:

> In the event the Mortgagor/Borrower defaults in the obligations hereby secured, breaches or fails to comply with any of the terms and conditions stipulated in this mortgage or in the separate instruments evidencing the obligations hereby secured, or institutes suspension of payments or insolvency proceedings or to be involuntarily declared insolvent, or if this mortgage cannot be recorded in the Registry of Deeds (hereinafter referred to as "events of default"), the Mortgagee may foreclose this mortgage extra-judicially in accordance with Act No. 3135, as amended, or judicially in accordance with the Rules of Court. Should the Mortgagee be compelled to foreclose this mortgage or to take any other legal action to protect its interest, the Mortgagor/Borrower shall pay attorney's fees which are hereby fixed at 15% of the total obligation that is unpaid exclusive of all costs and fees allowed by law.[18]

The spouses Marcelo defaulted on the payment of their outstanding loans, prompting PCIB to make repeated demands for its payment as evidenced by PCIB's final demand letter[19] dated 19 June 1998 on the outstanding obligation of the spouses amounting to ₱6,836,931.05 as of 30 May 1998. The unpaid obligation mounted up to ₱7,628,501.98 as of 30 April 2003.[20]

On 3 August 1998, PCIB file a Petition for Extra-judicial Foreclosure over the mortgaged properties before the Regional Trial Court (RTC) of Malolos, Bulacan.[21]

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[12] *Id.* at 23.

[13] *Id.* at 24.

[14] *Id.* at 25.

[15] *Id.* at 26.

[16] *Id.* at 27.

[17] *Id.* at 29.

[18] Records, p. 463.

[19] Exhibit "9"; pp. 78-479.

[20] Exhibit "10". *Id.* at 478-479.

[21] *Id.* at 531.

A Notice of Sheriff's Sale[22] dated 7 August 1998 was issued by the Provincial Sheriff of Bulacan thru Sheriff IV Junie Jovencio E. Ipac (Sheriff Ipac). The said Notice was posted on the Meralco posts within the vicinities of Baliuag Roman Catholic Church, Baliuag Public Market and the chapel of Sabang, Baliuag, Bulacan as evidenced by the Affidavit of Posting[23] executed by Sheriff Ipac dated 7 August 1998.[24]

The Notice was also sent by registered mail to PCIB and spouses Marcelo,[25] but the latter denied receiving the same.[26]

The Notice of the Sheriff's Sale was, likewise, published in *The Times Newsweekly*, a newspaper of general circulation as evidenced by the Affidavit of Publication[27] dated 5 September 1998 and copies of publications dated 22 August 1998,[28] 29 August 1998[29] and 5 September 1998.[30]

On 15 September 1998, the Office of the Provincial Sheriff of Bulacan conducted a public auction sale over the six parcels of land, and the same were sold to PCIB represented by Reynaldo Gatmaitan for ₱5,616,000.00.[31] The Certificate of Sale[32] issued to PCIB dated 28 October 2008 was then annotated on the TCTs of the subject lands on 10 November 1998.[33]

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[22] *Id.* at 480.

[23] *Id.* at 51.

[24] TSN, 24 June 2002, pp. 17-19.

[25] *Id.* at 11.

[26] *Rollo*, p. 122.

[27] Records, pp. 459-461.

[28] Exhibit "15", *Id.* at 487.

[29] Exhibit "16", *Id.* at 488.

[30] Exhibit "17", *Id.* at 489.

[31] *Rollo*, p. 122.

[32] Records, p. 34.

[33] Exhibit "E". *Id.* at 43-44.

Shortly before the expiration of the redemption period, spouses Marcelo filed a Complaint[34] before RTC Bulacan on 26 October 1999, alleging (1) PCIB's violations of the terms and conditions of the REM contract and the Promissory Notes by demanding exorbitant interest rates and unnecessary bank charges without them being notified; and (2) irregularities in the foreclosure proceedings for failure to comply with the posting and publication requirements as mandated by Act No. 3135. The spouses Marcelo prayed for the nullification of the foreclosure proceedings and the issuance of a Temporary Restraining Order (TRO) against PCIB to prevent the latter from taking possession of the foreclosed properties.

On 5 November 1999, the trial court issued an Order[35] denying the spouses Marcelo's application for a TRO for want of merit and directed further proceedings on the case. The trial court maintained that the publication of the Notice of Sale in *The Times Newsweekly* necessarily connoted that said publication was duly accredited by the trial court, having been allowed by the *Ex-Officio* Sheriff.

Quoting *Olizon v. Court of Appeals*,[36] the trial court declared that the lack of personal notice to the mortgagors is not a ground to set aside the foreclosure sale. Notices are given for the purpose of securing bidders and preventing a sacrifice of the property. If these objects are attained, immaterial errors and mistakes will not affect the sufficiency of the notice.

PCIB, in its Motion to Dismiss[37] filed on 3 January 2000, contended that the Complaint filed was empty rhetoric designed to delay its right under Section 7[38] of Act No. 3135, as amended

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[34] *Id.* at 2-9.

[35] *Id.* at 68-72.

[36] G.R. No. 107075, 1 September 1994, 236 SCRA 148.

[37] Records, pp. 94-110.

[38] SECTION 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the Province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent

by Act 4118, to take possession of the foreclosed property even during the redemption period of one year. It added that the matters are now *fait accompli,* for it had already foreclosed the properties and the one-year redemption period had already lapsed.

The spouses Marcelo opposed the above Motion by emphasizing the need for a full-blown trial as necessitated by the trial court in its Order dated 5 November 1999. They, likewise, reiterated the alleged irregularity in the foreclosure of their properties not offered as collaterals and the non-compliance with the posting, publication and raffle requirements, making the foreclosure proceedings invalid.[39]

In its Reply[40] filed on 21 January 2000, PCIB merely restated its averments in its Motion to Dismiss.

On 24 March 2000, the trial court issued an Order[41] denying the Motion to Dismiss filed by the PCIB. It declared that there remained the imperative need of ascertaining the actual amount of the indebtedness outstanding and due for the court to determine whether the foreclosure proceedings were valid or not. It ordered the PCIB to submit its answer to the Complaint.

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to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ***ex parte motion*** in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four Hundred and ninety-six, as amended by Act No. Twenty-eight hundred and sixty-six and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated who shall execute said order immediately.

[39] Comment and Opposition, 7 January 2000. Records, pp. 157-163.

[40] *Id.* at 167-175.

[41] *Id.* at 185-186.

PCIB, in its Answer[42] filed on 13 April 2000, put up a compulsory counterclaim for damages and attorney's fees in addition to its averments in its Motion to Dismiss and Reply.

In their Reply[43] filed on 12 May 2000, the spouses Marcelo prayed that the *status quo* be maintained and the foreclosure sale be declared null and void for not complying with the jurisdictional requirement of posting, publication and raffle.

In its Decision[44] dated 12 December 2003, the trial court, sustaining the legal presumption of regularity in the performance of Sheriff Ipac's official duty in the foreclosure proceedings, cited this Court in *Philippine National Bank v. International Corporate Bank,*[45] reiterating that the law does not require that a personal notice of the auction sale be given to the mortgagor.

The RTC affirmed, as well, PCIB's allegation of laches against spouses Marcelo, stating, among other things, that the action was but a much-delayed afterthought following the spouses Marcelo's neglect to seek an accurate accounting of their loan obligation and their omission to redeem their properties within the period prescribed by law. Hence, it decreed:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the above-entitled complaint for insufficiency of evidence to warrant the reliefs prayed for therein as well as the pecuniary counterclaim of defendant Philippine Commercial International Bank.[46]

Acting on the spouses Marcelo's Motion for Reconsideration,[47] the trial court issued an Order[48] dated 10 March 2004 reversing

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[42] *Id.* at 189-206.

[43] *Id.* at 215-219.

[44] Penned by Judge D. Roy A. Masado, Jr.; *id.* at 551-557.

[45] G.R. 86679, 23 July 1991, 199 SCRA 508.

[46] Records, p. 557.

[47] *Id.* at 558-564.

[48] *Id.* at 577-581.

itself and rendering the extra-judicial foreclosure proceedings null and void for being violative of Act No. 3135.

The trial court, in granting the Motion, submissively agreed with the spouses Marcelo's suppositions, thus:

> All told, the Court agrees with the argument of [Sps. Marcelo] that the provision of law requiring the posting of the notices of sale of a property subject of extra-judicial foreclosure have not been faithfully complied with in the proceedings complained of in the case at bar. By such token, the aforestated extra-judicial foreclosure proceedings must be nullified for having been violative of the law on the matter. If for that reason alone, the Court withdraws its application in the assailed decision of "the legal presumption that the public functionaries involved in the foreclosure proceedings, particularly the sheriff concerned, 'regularly performed' their official duties in that specific respect. [par. (m), Sec. 3, Rule 131 of the Revised Rules of Court].[49]

In pronouncing non-compliance with the publication requirement as necessitated by Act No. 3135, the trial court decreed that the publication of the Notice of Sheriff's Sale in *The Times Newsweekly*, being a tabloid with few stale news items, was insufficient to meet the publication requirement of the law, the same having commanded very minimal readership. Hence:

> WHEREFORE, premises considered, the aforementioned Motion for Reconsideration submitted by [the spouses Marcelo] *vis-à-vis* the decision dated 12 December 2003 is hereby GRANTED. Accordingly, the aforesaid decision, particularly its dispositive portion, is hereby set aside and, in lieu thereof, another judgment is hereby rendered declaring null and void the extra-judicial foreclosure proceedings initiated by [respondent] Philippine Commercial International Bank against the properties mortgaged in its favor by spouses Rogelio Marcelo and Milagros Marcelo and all the incidents appurtenant thereto, including the public auction sale conducted, the certificate of sale issued pursuant thereto and the annotation thereof in [the spouses Marcelo] transfer certificates of title.[50]

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[49] *Rollo,* pp. 34-35.

[50] *Id.* at 35.

Aggrieved, PCIB appealed the above Order to the Court of Appeals on 31 March 2004.[51]

The Court of Appeals, in its Decision[52] dated 31 January 2007, overturned the appealed Order. The appellate court held that the publication of the Notice of Sheriff's Sale at *The Times Newsweekly*, as recognized by the Executive Judge of the trial court, was in compliance with the publication requirement for the foreclosure sale.

The appellate court, defining *public place* as any location that the local state or national government maintains for the use of the public such as highway, park or public building, maintained that the posting of the said notices at the Meralco posts satisfies the mandates of Act. No. 3135 as to posting requirement, for what is material is the accessibility of the said posted notices to the general public. Finding refuge in case law, it added that supposed there was really a defect in posting, still the publication of the notice in a newspaper of general circulation in the city or municipality where the mortgaged property was situated cured the infirmity. Therefore, it ruled:

> WHEREFORE, premises considered, the appealed Order dated March 10, 2004 is **REVERSED** and **SET ASIDE**. In lieu thereof, another is entered ordering the **REINSTATEMENT** of the trial court's December 12, 2003 Decision.[53]

The Court of Appeals, in its Resolution[54] dated 29 August 2007, denied the petitioners' Motion for Extension of Time to file Motion for Reconsideration of its 31 January 2007 Decision, on the ground that the time for filing the same was non-extendible; Petitioners' Motion for Reconsideration was denied for being filed 11 days late on 12 March 2007.

On 31 October 2007, the Court of Appeals resolved to deny the spouses Marcelo's Motion for Reconsideration filed on 19

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[51] *Id.* at 582.

[52] CA *rollo*, pp. 122-137.

[53] *Rollo,* p. 81.

[54] CA *rollo*, p. 152.

September 2007 for being a second motion for reconsideration that was proscribed under Section 2, Rule 52 of the Rules of Court.[55]

Signed by Court of Appeals Executive Clerk of Court III, Vilma S. Ayala-Dasal on 10 April 2008, the appellate court made an Entry of Judgment of its 31 January 2007 Decision; said decision became final and executory on 26 September 2007, and was recorded in the Book of Entries of Judgment.

Hence, this petition[56] filed on 21 May 2008, wherein the spouses Marcelo point out the following errors:

I. That the Court of Appeals gravely erred in ruling that the Motion for Extension of Time to file Motion for Reconsideration is non-extendible.

II. That the Court of Appeals gravely erred in upholding the validity of the extra-judicial foreclosure sale despite of non-compliance with the posting and publication requirements as mandated by Act No. 3135.

III. That the Court of Appeals gravely erred in upholding the validity of the foreclosure sale despite of PCIB's breach of contract by charging interests not agreed upon by the parties.

This petition has no merit.

Revisiting the records of this case would reveal that the case attained its finality as of 26 September 2007, and the same has already been recorded in the Book of Entries of Judgment. This Court, in a long line of cases, has maintained that once the judgment has become final and executory, it can no longer be disturbed, altered or modified.[57] Except for clerical errors or mistakes, all the issues between the parties are deemed resolved and laid to rest.[58]

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[55] *Id.* at 160.

[56] *Rollo*, pp. 3-14.

[57] See *Industrial Timber Corporation v. Ababon*, G.R. No. 164518, 25 January 2006, 480 SCRA 171, 180.

[58] See *Ram's Studio and Photographic Equipment, Inc. v. Court of Appeals*, 400 Phil. 542, 550 (2000).

In *Dapar v. Biascan*,[59] this Court reiterates that nothing is more settled in law than that once a judgment attains finality, it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the resolution of his case.

The instant Petition offers no cogent reason that would sway this Court to make a radical departure from its hesitancy to reopen a case that has attained finality. The issues raised in the main by the petitioners are but the same issues that were already passed upon by the Court of Appeals in its Decision dated 31 January 2007. To reopen this case would mean a crass defiance of our basic procedural rules. Consequently, it will run contrary to the dictates of due process, as it would deprive PCIB from executing the rights vested upon it after the case has been adjudged with finality. The effective and efficient administration of justice requires that once a judgment has become final, the prevailing party should not be deprived of the fruits of the verdict by subsequent suits on the same issues filed by the same parties.[60]

Through the ages, courts have been duty-bound to put an end to controversies. Any attempt to prolong, resurrect or juggle them should be firmly struck down. The system of judicial review should not be misused and abused to evade the operation of final and executory judgments.[61]

Nevertheless, even if we probe into the merits of this case, still, the petition is unmeritorious.

In their first assigned error, the petitioners claimed that the Motion for Extension of Time to File Motion for Reconsideration is in accordance with law.

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[59] 482 Phil. 385 (2004).

[60] *Buaya v. Stronghold Insurance Co., Inc.*, 396 Phil. 738, 747-748 (2000).

[61] *Id.*

We disagree.

This Court provides in Section 1, Rule 37 of the Rules of Court that a motion for reconsideration of a judgment or a final order should be filed within the period for appeal, which is within 15 days after notice to the appellant of the judgment or final order appealed from. The 2002 Internal Rules of the Court of Appeals also states that unless an appeal or a motion for reconsideration or new trial is filed within the 15-day reglementary period, the Court of Appeals' decision becomes final.[62] Hence, the general rule is that no motion for extension of time to file a motion for reconsideration is allowed.

The rule as to the non-extension of time to file a motion for reconsideration is, however, not absolute. As early as 1986 in *Habaluyas Enterprises, Inc. v. Maximo M. Japson*,[63] this Court has pronounced:

> After considering the able arguments of counsels for petitioners and respondents, the Court resolved that the interest of justice would be better served if the ruling in the original decision were applied prospectively from the time herein stated. The reason is that it would be unfair to deprive parties of their right to appeal simply because they availed themselves of a procedure which was not expressly

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[62] **Rule VII of the 2002 Internal Rules of the Court of Appeals**

(Entry of Judgment and Remand of Cases)

Section 1. *Entry of Judgment*. — Unless a motion for reconsideration or new trial is filed or an appeal taken to the Supreme Court, judgments and final resolutions of the Court shall be entered upon expiration of fifteen (15) days from notice to the parties.

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Sec. 5. *Entry of Judgment and Final Resolution*. — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final resolution and shall be signed by the clerk, with a certificate that such judgment or final resolution has become final and executory.

[63] 226 Phil. 144, 147-148 (1986).

prohibited or allowed by the law or the Rules. On the other hand, a motion for new trial or reconsideration is not a pre-requisite to an appeal, a petition for review or a petition for review on *certiorari*, and since the purpose of the amendments above referred to is to expedite the final disposition of cases, a strict but prospective application of the said ruling is in order. Hence, for the guidance of Bench and Bar, the Court restates and clarifies the rules on this point, as follows:

> 1.) **Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that** ***no motion for extension of time to file a motion for new trial or reconsideration*** **may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court.** ***Such a motion may be filed only in cases pending with the Supreme Court*** **as the court of last resort, which may in its sound discretion either grant or deny the extension requested.** (Emphasis ours.)

Accordingly, motions for extension of time to file a motion for new trial or reconsideration may be filed only in connection with cases pending before this Court, which may in its sound discretion either grant or deny the extension requested. No such motion may be filed before any lower courts.[64] In opting for the liberal application of the rules in the interest of equity and justice, we cannot look with favor on a course of action which would place the administration of justice in a straight jacket for then the result would be a poor kind of justice if there would be justice at all.[65]

We likewise disagree with the petitioners' allegation that the Court of Appeals gravely erred in upholding the validity of the extra-judicial foreclosure sale despite non-compliance with the posting and publication requirements as mandated by Act No. 3135.

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[64] *Fernandez v. Court of Appeals*, G.R. No. 131094, 16 May 2005, 458 SCRA 454, 467-468.

[65] See *Alberto Imperial v. Court of Appeals,* G.R. No. 158093, June 5, 2009; *Barnes v. Padilla,* G.R. No. 160753, 28 June 2005, 461 SCRA 533, 539.

The requirement on the posting of notices is found in Section 3 of Act No. 3135, as amended by Act No. 4118, *viz*:

> Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

The petitioners argue that the posting of the Notice of Sheriff's Sale on Meralco posts did not comply with Act No. 3135 requiring the posting of the same in at least three public places.

A *public place* is a place exposed to the public and where the public gathers together or passes to and fro.[66] As can be gleaned from Sheriff Ipac's Affidavit of Posting, the Notices were posted on the Meralco posts within the vicinities of Baliuag Roman Catholic Church, Baliuag Public Market and near the chapel of Sabang, Baliuag, Bulacan. The aforementioned vicinities where the Meralco posts were erected are public places, to which the general public has a right to resort. The Meralco posts where the Notices were posted are but component structures of the public place itself. The law does not intend that notices to the public be posted on specific bulletin boards or information areas of a public place. What the law directs is for the notices to be placed in an area where the same is perceptible to the public.

As regards publication, Presidential Decree No. 1079, effective 24 May 1977 provides:

> SECTION. 1. All notices of auction sales in extrajudicial foreclosure of real estate mortgage under Act No. 3135 as amended, judicial notices such as notices of sale on execution of real properties, notices in special proceedings, court orders and summonses and all similar announcements arising from court litigation required by law to be published in a newspaper or periodical of general circulation in particular provinces and/or cities shall be published

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[66] *Black's Law Dictionary* (Centennial Edition, 1891-1991), pp. 1230-1231.

in newspapers or publications published, edited and circulated in the same city and/or province where the requirement of general circulation applies: *Provided*, That the province or city where the publication's principal office is located shall be considered the place where it is edited and published: *Provided*, further, That in the event there is no newspaper or periodical published in the locality, the same may be published in the newspaper or periodical published, edited and circulated in the nearest city or province: *Provided*, finally, That no newspaper or periodical which has not been authorized by law to publish and which has not been regularly published for at least one year before the date of publication of the notices or announcements which may be assigned to it shall be qualified to publish the said notices.

SEC. 2. The executive judge of the court of first instance shall designate a regular working day and a definite time each week during which the said judicial notices or advertisements shall be distributed personally by him for publication to qualified newspapers or periodicals as defined in the preceding section, which distribution shall be done by raffle: *Provided*, That should the circumstances require that another day be set for the purpose, he shall notify in writing the editors and publishers concerned at least three (3) days in advance of the designated date: *Provided*, further, That the distribution of the said notices by raffle shall be dispensed with in case only one newspaper or periodical is in operation in a particular province or city.

The trial court's opinion, that *The Times Newsweekly's* minimal readership made it insufficient to meet the publication requirement is, to our minds, too narrow and limiting as to strip the newspaper of its privilege as one of the authorized publications for the notices of auction sale in Bulacan. As this Court held in many cases, to be a newspaper of general circulation, it is enough that it is published for the dissemination of local news and general information; that it has a bona fide subscription list of paying subscribers; and that it is published at regular intervals.[67] The newspaper need not have the largest circulation, so long as it is of general circulation.[68]

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[67] *Basa v. Mercado*, 61 Phil. 632, 635 (1935).

[68] See *Perez v. Perez*, 494 Phil. 68, 77 (2005).

As evidenced by the Affidavit of Publication executed by *The Times Newsweekly*'s publisher, Teddy F. Borres, the said newspaper is of general circulation in the Provinces of Bulacan, Pampanga, Bataan, Zambales, Nueva Ecija, Tarlac and other cities. The same is published every Saturday by *The Daily Record, Inc.*

As to the last assigned error, the spouses Marcelo claim nullity of the foreclosure sale due to the alleged increase of interest rates and charges without their consent.

Again, we find no merit in said allegation.

Every promissory note signed by the plaintiffs has its corresponding Disclosure Statement wherein the interests and charges are stated. The acknowledgment by the plaintiffs of the statement prior to the consummation of the credit transaction and their agreement with the terms and conditions thereof simply contradict their self-claimed innocence over the matter.

IN VIEW WHEREOF, the Petition is *DENIED*. The Decision dated 31 January 2007 and the Resolution dated 29 August 2007 of the Court of Appeals in CA-G.R. CV No. 82424, upholding the validity of the extra-judicial foreclosure proceedings initiated by Philippine Commercial International Bank (PCIB) and the subsequent public auction sale conducted, are hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

FIRST DIVISION

[G.R. No. 183908. December 4, 2009]

JOELSON O. ILORETA, *petitioner, vs.* **PHILIPPINE TRANSMARINE CARRIERS, INC. and NORBULK SHIPPING U.K., LTD.,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; DISABILITY BENEFITS; PERMANENT TOTAL DISABILITY; NOTION OF DISABILITY IS INTIMATELY RELATED TO THE WORKER'S CAPACITY TO EARN, WHAT IS COMPENSATED BEING NOT HIS INJURY OR ILLNESS BUT HIS INABILITY TO WORK RESULTING IN THE IMPAIRMENT OF HIS EARNING CAPACITY. —** The Court has applied the Labor Code concept of permanent total disability to Filipino seafarers in keeping with the avowed policy of the State to give maximum aid and full protection to labor, it holding that the notion of disability is intimately related to the worker's capacity to earn, what is compensated being not his injury or illness but his inability to work resulting in the impairment of his earning capacity, hence, disability should be understood less on its medical significance but more on the loss of earning capacity.

2. **ID.; ID.; ID.; ID.; FINDINGS OF THE *THIRD* PHYSICIAN THAT PETITIONER IS SUFFERING FROM A LIFE-RISK AND WORK-RELATED HEART AILMENT ARE FINAL AND BINDING ON THE PARTIES. —** The *third* physician, Dr. Fajardo, whose findings are final and binding on the parties, certified that petitioner is suffering from a life-risk and work-related heart ailment (hypertensive cardiovascular disease/ coronary artery disease, chronic stable angina). Dr. Fajardo thus cautioned that although petitioner had undergone "Percutaneous Coronary Intervention," his illness "can be aggravated by [his] continued employment" which can cause the "recurrence of [the] coronary events." Significantly, the doctor's impression matches that of petitioner's physician Dr. Vicaldo that petitioner is "unfit to resume work as seaman in any capacity" as "his illness is considered work-aggravated."

3. **ID.; ID.; ID.; ID.; PETITIONER'S DISABILITY RATING BEING 68.66%, HE IS ENTITLED TO A 100% DISABILITY PENSION OF $60,000.00 UNDER THE PARTIES' COLLECTIVE BARGAINING AGREEMENT. —** Under paragraph 20.1.5 of the parties' CBA, it is stipulated that "[a] seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall x x x be regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, *i.e.*, x x x US$60,000.00 for ratings." Petitioner's disability rating being 68.66%, he is entitled to a 100% disability compensation of US$60,000, as correctly found by the Labor Arbiter and the NLRC.

4. **ID.; ID.; ID.; ID.; AWARD OF ATTORNEY'S FEES DEEMED JUST AND EQUITABLE. —** As for the deletion by the appellate court of the award of attorney's fees, the Court deems it just and equitable to reinstate the same, petitioner having been compelled to litigate due to respondents' failure to satisfy his valid claim. The NLRC ruling reducing to US$1,000 the Labor Arbiter's award of attorney's fees stands, petitioner not having appealed therefrom and, in any event, it being reasonable.

APPEARANCES OF COUNSEL

Romulo P. Valmores for petitioner.
Eric S. Sarmiento and *Sugay Law* for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Joelson O. Iloreta (petitioner) was on February 22, 2002 hired by Philippine Transmarine Carriers, Inc. and Norbulk Shipping U.K., Ltd. (respondents) as Able Seaman on board the vessel *M/S Nautilus* for a period of nine months with a basic monthly salary of US$558 exclusive of overtime pay and other benefits. He was a member of the Associated Marine Officer and Seaman's Union of the Philippines which had a Collective Bargaining Agreement (CBA) with respondents.

On July 12, 2002, while pushing drums full of caustic soda, petitioner complained of chest pains. He later noticed that whenever he exerted physical effort, the pains persisted. When the vessel was docked at the port of Santos, Brazil on August 2, 2002, he was referred to the Centro Medico Internacional and was diagnosed by Dr. Heraldo de Carvalho to be suffering from "Angina pectoris; Arterial hypertension" which he described as "a serious heart disease, involving life risk." On the doctor's recommendation, petitioner was repatriated to the Philippines on August 16, 2002, with medical escort, to undergo further "heart investigation (cinecoronarioangiography) and surgery if necessary."[1]

Petitioner was confined on August 18, 2002 at St. Luke's Medical Center under the care of respondents' company-designated physician Natalio G. Alegre (Dr. Alegre). He underwent "coronary angiography" and "coronary angioplasty" on August 24, 2002 and September 16, 2002, respectively,[2] the expenses for which, as well as his sickness allowance for 120 days, were paid by respondents.[3]

After undergoing post-surgical check-ups, petitioner was on December 17, 2002 cleared by Dr. Alegre "to return to former work as a seaman with maintenance medications of Plavix 75 mg, and Lipitor 10 mg" and in was fact issued a confirmatory certification declaring him "Fit to resume former work."[4]

His chest pains and dizziness during physical exertion having persisted, petitioner sought a *second* opinion from an independent cardiologist, Dr. Efren R. Vicaldo (Dr. Vicaldo) of the Philippine Heart Center who, on April 22, 2003, diagnosed him to be suffering from

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[1] Medical reports dated August 2, 7 & 8, 2002, *rollo*, pp. 40-42.

[2] Medical reports dated August 24, 2002 & September 16, 2002, *id.* at 43-44.

[3] CA Decision dated June 28, 2007, *id.* at 141.

[4] *Id.*; Respondents' Position Paper, *id.* at 70 (underscoring supplied).

> Hypertensive Cardiovascular Disease
> Coronary Artery Disease, one vessel
> (left anterior descending artery)
> Impediment Grade IV (68.66%).[5] (Underscoring supplied)

And petitioner was declared "unfit to resume work as seaman in any capacity" as "his illness is considered work-aggravated" to which regular "lifetime medication to control his blood pressure [and] to prevent reocclusion of his coronaries."[6]

Petitioner thereupon asked respondents for full permanent disability benefits, but was unsuccessful, hence, he filed on July 14, 2003 a complaint to recover permanent total disability compensation, damages and attorney's fees before the National Labor Relations Commission (NLRC) Arbitration Office in Quezon City.[7]

Respondents maintained that petitioner is not entitled to disability benefits in view of the company-designated physician's certification of fitness to resume former work.[8]

The parties later agreed to refer petitioner for examination by a *third* physician, Dr. Reynaldo P. Fajardo (Dr. Fajardo) of the Philippine Heart Center[9] who, on July 20, 2004, issued a Medical Certificate[10] with findings similar to those of Dr. Vicaldo's, *viz*:

> Hypertensive Cardiovascular Disease / Coronary Artery Disease, Chronic Stable Angina, Single Vessel Involvement (Left Anterior Descending [A]rtery), S/P Percutaneous Coronary Intervention, Class II-III
> Impediment Grade IV (68.66%) (Underscoring supplied),

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[5] Medical Certificate, *id.* at 45.

[6] "Justification of Impediment Grade IV (68.66%) for Seaman Joelson O. Iloreta" dated April 22, 2003, *id.* at 46 (underscoring supplied).

[7] Petitioner's Position Paper, *id.* at 47, 62-63.

[8] Respondents' Position Paper, *id.* at 65, 71.

[9] CA Decision, *id.* at 142.

[10] *Id.* at 81.

after noting that petitioner's "history of effort-related angina since July 12, 2002 [has] persisted up to the present"; that "[d]espite Percutaneous Coronary Intervention done on [him], several factors predisposing to recurrence of coronary events can be aggravated by [his] continued employment"; and that his illness is "work-related stress."[11]

By Decision of June 23, 2005, Labor Arbiter Daniel J. Cajilig found for petitioner, awarding US$60,000 disability compensation to petitioner, in this wise:

> [S]ince it has not been denied that complainant is a member of the seaman's Union, perforce, his claims must be based on the provision of the existing CBA which provides as follows:
>
> ***20.1.4. Compensation for Disability***
>
> *20.1.4.1.* A seafarer who suffers permanent disability as a result of work-related illness or from an injury as a result of an accident regardless of fault but excluding injuries caused by seafarer's willful act, whilst serving on board, including accidents and work-related illness occurring whilst traveling to or from the ship, and whose ability to work is reduced as a result thereof, shall, in addition to sick pay, be entitled to compensation according to the provisions of this Agreement. x x x.
>
> *20.1.4.2.* The degree of disability which the Employer, subject to this Agreement, is liable to pay shall be determined by a doctor appointed by the Employer. If a doctor appointed by seafarer and his Union disagrees with the assessment, a **3rd doctor** may be **agreed jointly** between the Employer and the seafarer and his Union. And **the 3rd doctor's decision** shall be **final** and **binding** on both parties.
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> x x x x x x x x x
>
> *20.1.4.4.* The applicable disability compensation shall be in accordance with the degree of disability and rate of compensation indicated in the table hereunder, to wit:

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[11] "Clinical Data Rationalizing Recommendation of Impediment Grade IV (68.66%) for Seaman Joelson O. Iloreta," *id.* at 82 (underscoring and emphasis supplied).

Degree of Permanent Disability	*Rate of Compensation*	
%	*Ratings* US$	*Officers* US$
100	60,000	80,000
75	45,000	60,000
60	36,000	48,000
50	30,000	40,000
40	24,000	32,000
30	18,000	24,000
20	12,000	16,000
10	6,000	8,000

with any differences, including less than 10% disability, to be *pro rata*.

20.1.5. Permanent Medical Unfitness — A seafarer whose disability is assessed at **50% or more** under the POEA Employment Contract shall, for the purpose of this paragraph, **be regarded as permanently unfit for further sea service in any capacity** and **entitled to 100% compensation, *i.e.*,** US$80,000.00 for officers and **US$60,000.00** for ratings. Furthermore, any seafarer assessed at less than 50% disability under the Contract but certified as permanently unfit for further sea service in any capacity by the company doctor, shall also be entitled to 100% compensation.[12] (Emphasis and underscoring supplied)

And the Labor Arbiter also awarded petitioner attorney's fees in the amount of US$6,000 on finding that he was compelled to engage a lawyer to pursue his claims. Thus the Labor Arbiter disposed:

WHEREFORE, prescinding from the foregoing considerations, the complainant is hereby ordered paid his total disability compensation by the respondents, jointly and severally in the amount of **SIXTY THOUSAND (US$60,000.00) US DOLLARS** plus 10% of the total monetary awards as and for **attorney's fees in the amount of US$6,000.00** or its Philippine Peso equivalent at the time of actual payment.

The rest of the claims are denied for lack of merit.

[12] *Id.* at 95-96.

SO ORDERED.[13] (Emphasis in the original)

The NLRC affirmed the Labor Arbiter's decision with modification by reducing the award of attorney's fees to US$1,000. Thus it disposed:

WHEREFORE, premises considered, the appeal is hereby dismissed. The DECISION of the Labor Arbiter is hereby AFFIRMED subject to the modification that the award of attorney's fee is reduced to US$1,000.[14] (Underscoring supplied)

Their motion for reconsideration having been denied, respondents brought the case on *Certiorari* to the Court of Appeals which, by Decision[15] of June 28, 2007, affirmed with modification the NLRC decision by reducing the disability compensation to US$34,330 and deleting the award of attorney's fees in this wise:

While agreeing to the factual findings of the NLRC, we are constrained to reduce the amount of the award for disability benefits following Dr. Fajardo's finding of Impediment Grade IV (68.66%) in relation to the Schedule of Disability under Section 32 of the POEA Standard Contract for Seaman. Under the said schedule, Iloreta with an Impediment Grade IV is entitled to US$50,000.00 x 68.66% or the amount equivalent to US$34,330.00.

As regards the award of Attorney's fees, the same must be deleted for the NLRC failed to show any basis for its award of US$1,000.00. We must not forget that the policy as it stands is that no premium should be placed on the right to litigate. This is simply not awarded every time a party wins a suit. Besides, the petitioners were never amiss in their responsibility to Iloreta. In fact, they shouldered all the expenses for the angiogram and angioplasty plus the allowance equivalent to 120 days.[16] (Underscoring supplied)

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[13] *Id.* at 96-97.

[14] *Id.* at 103.

[15] Penned by Associate Justice Rosmari D. Carandang with Associate Justices Marina L. Buzon and Mariflor P. Punzalan Castillo concurring, *id.* at 140-148.

[16] CA Decision, *id.* at 146-147.

Petitioner's Motion for Partial Reconsideration of the appellate court's decision having been denied by Resolution of July 15, 2008,[17] he filed the present Petition for Review on *Certiorari*, faulting the Court of Appeals in not upholding **(a)** the permanent total disability compensation awarded to him by the Labor Arbiter and affirmed by the NLRC, and **(b)** the award by the Labor Arbiter of attorney's fees.

Respondents counter that while petitioner's disability is "permanent," the same "is only partial" since the *third* doctor, Dr. Fajardo, found him to have only a Grade IV disability impediment of 68.66%. They thus conclude that the appellate court's decision "has sufficient factual and legal justification."[18]

The petition is impressed with merit.

The Court has applied the Labor Code concept of permanent total disability to Filipino seafarers in keeping with the avowed policy of the State to give maximum aid and full protection to labor,[19] it holding that the notion of disability is intimately related to the worker's capacity to earn, what is compensated being not his injury or illness but his inability to work resulting in the impairment of his earning capacity, hence, disability should be understood less on its medical significance but more on the loss of earning capacity.[20]

Remigio v. National Labor Relations Commission[21] summarizes the laws and jurisprudence on the application of the Labor Code concept of disability compensation to the case of seafarers, *viz*:

The standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under E.O. No. 247 to "secure

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[17] *Id.* at 157.

[18] *Id.* at 173-174 (emphasis and underscoring supplied).

[19] Section 3, Article XIII of the 1987 Constitution; *Remigio v. National Labor Relations Commission*, G.R. No. 159887, April 12, 2006, 487 SCRA 190, 206-211; *Austria v. Court of Appeals*, Phil. 926, 933.

[20] *Philimare, Inc./Marlow Navigation Co., Ltd. v. Suganob*, G.R. No. 168753, July 9, 2008, 557 SCRA 438, 448.

[21] *Supra*, note 19.

the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas." Even without this provision, a contract of labor is so impressed with public interest that the New Civil Code expressly subjects it to "the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects" (Art. 1700).

Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers. x x x.

x x x x x x x x x

There are three kinds of disability benefits under the Labor Code, as amended by P.D. No. 626: (1) temporary total disability, (2) permanent total disability, and (3) permanent partial disability. Section 2, Rule VII of the Implementing Rules of Book V of the Labor Code differentiates the disabilities as follows:

> Sec. 2. *Disability*. — (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period not exceeding 120 days, except as otherwise provided for in Rule X of these Rules.
>
> (b) A disability is **total** and **permanent** if as a result of the injury or sickness the employee is **unable to perform any gainful occupation for a continuous period exceeding 120 days**, except as otherwise provided for in Rule X of these Rules.
>
> (c) A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body.

In *Vicente v. ECC* (G.R. No. 85024, January 23, 1991, 193 SCRA 190, 195):

> x x x **the test** of whether or not an employee suffers from **'permanent total disability'** is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. Thus, if by reason of the injury or sickness he sustained, the employee is **unable to perform his customary job for more than 120 days** and he does not come within the coverage of Rule X of the Amended Rules on Employees Compensability (which, in more detailed manner,

describes what constitutes temporary total disability), **then the said employee undoubtedly suffers from 'permanent total disability' regardless of whether or not he loses the use of any part of his body.**

A **total** disability does not require that the employee be absolutely disabled or totally paralyzed. **What is necessary is that the injury must be such that the employee cannot pursue his usual work and earn therefrom** (*Austria v. Court of Appeals*, G.R. No. 146636, Aug. 12, 2002, 387 SCRA 216, 221). On the other hand, a **total** disability is **considered permanent if it lasts continuously for more than 120 days**. Thus, in the very recent case of *Crystal Shipping, Inc. v. Natividad* (G.R. No. 134028, December 17, 1999, 321 SCRA 268, 270-271), we held:

> Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. x x x.
>
> Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.[22] (Emphasis and underscoring supplied)

Applying the standards reflected above *vis-à-vis* the fact that from the time petitioner was medically repatriated on August 16, 2002 up to the time he filed his complaint for disability compensation on July 14, 2003 or for almost eleven (11) months, petitioner remained unemployed, his disability is considered permanent and total.

The *third* physician, Dr. Fajardo, whose findings are final and binding on the parties, certified that[23] petitioner is suffering

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[22] *Id.* at 207, 209-211.

[23] Par. 20.1.4.2 of the parties' CBA provides: "The degree of disability which the Employer, subject to this Agreement, is liable to pay shall be determined by a doctor appointed by the Employer. If a doctor appointed by the seafarer and

from a life-risk and work-related heart ailment (hypertensive cardiovascular disease/coronary artery disease, chronic stable angina). Dr. Fajardo thus cautioned that although petitioner had undergone "Percutaneous Coronary Intervention," his illness "can be aggravated by [his] continued employment" which can cause the "recurrence of [the] coronary events." Significantly, the doctor's impression matches that of petitioner's physician Dr. Vicaldo that petitioner is "unfit to resume work as seaman in any capacity" as "his illness is considered work-aggravated."

Under paragraph 20.1.5 of the parties' CBA, it is stipulated that "[a] seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall x x x be regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, *i.e.*, x x x US$60,000.00 for ratings."[24] Petitioner's disability rating being 68.66%, he is entitled to a 100% disability compensation of US$60,000, as correctly found by the Labor Arbiter and the NLRC. So *Philimare, Inc./ Marlow Navigation Co., Ltd. v. Suganob*,[25] enlightens, thus:

> *Apropos* the appropriate disability benefits that respondent is entitled to, we find that Suganob is entitled to Grade 1 disability benefits which corresponds to total and permanent disability. . .
>
> x x x **To be entitled to Grade 1 disability benefits, the employee's disability must not only be total but also permanent**.
>
> **Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any of his body**. Clearly, Suganob's disability is

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his Union disagrees with the assessment, a **3rd doctor** may be agreed jointly between the Employer and the seafarer and his Union. And **the 3rd doctor's decision** shall be **final** and **binding** on both parties (underscoring and emphasis supplied). Section 20.B.3 of the POEA Standard Employment Contract for Seaman has a similar provision.

[24] Paragraphs 20.1.4.4 and 20.1.5 of the parties' CBA (underscoring and emphasis supplied).

[25] *Supra*, note 20, citing *Austria v. Court of Appeals*, *supra* note 19; *Government Service Insurance System v. Cadiz*, 453 Phil. 384 (2003); *Philippine Transmarine Carriers, Inc. v. National Labor Relations Commission*, 405 Phil. 487 (2001).

permanent since he was unable to work from the time he was medically repatriated on September 17, 2001 up to the time the complaint was filed on April 25, 2002, or more than 7 months. Moreover, if in fact Suganob is clear and fit to work on October 29, 2001, he would have been taken back by petitioners to continue his work as a Chief Cook, but he was not. **His disability is undoubtedly permanent**.

Total disability, on the other hand, does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one's earning capacity. Total disability does not require that the employee be absolutely disabled, or totally paralyzed. **What is necessary is that the injury must be such that the employee cannot pursue his usual work and earn therefrom**. Both the company-designated physician and Suganob's physician found that Suganob is **unfit to continue his duties as a Chief Cook since his illness prevented him from continuing his duties as such**. Due to his illness, he can no longer perform work which is part of his daily routine as Chief Cook like lifting heavy loads of frozen meat, fish, water, etc. when preparing meals for the crew members. **Hence, Suganob's disability is also total**.[26] (Emphasis supplied)

As for the deletion by the appellate court of the award of attorney's fees, the Court deems it just and equitable to reinstate the same, petitioner having been compelled to litigate due to respondents' failure to satisfy his valid claim.[27] The NLRC ruling reducing to US$1,000 the Labor Arbiter's award of attorney's fees stands, petitioner not having appealed therefrom and, in any event, it being reasonable.

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals are *REVERSED* and *SET ASIDE*. The NLRC Decision dated August 31, 2005 is *REINSTATED*.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[26] *Id.* at 446, 448-449.

[27] *RFM Corporation-Flour Division v. Kapisanan ng Manggagawang Pinagkaisa-RFM (KAMPI- NAFLU- KMU)*, G.R. No. 162324, February 4, 2009, 578 SCRA 34, 38.

THIRD DIVISION

[G.R. No. 185477. December 4, 2009]

HERMINIO M. GUTIERREZ and ELISA A. GUTIERREZ-MAYUGA, *petitioners, vs.* **FLORA MENDOZA-PLAZA and PONCIANO HERNANDEZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; A NOTARIZED DOCUMENT ENJOYS A *PRIMA FACIE* PRESUMPTION OF AUTHENTICITY AND DUE EXECUTION; CLEAR AND CONVINCING EVIDENCE MUST BE PRESENTED TO OVERCOME SUCH LEGAL PRESUMPTION. —** Petitioners seem to have overlooked the fact that the deed of donation *inter vivos* is a notarized document. According to Section 30, Rule 132 of the Rules of Court, "every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being a *prima facie* evidence of the execution of the instrument or document involved." A notarial document enjoys a *prima facie* presumption of authenticity and due execution. Clear and convincing evidence must be presented to overcome such legal presumption.

2. **ID.; ID.; PETITIONERS FAILED TO ADDUCE SUFFICIENT EVIDENCE TO OVERCOME THE PRESUMPTION. —** In the instant case, petitioners failed to adduce sufficient evidence to overcome the above presumption. The only evidence offered by petitioners to impugn the deed of donation *inter vivos* was the testimony of petitioner Elisa, wherein she stated that the contents of the deed could not have been true, given that petitioners inherited the subject property from Victoria Mendoza, the daughter of Ignacio with his first wife Juana. Such testimony was utterly lacking. Furthermore, the Court finds nothing wrong and/or unusual in the fact that the deed of donation *inter vivos* was produced and made known to petitioners only in the early part of the year 2006 or more than sixty (60) years after its execution. Understandably, it was only when petitioners claimed ownership of a portion of the subject property that respondents were compelled to assert

their own title to the property, which they traced to the deed of donation *inter vivos.*

3. **ID.; ID.; ALLEGED ISSUE OF IMPAIRMENT OF LEGITIME CANNOT BE CONSIDERED AS THE SAME WAS ONLY RAISED FOR THE FIRST TIME ON APPEAL. —** The non-registration of the aforesaid deed does not also affect the validity thereof. Registration is not a requirement for validity of the contract as between the parties, for the effect of registration serves chiefly to bind third person. The principal purpose of registration is merely to notify other persons not parties to a contract that a transaction involving the property has been entered into. The conveyance of unregistered land shall not be valid against any person unless registered, except (1) the grantor, (2) his heirs and devisees, and (3) third persons having actual notice or knowledge thereof. As held by the Court of Appeals, petitioners are the heirs of Ignacio, the grantor of the subject property. Thus, they are bound by the provisions of the deed of donation *inter vivos.*

4. **CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; DONATION; NON-REGISTRATION OF THE DEED OF DONATION DOES NOT AFFECT THE VALIDITY THEREOF. —** Anent the argument that the donation *inter vivos* impaired the legitimes of petitioners, the Court deems it unnecessary to discuss the same. Said argument was indeed only raised for the first time on appeal to the Court of Appeals and in the Supplement to the Motion for Reconsideration of the appellate court's Amended Decision at that. Points of law, theories, issues, and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule.

5. **ID.; ID.; PRESCRIPTION; ACTS OF POSSESSORY CHARACTER PERFORMED BY ONE WHO HOLDS BY MERE TOLERANCE OF THE OWNER ARE CLEARLY NOT *EN CONCEPTO DE DUEÑO,* AND SUCH POSSESSORY ACTS, NO MATTER HOW LONG SO CONTINUED, DO NOT START THE RUNNING OF THE PERIOD OF PRESCRIPTION. —** Petitioners' claim of prescription in their favor likewise deserves scant consideration.

Unlike respondents who can trace their title to the subject property by virtue of the deed of donation *inter vivos,* petitioners cannot adequately explain how they entered and possessed the subject property to become owners thereof. More importantly, petitioners cannot even rebut the testimony of Mercedes Mendoza that she was present when Victoria entreated their father Ignacio to allow her (Victoria) to construct a house on a portion of the subject property. Ignacio gave permission to Victoria, but only on the condition that she would have to leave when his children by his second marriage would need the property. Thus, the possession of the property by Victoria was only by virtue of the mere tolerance thereof by Ignacio and the children of his second marriage. As such, the alleged possession by petitioners, which they claim to trace to Victoria, was also by mere tolerance on the part of respondents. Prescription as a mode of acquisition requires the existence of the following: (1) capacity to acquire by prescription; (2) a thing capable of acquisition by prescription; (3) possession of the thing under certain conditions; and (4) lapse of time provided by law. Acquisitive prescription may either be ordinary, in which case the possession must be in good faith and with just title; or extraordinary, in which case there is neither good faith nor just title. In either case, there has to be possession, which must be in the concept of an owner, public, peaceful and uninterrupted. As a corollary, Article 1119 of the Civil Code provides that: Art. 1119. Acts of possessory character executed in virtue of license or by mere tolerance of the owner shall not be available for the purposes of possession. Acts of possessory character performed by one who holds by mere tolerance of the owner are clearly not *en concepto de dueño*, and such possessory acts, no matter how long so continued, do not start the running of the period of prescription. In light of the foregoing, petitioners cannot claim any better right to the subject property as against respondents.

APPEARANCES OF COUNSEL

Caballes Bravo & Associates Law Office for petitioners.
Ramon P. Makasiar for respondents.

DECISION

CHICO-NAZARIO, *J*.:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Amended Decision[2] dated 26 September 2008 of the Court of Appeals in CA-G.R. CV No. 89555, which recalled and set aside its earlier Decision[3] dated 2 June 2008. The prior Decision of the appellate court reversed the Decision[4] dated 15 June 2007 of the Regional Trial Court (RTC) of Tanauan City, Branch 83, in Civil Case No. 06-04-2929, which pronounced that herein respondents Flora Mendoza and Ponciano Hernandez (respondents) were the lawful owners of the property subject of this case.

As culled from the records, the antecedents of the case are as follows:

Ignacio Mendoza is the common ascendant of the parties herein. Ignacio was first married to Juana Jaurigue,[5] to whom Dominador and Victoria were born. Petitioner Herminio M. Gutierrez (Herminio)[6] is the son of Victoria, and petitioner Elisa A. Gutierrez-Mayuga (Elisa)[7] is the daughter of Herminio.

After the death of Juana in 1913, Ignacio married Ignacia Jaurigue, the younger sister of Juana. Out of this second marriage, five children were born, namely: Crisostomo, Flora, Felisa, Mercedes and Constancia. As aforesaid, respondent Flora

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[1] *Rollo*, pp. 3-36.

[2] Penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Lucas P. Bersamin (now a member of this Court) and Pampio A. Abarintos, concurring; *rollo*, pp. 106-110.

[3] *Rollo*, pp. 78-85.

[4] Penned by Presiding Judge Hermenegildo M. Lacap; *rollo*, pp. 38-46.

[5] The exact date of the marriage of Ignacio and Juana is not clearly established in the records.

[6] Sometimes referred to as "Armenio" in other parts of the records.

[7] Sometimes referred to as "Eliza" in other parts of the records.

Mendoza-Plaza (Flora) is the daughter of Ignacia, while respondent Ponciano Hernandez (Ponciano) is the son of Felisa.

The parcel of land subject of this case (subject property) is an unregistered land located in Barangay Sta. Clara, Sto. Tomas, Batangas, containing an area of 446 square meters, more or less.

On 25 March 1916, Ignacio acquired the subject property by way of purchase from Luis Custodio for ₱200.00, which sale was contained in a notarized document entitled *Escritura Publica*.[8]

Thereafter, on 8 March 1940, Ignacio executed a **deed of donation *inter vivos***,[9] whereby the subject property was donated to the children whom he begot with Ignacia, his second wife. Ignacia accepted the donation in the same instrument on behalf of her children. Dominador and Victoria were also signatories to the deed of donation *inter vivos* as instrumental witnesses. The deed was likewise duly notarized, but the same was not recorded in the Registry of Deeds.

Subsequently, on 27 April 2006, respondents filed a Complaint for *Accion Reivindicatoria*, *Publiciana* and Quieting of Title against petitioners in the RTC of Tanauan City, which was docketed as Civil Case No. 06-04-2929. Respondents alleged that after the execution of the deed of donation *inter vivos*, the subject property was assigned to Flora and her sister Felisa, who then possessed and occupied the same as owners. Ponciano took over and exercised the rights of his mother Felisa after the latter died in 1988. On or about late January or early February of 2006, petitioners took possession of the southern portion of the subject property and constructed a house of strong materials therein, despite the vigorous objection and opposition of the respondents. As the parties were close relatives, respondents exerted efforts to compromise and amicably settle the case, but

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[8] The original instrument was written in the Spanish language; records, pp. 7-9.

[9] Records, p. 10.

petitioners refused. Respondents prayed, *inter alia*, that they be declared the true and rightful owners of the subject land; petitioners be directed to demolish and remove the house of strong materials, which they built in bad faith; and petitioners be ordered to pay attorney's fees, expenses of litigation, damages and judicial costs.

Petitioners accordingly denied the above material averments in their Answer,[10] asserting that Ignacio and his first wife, Juana, had been in possession of the subject property as early as 1900. After the death of Juana, Dominador, Victoria and Ignacio took over possession of the subject property. When Dominador and Victoria died in 1940 and 1943, respectively, their heirs, including petitioners, occupied and possessed the subject property openly, peacefully and publicly. Petitioners likewise disputed the genuineness and authenticity of the deed of donation *inter vivos*, considering that for more than 65 years the said document was not registered with the office of the Register of Deeds to cause its transfer to respondents. Respondents' presence on and occupancy of a portion of the subject property were allegedly a mere tolerance on the part of petitioners. Thus, the title and rights of petitioners over the subject property were absolute and legal by virtue of succession.

On 15 June 2007, the RTC rendered its Decision in favor of respondents, the dispositive portion of which provides:

> WHEREFORE, judgment is rendered in favor of the [respondents] and against [petitioners]:
>
> 1. Pronouncing and confirming that the [respondents] are the lawful, true and rightful owners of the land described in paragraph 4 of the complaint [subject property], and hereby remove the cloud and quiet their title thereto:
>
> 2. Ordering the [petitioners] to refrain from disturbing in whatever manner the ownership and possession of the [respondents] over the land subject matter of this litigation;
>
> 3. Pronouncing [petitioners] to have lost the house of strong and concrete materials which they built in bad faith on the land of

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[10] *Id.* at 17-27.

the [respondents] without right to indemnity, and ordering the [petitioners] to demolish and remove the said house from the [respondents'] land within thirty (30) days from the date this judgment becomes final at their own expense and thereafter vacate and restore to the [respondents] possession of the portion of the land which the [petitioners] have occupied.

4. Ordering the [petitioners] to pay [respondent] Ponciano Hernandez the sum of ₱50,000.00 for moral damages, and another sum of ₱20,000.00 to both [respondents] for attorney's fees.

5. Plus the costs assessed against the [petitioners].[11]

Principally, the RTC relied on the deed of donation *inter vivos* in awarding the subject property to respondents. The same was properly identified and described in the testimony of Mercedes Mendoza, one of the daughters of Ignacio by his second marriage. The deed was also a notarized document, which was executed with all the formal requirements of the law. Thus, the recitals contained therein were presumed to be true and authentic, which presumption the petitioners failed to overcome with clear, convincing, overwhelming and more than merely preponderant evidence. The RTC also ruled that the deed of donation *inter vivos* was an ancient document,[12] having been executed on 8 March 1940 and being clearly more than thirty (30) years old. The deed was in the proper custody of respondent Ponciano who acquired the same from his mother Felisa, before the latter's death. On its face, the deed was free from any alterations, interlineations, or erasures of a material character, or any circumstance that may generate suspicion of its authenticity. The certificate of the Clerk of Court of Batangas City offered by petitioners, stating that the office had no available

[11] *Rollo,* p. 46.

[12] The rule on ancient documents is found in Section 21, Rule 132 of the Rules of Court, which provides:

Sec. 21. *When evidence by authenticity of private document not necessary.* — Where a private document is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given.

records/documents notarized by the notary public who signed the deed of donation *inter vivos*, did not rule out the authenticity of the said deed. It did not follow that the deed was also inexistent in another government depositories of ancient documents.

Moreover, the RTC declared petitioners to be in bad faith in building a house of strong materials on a portion of the subject property. The respondents strongly opposed the construction from the start, given that the occupation and possession by the petitioners were merely tolerated.

Petitioners filed an appeal with the Court of Appeals, which was docketed as CA-G.R. CV No. 89555.

On 2 June 2008, the Court of Appeals promulgated a Decision, reversing the ruling of the RTC, ratiocinating in this wise:

> It is undisputed that the subject property is an unregistered land over which both parties, who are descendants of Ignacio Mendoza, claim ownership. [Respondents] claim ownership by virtue of a donation *inter vivos*, allegedly executed in 1940 by Ignacio in favor of Ignacia, and possession thereof. On the other hand, [petitioners] claim that they are owners of a portion of the property by acquisitive possession. Both parties presented receipts proving that they have been paying realty taxes on the property. Thus, the controversy boils down to the examination of the evidence presented.
>
> The RTC herein relied heavily on the donation *inter vivos,* Exh. "B" dated March 8, 1940, allegedly executed by Ignacio Mendoza in favor of [his children with his second wife Ignacia], which was acknowledged by Ignacia in the same instrument x x x. Reliance on Exh. "B", however, is flawed. It must be noted that the property subject of controversy is an unregistered land, and the parties therein are [the children of Ignacio with his second wife] and Ignacio Mendoza. [Petitioners] are strangers to the instrument. **Thus, while Exh. "B" is valid between Ignacio Mendoza and [respondents], the same cannot affect third parties such as [petitioners], unless the same is registered** in the manner provided under Section 194 of Act No. 2711, effective March 10, 1917, as amended by Act No. 2837 and later by Act No. 3344, which states:
>
>> "Sec. 194. Recording of instruments or deeds relating to real estate not registered under Act Numbered Four Hundred and Ninety-Six or under the Spanish Mortgage Law. — No

instrument or deed establishing, transmitting, acknowledging, modifying or extinguishing rights with respect to real estate not registered under the provisions of Act Numbered Four Hundred and Ninety-Six entitled "The Land Registration Act," and its amendments, or under the Spanish Mortgage Law, shall be valid, except as between the parties thereto, until such instrument or deed has been registered x x x in the office of the register of deeds for the province or city where the real estate lies.

x x x x x x x x x

The above provision of the law has been reiterated in Section 113 of Presidential Decree No. 1529, as amended, which states:

"Sec. 113. Recording of instruments relating to unregistered lands. — No deed, conveyance, mortgage, lease or other voluntary instrument affecting land not registered under the Torrens system shall be valid, except as between the parties thereto, unless such instrument shall have been recorded in the manner herein prescribed in the office of the Register of Deeds for the province or city where the land lies.

x x x x x x x x x

A careful review of the records shows that Exh. "B", purporting to be a deed of donation, was not registered at all. Apropos, the [petitioners], being third parties thereto, are not bound by the transmittal of rights from Ignacio Mendoza to the [respondents] x x x.

Setting aside Exh. "B", the pieces of evidence left are the tax declarations presented during the trial. However, it is an established jurisprudence that tax declarations and tax receipts are not conclusive evidence of ownership x x x. "In the absence of actual public and adverse possession, the declaration of the land for tax purposes does not prove ownership" x x x. Further examination of the tax declarations x x x show that both parties have been paying realty taxes thereon in the name of Ignacio Mendoza. Likewise, while the parties rely on the tax receipts and tax declarations coupled with the assertions of adverse possession, these do not indicate that they own the same because the property was not declared in their names. x x x.[13] (Emphases ours.)

[13] *Rollo,* pp. 82-84.

The Court of Appeals, thus, decreed:

IN VIEW OF THE FOREGOING, the instant appeal is **GRANTED**. The Decision of the Regional Trial Court (RTC) dated June 15, 2007, promulgated by Branch 83, City of Tanuan, Batangas, in Civil Case No. 06-04-2929, is hereby **REVERSED and SET ASIDE**, and a new one entered **DISMISSING** the complaint in Civil Case No. 06-04-2929. No cost.[14]

Respondents forthwith filed a Motion for Reconsideration[15] on the above Decision, contending, *inter alia*, that where a party has knowledge of a prior existing interest which was unregistered at the time he acquired a right to the same land, his knowledge of that prior unregistered interest has the effect of registration as to him. The knowledge of Victoria, an instrumental witness to the deed of donation *inter vivos*, of the existing prior interest of the heirs of Ignacio by his second marriage is deemed in law to be knowledge of the petitioners.

On 26 September 2008, the Court of Appeals promulgated an Amended Decision,[16] setting aside its earlier Decision, holding that:

After a careful analysis of the circumstances of this case, We find merit in the arguments of the plaintiff-appellees.

x x x x x x x x x

To clarify, as a general rule, "no deed, conveyance, mortgage, lease or other voluntary instrument affecting land not registered under the Torrens system shall be valid, except as between the parties thereto, unless such instrument shall have been recorded in the manner herein prescribed in the office of the Register of Deeds for the province or city where the land lies" (Section 113, Presidential Decree No. 1529, as amended). This means that any instrument dealing with unregistered land shall not bind third persons, unless the instrument is registered in the Office of the Register of Deeds albeit valid as between the parties therein.

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[14] *Id.* at 84-85.

[15] CA *rollo*, pp. 111-119.

[16] *Rollo*, pp. 106-110.

As correctly pointed out by the [respondents], the law has exceptions. "The conveyance shall not be valid against any person unless registered, except (1) the grantor, (2) his heirs and devisees, and (3) third persons having actual notice of knowledge thereof" (*Heirs of Eduardo Manlapat v. Court of Appeals, supra*, p. 426, citing Peña, Registration of Land Titles and Deeds, 1994 ed. p. 28.)

x x x x x x x x x

Appropriately, the proper exception applicable in this case to bind the [petitioners] to the donation *inter vivos* should be under the second exception, that is, being heirs of Ignacio Mendoza. **It should be stressed that the owner of the unregistered property is Ignacio Mendoza and that both parties are his successors. [Respondents] are his successors by his second marriage, while [petitioners] are his successors by his first marriage. Thus, being his heirs and successors, the [petitioners] must be bound for they are considered mere extension of the grantor** (Peña, *Registration of Land Titles and Deeds*, p. 28).

IN VIEW OF ALL THE FOREGOING, the instant motion for reconsideration is hereby **GRANTED**. This Court's Decision promulgated on June 2, 2008 is **RECALLED AND SET ASIDE,** and a new one entered **AFFIRMING** the Regional Trial Court's Decision dated June 15, 2007, in Civil Case No. 06-04-2929. No Cost. (Emphases ours.)

Petitioners filed a Motion for Reconsideration[17] and a Supplement to the Motion for Reconsideration,[18] but the Court of Appeals was not persuaded. On 21 November 2008, the appellate court issued a Resolution,[19] finding that:

A careful review of the motion for reconsideration shows that the issues raised therein have been already been (sic) clarified in and by Our Amended Decision. As to the arguments raised in the Supplement, *i.e.*, that the [petitioners'] legitimes are prejudiced, the same must likewise be denied for having been raised for the first time at this stage of the appeal in a motion for reconsideration. In

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[17] CA *rollo*, pp. 137-147.

[18] *Id.* at 159-182.

[19] *Rollo*, pp. 161-162.

any case, the [petitioners] are not without recourse regarding their alleged prejudiced right to their legitimes.

IN VIEW OF THE FOREGOING, the instant motion for reconsideration and Supplement are **DENIED**.

Petitioners filed the instant Petition for Review on *Certiorari*, imploring the Court to take another judicious look at their case, in their hope of securing a more favorable judgment.

Petitioners insist on disputing the authenticity of the deed of donation *inter vivos* in favor of the children of Ignacio and his second wife, Ignacia. Not only was the deed belatedly introduced by Ponciano; the same is also fatally invalid in view of its non-registration as prescribed by law. Supposedly, the said deed is likewise inherently flawed substantively, because its provisions totally exclude petitioners from participating in the sharing of the property subject of the case, thereby impairing their legitimes. Furthermore, petitioners claim that they have occupied and possessed a portion of the subject property in their own right and in the concept of owners, thus acquiring the same by prescription, if not laches.

We deny the petition.

Petitioners seem to have overlooked the fact that the deed of donation *inter vivos* is a notarized document. According to Section 30, Rule 132 of the Rules of Court, "every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being a *prima facie* evidence of the execution of the instrument or document involved." A notarial document is evidence of the facts expressed therein.[20] A notarized document enjoys a *prima facie* presumption of authenticity and due execution. Clear and convincing evidence must be presented to overcome such legal presumption.[21]

In the instant case, petitioners failed to adduce sufficient evidence to overcome the above presumption. The only evidence

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[20] *Mendiola v. Court of Appeals*, 193 Phil. 326, 335 (1981).

[21] *Domingo v. Robles*, 493 Phil. 916, 921 (2005).

offered by petitioners to impugn the deed of donation *inter vivos* was the testimony[22] of petitioner Elisa, wherein she stated that the contents of the deed could not have been true, given that petitioners inherited the subject property from Victoria Mendoza, the daughter of Ignacio with his first wife Juana. Such testimony was utterly lacking. Furthermore, the Court finds nothing wrong and/or unusual in the fact that the deed of donation *inter vivos* was produced and made known to petitioners only in the early part of the year 2006 or more than sixty (60) years after its execution. Understandably, it was only when petitioners claimed ownership of a portion of the subject property that respondents were compelled to assert their own title to the property, which they traced to the deed of donation *inter vivos*.

The non-registration of the aforesaid deed does not also affect the validity thereof. Registration is not a requirement for validity of the contract as between the parties, for the effect of registration serves chiefly to bind third persons. The principal purpose of registration is merely to notify other persons not parties to a contract that a transaction involving the property has been entered into.[23] The conveyance of unregistered land shall not be valid against any person unless registered, except (1) the grantor, (2) his heirs and devisees, and (3) third persons having actual notice or knowledge thereof. As held by the Court of Appeals, petitioners are the heirs of Ignacio, the grantor of the subject property. Thus, they are bound by the provisions of the deed of donation *inter vivos*.

Anent the argument that the donation *inter vivos* impaired the legitimes of petitioners, the Court deems it unnecessary to discuss the same. Said argument was indeed only raised for the first time on appeal to the Court of Appeals and in the Supplement to the Motion for Reconsideration of the appellate court's Amended Decision at that. Points of law, theories, issues, and arguments not brought to the attention of the lower court need

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[22] TSN, 25 January 2007, pp. 28-30.

[23] *Heirs of Eduardo Manlapat v. Court of Appeals*, G.R. No. 125585, 8 June 2005, 459 SCRA 412, 426.

not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule.[24]

Petitioners' claim of prescription in their favor likewise deserves scant consideration. Unlike respondents who can trace their title to the subject property by virtue of the deed of donation *inter vivos*, petitioners cannot adequately explain how they entered and possessed the subject property to become owners thereof. More importantly, petitioners cannot even rebut the testimony[25] of Mercedes Mendoza that she was present when Victoria entreated their father Ignacio to allow her (Victoria) to construct a house on a portion of the subject property. Ignacio gave permission to Victoria, but only on the condition that she would have to leave when his children by his second marriage would need the property. Thus, the possession of the property by Victoria was only by virtue of the mere tolerance thereof by Ignacio and the children of his second marriage. As such, the alleged possession by petitioners, which they claim to trace to Victoria, was also by mere tolerance on the part of respondents.

Prescription as a mode of acquisition requires the existence of the following: (1) capacity to acquire by prescription; (2) a thing capable of acquisition by prescription; (3) possession of the thing under certain conditions; and (4) lapse of time provided by law. Acquisitive prescription may either be ordinary, in which case the possession must be in good faith and with just title; or extraordinary, in which case there is neither good faith nor just title. In either case, there has to be possession, which must be in the concept of an owner, public, peaceful and uninterrupted.[26] As a corollary, Article 1119 of the Civil Code provides that:

> Art. 1119. Acts of possessory character executed in virtue of license or by mere tolerance of the owner shall not be available for the purposes of possession.

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[24] *Pasco v. Pison-Arceo Agricultural and Development Corporation*, G.R. No. 165501, 28 March 2006, 485 SCRA 514, 523.

[25] TSN, 14 December 2006, pp. 21-22.

[26] *National Power Corporation v. Campos*, 453 Phil. 79, 90 (2003).

Acts of possessory character performed by one who holds by mere tolerance of the owner are clearly not *en concepto de dueño*, and such possessory acts, no matter how long so continued, do not start the running of the period of prescription.

In light of the foregoing, petitioners cannot claim any better right to the subject property as against respondents.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is *DENIED*. The Amended Decision dated 26 September 2008 of the Court of Appeals in CA-G.R. CV No. 89555 is hereby *AFFIRMED*. No costs.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 186460. December 4, 2009]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GUALBERTO CINCO *y* SOYOSA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; DEFINED; PURPOSE; WHEN CONSIDERED VALID AND SUFFICIENT. — An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court. To be considered as valid and sufficient, an information must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission

of the offense; and the place where the offense was committed. The purpose of the requirement for the information's validity and sufficiency is to enable the accused to suitably prepare for his defense, since he is presumed to have no independent knowledge of the facts that constitute the offense.

2. **ID.; ID.; ID.; FAILURE TO SPECIFY THE EXACT DATES OR TIMES WHEN THE RAPES OCCURRED DOES NOT *IPSO FACTO* MAKE THE INFORMATION DEFECTIVE ON ITS FACE; DATE OR TIME OF COMMISSION OF RAPE IS NOT A MATERIAL INGREDIENT OF THE CRIME. —** With respect to the date of the commission of the offense, Section 11, Rule 110 of the Revised Rules of Criminal Procedure specifically provides that it is not necessary to state in the information the precise date the offense was committed except when it is a material ingredient of the offense, and that the offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. In rape cases, failure to specify the exact dates or times when the rapes occurred does not *ipso facto* make the information defective on its face. The reason is obvious. The date or time of the commission of rape is not a material ingredient of the said crime because the *gravamen* of rape is carnal knowledge of a woman through force and intimidation. The precise time when the rape took place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission. In sustaining the view that the exact date of commission of the rape is immaterial, we ruled in *People v. Purazo* that: We have ruled, time and again, that the date is not an essential element of the crime of rape, for the *gravamen* of the offense is carnal knowledge of a woman. As such, the time or place of commission in rape cases need not be accurately stated. As early as 1908, we already held that where the time or place or any other fact alleged is not an essential element of the crime charged, conviction may be had on proof of the commission of the crime, even if it appears that the crime was not committed at the precise time or place alleged, or if the proof fails to sustain the existence of some immaterial fact set out in the complaint, provided it appears that the specific crime charged was in fact committed prior to the date of the filing of the

complaint or information within the period of the statute of limitations and at a place within the jurisdiction of the court.

3. ID.; ID.; ID.; COMPLAINTS AND INFORMATIONS IN PROSECUTIONS FOR RAPE WHICH MERELY ALLEGED THE MONTH AND YEAR OF ITS COMMISSION IS SUFFICIENT. — This Court has upheld complaints and informations in prosecutions for rape which merely alleged the **month and year** of its commission. There is no cogent reason to deviate from these precedents, especially so when the prosecution has established the fact that the rape under Criminal Case No. Q-99-89097 was committed prior to the date of the filing of the information in the said case. Hence, the allegation in the information under Criminal Case No. Q-99-89097, which states that the rape was committed **on or about November 1998,** is sufficient to affirm the conviction of appellant in the said case. Appellant's allegation of variance between the date of the commission of rape in Criminal Case No. Q-99-89098 and that established by the evidence during the trial is erroneous. AAA categorically testified that she was raped by appellant on 1 November 1998. This is consistent with the allegation in the information under Criminal Case No. Q-99-89098 that appellant raped AAA on 1 November 1998.

4. CRIMINAL LAW; RAPE; PROPER PENALTY; CASE AT BAR. — Since the sole issue raised by appellant was resolved by this Court in favor of the validity of the informations filed against him, then the subsequent trial court proceedings and the resulting judgment of conviction against appellant should likewise be affirmed, there being no other questions raised by appellant as to them. We further uphold the penalty imposed on appellant by the RTC and the Court of Appeals. Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, was the law pertinent to the rapes committed on **1 November 1998 and in the latter part of November 1998**. The law states that the death penalty shall be imposed if the rape victim is a minor, and the offender is the common-law spouse of the parent of the victim. The qualifying circumstances of minority of the victim and her relationship with the offender must be alleged in the complaint or information and proved during the trial to warrant the imposition of the death penalty. The informations in Criminal Case No. Q-99-89097 and Q-99-89098 allege that

AAA was a minor at the time she was raped. However, there is no allegation therein that the offender, herein appellant, is the common-law spouse of AAA's parent. Thus, the qualifying circumstances of minority and relationship cannot be properly appreciated. In the absence of such qualifying circumstances, the rapes in the instant cases are treated as simple rapes. Under Republic Act No. 8353, the penalty for simple rape is *reclusion perpetua*.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the Decision[1] dated 30 January 2008 of the Court of Appeals in CA-G.R. CR-HC No. 01537 which affirmed *in toto* the Decision, dated 14 July 2005, of the Regional Trial Court (RTC), Branch 106, Quezon City, in Criminal Cases No. Q-98-79944, No. Q-99-89097 and No. Q-89098,[2] finding accused-appellant Gualberto Cinco *y* Soyosa guilty of two counts of simple rape.

The facts gathered from the records are as follows:

In November 1998, an information[3] was filed before the RTC accusing appellant of acts of lasciviousness, thus:

Criminal Case No. Q-98-79944

That on or about the 30th day of November 1998, in Quezon City, Philippines, the said accused with lewd design, did then and there willfully, unlawfully and feloniously commit an act of sexual abuse

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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. 2-15.

[2] CA *rollo*, pp. 9-17.

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

upon the person of AAA,[4] a minor, 14 years old, by then and there touching her body and mashing her breast, against her will and without her consent which act debases, degrades, or demeans the intrinsic worth and human dignity of said complainant as a human being, to the damage and prejudice of the said offended party.

Subsequently, on 18 August 1999, two separate informations[5] were filed with the RTC charging appellant with rape. The accusatory portions of the informations read:

Criminal Case No. Q-99-89097

That on or about the month of November, 1998 in Quezon City, Philippines, the said accused, by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously undressed [AAA], a minor, 14 years of age, inside her room of the house located at XXX, and thereafter have carnal knowledge with [AAA] against her will and without her consent.

Criminal Case No. Q-99-89098

That on or about the 1st day of November, 1998 in Quezon City, Philippines, the said accused, by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously undressed [AAA], a minor, 14 years of age, in the sala of their house located at XXX, and thereafter have carnal knowledge with [AAA] against her will and without her consent.

Thereafter, the aforementioned cases were consolidated. When arraigned on 7 February 2000, appellant, assisted by counsel *de oficio*, pleaded "not guilty" to the charges. Trial on the merits followed.

The prosecution presented as witnesses Dr. Mariella Castillo and AAA. Their testimonies, woven together, bear the following:

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[4] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. (*People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 421-426.)

[5] Records, pp. 2-5.

Herein private complainant, AAA, was born on 21 August 1984 in the province of YYY. When she was 12 years old, her aunt, BBB, took her from the custody of her paternal grandmother and brought her to BBB's residence located at XXX. Since then, AAA lived in the said house with BBB and herein appellant (BBB's common-law spouse/live-in partner).

On 1 November 1998, at around 6:00 p.m., AAA, then 14 years old, was inside the house watching television. Appellant entered the house and proceeded to the kitchen. He took a knife therefrom and poked it at AAA. He told her not to shout or he would kill her. He tied her two hands at the back of her head and removed her skirt and panty. She began to cry, but he told her to stop doing so. He went on top of her, spread her thighs, and inserted his penis into her vagina. He then made push and pull movements. As she felt pain in her vagina, she tried to push him away but to no avail. He pinched her breast which was very painful. After satisfying his lust, he untied her hands, put on his shorts and left her. She then stood up and put on her clothes. She went to the comfort room and saw her panty stained with blood.

In the latter part of November 1998, at about 4:00 p.m., AAA was inside the house while appellant was drinking with friends outside. Later, appellant, then armed with a knife, entered AAA's room and approached AAA. He pointed the knife at her neck and told her not to make noise. He covered her mouth with a handkerchief and tied her hands with a nylon rope. He then removed his pants and brief, stripped her of her shorts and panty, and went on top of her. He inserted his penis into her vagina and made up and down movements. Before leaving her, he warned her not to tell anyone of the incidents or he would kill her.

Subsequently, AAA went to the *barangay* hall to report the incidents. However, upon arriving thereat, she told the *barangay* officials that she was merely "touched" and not raped by appellant. She was forced to make such statement because appellant's siblings, namely, Sonia and Roel, threatened to kill her if she would divulge the truth. Appellant was eventually arrested and

detained. She then filed with the Office of the Prosecutor, Quezon City, a complaint for acts of lasciviousness against appellant.

Thereafter, AAA confided to BBB that appellant raped her. BBB accompanied AAA to the office of the Department of Social Welfare and Development (DSWD), Marilac Hills, Alabang, Muntinlupa. Thereupon, AAA disclosed to a social worker that she was raped by appellant. After the interview, the social worker and BBB accompanied AAA to Camp Crame where the latter underwent physical and genital examination, which was conducted by Dr. Mariella Castillo (Dr. Castillo). In the said genital examination, Dr. Castillo found that AAA had an estrogenized hymen with healed laceration at the 6:00 o'clock and 8:00 o'clock positions. The deep notches, being in the posterior part of the hymen, indicate that the same had been lacerated before, but were now healed. The notches were caused by penetration injuries or by an object being inserted through the hymen opening to the vaginal canal.

Afterwards, appellant was charged with two counts of rape.[6]

The prosecution also proffered documentary evidence to buttress the testimonies of its witness, to wit: (1) provisional medical certificate of AAA issued by Dr. Castillo (Exhibit A);[7] (2) final medical certificate of AAA issued by Dr. Castillo (Exhibit B);[8] (3) sworn statement of AAA (Exhibit C);[9] and (4) AAA's birth certificate (Exhibit D).[10]

For its part, the defense presented the testimonies of appellant, Gregorio Frias and Roel Cinco to refute the foregoing accusations. No documentary evidence was adduced. Appellant denied any liability and interposed an alibi.

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[6] TSN, 9 November 2000, 8 August 2001, 22 August 2001, 19 September 2001 and 3 October 2001.

[7] Records, p. 144.

[8] *Id.* at 145.

[9] *Id.* at 146.

[10] *Id.* at 150.

Appellant claimed that he was not in the house when the alleged incidents occurred. He testified that from 8:00 a.m. to midnight of 1 November 1998, he sold ice cream in Cubao, Quezon City. He went home in the morning of the following day, 2 November 1998. Also, during the latter part of November 1998, he sold ice cream for the whole day in the same place and went home in the morning of the following day. He alleged that AAA had ill motive to fabricate the rape charges, because he caught her several times stealing money from his box inside the house.[11]

Gregorio Frias, friend of appellant, narrated that on 1 November 1998, he and appellant were selling ice cream in Cubao, Quezon City. At about 5:00 p.m. of the same day, he went to appellant's house and upon arriving therein, he noticed that the people inside were arguing about the loss of money. On 30 November 1998, he and appellant were selling ice cream in Cubao, Quezon City.[12]

Roel Cinco, brother of appellant, stated that on 1 November 1998, he was watching television inside appellant's house. At around 6:00 p.m., appellant arrived at the house. Later that evening, appellant quarreled with BBB because AAA had several times stolen money from him.[13]

After trial, the RTC rendered a Decision convicting appellant of rape in Criminal Case Nos. Q-99-89097 and Q-89098. Appellant was sentenced to *reclusion perpetua* in both cases. He was also ordered to pay AAA in each of the cases the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages. With respect to Criminal Case No. Q-98-79944 for acts of lasciviousness, appellant was acquitted therein for failure of the prosecution to establish said charge. Appellant appealed to the Court of Appeals.

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[11] TSN, 3 April 2003 and 19 June 2003.

[12] TSN, 12 February 2004.

[13] TSN, 20 January 2005.

On 30 January 2008, the Court of Appeals promulgated its Decision affirming *in toto* the RTC Decision. Appellant filed a Notice of Appeal on 12 February 2008.[14]

In his Brief, appellant assigns a lone error, thus:

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE INFORMATIONS UNDER CRIMINAL CASE NOS. Q-99-89097 AND Q-99-89098 AS INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR THE PROSECUTION'S FAILURE TO STATE WITH PARTICULARITY THE APPROXIMATE DATES OF THE COMMISSION OF THE ALLEGED RAPES.[15]

Appellant maintains that the approximate times and dates of the commission of the offense must be stated in the informations; that the informations in the instant cases do not state the approximate times and dates of the alleged rapes; that although AAA testified that the first rape occurred nearly before All Saints Day of 1998, the information in Criminal Case No. Q-89098, nonetheless, states that such incident transpired on 1 November 1998; that the informations are fatally defective; that the times and dates of the alleged rapes are so indefinite, thereby depriving appellant of the opportunity to prepare for his defense; that appellant's constitutional right to be informed of the nature and cause of the accusation against him was violated; and that by reason of the foregoing, appellant is entitled to an acquittal.[16]

An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court.[17] To be considered as valid and sufficient, an information must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the

[14] CA *rollo*, pp. 98-99.

[15] *Id.* at 39.

[16] *Id.* at 39-42.

[17] Section 4, Rule 110 of the Revised Rules of Criminal Procedure.

offense; and the place where the offense was committed.[18] The purpose of the requirement for the information's validity and sufficiency is to enable the accused to suitably prepare for his defense, since he is presumed to have no independent knowledge of the facts that constitute the offense.[19]

With respect to the date of the commission of the offense, Section 11, Rule 110 of the Revised Rules of Criminal Procedure specifically provides that it is not necessary to state in the information the precise date the offense was committed except when it is a material ingredient of the offense, and that the offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

In rape cases, failure to specify the exact dates or times when the rapes occurred does not *ipso facto* make the information defective on its face. The reason is obvious. The date or time of the commission of rape is not a material ingredient of the said crime because the *gravamen* of rape is carnal knowledge of a woman through force and intimidation. The precise time when the rape took place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.[20] In sustaining the view that the exact date of commission of the rape is immaterial, we ruled in *People v. Purazo*[21] that:

> We have ruled, time and again, that the date is not an essential element of the crime of rape, for the *gravamen* of the offense is carnal knowledge of a woman. As such, the time or place of commission in rape cases need not be accurately stated. As early as 1908, we already held that where the time or place or any other fact alleged is not an essential element of the crime charged, conviction

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[18] Section 6, *id.*

[19] *Balitaan v. Court of First Instance of Batangas*, *Branch II,* 201 Phil. 311, 323 (1982).

[20] *People v. Magbanua*, 377 Phil. 750, 763 (1999).

[21] 450 Phil. 651, 671-672 (2003).

may be had on proof of the commission of the crime, even if it appears that the crime was not committed at the precise time or place alleged, or if the proof fails to sustain the existence of some immaterial fact set out in the complaint, provided it appears that the specific crime charged was in fact committed prior to the date of the filing of the complaint or information within the period of the statute of limitations and at a place within the jurisdiction of the court.

This Court has upheld complaints and informations in prosecutions for rape which merely alleged the **month and year** of its commission.[22] There is no cogent reason to deviate from these precedents, especially so when the prosecution has established the fact that the rape under Criminal Case No. Q-99-89097 was committed prior to the date of the filing of the information in the said case. Hence, the allegation in the information under Criminal Case No. Q-99-89097, which states that the rape was committed **on or about November 1998,** is sufficient to affirm the conviction of appellant in the said case.

Appellant's allegation of variance between the date of the commission of rape in Criminal Case No. Q-99-89098 and that established by the evidence during the trial is erroneous. AAA categorically testified that she was raped by appellant on 1 November 1998.[23] This is consistent with the allegation in the information under Criminal Case No. Q-99-89098 that appellant raped AAA on 1 November 1998.

Since the sole issue raised by appellant was resolved by this Court in favor of the validity of the informations filed against him, then the subsequent trial court proceedings and the resulting judgment of conviction against appellant should likewise be affirmed, there being no other questions raised by appellant as to them. We further uphold the penalty imposed on appellant by the RTC and the Court of Appeals.

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[22] *People v. Macabata*, 460 Phil. 409, 421 (2003), citing *People v. Aspuria*, 440 Phil. 41, 52 (2002); *People v. Morfi*, 435 Phil. 166, 177 (2002); *People v. Abellano*, 440 Phil. 288, 293 (2002).

[23] TSN, 8 August 2001, p. 5.

Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, was the law pertinent to the rapes committed on **1 November 1998 and in the latter part of November 1998**. The law states that the death penalty shall be imposed if the rape victim is a minor, and the offender is the common-law spouse of the parent of the victim.[24] The qualifying circumstances of minority of the victim and her relationship with the offender must be alleged in the complaint or information and proved during the trial to warrant the imposition of the death penalty.[25]

The informations in Criminal Case No. Q-99-89097 and Q-99-89098 allege that AAA was a minor at the time she was raped. However, there is no allegation therein that the offender, herein appellant, is the common-law spouse of AAA's parent. Thus, the qualifying circumstances of minority and relationship cannot be properly appreciated. In the absence of such qualifying circumstances, the rapes in the instant cases are treated as simple rapes. Under Republic Act No. 8353, the penalty for simple rape is *reclusion perpetua*.

We also sustain the RTC and the Court of Appeals' award of civil indemnity in the amount of ₱50,000.00 and moral damages in the amount of ₱50,000.00 to AAA, pursuant to prevailing jurisprudence.[26] Nonetheless, the award of exemplary damages in the amount of ₱25,000.00 should be deleted, as no aggravating circumstance in the commission of rapes was proven.[27]

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[24] **Article 266-B** x x x "The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating circumstances: 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. x x x"

[25] *People v. Layugan*, G.R. Nos. 130493-98, 28 April 2004, 428 SCRA 98, 116.

[26] *People v. Biong*, 450 Phil. 432, 448 (2003); *People v. Invencion*, 446 Phil. 775, 792 (2003); *People v. Pagsanjan*, 442 Phil. 667, 687 (2002).

[27] **CIVIL CODE OF THE PHILIPPINES, ARTICLE 2230:** In criminal offenses, exemplary damages as part of civil liability may be imposed when the crime was committed with one or more aggravating circumstances; *People v. Ramos*, 399 Phil. 455, 481 (2000); *People v. Manalo*, 444 Phil. 655, 674 (2003).

WHEREFORE, the Decision, dated 30 January 2008, of the Court of Appeals in CA-G.R. CR-HC No. 01537, is hereby *AFFIRMED* with the *MODIFICATION* that the award of exemplary damages is deleted.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Bersamin,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 168756. December 7, 2009]

SHRIMP SPECIALISTS, INC., *petitioner, vs.* **FUJI-TRIUMPH AGRI-INDUSTRIAL CORPORATION,** *respondent.*

[G.R. No. 171476. December 7, 2009]

FUJI-TRIUMPH AGRI-INDUSTRIAL CORPORATION, *petitioner, vs.* **SHRIMP SPECIALISTS, INC. and EUGENE LIM,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ADMISSIONS; EVIDENCE OF AN ADMISSION OF ANY BREACH OR WARRANTY MUST BE CLEAR AND CONVINCING; ALLEGED ADMISSION WAS NOT EXPRESSED IN DEFINITE, CERTAIN AND UNEQUIVOCAL LANGUAGE. —** In *CMS Logging, Inc. v. Court of Appeals*, we held: It is a rule that 'a

[*] Associate Justice Lucas P. Bersamin was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 20 April 2009.

statement is not competent as an admission where it does not, under a reasonable construction, appear to admit or acknowledge the fact which is sought to be proved by it.' An admission or declaration to be competent must have been expressed in definite, certain and unequivocal language. As correctly ruled by the CA, the statement "to inform in advance in case the same checks cannot be deposited for failure to replace the defective feeds" is not expressed in definite, certain and unequivocal language that Fuji admitted to delivering defective feeds. The CA also ruled that to be an admission of any breach of warranty, the evidence must be clear and convincing. The CA pointed out that the inspection and discovery of the alleged defective feeds were made as early as March 1989 while the feeds subject of this case were delivered to Shrimp Specialists only from 3 June to 24 July 1989. Even assuming that Fuji admitted that the feeds delivered were defective, the question of whether Fuji had replaced the feeds is a factual matter not usually reviewable in a petition filed under Rule 45.

2. **ID.; ID.; WHETHER RESPONDENT CORPORATION DELIVERED DEFECTIVE FEEDS OR WHETHER THE ALLEGED STATEMENT IS TANTAMOUNT TO ADMISSION THAT THE FEEDS DELIVERED WERE DEFECTIVE AND THEY FAILED TO REPLACE IT ARE QUESTIONS OF FACT WHICH NECESSITATE AN EXAMINATION OF THE PROBATIVE VALUE OF THE EVIDENCE ADDUCED AT THE TRIAL COURT. —** A petition for review under Rule 45 of the Rules of Court covers only questions of law. Questions of fact are not reviewable by this Court because they are final and conclusive especially if borne out by the record or based on substantial evidence. In *Paterno v. Paterno*, the Court explained: Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact. Whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party

are of such gravity as to justify refusing to give said proofs weight — all these are issues of fact. Questions like these are not reviewable by this Court, which, as a rule, confines its review of cases decided by the Court of Appeals only to questions of law raised in the petition and therein distinctly set forth. Whether Fuji delivered defective feeds, or whether the statement is tantamount to an admission that the feeds delivered were defective, or whether Fuji failed to replace defective feeds, are questions of fact which necessitate an examination of the probative value of the evidence adduced before the trial court.

3. ID.; ID.; NO REASON TO DISTURB THE FACTUAL FINDINGS OF THE TRIAL AND APPELLATE COURT; FACT THAT PETITIONER ACKNOWLEDGED RECEIPT OF THE SUBJECT FEEDS TO BE IN GOOD ORDER IS CONTRARY TO THEIR ARGUMENT THAT THE FEEDS DELIVERED WERE DEFECTIVE. — The written agreement signed by Edward Lim and Ervin Lim did not convince the trial and appellate courts that the feeds supplied by Fuji were defective because evidence to the contrary exists, to wit: a. No proper complaint was submitted to Fuji when the prawn growers allegedly experienced tremendous losses; b. Fuji was not represented in the group which conducted the inspection; c. The existence of the IAC was not duly proven and its findings were not reduced into writing; d. The inspection was conducted on four prawn ponds only, which could be exposed to other harsh elements of nature; and e. No inspection was conducted on the prawn feeds itself, hence, the IAC's findings that the feeds were contaminated with aflatoxin is without basis. The CA pointed out that a representative from Shrimp Specialists even acknowledged receipt of feeds in good order and condition, hence, Shrimp Specialists' argument is contrary to the evidence on record. The factual findings of the trial court, when affirmed by the appellate court, are generally binding on the Supreme Court. After a careful review of the records, the Court finds no reason to disturb the factual findings of the trial court and the appellate court.

4. MERCANTILE LAW; CORPORATION CODE; LIABILITY OF OFFICERS; CORPORATE OFFICERS OF PETITIONER CORPORATION CANNOT BE MADE PERSONALLY LIABLE FOR OBLIGATIONS OF THE CORPORATION

ABSENT ANY PROOF THAT THEY HAD MALICIOUSLY AND DELIBERATELY CAUSED TO DEFAULT ON THEIR OBLIGATION WITHOUT ANY VALID REASON; CASE AT BAR. — Fuji claims that the CA erred in dismissing the case against Eugene Lim and freeing him from solidary liability with Shrimp Specialists to Fuji for the amount of the delivered feeds. Fuji alleges that Eugene Lim, as President of Shrimp Specialists, was the one who solicited and negotiated with Fuji for the purchase of prawn feeds. Fuji contends that it was primarily because of Eugene Lim's representation that Fuji entered into the Distributorship Agreement with Shrimp Specialists and agreed to supply prawn feeds on credit. Shrimp Specialists asserts that Fuji has not presented any evidence to show that Eugene Lim acted in bad faith. Fuji also failed to present any evidence to prove that Eugene Lim had maliciously and deliberately caused Shrimp Specialists to default on its obligation without any valid reason. Hence, Eugene Lim cannot be made personally liable for the obligations of Shrimp Specialists.

5. **ID.; ID.; ID.; NO SUFFICIENT GROUND ESTABLISHED TO DISREGARD SEPARATE CORPORATE PERSONALITY IN CASE AT BAR. —** A corporation is vested by law with a personality separate and distinct from the people comprising it. Ownership by a single or small group of stockholders of nearly all of the capital stock of the corporation is not by itself a sufficient ground to disregard the separate corporate personality. Thus, obligations incurred by corporate officers, acting as corporate agents, are direct accountabilities of the corporation they represent. In *Uy v. Villanueva*, the Court explained: The general rule is that obligations incurred by the corporation, acting through its directors, officers, and employees, are its sole liabilities. However, solidary liability may be incurred, but only under the following exceptional circumstances: 1. When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons; 2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection

thereto; 3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation; or 4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action. In this case, none of these exceptional circumstances is present. In its decision, the trial court failed to provide a clear ground why Eugene Lim was held solidarily liable with Shrimp Specialists. The trial court merely stated that Eugene Lim signed on behalf of the Shrimp Specialists as President without explaining the need to disregard the separate corporate personality. The CA correctly ruled that the evidence to hold Eugene Lim solidarily liable should be more than just signing on behalf of the corporation because artificial entities can only act through natural persons. Thus, the CA was correct in dismissing the case against Eugene Lim.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc and De Los Angeles for Shrimp Specialist, Inc. and Eugene Lim.

Britanico Sarmiento & Franco Law Offices for Fuji Triumph Agr-Industrial Corporation.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a consolidation of two separate petitions. In G.R. No. 168756, Shrimp Specialists, Inc. (Shrimp Specialists) filed a Petition for Review on *Certiorari*[1] assailing the Court of Appeals' Decision[2] dated 28 June 2005 in CA-G.R. CV No. 57420. In the assailed decision, the Court of Appeals (CA) ordered Shrimps Specialists to pay Fuji-Triumph Agri-Industrial Corporation (Fuji) the following:

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Jose Catral Mendoza with Presiding Justice Romeo A. Brawner and Associate Justice Edgardo P. Cruz, concurring.

1. the sum of ₱767,427.00 representing the principal amount for the deliveries made by plaintiff from June to July 1989 inclusive plus six percent (6%) thereon per annum computed from extrajudicial demand, February 2, 1990, until the finality of the judgment plus twelve percent (12%) interest thereon per annum, computed from the finality of this judgment until the amount is fully paid;
2. the sum of ₱30,000.00 as reasonable attorney's fees; and
3. the cost of this suit.[3]

The CA modified the Regional Trial Court's Decision[4] dated 15 April 1997 by dismissing the case against Eugene Lim, President of Shrimp Specialists.

In G.R. No. 171476, Fuji filed a Petition for Review on *Certiorari*[5] assailing the CA Resolution dated 26 January 2006 in CA-G.R. CV No. 57420, denying Fuji's Motion for Reconsideration of the CA Decision dated 28 June 2005.

The Facts

Shrimp Specialists and Fuji entered into a Distributorship Agreement, under which Fuji agreed to supply prawn feeds on credit basis to Shrimp Specialists. The prawn feeds would be used in prawn farms under Shrimp Specialists' technical supervision and management. In 1987, Shrimp Specialists began purchasing prawn feeds from Fuji and paid for them in the regular course of business.[6]

From 3 June 1989 to 24 July 1989, Fuji delivered prawn feeds, and Shrimp Specialists issued 9 postdated checks as payment.[7]

Shrimp Specialists alleges that it issued a stop-payment order for the checks because it discovered that earlier deliveries were

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[3] *Rollo* (G.R. No. 168756), p. 11.

[4] Penned by Judge Monina A. Zenarosa.

[5] Under Rule 45 of the Rules of Court.

[6] *Rollo* (G.R. No. 168756), p. 121.

[7] *Rollo* (G.R. No. 171476), p. 317.

contaminated with aflatoxin. Shrimp Specialists claims that it verbally informed Fuji about the contamination and Fuji promised to send stocks of better quality. Shrimp Specialists states that it continued to purchase prawn feeds from Fuji, but the stocks were still contaminated with aflatoxin.[8]

Fuji denies that the feeds were contaminated. Fuji asserts that Shrimp Specialists requested to put on hold the deposit of the checks due to insufficient funds. Fuji adds that when the checks were presented for payment, the drawee bank dishonored all the checks due to a stop-payment order.[9]

In January 1990, Ervin Lim, Fuji's Vice-President and owner, and Edward Lim, Shrimp Specialists' Finance Officer, met in Ozamiz City to discuss the unpaid deliveries. After the meeting, both agreed that Shrimp Specialists would issue another set of checks to cover the ones issued earlier. This agreement was reduced into writing and signed by both parties on behalf of their corporations.[10] The agreement reads:

Received from SSI the ff. checks representing full payment of the previous stopped (sic) payment checks to Fuji as follows:

Ck # 158002	-	₱ 153,485.40
003	-	153,485.40
004	-	153,485.40
005	-	153,485.40
006	-	153,485.40

To inform in advance in case the above checks cannot be deposited for failure to replace the defective feeds.

Prepared by: Received by:
(signed) Edward Lim (signed) Ervin Lim[11]

Fuji states that it accepted the checks in good faith and believed that the account would finally be paid since Edward Lim assured

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[8] *Id.* at 220.

[9] *Id.* at 318.

[10] *Id.* at 220.

[11] *Rollo* (G.R. No. 168756), p. 48.

Ervin Lim of the payment. However, upon presentment of the replacement checks, these were again dishonored due to another stop-payment order issued by Shrimp Specialists.[12]

Shrimp Specialists argues that despite the written agreement, Fuji deposited these checks without first replacing the defective feeds or at least informing Shrimp Specialists in advance that it would not replace the defective feeds. Thus, Shrimp Specialists contends that it was constrained to issue another stop-payment order for these checks.[13]

Fuji claims that despite repeated demands for payment, Shrimp Specialists failed to comply with its obligation to make good the replacement checks.[14]

Fuji filed criminal charges against the officers of Shrimp Specialists who signed the checks for violation of the Anti-Bouncing Checks Law. The charges were all dismissed.[15]

On 26 October 1990, Fuji filed a civil complaint for sum of money against Shrimp Specialists and Eugene Lim. On 15 April 1997, the Regional Trial Court of Quezon City (trial court), Branch 76, rendered a decision finding Shrimp Specialists and Eugene Lim solidarily liable to pay ₱767,427 representing the deliveries made from June to July 1989 plus interests. Fuji was also awarded ₱30,000 as reasonable attorney's fees and the cost of the suit.[16]

Shrimp Specialists and Eugene Lim elevated the case to the CA. On 28 June 2005, the CA rendered a decision modifying the trial court's decision. The CA affirmed the trial court's decision to hold Shrimp Specialists liable to pay Fuji ₱767,427 for the prawn feeds delivered plus interests, ₱30,000 as attorney's fees and cost of suit. However, the CA absolved Eugene Lim from any liability.

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[12] *Rollo* (G.R. No. 171476), p. 318.

[13] *Id.* at 221.

[14] *Id.* at 318.

[15] *Id.* at 221.

[16] *Id.* at 221-222.

Aggrieved by the decision, both Shrimp Specialists and Fuji elevated the case before this Court.

The Ruling of the Regional Trial Court

In the Decision dated 15 April 1997, the trial court found Shrimp Specialists liable to pay Fuji ₱767,427 for the prawn feeds delivered from June to July 1989. The trial court stated that since Eugene Lim negotiated with Fuji and signed the Distributorship Agreement in his capacity as President of Shrimp Specialists, Eugene Lim was privy to the agreement and hence, was also liable.[17]

After hearing the testimonies of Alphonsus Faigal, Fuji's Internal Auditing Division manager,[18] Salvador P. Sequitin, Fuji's liaison officer,[19] Esteban del Mar, Shrimp Specialists' managing director,[20] Jose Marquez, Provincial Fishery Officer of Misamis Occidental and a member of the International Aquaculture Consultancy (IAC),[21] Joan Maria Antonia Sato, owner of seven prawn ponds,[22] and Edward Lim, Shrimp Specialists' finance officer,[23] the trial court made the following findings:

1. Shrimp Specialists did not submit a proper complaint to Fuji when it found out that the prawn growers allegedly experienced tremendous losses in their prawn harvest due to the defective feeds.

2. Shrimp Specialists did not find it necessary to seek representation from Fuji to form part of the group which conducted the inspection.

3. IAC's findings were not reduced into writing as to put in question the veracity of its report. Jose Marquez's testimony that he was part of the group who conducted the inspection on the prawn ponds is not a substitute to the absence of a written report by IAC.

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[17] *Id.* at 124.

[18] *Id.* at 108-110.

[19] *Id.* at 118.

[20] *Id.* at 110-112.

[21] *Id.* at 112-113.

[22] *Id.* at 113-115.

[23] *Id.* at 115-118.

4. The alleged inspection was conducted on four prawn ponds only. Prawn ponds are exposed to the harsh elements of nature. The supply of water, bacterial content, salinity, and temperature are other factors which may contribute to the high mortality rate of prawns.

5. The inspection was directed on the prawn ponds and not on the questioned feeds itself. Hence, IAC's findings that the feeds were contaminated with aflatoxin when these feeds were not subjected to examination is without basis.

6. IAC's existence as an entity was not duly proven. Fuji disputed the existence of IAC through a certification issued by the Securities and Exchange Commission certifying that IAC was not registered as a corporation or partnership. Further, no representative from IAC was presented during the hearing to testify on its existence, expertise and authenticity of its findings.[24]

The trial court ruled that the written agreement signed by Edward Lim and Ervin Lim does not suffice to convince the court that the feeds delivered by Fuji were defective. The trial court explained that even if the agreement mentions Fuji as having to replace the defective feeds, this statement is not tantamount to an express admission of the defective quality of the feeds that were delivered.[25]

Citing Article 1249[26] of the Civil Code of the Philippines, the trial court held that the obligation of Shrimp Specialists to pay Fuji still subsists because Edward Lim, Fuji's finance officer, issued a stop-payment order, hence, the checks were never cashed.[27]

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[24] *Id.* at 121-123.

[25] *Id.* at 123.

[26] Art. 1249. x x x

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

x x x x x x x x x

[27] *Rollo* (G.R. No. 171476), p. 124.

The trial court held that Eugene Lim is solidarily liable with Shrimp Specialists. The trial court reasoned that Eugene Lim negotiated with Fuji and signed the Distributorship Agreement in his capacity as president of Shrimp Specialists, hence, he is privy to the agreement.[28]

The Ruling of the Court of Appeals

In resolving the petition, the CA agreed with the trial court that Shrimp Specialists failed to prove with certainty that Fuji delivered defective feeds. Based on the records, the inspection and discovery of the alleged defect in Fuji's prawn feeds were made as early as March 1989 while the feeds subject of this case were delivered to Shrimp Specialists only from 3 June to 24 July 1989. The CA added that Shrimp Specialists' argument is inconsistent with the delivery receipts where the representative from Shrimp Specialists acknowledged receipt of the feeds in good order and condition.[29]

The CA stated that the findings of the trial court deserve utmost consideration. The CA held that there was no credible evidence showing that the feeds were contaminated with aflatoxin. No technical or scientific evidence was shown. In fact, no laboratory tests were conducted. Only four ponds were inspected and on those occasions, there was no representative from Fuji.[30]

The CA declared that the portion in the agreement, which states "to inform in advance in case the same checks cannot be deposited for failure to replace the defective feeds," is too nebulous to be taken as an admission on the part of Fuji's representative that the feeds earlier delivered were defective. The CA doubted if Fuji really acknowledged that its earlier feeds were defective because the agreement was just to acknowledge receipt of the checks. The qualification was not clear as to its true import. To be an admission of any breach of warranty, the evidence must be clear and convincing.[31]

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[28] *Id.*

[29] *Id.* at 22.

[30] *Id.* at 23-24.

[31] *Id.* at 24.

The CA dismissed the case against Eugene Lim. The CA found that based on a review of the evidentiary records, there was no reason to pierce the corporate veil. The CA reasoned that the evidence should be more than just signing on behalf of the corporation because these artificial entities cannot act except through a natural person. The CA added that there is no evidence that Eugene Lim and Shrimp Specialists are one and the same and they dealt with Fuji in bad faith or that Eugene Lim assumed solidary obligation with Shrimp Specialists for any liability which might arise under the Distributorship Agreement.[32]

The Issue

In G.R. No. 168576, Shrimp Specialists assigns this error for our consideration: whether the CA erred in interpreting the provision "to inform in advance in case the same checks cannot be deposited for failure to replace the defective feeds."

In G.R. No. 171476, Fuji presents this sole issue: whether the CA erred in dismissing the case against respondent Eugene Lim and freeing him from solidary liability with Shrimp Specialists.

The Ruling of the Court

An Admission must be expressed in definite and unequivocal language

Shrimp Specialists maintains that the provision "to inform in advance in case the same checks cannot be deposited for failure to replace the defective feeds" clearly shows that Fuji admitted that the feeds delivered were defective, otherwise, there would be no reason to include the statement in an agreement that merely acknowledged receipt of the checks.[33] On the other hand, Fuji asserts that the statement is too ambiguous to be considered an admission that Fuji delivered defective feeds to Shrimp Specialists when there is evidence to support the contrary.[34]

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[32] *Id.* at 26.

[33] *Rollo* (G.R. No. 168756), p. 132.

[34] *Id.* at 231.

In *CMS Logging, Inc. v. Court of Appeals*,[35] we held:

> It is a rule that 'a statement is not competent as an admission where it does not, under a reasonable construction, appear to admit or acknowledge the fact which is sought to be proved by it.' An admission or declaration to be competent must have been expressed in definite, certain and unequivocal language.

As correctly ruled by the CA, the statement "to inform in advance in case the same checks cannot be deposited for failure to replace the defective feeds" is not expressed in definite, certain and unequivocal language that Fuji admitted to delivering defective feeds. The CA also ruled that to be an admission of any breach of warranty, the evidence must be clear and convincing. The CA pointed out that the inspection and discovery of the alleged defective feeds were made as early as March 1989 while the feeds subject of this case were delivered to Shrimp Specialists only from 3 June to 24 July 1989. Even assuming that Fuji admitted that the feeds delivered were defective, the question of whether Fuji had replaced the feeds is a factual matter not usually reviewable in a petition filed under Rule 45.[36]

A petition for review under Rule 45 of the Rules of Court covers only questions of law. Questions of fact are not reviewable by this Court because they are final and conclusive especially if borne out by the record or based on substantial evidence.[37] In *Paterno v. Paterno*,[38] the Court explained:

> Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without

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[35] G.R. No. 41420, 10 July 1992, 211 SCRA 374, 380. Citing *Bank of the Philippine Islands v. Fidelity & Surety Co.,* 51 Phil. 57, 64 (1927).

[36] *Omengan v. Philippine National Bank*, G.R. No. 161319, 23 January 2007, 512 SCRA 305, 309.

[37] *Nombrefia v. People*, G.R. No. 157919, 30 January 2007, 513 SCRA 369, 375.

[38] G.R. No. 63680, 23 March 1990, 183 SCRA 630, 636-637.

doubt questions of fact. Whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight — all these are issues of fact. Questions like these are not reviewable by this Court, which, as a rule, confines its review of cases decided by the Court of Appeals only to questions of law raised in the petition and therein distinctly set forth.

Whether Fuji delivered defective feeds, or whether the statement is tantamount to an admission that the feeds delivered were defective, or whether Fuji failed to replace defective feeds, are questions of fact which necessitate an examination of the probative value of the evidence adduced before the trial court.

The written agreement signed by Edward Lim and Ervin Lim did not convince the trial and appellate courts that the feeds supplied by Fuji were defective because evidence to the contrary exists, to wit:

a. No proper complaint was submitted to Fuji when the prawn growers allegedly experienced tremendous losses;

b. Fuji was not represented in the group which conducted the inspection;

c. The existence of the IAC was not duly proven and its findings were not reduced into writing;

d. The inspection was conducted on four prawn ponds only, which could be exposed to other harsh elements of nature; and

e. No inspection was conducted on the prawn feeds itself, hence, the IAC's findings that the feeds were contaminated with aflatoxin is without basis.

The CA pointed out that a representative from Shrimp Specialists even acknowledged receipt of feeds in good order

and condition, hence, Shrimp Specialists' argument is contrary to the evidence on record.

The factual findings of the trial court, when affirmed by the appellate court, are generally binding on the Supreme Court.[39] After a careful review of the records, the Court finds no reason to disturb the factual findings of the trial court and the appellate court.

Solidary Liability

Fuji claims that the CA erred in dismissing the case against Eugene Lim and freeing him from solidary liability with Shrimp Specialists to Fuji for the amount of the delivered feeds.[40] Fuji alleges that Eugene Lim, as President of Shrimp Specialists, was the one who solicited and negotiated with Fuji for the purchase of prawn feeds. Fuji contends that it was primarily because of Eugene Lim's representation that Fuji entered into the Distributorship Agreement with Shrimp Specialists and agreed to supply prawn feeds on credit.[41]

Shrimp Specialists asserts that Fuji has not presented any evidence to show that Eugene Lim acted in bad faith. Fuji also failed to present any evidence to prove that Eugene Lim had maliciously and deliberately caused Shrimp Specialists to default on its obligation without any valid reason. Hence, Eugene Lim cannot be made personally liable for the obligations of Shrimp Specialists.[42]

A corporation is vested by law with a personality separate and distinct from the people comprising it. Ownership by a single or small group of stockholders of nearly all of the capital stock of the corporation is not by itself a sufficient ground to disregard the separate corporate personality. Thus, obligations

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[39] *Titan Construction Corporation v. Uni-field Enterprises, Inc.*, G.R No. 153874, 1 March 2007, 517 SCRA 180, 186.

[40] *Rollo* (G.R. No. 171476), p. 332.

[41] *Id.* at 332-334.

[42] *Id.* at 242.

incurred by corporate officers, acting as corporate agents, are direct accountabilities of the corporation they represent.[43] In *Uy v. Villanueva*,[44] the Court explained:

> The general rule is that obligations incurred by the corporation, acting through its directors, officers, and employees, are its sole liabilities. However, solidary liability may be incurred, but only under the following exceptional circumstances:
>
> 1. When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons;
>
> 2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto;
>
> 3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation; or
>
> 4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.[45]

In this case, none of these exceptional circumstances is present. In its decision, the trial court failed to provide a clear ground why Eugene Lim was held solidarily liable with Shrimp Specialists. The trial court merely stated that Eugene Lim signed on behalf of the Shrimp Specialists as President without explaining the need to disregard the separate corporate personality. The CA correctly ruled that the evidence to hold Eugene Lim solidarily liable should be more than just signing on behalf of the corporation because artificial entities can only act through natural persons.

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[43] *Edsa Shangri-La Hotel and Resort, Inc. v. BF Corporation*, G.R. No. 145842, 27 June 2008, 556 SCRA 25, 43.

[44] G.R. No. 157851, 29 June 2007, 526 SCRA 73.

[45] *Id.* at 89.

Thus, the CA was correct in dismissing the case against Eugene Lim.

WHEREFORE, we *DENY* both petitions. We *AFFIRM* the Decision of the Court of Appeals dated 28 June 2005 and the Resolution dated 26 January 2006 in CA-G.R. CV No. 57420.

SO ORDERED.

Corona,[*] *Leonardo-de Castro,*[**] *Brion,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 184977. December 7, 2009]

COCA-COLA BOTTLERS PHILIPPINES, INC., *petitioner, vs.* **RICKY E. DELA CRUZ, ROLANDO M. GUASIS, MANNY C. PUGAL, RONNIE L. HERMO, ROLANDO C. SOMERO, JR., DIBSON D. DIOCARES, and IAN B. ICHAPARE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ALLEGED DEFECT IN THE VERIFICATION AND CERTIFICATION OF RESPONDENT'S APPEAL IS A MINOR AND TECHNICAL ONE WHICH SHOULD NOT DEFEAT THE PETITION AND ONE THAT CAN BE OVERLOOK IN THE INTEREST OF SUBSTANTIAL JUSTICE TAKING INTO ACCOUNT THE MERITS OF THE CASE. — We find from our examination of the records that the fact situation that gave rise to the notarial issue before the CA was not a new one; the same situation obtained before the NLRC where the verification

[*] Designated additional member per Special Order No. 804.

[**] Designated additional member per Special Order No. 776.

and certification of the respondents' appeal were also notarized before the same notary public — *Diosdado V. Macapagal* — and where the respondents presented the same evidence of identity (their community tax certificates). The petitioner's belated attention to the imputed defect indicates to us that the petitioner did not consider this defect worth raising when things were going its way, but considered it a serious one when things turned the other way. This opportunistic stance is not our idea of how technical deficiencies should be viewed. We are aware, too, that under the circumstances of this case, the defect is a technical and minor one; the respondents did file the required verification and certification of non-forum shopping with all the respondents properly participating, marred only by a glitch in the evidence of their identity. In the interest of justice, this minor defect should not defeat their petition and is one that we can overlook in the interest of substantial justice, taking into account the merits of the case as discussed below.

2. ID.; ID.; NECESSARY PARTY ISSUE PROCEEDS FROM A MISAPPREHENSION OF THE RELATIONSHIPS IN A CONTRACTING RELATIONSHIP; ISSUE RENDERED ACADEMIC WITH THE CONCLUSION THAT LABOR-ONLY CONTRACTING EXISTS IN CASE AT BAR. — the petitioner's necessary party issue proceeds from a misapprehension of the relationships in a contracting relationship. As lucidly pointed out in *Azucena's The Labor Code with Comments and Cases*, there are three parties in a legitimate contracting relationship, namely: the principal, the contractor, and the contractor's employees. In this trilateral relationship, the principal controls the contractor and his employees with respect to the ultimate results or output of the contract; the contractor, on the other hand, controls his employees with respect, not only to the results to be obtained, but with respect to the means and manner of achieving this result. This pervasive control by the contractor over its employees results in an employer-employee relationship between them. This trilateral relationship under a legitimate job contracting is different from the relationship in a labor-only contracting situation because in the latter, the contractor simply becomes an agent of the principal; either directly or through the agent, the principal then controls the results as well as the means and manner of achieving the desired results. In other words, the party who would have been the principal in

a legitimate job contracting relationship and who has no direct relationship with the contractor's employees, simply becomes the employer in the labor-only contracting situation with direct supervision and control over the contracted employees. As *Azucena* astutely observed: *in labor-contracting, there is really no contracting and no contractor; there is only the employer's representative who gathers and supplies people for the employer; labor-contracting is therefore a misnomer.* Where, as in this case, the main issue is labor contracting and a labor-only contracting situation is found to exist as discussed below, the question of whether or not the purported contractors are necessary parties is a non-issue; these purported contractors are mere representatives of the principal/employer whose personality, as against that of the workers, is merged with that of the principal/employer. Thus, this issue is rendered academic by our conclusion that labor-only contracting exists. Our labor-only contracting conclusion, too, answers the petitioner's argument that confusion results because the workers will have two employers.

3. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; LABOR CODE; ALLOWS CONTRACTING AND SUBCONTRACTING INVOLVING SERVICES BUT CLOSELY REGULATES THE ACTIVITIES FOR THE PROTECTION OF WORKERS; "LABOR-ONLY" CONTRACTING, PROHIBITED. —** The law **allows** contracting and subcontracting involving services but **closely regulates** these activities for the protection of workers. Thus, an employer can contract out part of its operations, provided it complies with the limits and standards provided in the Code and in its implementing rules. The directly applicable provision of the Labor Code on contracting and subcontracting is Article 106 which provides: x x x <u>There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the later were directly employed by him</u>.

4. **ID.; ID.; THE "RIGHT TO CONTROL" REFERS TO THE PREROGATIVE OF A PARTY TO DETERMINE, NOT ONLY THE END RESULT SOUGHT TO BE ACHIEVED, BUT ALSO THE MEANS AND MANNER TO BE USED TO ACHIEVE THE END. —** The Department of Labor and Employment implements this Labor Code provision through its Department Order No. 18-02 (*D.O. 18-02*). On the matter of labor-only contracting, Section 5 thereof provides: Prohibition against labor-only contracting. — Labor-only contracting is hereby declared prohibited x x x labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present: i) The contractor or subcontractor does not have sufficient capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or ii)The contractor does not exercise *the right to control* over the performance of the work of the contractual-employee. "Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools or equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out. The "right to control" refers to the prerogative of a party to determine, not only the end result sought to be achieved, but also the means and manner to be used to achieve this end.

5. **ID.; ID.; THE CONTRACT BETWEEN THE PRINCIPAL AND THE CONTRACTOR IS NOT THE FINAL WORD ON HOW THE CONTRACTED WORKERS RELATE TO THE PRINCIPAL AND THE PURPORTED CONTRACTOR; THE RELATIONSHIPS MUST BE TESTED ON THE BASIS ON HOW THEY ACTUALLY OPERATED. —** In the present case, both the capitalization of Peerless and Excellent and their control over the means and manner of their operations are live sub-issues before us. A key consideration in resolving these issues is the contract between the company and the purported contractors. The contract with Peerless which is almost identical with the contract with Excellent. The provisions — particularly,

that Peerless and Excellent retain the right to select, hire, dismiss, supervise, control, and discipline all personnel they will assign to the petitioner, as well as pay their salaries – were cited by the labor arbiter and the NLRC as basis for their conclusion that no employer-employee relationship existed between the respondents and the petitioner. The Court of Appeals viewed matters differently and faulted the labor tribunals for relying "solely" on the service contracts to prove that the respondents were employees of Peerless and Excellent. The CA cited in this regard what we said in *7K Corporation v. NLRC:* The fact that the service contract entered into by petitioner and Universal stipulated that private respondents shall be the employees of Universal, would not help petitioner, as the language of a contract is not determinative of the relationship of the parties. Petitioner and Universal cannot dictate, by the mere expedient of a declaration in a contract, the character of Universal business, *i.e.*, whether as labor-only contractor , or job contractor, it being crucial that Universal's character be mentioned in terms of and determined by the criteria set by the statute as basis for looking at how the contracted workers really related with the company in performing their contracted tasks. In other words, the contract between the principal and the contractor is not the final word on how the contracted workers relate to the principal and the purported contractor; the relationships must be tested on the basis of how they actually operate.

6. ID.; ID.; NO INDICATION IN THE RECORDS THAT THE CONTRACTORS HAD SUBSTANTIAL CAPITAL, TOOLS OR INVESTMENT USED DIRECTLY IN PROVIDING THE CONTRACTED SERVICES TO PETITIONER COMPANY; THE CONTRACTED PERSONNEL USED COMPANY TRUCKS AND EQUIPMENT IN AN OPERATION WHERE COMPANY SALES PERSONNEL HAD PRIMARILY HANDLED. — Even before going into the realities of workplace operations, the CA found that the service contracts themselves provide ample leads into the relationship between the company, on the one hand, and Peerless and Excellent, on the other. The CA noted that both the Peerless and the Excellent contracts show that their obligation was solely to provide the company with "*the services of contractual employees*," and nothing more. These contracted services were for the handling and delivery of the company's products and allied services.

Following D.O. 18-02 and the contracts that spoke purely of the supply of labor, the CA concluded that Peerless and Excellent were labor-only contractors unless they could prove that they had the required capitalization and the right of control over their contracted workers. The CA concluded that other than the petitioner's bare allegation, there is no indication in the records that Peerless and Excellent had substantial capital, tools or investment used directly in providing the contracted services to the petitioner. Thus, in the handling and delivery of company products, the contracted personnel used company trucks and equipment in an operation where company sales personnel primarily handled sales and distribution, merely utilizing the contracted personnel as sales route helpers. In plainer terms, the contracted personnel (acting as sales route helpers) were only engaged in the marginal work of helping in the sale and distribution of company products; they only provided the muscle work that sale and distribution required and were thus necessarily under the company's control and supervision in doing these tasks.

7. ID.; ID.; THE CONTRACTORS WERE NOT INDEPENDENTLY SELLING AND DISTRIBUTING COMPANY PRODUCTS, USING THEIR OWN EQUIPMENT, MEANS AND METHODS OF SELLING AND DISTRIBUTION; THEY ONLY SUPPLIED THE MANPOWER THAT HELPED THE COMPANY IN THE HANDLING OF PRODUCTS FOR SALE AND DISTRIBUTION. — Still another way of putting it is that the contractors were not independently selling and distributing company products, using their own equipment, means and methods of selling and distribution; they only supplied the manpower that helped the company in the handing of products for sale and distribution. In the context of D.O. 18-02, the contracting for sale and distribution as an independent and self-contained operation is a legitimate contract, but the pure supply of manpower with the task of assisting in sales and distribution controlled by a principal falls within prohibited labor-only contracting. The role of sales route helpers in company operations is not a new issue before this Court as we have ruled on this issue in *Magsalin v. National Organization of Workingmen* which the CA itself cited in the assailed decision. We held in this cited case that: The argument of petitioner that its usual business or trade is softdrink manufacturing and that the work assigned to the respondent workers so involves merely "postproduction activities," one which is not

indispensable in the manufacture of its products, scarcely can be persuasive. If, as so argued by petitioner company, only those whose work are directly involved in the production of softdrinks may be held performing functions necessary and desirable in its usual business or trade, there would have been no need for it to even maintain regular truck sales route helpers. The nature of the work performed must be viewed from a perspective of the business or trade in its entirety and not only in a confined scope.

8. **ID.; ID.; THE CONTRACTED PERSONNEL, HEREIN RESPONDENTS, ENGAGED IN THE COMPONENT FUNCTIONS IN THE MAIN BUSINESS OF THE COMPANY UNDER THE LATTER'S SUPERVISION AND CONTROL, ARE CONSIDERED REGULAR EMPLOYEES OF PETITIONER COMPANY. —** While the respondents were not direct parties to this ruling, the petitioner was the party involved and *Magsalin* described in a very significant way the manufacture of softdrinks and the company's sales and distribution activities in relation with one another. Following the lead we gave in *Magsalin*, the CA concluded that the contracted personnel who served as route helpers were really engaged in functions directly related to the overall business of the petitioner. This led to the further CA conclusion that the contracted personnel were under the company's supervision and control since sales and distribution were in fact not the purported contractors' independent, discrete and separable activities, but were component parts of sales and distribution operations that the company controlled in its softdrinks business. Based on these considerations, we fully agree with the CA that Peerless and Excellent were mere suppliers of labor who had no sufficient capitalization and equipment to undertake sales and distribution of softdrinks as independent activities separate from the manufacture of softdrinks, and who had no control and supervision over the contracted personnel. They are therefore labor-only contractors. Consequently, the contracted personnel, engaged in component functions in the main business of the company under the latter's supervision and control, cannot but be regular company employees. In these lights, the petition is totally without merit and hence must be denied.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta and Gastardo Law Offices for petitioner.

Armando San Antonio for respondents.

D E C I S I O N

BRION, *J*.:

The present petition for review on *certiorari*[1] challenges the decision[2] and resolution[3] of the Court of Appeals (*CA*) rendered on August 29, 2008 and October 13, 2008, respectively, in CA-G.R. SP No. 102988.

THE ANTECEDENTS

Respondents Ricky E. Dela Cruz, Rolando M. Guasis, Manny C. Pugal, Ronnie L. Hermo, Rolando C. Somero, Jr., Dibson D. Diocares, and Ian Ichapare (*respondents*) filed in July 2000 two separate complaints[4] for regularization with money claims against Coca-Cola Bottlers Philippines, Inc., (*petitioner* or *the company*). The complaints were consolidated and subsequently amended to implead Peerless Integrated Service, Inc. (*Peerless*) as a party-respondent.

Before the Labor Arbiter, the respondents alleged that they are route helpers assigned to work in the petitioner's trucks. They go from the Coca- Cola sales offices or plants to customer outlets such as sari-sari stores, restaurants, groceries, supermarkets and similar establishments; they were hired either directly by the petitioner or by its contractors, but they do not enjoy the full remuneration, benefits and privileges granted to the petitioner's

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[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 3-35.

[2] *Id.* at 431; penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justice Jose L. Sabio, Jr. and Associate Justice Jose C. Reyes, Jr.

[3] *Id.* at 474.

[4] NLRC NCR Case Nos. 00-0703563-2000 & 00-07-03694-2000.

regular sales force. They argued that the services they render are necessary and desirable in the regular business of the petitioner.[5]

In defense, the petitioner contended that it entered into contracts of services with Peerless[6] and Excellent Partners Cooperative, Inc. (*Excellent*)[7] to provide allied services; under these contracts, Peerless and Excellent retained the right to select, hire, dismiss, supervise, control and discipline and pay the salaries of all personnel they assign to the petitioner; in return for these services, Peerless and Excellent were paid a stipulated fee. The petitioner posited that there is no employer-employee relationship between the company and the respondents and the complaints should be dismissed for lack of jurisdiction on the part of the National Labor Relations Commission (*NLRC*). Peerless did not file a position paper, although nothing on record indicates that it was ever notified of the amended complaint.

In reply, the respondents countered that they worked under the control and supervision of the company's supervisors who prepared their work schedules and assignments. Peerless and Excellent, too, did not have sufficient capital or investment to provide services to the petitioner. The respondents thus argued that the petitioner's contracts of services with Peerless and Excellent are in the nature of "labor-only" contracts prohibited by law.[8]

In rebuttal, the petitioner belied the respondents' submission that their jobs are usually necessary and desirable in its main business. It claimed that its main business is softdrinks manufacturing and the respondents' tasks of handling, loading and unloading of the manufactured softdrinks are not part of the manufacturing process. It stressed that its only interest in the respondents is in the result of their work, and left to them the means and the methods of achieving this result. It thus

[5] Petition, Annex "E"; *rollo,* pp. 95-99, 98.

[6] Petition, Annex "A"; *id.* at 44-48.

[7] Petition Annex "B"; *id.* at 49-59.

[8] Petition, Annex "F"; *id.* at 102-108.

argued that there is no basis for the respondents' claim that without them, there would be over-production in the company and its operations would come to a halt.[9] The petitioner lastly argued that in any case, the respondents did not present evidence in support of their claims of company control and supervision so that these claims cannot be considered and given weight.[10]

THE COMPULSORY ARBITRATION RULINGS

Labor Arbiter Joel S. Lustria dismissed the complaint for lack of jurisdiction in his decision of September 28, 2004,[11] after finding that the respondents were the employees of either Peerless or Excellent and not of the petitioner. He brushed aside for lack of evidence the respondents' claim that they were directly hired by the petitioner and that company personnel supervised and controlled their work. The Labor Arbiter likewise ordered Peerless "to accord to the appropriate complainants all employment benefits and privileges befitting its regular employees."[12]

The respondents appealed to the NLRC.[13] On October 31, 2007, the NLRC denied the appeal and affirmed the labor arbiter's ruling,[14] and subsequently denied the respondents' motion for reconsideration.[15] The respondents thus sought relief from the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.

THE CA DECISION

The main substantive issue the parties submitted to the CA was whether Excellent and Peerless were independent contractors or "labor-only" contractors. Procedurally, the petitioner questioned the sufficiency of the petition and asked for its dismissal on the

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[9] *Id.* at 113-115.

[10] Petition, Annex "D"; *id.* at 91-94.

[11] Petition, Annex "I"; *id.* at 123-132.

[12] Petition, Annex "I"; *id.* at 123-132.

[13] Petition, Annex "J"; *id.* at 133-145.

[14] Decision dated October 31, 2007; *id.* at 221-227.

[15] Resolution dated December 28, 2007; *id.* at 228-229.

following grounds: (1) the petition was filed out of time; (2) failure to implead Peerless and Excellent as necessary parties; (3) absence of the notarized proof of service that Rule 13 of the Rules of Court requires; and (4) defective verification and certification.

The CA examined the circumstances of the contractual arrangements between Peerless and Excellent, on the one hand, and the company, on the other, and found that Peerless and Excellent were engaged in labor-only contracting, a prohibited undertaking.[16] The appellate court explained that based on the respondents' assertions and the petitioner's admissions, the contractors simply supplied the company with manpower, and that the sale and distribution of the company's products are the same allied services found by this Court in *Magsalin v. National Organization of Workingmen*[17] to be necessary and desirable functions in the company's business.

On the matter of capitalization, the CA invoked our ruling in *7K Corporation v. NLRC*[18] presuming a contractor supplying labor to be engaged in prohibited labor-only contracting, unless the contractor can show that it has substantial capital, investment, and tools to undertake the contract. The CA found no proof in the records showing the required capitalization and tools; thus, the CA concluded that Peerless and Excellent were engaged in "labor-only" contracting.

The CA faulted the labor tribunals for relying solely on the contract of services in determining who the real employer is. Again invoking our *7K Corporation* ruling, it pointed out that the language of a contract is not wholly determinative of the relationship of the parties; whether a labor-only or a job contractor relationship exists must be determined using the criteria established by law. Finding that the Labor Arbiter's and the NLRC's

[16] The elements of prohibited labor-only contracting are: (a) the contractor supplies or places workers to perform a job, work or service for a principal; (b) the work performed is directly related to the business of the principal; and (c) the contractor does not have substantial capital or investment which relates to the job, work or service to be performed.

[17] G.R. No. 148492, May 9, 2003, 403 SCRA 199.

[18] G.R. No. 148490, November 22, 2006, 507 SCRA 509.

conclusions were not supported by substantial evidence, the CA nullified the challenged NLRC decision and ordered the company "to reinstate the petitioners with the full status and rights of regular employees and to grant them all benefits as provided by existing collective bargaining agreement or by law."

The CA generally brushed aside the company's procedural questions.

It ruled that the petition was filed on time, noting that April 7, 2008, a Monday and the last day for filing the petition, was declared a holiday in lieu of April 9 (*Araw ng Kagitingan*), a Wednesday,[19] and that the petition was filed on April 8, 2008, a Tuesday and a working day.

That the contractors were not impleaded as necessary parties was not a fatal infirmity, according to the CA, relying on the ruling of the Court in *Cabutihan v. Landcenter Construction and Development Corporation.*[20] On the other hand, the alleged lack of proof of service was brushed aside on the finding that there is in the records of the case (page 35 of the petition) an affidavit of service executed by Rufino San Antonio indicating compliance with the rule on service. Finally, the CA ruled that the defect in the verification and certification was a mere formal requirement that can be excused in the interest of substantial justice, following the ruling of this Court in *Uy v. Landbank of the Philippines.*[21]

Petitioner moved for reconsideration of the decision, but the CA denied the motion in its resolution of October 13, 2008.[22]

The Petition

The company filed the present appeal on November 4, 2008 on the grounds that the CA erred when it:[23]

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[19] Pursuant to Presidential Proclamation No. 1463, February 18, 2008.

[20] G.R. No. 146594, June 10, 2002, 383 SCRA 353.

[21] G.R. No. 136100, July 24, 2000, 336 SCRA 419.

[22] *Supra* note 3.

[23] *Supra* note 1, pp. 14-15.

1. gave due course to the petition despite the failure of the respondents to comply with the Rules on Notarial Practice in its verification and certification;
2. excluded the contractors as necessary parties in violation of Section 8, Rule 3, in relation with Section 5, Rule 65 of the Rules of Court; and
3. refused to follow established jurisprudence holding that the findings of fact of the NLRC are accorded respect, if not finality, when supported by substantial evidence.

On the notarial issue, the petitioner argues that Rule 65 of the Rules of Court requires that a petition filed before the CA must be verified and accompanied with a properly notarized certification of non-forum shopping. It claims that the verification and certification accompanying the petition were not notarized as required by Section 12, Rule II of the 2004 Rules on Notarial Practice (for failure to present competent evidence of identity) and Section 2, Rule IV (prohibition against the notarization without appropriate proof of identity); the verification and certification attached to the petition before the CA do not indicate that the affiants were personally known to the notary public, nor did the notary identify the affiants through competent evidence of identity other than their community tax certificate. These violations, according to the petitioner, collectively resulted in a petition filed without the proper verification and certification required by Section 4, Rule 7 of the Rules of Court.

On the necessary party issue, the petitioner posits that the CA ruling excluding the contractors as necessary parties "results in the absurd situation whereby the grant of regularization by the Labor Arbiter in favor of the respondents and against the contractors, is actually the same award the CA held in their favor and against the Company thereby making them regular employees of both the Company and the contractors," a situation which "is precisely what Section 8, Rule 3, in relation to Section 5, Rule 65 of the Rules of Court seeks to prevent."

The petitioner also takes exception to the CA's reliance on the ruling of the Court in *Cabutihan v. Landcenter Construction*

and Development Corporation.[24] It posits that the ruling in *Cabutihan* was taken out of context; in that case, the subject matter was divisible as it pertained to the conveyance of 36.5% of the property under litigation or, in the alternative, to the value corresponding to this portion. On this fact situation, the Court found that the non-joinder of the companions of the petitioner as party-litigants was not prejudicial to their rights.

In the present case, the petitioner posits that supposed cause of action (for regularization of the respondents) and the issue of employer-employee relationship cannot be ruled upon without including the parties who had already been held liable by the NLRC. It adds that as a result of the CA ruling, the respondents are now regular employees of both the petitioner and the contractors.

In their comment of March 4, 2009,[25] the respondents, aside from the reiteration of their previously expressed positions on necessary parties and the labor-only contracting issues, argued that the rules of procedure are not controlling in labor cases and that every and all the reasonable means shall be used to ascertain the facts for the full adjudication of the merits of the case. They argue that it is more in accord with substantial justice and equity to overlook procedural questions raised.

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

The Notarial Issue.

After due consideration, we deem the respondents to have substantially complied with the verification and certification requirements in their petition for *certiorari* before the CA.

We find from our examination of the records that the fact situation that gave rise to the notarial issue before the CA was not a new one; the same situation obtained before the NLRC where the verification and certification of the respondents' appeal

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[24] *Supra* note 20.

[25] *Rollo*, pp. 479-495.

were also notarized before the same notary public — *Diosdado V. Macapagal* — and where the respondents presented the same evidence of identity (their community tax certificates).[26]

The petitioner's belated attention to the imputed defect indicates to us that the petitioner did not consider this defect worth raising when things were going its way, but considered it a serious one when things turned the other way. This opportunistic stance is not our idea of how technical deficiencies should be viewed. We are aware, too, that under the circumstances of this case, the defect is a technical and minor one; the respondents did file the required verification and certification of non-forum shopping with all the respondents properly participating, marred only by a glitch in the evidence of their identity.[27] In the interest of justice, this minor defect should not defeat their petition and is one that we can overlook in the interest of substantial justice, taking into account the merits of the case as discussed below.

The Necessary Party Issue.

In our view, the petitioner's necessary party issue proceeds from a misapprehension of the relationships in a contracting relationship. As lucidly pointed out in *Azucena's The Labor Code with Comments and Cases*,[28] there are three parties in a legitimate contracting relationship, namely: the principal, the contractor, and the contractor's employees. In this trilateral relationship, the principal controls the contractor and his employees with respect to the ultimate results or output of the contract; the contractor, on the other hand, controls his employees with respect, not only to the results to be obtained, but with respect to the means and manner of achieving this result. This pervasive control by the contractor over its employees results in an employer-employee relationship between them.

This trilateral relationship under a legitimate job contracting is different from the relationship in a labor-only contracting

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[26] Petition, Annex "J"; *id.*, pp. 149-150.

[27] Petition, Annex "O"; *id.*, pp. 218-219.

[28] 5th ed., 2004, p. 261.

situation because in the latter, the contractor simply becomes an agent of the principal; either directly or through the agent, the principal then controls the results as well as the means and manner of achieving the desired results. In other words, the party who would have been the principal in a legitimate job contracting relationship and who has no direct relationship with the contractor's employees, simply becomes the employer in the labor-only contracting situation with direct supervision and control over the contracted employees. As *Azucena* astutely observed: *in labor-contracting, there is really no contracting and no contractor; there is only the employer's representative who gathers and supplies people for the employer; labor-contracting is therefore a misnomer.*[29]

Where, as in this case, the main issue is labor contracting and a labor-only contracting situation is found to exist as discussed below, the question of whether or not the purported contractors are necessary parties is a non-issue; these purported contractors are mere representatives of the principal/employer whose personality, as against that of the workers, is merged with that of the principal/employer. Thus, this issue is rendered academic by our conclusion that labor-only contracting exists. Our labor-only contracting conclusion, too, answers the petitioner's argument that confusion results because the workers will have two employers.

The Contracting Out Issue.

Contracting and sub-contracting are "hot" labor issues for two reasons. The *first* is that job contracting and labor-only contracting are technical Labor Code concepts that are easily misunderstood. For one, there is a lot of lay misunderstanding of what kind of contracting the Labor Code prohibits or allows. The *second*, echoing the cry from the labor sector, is that the Labor Code provisions on contracting are blatantly and pervasively violated, effectively defeating workers' right to security of tenure.

This Court, through its decisions, can directly help address the problem of misunderstanding. The second problem, however,

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[29] *Id.*

largely relates to implementation issues that are outside the Court's legitimate scope of activities; the Court can only passively address the problem through the cases that are brought before us. Either way, however, the need is for clear decisions that the workers, most especially, will easily understand and appreciate. We resolve the present case with these thoughts in mind.

The law **allows** contracting and subcontracting involving services but **closely regulates** these activities for the protection of workers. Thus, an employer can contract out part of its operations, provided it complies with the limits and standards provided in the Code and in its implementing rules.

The directly applicable provision of the Labor Code on contracting and subcontracting is Article 106 which provides:

> Whenever, an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor shall be paid in accordance with the provisions of this Code.
>
> The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code.
>
> There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the alter were directly employed by him (underscoring supplied).

The Department of Labor and Employment implements this Labor Code provision through its Department Order No. 18-02

(*D.O. 18-02*).[30] On the matter of labor-only contracting, Section 5 thereof provides:

> Prohibition against labor-only contracting. — Labor-only contracting is hereby declared prohibited x x x labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:
>
> i) The contractor or subcontractor does not have sufficient capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
>
> ii) The contractor does not exercise *the right to control* over the performance of the work of the contractual-employee.
>
> "Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools or equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out. [Emphasis supplied]

The "right to control" refers to the prerogative of a party to determine, not only the end result sought to be achieved, but also the means and manner to be used to achieve this end.

In strictly layman's terms, a manufacturer can sell its products on its own, or allow contractors, independently operating on their own, to sell and distribute these products in a manner that does not violate the regulations. From the terms of the above-quoted D.O. 18-02, the legitimate job contractor must have the capitalization and equipment to undertake the sale and distribution of the manufacturer's products, and must do it on its own using its own means and selling methods.

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[30] Rules Implementing Articles 106 to 109 of the Labor Code, as amended.

In the present case, both the capitalization of Peerless and Excellent and their control over the means and manner of their operations are live sub-issues before us.

A key consideration in resolving these issues is the contract between the company and the purported contractors. The contract[31] with Peerless, which is almost identical with the contract with Excellent, among others, states:

1. The CONTRACTOR agrees and undertakes to perform and/or provide for the COMPANY, on a non-exclusive basis, the services of contractual employees for a temporary period for task or activities that are considered contractible under DOLE Department Order No. 10, Series of 1 997 (sic), such as lead helpers and replacement for absences as well as other contractible jobs that may be needed by the Company from time to time.[32]

x x x x x x x x x

5. The CONTRACTOR shall have exclusive discretion in the selection, engagement and discharge of its personnel, employees or agents or otherwise in the direction and control hereunder. The determination of the wages, salaries and compensation of the personnel, workers and employees of the CONTRACTOR shall be within its full control.[33]

x x x x x x x x x

. . . Although it is understood and agreed between the parties hereto that the CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of he COMPANY merely as to result to be accomplished by the work or services herein specified, and not as to the means and methods of accomplishing such result, the CONTRACTOR hereby warrants that it will perform such work or services in such manner as will be consistent with the achievement of the result herein contracted for.[34]

These provisions — particularly, that Peerless and Excellent retain the right to select, hire, dismiss, supervise, control, and

[31] *Supra* note 6.

[32] *Id.* at 44.

[33] *Id.* at 45.

[34] *Id.*

discipline all personnel they will assign to the petitioner, as well as pay their salaries — were cited by the labor arbiter and the NLRC as basis for their conclusion that no employer-employee relationship existed between the respondents and the petitioner.

The Court of Appeals viewed matters differently and faulted the labor tribunals for relying "solely" on the service contracts to prove that the respondents were employees of Peerless and Excellent. The CA cited in this regard what we said in *7K Corporation v. NLRC:*[35]

> The fact that the service contract entered into by petitioner and Universal stipulated that private respondents shall be the employees of Universal, would not help petitioner, as the language of a contract is not determinative of the relationship of the parties. Petitioner and Universal cannot dictate, by the mere expedient of a declaration in a contract, the character of Universal business, *i.e.*, whether as labor-only contractor, or job contractor, it being crucial that Universal's character be mentioned in terms of and determined by the criteria set by the statute.[36]

as basis for looking at how the contracted workers really related with the company in performing their contracted tasks. In other words, the contract between the principal and the contractor is not the final word on how the contracted workers relate to the principal and the purported contractor; the relationships must be tested on the basis of how they actually operate.

Even before going into the realities of workplace operations, the CA found that the service contracts[37] themselves provide ample leads into the relationship between the company, on the one hand, and Peerless and Excellent, on the other. The CA noted that both the Peerless and the Excellent contracts show that their obligation was solely to provide the company with "*the services of contractual employees*,"[38] and nothing more.

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[35] *Supra* note 18.

[36] *Id.* at 521-522.

[37] Petition, Annexes "A" and "B"; *supra* notes 6 and 7.

[38] Court of Appeals Decision, August 29, 2008; *rollo*, pp. 435-438.

These contracted services were for the handling and delivery of the company's products and allied services.[39] Following D.O. 18-02 and the contracts that spoke purely of the supply of labor, the CA concluded that Peerless and Excellent were labor-only contractors unless they could prove that they had the required capitalization and the right of control over their contracted workers.

The CA concluded that other than the petitioner's bare allegation, there is no indication in the records that Peerless and Excellent had substantial capital, tools or investment used directly in providing the contracted services to the petitioner. Thus, in the handling and delivery of company products, the contracted personnel used company trucks and equipment in an operation where company sales personnel primarily handled sales and distribution, merely utilizing the contracted personnel as sales route helpers.

In plainer terms, the contracted personnel (acting as sales route helpers) were only engaged in the marginal work of helping in the sale and distribution of company products; they only provided the muscle work that sale and distribution required and were thus necessarily under the company's control and supervision in doing these tasks.

Still another way of putting it is that the contractors were not independently selling and distributing company products, using their own equipment, means and methods of selling and distribution; they only supplied the manpower that helped the company in the handing of products for sale and distribution. In the context of D.O. 18-02, the contracting for sale and distribution as an independent and self-contained operation is a legitimate contract, but the pure supply of manpower with the task of assisting in sales and distribution controlled by a principal falls within prohibited labor-only contracting.

The role of sales route helpers in company operations is not a new issue before this Court as we have ruled on this issue in

[39] *Id.*

Magsalin v. National Organization of Workingmen[40] which the CA itself cited in the assailed decision. We held in this cited case that:

> The argument of petitioner that its usual business or trade is softdrink manufacturing and that the work assigned to the respondent workers so involves merely "postproduction activities," one which is not indispensable in the manufacture of its products, scarcely can be persuasive. If, as so argued by petitioner company, only those whose work are directly involved in the production of softdrinks may be held performing functions necessary and desirable in its usual business or trade, there would have been no need for it to even maintain regular truck sales route helpers. The nature of the work performed must be viewed from a perspective of the business or trade in its entirety and not only in a confined scope.[41]

While the respondents were not direct parties to this ruling, the petitioner was the party involved and *Magsalin* described in a very significant way the manufacture of softdrinks and the company's sales and distribution activities in relation with one another. Following the lead we gave in *Magsalin*, the CA concluded that the contracted personnel who served as route helpers were really engaged in functions directly related to the overall business of the petitioner. This led to the further CA conclusion that the contracted personnel were under the company's supervision and control since sales and distribution were in fact not the purported contractors' independent, discrete and separable activities, but were component parts of sales and distribution operations that the company controlled in its softdrinks business.

Based on these considerations, we fully agree with the CA that Peerless and Excellent were mere suppliers of labor who had no sufficient capitalization and equipment to undertake sales and distribution of softdrinks as independent activities separate from the manufacture of softdrinks, and who had no control and supervision over the contracted personnel. They are therefore labor-only contractors. Consequently, the contracted personnel,

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[40] *Supra* note 17.

[41] *Id.* at 205.

engaged in component functions in the main business of the company under the latter's supervision and control, cannot but be regular company employees. In these lights, the petition is totally without merit and hence must be denied.

WHEREFORE, premises considered, we hereby *DENY* the petition and accordingly *AFFIRM* the challenged decision and resolution of the Court of Appeals in CA-G.R. SP No. 102988. Costs against the petitioner.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Del Castillo, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 161929. December 8, 2009]

LYNN PAZ T. DELA CRUZ, FERNANDO SERRANO, NATHANIEL LUGTU, and JANET S. PINEDA, *petitioners, vs.* **SANDIGANBAYAN, THE SPECIAL PROSECUTOR and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *PRINCIPLE OF LAW OF THE CASE*; CUNNING ATTEMPT OF THE PARTIES TO EVADE THE APPLICATION THEREOF IN CASE AT BAR IS UNEQUIVOCALLY DEPLORED. —** The principle of the law of the case is an established rule in this jurisdiction. Thus, when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. The court reviewing

the succeeding appeal will not re-litigate the case but instead apply the ruling in the previous appeal. This enables the appellate court to perform its duties satisfactorily and efficiently which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case and upon any and subsequent appeal. While the applicability of this principle in this case is straightforward, the cunning attempt of the parties to evade the application thereof is what we unequivocally deplore here. The accused often decry the snail pace of the administration of justice but when they themselves give cause for the delay, they have no reason to complain. We again remind the parties and their counsels to act with candor and not to test the patience of this Court.

2. **CRIMINAL LAW; R.A. NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); THE PREVENTIVE SUSPENSION OF THE ACCUSED UNDER SECTION 13 THEREOF IS MANDATORY UPON A FINDING THAT THE INFORMATION IS VALID. —** Pursuant to Section 13 of RA No. 3019, it becomes mandatory for the court to immediately issue the suspension order upon a proper determination of the validity of the information. The court possesses no discretion to determine whether a preventive suspension is necessary to forestall the possibility that the accused may use his office to intimidate witnesses, or frustrate his prosecution, or continue committing malfeasance. The presumption is that unless the accused is suspended, he may frustrate his prosecution or commit further acts of malfeasance or do both. The issues proper for a pre-suspension hearing are, thus, limited to ascertaining whether: (1) the accused had been afforded due preliminary investigation prior to the filing of the information against him, (2) the acts for which he was charged constitute a violation of the provisions of RA No. 3019 or of the provisions of Title 7, Book II of the Revised Penal Code, or (3) the information against him can be quashed under any of the grounds provided in Section 2, Rule 117 of the Rules of Court.

3. **ID.; ID.; PETITIONERS CONVENIENTLY FAILED TO REVEAL THAT THIS IS THE SECOND TIME THAT THEY ARE APPEALING BEFORE THE COURT, RAISING THE SAME ISSUES AND ARGUMENTS, *VIA* THE INSTANT PETITION. —** While ordinarily we would proceed to determine whether the ruling of the *Sandiganbayan* upholding the validity

of the information and directing the preventive suspension suffer from the vice of grave abuse of discretion, the peculiar circumstances of this case constrain us to dismiss the petition outright. As will be discussed hereunder, all of the above issues proper in a pre-suspension hearing were previously passed upon by the *Sandiganbayan* and then by us *via* G.R. No. 158308. Petitioners conveniently failed to reveal that this is the second time that they are appealing before us, raising the same issues and arguments, *via* the instant petition. The present recourse is, thus, but a futile attempt to reopen settled rulings with the deplorable consequence of delaying the prompt disposition of the main case.

4. ID.; ID.; THE VALIDITY OF THE SUBJECT INFORMATION HAS BEEN RAISED AND RESOLVED IN G.R. NO. 158308; UNDER THE *PRINCIPLE OF LAW OF THE CASE*, THE SAID ISSUE CAN NO LONGER BE RE-LITIGATED. — The issues and arguments in the instant petition were already included in the issues and arguments raised and resolved in G.R. No. 158308. The Court *En Banc's* June 17, 2003 Resolution should, thus, have put to rest the issue of the validity of the subject information. Yet, petitioners would have us now revisit the same issue in the instant petition. This cannot be done. Under the principle of the law of the case, when a question is passed upon by an appellate court and the case is subsequently remanded to the lower court for further proceedings, the question becomes settled upon a subsequent appeal. Whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. Thus, considering that the validity of the information has long been settled in G.R. No. 158308, the *Sandiganbayan* properly granted the motion to suspend the accused *pendente lite*.

5. ID.; ID.; THAT THE ACCUSED SHOULD BE ALLOWED TO ARDUOUSLY AND ZEALOUSLY DEFEND HIS LIFE, LIBERTY AND PROPERTY IS NOT IN QUESTION, BUT IT MUST BE DONE ONLY WITHIN THE PERMISSIBLE LIMITS OF THE FRAMEWORK OF OUR CRIMINAL LAWS AND LAWS OF PROCEDURE. — We note with deep

disapproval the failure of petitioners to properly apprise this Court of the proceedings previously taken in G.R. No. 158308. Petitioners did not act forthrightly when they omitted in their statement of facts that they had earlier challenged the validity of the subject information before the *Sandiganbayan* and this Court, which issue they now seek to resuscitate in the instant petition. That the accused should be allowed to arduously and zealously defend his life, liberty and property is not in question. But this is so only within the permissible limits of the framework of our criminal laws and rules of procedure. Indubitably, the accused should not give ground for delay in the administration of criminal justice, much less, hide from this Court the patent unworthiness of his cause.

APPEARANCES OF COUNSEL

Manuel R. Castro for Lynn Paz T. Dela Cruz, Nathaniel Lugtu and Janet S. Pineda.

Ricardo C. Atienza for Fernando Serrano.

D E C I S I O N

DEL CASTILLO, *J*.:

The principle of the law of the case is an established rule in this jurisdiction. Thus, when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. The court reviewing the succeeding appeal will not re-litigate the case but instead apply the ruling in the previous appeal. This enables the appellate court to perform its duties satisfactorily and efficiently which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case and upon any and subsequent appeal.[1] While the applicability of this principle in this case is straightforward, the cunning attempt of the parties to evade the application thereof is what we unequivocally deplore here. The

[1] *Ariola v. Philex Mining Corporation*, G.R. No. 147756, August 9, 2005, 466 SCRA 152, 176-177.

accused often decry the snail pace of the administration of justice but when they themselves give cause for the delay, they have no reason to complain. We again remind the parties and their counsels to act with candor and not to test the patience of this Court.

This is a Petition for *Certiorari* and Prohibition assailing the *Sandiganbayan's* (1) December 8, 2003 Resolution[2] in Criminal Case No. 26042, which ordered petitioners' suspension *pendente lite* and its (2) February 5, 2004 Resolution,[3] which denied petitioners' motion for reconsideration.

Factual Antecedents

The instant criminal complaint arose from the construction and/or renovation project involving several multi-purpose halls located in various *barangays* in the City of Tarlac. Upon post audit, the Provincial Auditor of the Commission on Audit (COA) issued Notice of Disallowance No. 99-001-100(98) dated January 29, 1999 and Notice of Disallowance No. 99-003-101(98) dated July 22, 1999 on the ground that what were actually constructed and/or renovated were *barangay* chapels in violation of Section 29(2),[4] Article VI of the Constitution and Section 335[5] of the Local Government Code prohibiting public expenditure for religious purposes.[6] On February 6, 1998, private complainants

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[2] Records, Vol. III, pp. 158-164; penned by Associate Justice Gregory S. Ong and concurred in by Associate Justices Rodolfo G. Palattao and Norberto Y. Geraldez.

[3] *Id.* at 234-235. The Resolution was adopted by Associate Justices Gregory S. Ong, Norberto Y. Geraldez and Efren N. De la Cruz.

[4] Section 29(2). No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

[5] Section 335. *Prohibitions Against Expenditures for Religious or Private Purposes*. — No public money or property shall be appropriated or applied for religious or private purposes.

[6] Records, Vol. I, pp. 145-149.

Jesus B. David and Ana Alamo Aguas filed a complaint with the Office of the Ombudsman in connection with the approval and implementation of the aforesaid projects against several local government officials of the City of Tarlac, namely:

Gelacio R. Manalang- Mayor
Alfredo D. Baquing- Engineer
Nathaniel B. Lugtu- Accountant
Lynn Paz T. Dela Cruz- Assistant Accountant
Fernando L. Serrano- Budget Officer
Janet S. Pineda- Planning & Development Officer

for violation of Section 3(e)[7] of Republic Act (RA) No. 3019[8] or "The Anti-Graft and Corrupt Practices Act." In his July 13, 1999 Resolution,[9] the Ombudsman dismissed the complaint for insufficiency of evidence and prematurity. On September 8, 1999, private complainants moved for reconsideration. As a result, the Ombudsman referred the case to the Office of the Chief Legal Counsel for review and recommendation. In its April 13, 2000 Memorandum,[10] the Office of the Chief Legal Counsel recommended that the corresponding information be filed against the aforesaid local officials because there is probable cause to hold them liable for violation of the anti-graft law. Acting favorably thereon, on May 16, 2000, the Ombudsman

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

x x x x x x x x x

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

[8] Effective: August 17, 1960.

[9] Records, Vol. I, pp. 3-6.

[10] *Id.* at 7, 9-10.

issued an Order[11] directing the Office of the Special Prosecutor to file the necessary information with the *Sandiganbayan*, *viz*:

> That sometime on 6 February 1998 or thereabouts, in the City of Tarlac, province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused Gelacio R. Manalang, Alfredo D. Baquing, Lynn Paz T. dela Cruz, Fernando Serrano, Nathaniel Lugtu and Janet S. Pineda, accused Gelacio R. Manalang being the mayor of Tarlac City, Tarlac, a high ranking officer pursuant to R.A. 8249 in relation to Sec. 455(d) of R.A. 7160, and all the other accused then occupying different positions in the government of Tarlac City, conspiring and confederating with one another, committing the crime herein charged in relation to their office, taking advantage of their official position, acting with evident bad faith and manifest partiality, or gross inexcusable negligence, did then and there, wilfully, unlawfully and criminally, cause undue injury to the government and give unwarranted benefits, advantage or preference to a specific group of constituents by approving and releasing the amount of Five Hundred Forty Three Thousand Eight Hundred Pesos (₱543,800.00) for the construction of the "multi-purpose halls" in barangays Sapang Tagalog, Sapang Maragul and Dalayap in Tarlac City despite the fact, as Accused knew fully well, that what were being constructed are in truth chapels which would serve private purposes, and not barangay multi-purpose halls and, thereafter, proceeded to implement such construction.[12]

The case was docketed as Criminal Case No. 26042 and raffled to the Fourth Division. The accused then moved for reinvestigation on the ground that they were not given an opportunity to be heard when the Ombudsman reversed his earlier finding of lack of probable cause.

In its July 17, 2000 Order,[13] the *Sandiganbayan* granted the motion and gave the prosecution 20 days to re-evaluate the evidence and submit a report to the court. On July 31, 2001, the prosecution filed a Manifestation[14] with the *Sandiganbayan*

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[11] *Id.* at 8.

[12] *Id.* at 1.

[13] *Id.* at 253.

[14] *Id.* at. 292-294.

that after conducting its reinvestigation, it found probable cause to charge the accused with violation of the anti-graft law and prayed that the case be set for arraignment. As a consequence, the *Sandiganbayan* in its August 8, 2001 Resolution[15] set the case for arraignment and pre-trial.

Undeterred, the accused filed separate motions[16] to quash the information and/or to dismiss the case. On April 24, 2003, the *Sandiganbayan* issued a Resolution[17] which denied all of the aforesaid motions and upheld the validity of the subject information. It ruled that the information contained sufficient allegations to charge the accused with violation of Section 3(e) of RA No. 3019, that there exists probable cause to indict the accused and that the motions raise factual issues that cannot be resolved without an adversarial proceeding.

The accused then moved for reconsideration which was denied by the *Sandiganbayan* in its June 2, 2003 Resolution.[18] In addition to the reasons stated in its April 24, 2003 Resolution, the *Sandiganbayan* held that there was no violation of the right of the accused to due process based on the records forwarded to the court by the Ombudsman.

On May 12, 2003, the accused were arraigned and pleaded not guilty.[19] The prosecution subsequently filed a motion[20] to suspend the accused *pendente lite.*

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[15] *Id.* at 299.

[16] Motion to Dismiss dated February 15, 2002 filed by accused Dela Cruz, Serrano, Lugtu and Pineda; Supplemental Motion to Dismiss dated March 4, 2002 filed by accused Serrano; Omnibus Motion dated March 21, 2002 (to dismiss for lack of probable cause and violation of due process, to suspend proceedings and to hold in abeyance the pre-trial) filed by accused Manalang; and Motion to Dismiss dated October 29, 2002 filed by accused Bacquing.

[17] Records, Vol. II, pp. 353-358; penned by Associate Justice Rodolfo G. Palattao and concurred in by Associate Justices Gregory S. Ong and Ma. Cristina G. Cortez-Estrada.

[18] *Id.* at 429-432.

[19] *Id.* at 413.

[20] Records, Vol. III, pp. 8-10.

On June 10, 2003, the accused filed a consolidated petition for *certiorari* and prohibition before this Court against public respondents Fourth Division of the *Sandiganbayan*, the Ombudsman and the People of the Philippines. They ascribed grave abuse of discretion on the public respondents for filing the information and upholding the validity of the same despite the violation of the right of the accused to due process and the patent lack of probable cause. On June 17, 2003, we resolved to dismiss the petition for lack of merit.

Sandiganbayan's Ruling

On December 8, 2003, the *Sandiganbayan* issued the assailed Resolution which granted the prosecution's motion and ordered the preventive suspension of the accused for a period of 90 days. It ruled that the validity of the information has been previously settled in its April 24, 2003 Resolution. Thus, under Section 13 of RA No. 3019, the preventive suspension of the accused becomes mandatory. Petitioners thereafter filed a motion for reconsideration which was denied by the *Sandiganbayan* in its February 5, 2004 Resolution.

From the aforesaid adverse rulings, only accused Dela Cruz, Serrano, Lugtu and Pineda (petitioners) sought review before this Court *via* the instant petition for prohibition and *certiorari* under Rule 65 of the Rules of Court.

Issues

Petitioners raise the following issues for our resolution:

1. Whether the subject criminal case was prematurely instituted considering the pendency of petitioners' appeals before the COA *En Banc*.

2. Whether the Ombudsman may still reconsider his Resolution dated July 13, 1999, dismissing the complaint, after the same has already become final and executory.

3. Whether the subject information is fatally defective.

4. Whether, on the basis of the admitted or undisputed facts, there is probable cause to prosecute petitioners

and their co-accused for violation of Section 3(e) of RA No. 3019.[21]

Petitioners' Arguments

First, petitioners claim that they have been exonerated by the COA *En Banc*, thus, there is no more basis to prosecute them for violation of the anti-graft law. The filing of the subject criminal case against them was based on the results of a post-audit showing the alleged illegal disbursement of public funds for religious purposes. Consequently, the Provincial Auditor issued notices of disallowance against petitioners and their co-accused Manalang and Baquing. Petitioners thereafter appealed from said notices. Considering that these cases were still on appeal before the COA *En Banc*, the Ombudsman gravely abused his discretion when he ordered the filing of the subject criminal case against petitioners and their co-accused.

Moreover, in the *interim* and after a series of separate appeals, petitioners Lugtu, Dela Cruz and Serrano were exonerated by the COA *En Banc* on the common ground that as Accountant, Assistant Accountant and Budget Officer, respectively, they did not take part in the review of the plans and specifications as well as in the implementation, prosecution and supervision of the subject construction and/or renovation project. As for petitioner Pineda, no notice of disallowance was ever issued to her. Thus, with more reason subject criminal case should be dismissed in order to save petitioners from an expensive and vexatious trial.

In the same vein, there is no probable cause to hold petitioners liable for violation of the anti-graft law because the Ombudsman himself admitted that what were built were multi-purpose halls and not chapels in his November 16, 1999 Decision in OMB-ADM-1-99-0759 which absolved petitioners' co-accused Baquing from administrative liability.

Second, petitioners contend that the subject information is fatally defective because of the irregularities and due process

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[21] *Rollo*, p. 191.

violations committed during the preliminary investigation of this case. The Ombudsman acted without jurisdiction when he reversed his July 13, 1999 Resolution, which dismissed the criminal complaint, considering that this resolution had long become final and executory. Assuming that private complainants timely moved for reconsideration, the same was defective for failure to furnish all the accused with copies of said motion. The information should, thus, have been quashed under Section 3(d)[22] of Rule 117 of the Rules of Court for lack of authority of the Ombudsman to file the same.

Finally, petitioners argue that the allegations in the subject information do not constitute an offense because the alleged specific group that was benefited by the construction and/or renovation of the *barangay* chapels as well as the alleged private purposes served thereby were sufficiently identified and described. Hence, the right of the accused to be informed of the nature and cause of the accusation against them was violated.

Respondents' Arguments

First, respondents counter that the COA is not vested with jurisdiction to determine the criminal liability of petitioners. Its power is limited to the determination of the violation of its accounting and auditing rules and regulations. Hence, the COA *En Banc*'s exclusion of petitioners from liability under the notices of disallowance only relates to the administrative aspect of their accountability. This, however, does not foreclose the Ombudsman's authority to investigate and determine whether there is a crime to be prosecuted. For similar reasons, the exoneration of Baquing from administrative liability by the Ombudsman in his November 16, 1999 Decision in OMB-ADM-1-99-0759, specifically, the finding therein that what were constructed were multi-purpose halls and not chapels is not binding on the subject criminal case

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[22] SECTION 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:

x x x x x x x x x

(d) That the officer who filed the information had no authority to do so; x x x

against petitioners and their co-accused. The dismissal of an administrative case does not necessarily bar the filing of a criminal prosecution for the same or similar acts which were the subject of the administrative complaint.

Second, respondents aver that there was no denial of due process during the preliminary investigation stage. Private complainants timely moved for reconsideration from the July 13, 1999 Resolution of the Ombudsman. They received a copy of the aforesaid Resolution on August 25, 1999 and filed a letter seeking reconsideration on September 8, 1999 or within the 15-day reglementary period under the Rules of Procedure of the Ombudsman. The *Sandiganbayan* also found that there was no due process violation as borne out by the records forwarded to said court by the Ombudsman. Further, any defect in the preliminary investigation should be deemed cured because the *Sandiganbayan* ordered the reinvestigation of this case in its July 17, 2000 Order. After the reinvestigation, the Ombudsman maintained that there is probable cause to indict petitioners and their co-accused. This was affirmed by the *Sandiganbayan* when it set the case for arraignment and pre-trial.

Finally, respondents assert that the identity of the specific group and the private purposes served by the subject construction and/or renovation project are evidentiary matters that should be threshed out during the trial on the merits of this case.

Our Ruling

The petition lacks merit.

The preventive suspension of the accused under Section 13 of RA No. 3019 is mandatory upon a finding that the information is valid.

Section 13 of RA No. 3019 provides:

> Section 13. *Suspension and loss of benefits* — Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code

on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

Pursuant to this provision, it becomes mandatory for the court to immediately issue the suspension order upon a proper determination of the validity of the information.[23] The court possesses no discretion to determine whether a preventive suspension is necessary to forestall the possibility that the accused may use his office to intimidate witnesses, or frustrate his prosecution, or continue committing malfeasance. The presumption is that unless the accused is suspended, he may frustrate his prosecution or commit further acts of malfeasance or do both.[24]

In *Luciano v. Mariano*,[25] we laid down the guidelines for the exercise of the court's power to suspend the accused:

(c) By way of broad guidelines for the lower courts in the exercise of the power of suspension from office of public officers charged under a valid information under the provisions of Republic Act 3019 or under the provisions of the Revised Penal Code on bribery, pursuant to Section 13 of said Act, it may be briefly stated that upon the filing of such information, the trial court should issue an order with proper notice requiring the accused officer to show cause at a specific date of hearing why he should not be ordered suspended from office pursuant to the cited mandatory provisions of the Act. Where either the prosecution seasonably files a motion for an order of suspension or the accused in turn files a motion to quash the information or challenges the validity thereof, such show-cause order of the trial court would no longer be necessary. What is indispensable is that the trial court duly hear the parties at a hearing held for determining the validity of the information, and thereafter hand down its ruling, issuing the corresponding order of suspension should it uphold the validity of the information or withholding such suspension in the contrary case.

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[23] *Socrates v. Sandiganbayan*, 324 Phil. 151, 179 (1996).

[24] *Id.* at 180.

[25] 148-B Phil. 178 (1971).

(d) No specific rules need be laid down for such pre-suspension hearing. Suffice it to state that the accused should be given a fair and adequate opportunity to challenge the validity of the criminal proceedings against him, *e.g.* that he has not been afforded the right of due preliminary investigation; that the acts for which he stands charged do not constitute a violation of the provisions of Republic Act No. 3019 or of the bribery provisions of the Revised Penal Code which would warrant his mandatory suspension from office under Section 13 of the Act; or he may present a motion to quash the information on any of the grounds provided in Rule 117 of the Rules of Court. The mandatory suspension decreed by the Act upon determination of the pendency in court of a criminal prosecution for violation of the Anti-graft Act or for bribery under a valid information requires at the same time that the hearing be expeditious, and not unduly protracted such as to thwart the prompt suspension envisioned by the Act. Hence, if the trial court, say, finds the ground alleged in the quashal motion not to be indubitable, then it shall be called upon to issue the suspension order upon its upholding the validity of the information and setting the same for trial on the merits.[26]

The issues proper for a pre-suspension hearing are, thus, limited to ascertaining whether: (1) the accused had been afforded due preliminary investigation prior to the filing of the information against him, (2) the acts for which he was charged constitute a violation of the provisions of RA No. 3019 or of the provisions of Title 7, Book II of the Revised Penal Code, or (3) the information against him can be quashed under any of the grounds provided in Section 2, Rule 117 of the Rules of Court.[27]

While ordinarily we would proceed to determine whether the ruling of the *Sandiganbayan* upholding the validity of the information and directing the preventive suspension suffer from the vice of grave abuse of discretion, the peculiar circumstances of this case constrain us to dismiss the petition outright. As will be discussed hereunder, all of the above issues proper in a pre-suspension hearing were previously passed upon by the *Sandiganbayan* and then by us *via* G.R. No. 158308. Petitioners

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[26] *Id.* at 192-193.

[27] *Supra* note 23 at 179.

conveniently failed to reveal that this is the second time that they are appealing before us, raising the same issues and arguments, *via* the instant petition. The present recourse is, thus, but a futile attempt to reopen settled rulings with the deplorable consequence of delaying the prompt disposition of the main case.

The validity of the subject information has been raised and resolved in G.R. No. 158308. Under the principle of the law of the case, this issue can no longer be re-litigated.

Upon a review of the records of this case, we find that the issue as to the validity of the information, inclusive of all matters proper for a pre-suspension hearing, has already been passed upon by us. As stated earlier, the records indicate that on June 10, 2003, petitioners, along with their co-accused Manalang and Baquing, filed a consolidated petition for *certiorari* and prohibition before this Court against public respondents Fourth Division of the *Sandiganbayan*, the Ombudsman and the People of the Philippines. This case was docketed as G.R. No. 158308. Petitioners, Manalang and Baquing assailed therein, for having been issued with grave abuse of discretion, the following: (1) *Sandiganbayan's* April 24, 2003 Resolution which upheld the validity of the information charging them with violation of Section 3(e) of RA No. 3019, (2) *Sandiganbayan's* June 2, 2003 Resolution which denied petitioners, Manalang and Baquing's separate motions for reconsideration and (3) Ombudsman's May 16, 2000 Order which directed the Office of the Special Prosecutor to file the aforesaid information.

In its April 24 and June 2, 2003 Resolutions, the *Sandiganbayan* had earlier ruled, among others, that the subject information contains sufficient allegations to charge the accused with violation of the anti-graft law; that there was no denial of due process during the preliminary investigation stage; that there exists probable cause to indict the accused; and that the accused's other arguments, including the pendency of petitioners' separate

appeals before the COA *En Banc*, lacked merit. On June 17, 2003, the Court *En Banc* issued a Resolution dismissing the petition for failure to sufficiently show that the public respondents committed grave abuse of discretion in rendering the assailed issuances and for having raised factual issues. This Resolution became final and executory on July 31, 2003 as per the entry of judgment.[28]

The issues and arguments in the instant petition were already included in the issues and arguments raised and resolved in G.R. No. 158308.[29] The Court *En Banc's* June 17, 2003

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[28] *Rollo* (G.R. No. 158308), p. 197.

[29] In G.R. No. 158308, petitioners, Manalang and Baquing raised the following arguments:

I. The Honorable *Sandiganbayan* committed grave abuse of discretion amounting to lack or excess of jurisdiction in not finding that the dismissal of the complaint by the Ombudsman himself, upon the recommendation of the Deputy Ombudsman for Luzon after conducting preliminary investigation, is valid for it was based on findings supported by evidence and done so within the vast powers vested by law in the Ombudsman and his deputies;

II. The Honorable *Sandiganbayan* committed grave abuse of discretion amounting to lack or excess of jurisdiction in not finding that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction when the latter ordered the filing of the information considering that:

1. After the previous resolution of dismissal by the Ombudsman became final and executory, the subsequent filing of the information is flawed as it is deemed null and void because of lack of authority of the Hon. Ombudsman pursuant to Section 3, paragraph (d) of Rule 117 of the Rules of Criminal Procedure on the ground of a motion to quash that "the officer who filed the information had no authority to do so." And that the action taken by the Hon. Ombudsman was without or in excess of authority.

2. The accused were effectively deprived of their right to a preliminary investigation pursuant to Sections 2 & 4, Rule II of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman), when the previous resolutions dismissing the complaint that the Ombudsman himself approved were reversed by him, merely because of the recommendation of a legal counsel and even though no motion for reconsideration was filed by private complainants; and

3. That even assuming that the review and recommendation of the legal counsel and the approval thereof by the Ombudsman were part of

Resolution should, thus, have put to rest the issue of the validity of the subject information. Yet, petitioners would have us now revisit the same issue in the instant petition. This cannot be done. Under the principle of the law of the case, when a question is passed upon by an appellate court and the case is subsequently remanded to the lower court for further proceedings, the question becomes settled upon a subsequent appeal. Whatever is once

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preliminary investigation, there was inordinate delay in terminating the same thereby depriving the accused of their rights to due process and to a speedy disposition of the case.

III. The Honorable *Sandiganbayan* committed grave abuse of discretion amounting to lack or excess of jurisdiction in not finding that there is no probable cause or any sufficient basis, in fact and in law, to charge the petitioners for allegedly violating Section 3(e) of R.A. 3019 in that:

1. There was an appropriation ordinance passed by the *Sangguniang Panlungsod* of Tarlac authorizing the expenditures for such purpose;

2. Petitioners acted in good faith and were clothed with full legal authority by the *Sangguniang Panlungsod* when the questioned contracts were entered into for the construction of such multi-purpose halls in various *barangays*;

3. The petitioners had only to rely upon the certifications issued by the duly authorized technical and financial personnel of the city that the projects were properly constructed and funds disbursed pursuant to the approved purpose;

4. The fact that the Commission on Audit and the Ombudsman had already acquitted several of the petitioners in administrative proceedings lending considerable credence to the veracity of their claim of innocence and reflecting the glaring lack of probable cause of the action.

IV. That The Honorable *Sandiganbayan* committed grave abuse of discretion in denying the corresponding motions to dismiss or quash for lack of probable cause x x x on the ground that the issuance of the warrant of arrest already presupposes the existence of probable cause, in that:

1. A question as to the existence of probable cause, or absence thereof, may be raised and resolved even after the issuance of a warrant of arrest and even after the arraignment.

2. The lack of probable cause, though not included in the grounds enumerated by the Rules of Procedure in a motion to quash, is nonetheless a long established ground in jurisprudence and such ground, once proven, is fatal to any criminal action.

V. That the petitioners have no plain, speedy and adequate remedy in the ordinary course of law. [*Rollo* (G.R. No. 158308), pp. 15-17.]

irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[30] Thus, considering that the validity of the information has long been settled in G.R. No. 158308, the *Sandiganbayan* properly granted the motion to suspend the accused *pendente lite*.

In conclusion, we note with deep disapproval the failure of petitioners to properly apprise this Court of the proceedings previously taken in G.R. No. 158308. Petitioners did not act forthrightly when they omitted in their statement of facts that they had earlier challenged the validity of the subject information before the *Sandiganbayan* and this Court, which issue they now seek to resuscitate in the instant petition. That the accused should be allowed to arduously and zealously defend his life, liberty and property is not in question. But this is so only within the permissible limits of the framework of our criminal laws and rules of procedure. Indubitably, the accused should not give ground for delay in the administration of criminal justice, much less, hide from this Court the patent unworthiness of his cause.

WHEREFORE, the petition is *DISMISSED*. The *Sandiganbayan's* December 8, 2003 Resolution, which ordered petitioners' suspension *pendente lite* and February 5, 2004 Resolution, which denied petitioners' motion for reconsideration, are *AFFIRMED*. This case is *REMANDED* to the *Sandiganbayan* for further proceedings.

Treble costs against petitioners.

SO ORDERED.

Carpio (Chairperson),[*] *Leonardo-de Castro,*[**] *Brion,* and *Abad, JJ.,* concur.

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[30] *Cucueco v. Court of Appeals*, G.R. No. 139278, October 25, 2004, 441 SCRA 290, 301.

[*] 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. 175994. December 8, 2009]

JESUS CAMPOS and ROSEMARIE CAMPOS-BAUTISTA, *petitioners, vs.* **NENITA BUENVENIDA PASTRANA, ROGER BUENVENIDA, SONIA BUENVENIDA, TEDDY BUENVENIDA, VICTOR BUENVENIDA, HARRY BUENVENIDA, MILDRED BUENVENIDA, MANOLITO BUENVENIDA and DAISY BUENVENIDA, represented by their Attorney-in-Fact CARLITO BUENVENIDA,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE COURT; EXCEPTIONS TO THE RULE; NOT PRESENT IN CASE AT BAR. — Well-settled is the rule that this Court is not a trier of facts. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding, and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misappreciation 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 is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the CA are premised on the supposed absence of

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

evidence and contradicted by the evidence on record. None of these exceptions is present in this case. We find that the Decision of the CA is supported by the required quantum of evidence.

2. **CIVIL LAW; CONTRACTS; SALES; THE SUBJECT DEEDS OF ABSOLUTE SALE ARE ABSOLUTELY SIMULATED AND FICTITIOUS. —** The CA correctly held that the assailed Deeds of Absolute Sale were executed when the Possession Case was already pending, evidently to avoid the properties subject thereof from being attached or levied upon by the respondents. While the sales in question transpired on October 18, 1985 and November 2, 1988, as reflected on the Deeds of Absolute Sale, the same were registered with the Registry of Deeds only on October 25, 1990 and September 25, 1990. We also agree with the findings of the CA that petitioners failed to explain the reasons for the delay in the registration of the sale, leading the appellate court to conclude that the conveyances were made only in 1990 or sometime just before their actual registration and that the corresponding Deeds of Absolute Sale were antedated. This conclusion is bolstered by the fact that the supposed notary public before whom the deeds of sale were acknowledged had no valid notarial commission at the time of the notarization of said documents. Indeed, the Deeds of Absolute Sale were executed for the purpose of putting the lots in question beyond the reach of creditors. First, the Deeds of Absolute Sale were registered exactly one month apart from each other and about another one month from the time of the promulgation of the judgment in the Possession Case. The Deeds of Absolute Sale were antedated and that the same were executed when the Possession Case was already pending.

3. **ID.; ID.; ID.; THERE WAS A WIDE DISPARITY IN THE ALLEGED CONSIDERATION SPECIFIED IN THE DEEDS OF ABSOLUTE SALE AND THE ZONAL VALUATION OF THE SUBJECT PROPERTIES AS PER BIR CERTIFICATION; CONSIDERATIONS INVOLVED IN THE ASSAILED CONTRACTS OF SALE FOUND TO BE INADEQUATE CONSIDERING THE MARKET VALUES PRESENTED IN THE TAX DECLARATION AND IN THE BIR CERTIFICATION. —** There was a wide disparity in the alleged consideration specified in the Deeds of Absolute Sale and the actual zonal valuation of the subject properties as per the BIR Certification. As correctly noted by the CA, the

appraised value of the properties subject of this controversy may be lower at the time of the sale in 1990 but it could not go lower than ₱7,000.00 and ₱5,600.00. We likewise find the considerations involved in the assailed contracts of sale to be inadequate considering the market values presented in the tax declaration and in the BIR zonal valuation.

4. **ID.; ID.; ID.; MONEY JUDGMENT IN THE POSSESSION CASE HAS NOT BEEN DISCHARGED WITH. —** We cannot believe that the buyer of the 1,393-square meter residential land could not recall the exact area of the two lots she purchased. It appears on record that the money judgment in the Possession Case has not been discharged with. Per Sheriff's Service Return dated November 14, 1995, the *Alias* Writ of Execution and Sheriff's Demand for Payment dated September 19, 1995 remain unsatisfied.

5. **ID.; ID.; ID.; THE JUDGMENT DEBTORS CONTINUE TO BE IN ACTUAL POSSESSION OF THE PROPERTIES IN QUESTION. —** Spouses Campos continue to be in actual possession of the properties in question. Respondents have established through the unrebutted testimony of Rolando Azoro that spouses Campos have their house within Lot 3715-A and Lot 3715-B-2 and that they reside there together with their daughter Rosemarie. In addition, spouses Campos continued to cultivate the rice lands which they purportedly sold to their son Jesus. Meantime, Jesus, the supposed new owner of said rice lands, has relocated to Bulacan where he worked as a security guard. In other words, despite the transfer of the said properties to their children, the latter have not exercised complete dominion over the same. Neither have the petitioners shown if their parents are paying rent for the use of the properties which they already sold to their children.

6. **ID.; ID.; ID.; THE ISSUANCE OF TRANSFER CERTIFICATES OF TITLE TO PETITIONERS DID NOT VEST UPON THEM OWNERSHIP OF THE PROPERTIES. —** The fact that petitioners were able to secure titles in their names did not operate to vest upon them ownership over the subject properties. That act has never been recognized as a mode of acquiring ownership. The Torrens system does not create or vest title. It only confirms and records title already existing and vested. It does not protect a usurper from the true owner. It cannot be a shield for the commission of fraud. In the instant

case, petitioner Rosemarie Campos supposedly bought the residential properties in 1985 but did not have the assailed Deed of Absolute Sale registered with the proper Registry of Deeds for more than five years, or until a month before the promulgation of the judgment in the Possession Case. Hence, we affirm the finding of the CA that the purported deed was antedated. Moreover, her failure to take exclusive possession of the property allegedly sold, or, alternatively, to collect rentals is contrary to the principle of ownership and a clear badge of simulation. On these grounds, we cannot hold that Rosemarie Campos was an innocent buyer for value. Likewise, petitioner Jesus Campos supposedly bought the rice land from his parents in 1988 but did not have the assailed Deed of Absolute Sale registered with the proper Registry of Deeds for more than two years, or until two months before the promulgation of the judgment in the Possession Case. Thus, we likewise affirm the finding of the CA that the purported deed was antedated. In addition, on cross, he confirmed that he had knowledge of the prior pending cases when he supposedly purchased his parents' rice land. On these findings of fact, petitioner Jesus Campos cannot be considered as an innocent buyer and for value. Since both the transferees, Rosemarie and Jesus Campos, are not innocent purchasers for value, the subsequent registration procured by the presentation of the void deeds of absolute sale is likewise null and void.

7. ID.; ID.; ID.; THE ACTION FOR DECLARATION OF THE INEXISTENCE OF THE ASSAILED DEEDS OF ABSOLUTE SALE DOES NOT PRESCRIBE. — Petitioners argue that respondents' cause of action had prescribed when they filed the Nullity of the Sale Case on October 14, 1997, or seven years after the registration of the questioned sales in 1990. We cannot agree. As discussed above, the sale of subject properties to herein petitioners are null and void. And under Article 1410 of the Civil Code, an action or defense for the declaration of the inexistence of a contract is imprescriptible. Hence, petitioners' contention that respondents' cause of action is already barred by prescription is without legal basis.

8. ID.; ID.; ID.; SINCE THE ASSAILED DEEDS OF ABSOLUTE SALE ARE NULL AND VOID, THE CIVIL CODE PROVISIONS ON RESCISSION HAVE NO APPLICATION IN CASE AT BAR. — Finally, petitioners' argument that the

applicable law in this case is Article 1381(3) of the Civil Code on rescissible contracts and not Article 1409 on void contracts is not a question of first impression. This issue had already been settled several decades ago when we held that "an action to rescind is founded upon and presupposes the existence of a contract." A contract which is null and void is no contract at all and hence could not be the subject of rescission. In the instant case, we have declared the Deeds of Absolute Sale to be fictitious and inexistent for being absolutely simulated contracts. It is true that the CA cited instances that may constitute badges of fraud under Article 1387 of the Civil Code on rescissible contracts. But there is nothing else in the appealed decision to indicate that rescission was contemplated under the said provision of the Civil Code. The aforementioned badges must have been considered merely as grounds for holding that the sale is fictitious. Consequently, we find that the CA properly applied the governing law over the matter under consideration which is Article 1409 of the Civil Code on void or inexistent contracts.

APPEARANCES OF COUNSEL

Yngcong & Yngcong Law Office for petitioners.
Benito B. Pastrana for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

It sometimes happens that a creditor, after securing a judgment against a debtor, finds that the debtor had transferred all his properties to another leaving nothing to satisfy the obligation to the creditor. In this petition for review on *certiorari*,[1] petitioners ask us to set aside the November 23, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 68731 declaring as

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[1] *Rollo*, pp. 4-29.

[2] CA *rollo*, pp. 144-154; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Isaias P. Dicdican and Apolinario D. Bruselas, Jr.

null the sale of several parcels of land made by their parents in their favor, for being absolutely simulated transactions. Also assailed is the November 21, 2006 Resolution.[3]

Factual antecedents

This is the third case between essentially the same parties and the second among those cases to reach this Court on appeal, spanning a period of close to three decades.

The first case arose from the refusal of Carlito Campos (Carlito), the father of herein petitioners, to surrender the possession of a fishpond he leased from respondents' mother, Salvacion Buenvenida, despite the expiration of their contract of lease in 1980. Alleging that he was an agricultural lessee, Carlito filed an agrarian case docketed as CAR Case No. 1196 (Agrarian Case) against his lessor. After trial, the Regional Trial Court of Roxas City, Branch 14, found that Carlito was not an agricultural tenant. He then appealed to the CA and subsequently to this Court, but was unsuccessful.

While the appeal in the Agrarian Case was pending before the CA, herein respondents filed the second case, Civil Case No. V-5417, against Carlito for Recovery of Possession and Damages with Preliminary Mandatory Injunction (Possession Case) involving the same fishpond subject of the earlier agrarian case. On November 27, 1990, the Regional Trial Court of Roxas City, Branch 16, rendered a Decision[4] finding Carlito to have retained possession of the fishpond notwithstanding the expiration of the contract of lease and ordering him to pay rentals, the value of the produce and damages to the herein respondents. The Decision became final and executory and a Writ of Execution[5] was issued on February 7, 1995. Subsequently, on September 19, 1995, an *Alias* Writ of Execution[6] was also issued. Both

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[3] *Id.* at 201-202; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Romeo F. Barza and Priscilla Baltazar-Padilla.

[4] Records, pp. 195-200; penned by Judge Manuel E. Autajay.

[5] *Id.* at 220-221.

[6] *Id.* at 222-223.

were returned unsatisfied as per Sheriff's Return of Service dated November 14, 1995.

During the pendency of the Agrarian Case, as well as prior to the filing of the Possession Case, Carlito was the registered owner of the following properties:

1. Residential Lots 3715-A and 3715-B-2 covered by Transfer Certificates of Title Nos. 18205[7] and 18417,[8] respectively and

2. Agricultural Lots 850 and 852 covered by Original Certificates of Title Nos. P-9199[9] and P-9200,[10] respectively.

When the respondents were about to levy these properties to satisfy the judgment in the Possession Case, they discovered that spouses Carlito and Margarita Campos transferred these lots to their children Rosemarie and Jesus Campos, herein petitioners, by virtue of Deeds of Absolute Sale dated October 18, 1985[11] and November 2, 1988.[12] Specifically, spouses Campos sold the residential lots (Lots 3715-A and 3715-B-2), with a total area of 1,393 square meters, to their daughter Rosemarie for ₱7,000.00 and the agricultural lots (Lots 850 and 852) with a combined area of 7,972 square meters, to their son Jesus for ₱5,600.00.

Proceedings before the Regional Trial Court – Civil Case No. V-7028

On February 18, 1997, respondents instituted the third case, Civil Case No. V-7028 (Nullity of Sale Case),[13] subject of this appeal, seeking to declare as null the aforesaid deeds of sale and the transfer certificates of title issued pursuant thereto.

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[7] *Id.* at 206.

[8] *Id.* at 207.

[9] *Id.* at 208-209.

[10] *Id.* at 210-211.

[11] *Id.* at 307.

[12] *Id.* at 310.

[13] *Id.* at 1-8.

They alleged that the contracts of sale between spouses Campos and petitioners were simulated for the sole purpose of evading the levy of the abovementioned properties in satisfaction of a money judgment that might be rendered in the Possession Case.

In their Answer with Counterclaim,[14] spouses Campos and petitioners averred that Rosemarie and Jesus Campos acquired the lots in question in good faith and for value because they were sold to them *before* they had any notice of the claims or interests of other persons thereover.

On August 21, 2000, the Regional Trial Court of Roxas City, Branch 14, dismissed the complaint.[15] It held that —

In the Resolution of this case the issue is whether or not the spouses Carlito Campos and Margarita Arduo, sensing that an unfavorable judgment might be rendered against them in Civil Case No. V-5417 filed in Branch 16 on July 17, 1987 by the same plaintiffs for Recovery of Possession and Damages with Preliminary Mandatory Injunction, in evident bad faith and wanton disregard of the law, maliciously and fraudulently, executed a purely fictitious and simulated sale of their properties thereby ceding and transferring their ownership thereto to their children Rosemarie Campos-Bautista and Jesus Campos.

A close scrutiny of the defendants' documentary exhibits and testimonies showed that as early as 1981 defendant Jesus Campos was already leasing a fishpond in Brgy. Majanlud, Sapi-an, Capiz from Victorino Jumpay and defendant Rosemarie Campos was engaged in the *sari-sari* store business starting 1985 so that they were able to purchase the properties of their parents out of their profits derived therefrom.

The Deed of Absolute Sale (Exh. "6" & "10") executed by the spouses Carlito Campos and Margarita Arduo to Rosemarie Campos and Jesus Campos were dated October 17, 1985 and November 2, 1988, respectively.

It can readily [be] gleaned from the records that Civil Case No. V-5417 was filed on July 7, 1987 and was decided on November

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[14] *Id.* at 46-52.

[15] *Id.* at 321-324; penned by Judge Salvador S. Gubaton.

27, 1990. Furthermore, the *alias* writ of execution was issued only on July 5, 1995 for which the Sheriff's Return of Service was returned unsatisfied on November 14, 1995.

WHEREFORE, the complaint of the plaintiffs against the defendants is DISMISSED. Their claim for damages is likewise DISMISSED. The counter-claim of the defendants must also be DISMISSED as the case was not filed in evident bad faith and with malicious intent.

SO ORDERED.[16]

Proceedings before the Court of Appeals

Upon review of the evidence presented, the CA found that the conveyances were made in 1990, and not in 1985 or 1988, or just before their actual registration with the Registry of Deeds, evidently to avoid the properties from being attached or levied upon by the respondents. The CA likewise noted that the zonal value of the subject properties were much higher than the value for which they were actually sold. The appellate court further observed that despite the sales, spouses Campos retained possession of the properties in question. Finally, the CA took note of the fact that the writ of execution and *alias* writ issued in the Possession Case remained unsatisfied as the lower court could not find any other property owned by the spouses Campos that could be levied upon to satisfy its judgment, except the parcels of land subject of the assailed transactions.

On these bases, the CA ruled that the assailed contracts of sale were indeed absolutely simulated transactions and declared the same to be void *ab initio*. The dispositive portion of the Decision of the CA reads:

WHEREFORE, the instant appeal is GRANTED. The decision of the Regional Trial Court of Roxas City, Branch 14, dated August 21, 2000 in Civil Case No. V-7028 is REVERSED and SET ASIDE. Let a copy of this Decision be furnished to the Register of Deeds of the Province of Capiz who is hereby ordered to cancel Transfer Certificates of Title Nos. T-26092 and T-26093 in the name of Rosemarie Campos, and Transfer Certificates of Title Nos. T-23248

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[16] *Id.* at 324.

and 23249 in the name of Jesus Campos and restore said titles in the name of the previous owner, Carlito Campos.

SO ORDERED.

Only petitioners moved for reconsideration[17] but the CA denied the same.[18]

Issues

Hence, this petition for review on *certiorari* raising the following errors:

I.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN APPLYING ARTICLE 1409, CIVIL CODE, INSTEAD OF ARTICLE 1381 (3), CIVIL CODE, AND IN SPECULATING THAT A CAUSE OF ACTION OF SUPPOSED SALE IN FRAUD OF CREDITORS EXISTS DESPITE NON-EXHAUSTION OF REMEDIES TO ENFORCE THE JUDGMENT IN CIVIL CASE NO. V-5417.

II.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW OVERLOOKING THAT THE CAUSE OF ACTION HAD PRESCRIBED, THE COMPLAINT HAVING BEEN FILED AFTER SEVEN (7) YEARS OR ONLY ON 14 OCTOBER 1997, FROM THE TIME THE TITLES WERE ISSUED IN 1990.

III.

THE COURT OF APPEALS ERRONEOUSLY ANCHORED ITS IMPUGNED JUDGMENT ON MISAPPREHENSION OF FACTS THAT THE SALE WERE ANTEDATED, HENCE SIMULATED DESPITE GLARING ABSENCE OF EVIDENCE IN SUPPORT THEREOF.

IV.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN CASTING ASIDE OVERWHELMING EVIDENCE DULY APPRECIATED BY THE TRIAL COURT THAT PETITIONERS

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[17] CA *rollo*, pp. 164-185.

[18] *Id.* at 201-202.

ARE BUYERS IN GOOD FAITH AND FOR VALUE, WHO EXERCISED DOMINION OVER THE SUBJECT LOTS, WHICH IF PROPERLY CONSIDERED, SHALL WARRANT THE SINGULAR CONCLUSION THAT THE SALE AND TRANSFER OF TITLES ARE VALID.[19]

Petitioners' arguments

Petitioners assail the application of Article 1409[20] of the Civil Code on void contracts as against Article 1381(3)[21] of the Civil Code on rescissible contracts in fraud of creditors, considering that the questioned conveyances executed by the spouses Campos to their children were allegedly done to evade the enforcement of the writ of execution in the Possession Case.[22] In addition, petitioners allege that the CA misappreciated the facts of this case when it found that the questioned transactions were tainted with badges of fraud.[23]

Respondents' arguments

Respondents argue that the application of Article 1409 on void contracts was a natural and logical consequence of the

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[19] *Rollo*, pp. 11-12.

[20] Article 1409 of the Civil Code provides:

The following contracts are inexistent and void from the beginning:

x x x x x x x x x

(2) Those which are absolutely simulated or fictitious;

x x x x x x x x x

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[21] Article 1381 of the Civil Code provides:

The following contracts are rescissible:

x x x x x x x x x

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them.

x x x x x x x x x

[22] *Rollo*, p. 127.

[23] *Id.* at 144-145.

CA's finding that subject deeds of sale were absolutely simulated and fictitious, consistent with the nature of the respondents' cause of action which was for declaration of nullity of said contracts and the transfer certificates of titles issued pursuant thereto.[24] Respondents also stressed that the CA's finding is conclusive upon us and that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court.[25]

Our Ruling

The petition lacks merit.

Well-settled is the rule that this Court is not a trier of facts. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding, and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

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

(3) When there is a grave abuse of discretion;

(4) When the judgment is based on a misappreciation 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 is contrary to the admission 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;

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[24] *Id.* at 110-113.

[25] *Id.* at 107-10.

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

(10) When the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.

None of these exceptions is present in this case. We find that the Decision of the CA is supported by the required quantum of evidence.

The subject Deeds of Absolute Sale executed by the Spouses Campos to their children (herein petitioners) are absolutely simulated and fictitious.

The CA correctly held that the assailed Deeds of Absolute Sale were executed when the Possession Case was already pending, evidently to avoid the properties subject thereof from being attached or levied upon by the respondents. While the sales in question transpired on October 18, 1985 and November 2, 1988, as reflected on the Deeds of Absolute Sale, the same were registered with the Registry of Deeds only on October 25, 1990 and September 25, 1990.

We also agree with the findings of the CA that petitioners failed to explain the reasons for the delay in the registration of the sale, leading the appellate court to conclude that the conveyances were made only in 1990 or sometime just before their actual registration and that the corresponding Deeds of Absolute Sale were antedated. This conclusion is bolstered by the fact that the supposed notary public before whom the deeds of sale were acknowledged had no valid notarial commission at the time of the notarization of said documents.[26]

Indeed, the Deeds of Absolute Sale were executed for the purpose of putting the lots in question beyond the reach of creditors. First, the Deeds of Absolute Sale were registered exactly one month apart from each other and about another

[26] Records, pp. 226-227.

one month from the time of the promulgation of the judgment in the Possession Case. The Deeds of Absolute Sale were antedated and that the same were executed when the Possession Case was already pending.

Second, there was a wide disparity in the alleged consideration specified in the Deeds of Absolute Sale and the actual zonal valuation of the subject properties as per the BIR Certification, as follows:

	Consideration specified in Deed of Absolute Sale	Market Value as per Tax Declaration	Computed Zonal Valuation (BIR Certification)
Residential Lots: From Spouses Campos to daughter, Rosemarie Campos	₱ 7,000.00	₱ 83,580.00[27]	₱ 417,900.00[28]
Agricultural Lots: From Spouses Campos to son, Jesus Campos	₱ 5,600.00	₱ 25,000.19[29]	₱ 39,860.00[30]

As correctly noted by the CA, the appraised value of the properties subject of this controversy may be lower at the time of the sale in 1990 but it could not go lower than ₱7,000.00 and ₱5,600.00. We likewise find the considerations involved in the assailed contracts of sale to be inadequate considering the market values presented in the tax declaration and in the BIR zonal valuation.

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[27] *Rollo*, p. 37; Aggregate of the market value of ₱24,780.00 for Lot 3714-A and ₱58,800.00 for Lot 3715-B-2.

[28] *Id.*; Aggregate land area of 1,393 square meters multiplied by the zonal valuation of ₱300/square meter.

[29] *Id.* at 38; Aggregate of the market value of ₱14,698.43 for Lot 850 and ₱10,301.76 for Lot 852.

[30] *Id.* at 37; Aggregate land area of 7,972 square meters multiplied by the zonal valuation of ₱5/square meter.

Third, we cannot believe that the buyer of the 1,393-square meter[31] residential land could not recall the exact area of the two lots she purchased. In her cross-examination, petitioner Rosemarie Campos stated:

> Q: Can you tell us the total area of those two (2) lots that they sold to you?
>
> A: It consists of One Thousand (1,000) Square Meters.[32]
>
> x x x x x x x x x
>
> Q: By the way, for how much did you buy this [piece] of land consisting of 1,000 square meters?
>
> A: Seven Thousand Pesos (₱7,000.00) Your Honor.[33]

Fourth, it appears on record that the money judgment in the Possession Case has not been discharged with. Per Sheriff's Service Return dated November 14, 1995, the *Alias* Writ of Execution and Sheriff's Demand for Payment dated September 19, 1995 remain unsatisfied.

Finally, spouses Campos continue to be in actual possession of the properties in question. Respondents have established through the unrebutted testimony of Rolando Azoro that spouses Campos have their house within Lot 3715-A and Lot 3715-B-2 and that they reside there together with their daughter Rosemarie.[34] In addition, spouses Campos continued to cultivate the rice lands which they purportedly sold to their son Jesus.[35] Meantime, Jesus, the supposed new owner of said rice lands, has relocated to Bulacan[36] where he worked as a security guard.[37] In other words, despite the transfer of the said properties to their children,

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[31] *Id.* at 44-45; Lot 3715-A consists of 413 square meters while Lot 3715-B-2 consists of 980 square meters or a total area of 1,393 square meters.

[32] TSN, May 10, 1999, p. 12.

[33] *Id.* at 14.

[34] *Rollo*, p. 38.

[35] *Id.*

[36] *Id.*

[37] TSN, May 11, 1999, p. 3.

the latter have not exercised complete dominion over the same. Neither have the petitioners shown if their parents are paying rent for the use of the properties which they already sold to their children.

In *Suntay v. Court of Appeals,*[38] we held that:

> The failure of the late Rafael to take exclusive possession of the property allegedly sold to him is a clear badge of fraud. The fact that, notwithstanding the title transfer, Federico remained in actual possession, cultivation and occupation of the disputed lot from the time the deed of sale was executed until the present, is a circumstance which is unmistakably added proof of the fictitiousness of the said transfer, the same being contrary to the principle of ownership.

While in *Spouses Santiago v. Court of Appeals,*[39] we held that "the failure of petitioners to take exclusive possession of the property allegedly sold to them, or in the alternative, to collect rentals from the alleged vendor x x x is contrary to the principle of ownership and a clear badge of simulation that renders the whole transaction void and without force and effect, pursuant to Article 1409 of the Civil Code."

The issuance of transfer certificates of title to petitioners did not vest upon them ownership of the properties.

The fact that petitioners were able to secure titles in their names did not operate to vest upon them ownership over the subject properties. That act has never been recognized as a mode of acquiring ownership.[40] The Torrens system does not create or vest title. It only confirms and records title already existing and vested. It does not protect a usurper from the true owner. It cannot be a shield for the commission of fraud.[41]

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[38] 321 Phil. 809, 832 (1995).

[39] 343 Phil. 612, 622 (1997).

[40] *Berico v. Court of Appeals*, G.R. No. 96306, August 20, 1993, 225 SCRA 469, 480.

[41] *Spouses Santiago v. Court of Appeals*, *supra* note 39 at 623.

In the instant case, petitioner Rosemarie Campos supposedly bought the residential properties in 1985 but did not have the assailed Deed of Absolute Sale registered with the proper Registry of Deeds for more than five years, or until a month before the promulgation of the judgment in the Possession Case. Hence, we affirm the finding of the CA that the purported deed was antedated. Moreover, her failure to take exclusive possession of the property allegedly sold, or, alternatively, to collect rentals is contrary to the principle of ownership and a clear badge of simulation. On these grounds, we cannot hold that Rosemarie Campos was an innocent buyer for value.

Likewise, petitioner Jesus Campos supposedly bought the rice land from his parents in 1988 but did not have the assailed Deed of Absolute Sale registered with the proper Registry of Deeds for more than two years, or until two months before the promulgation of the judgment in the Possession Case. Thus, we likewise affirm the finding of the CA that the purported deed was antedated. In addition, on cross, he confirmed that he had knowledge of the prior pending cases when he supposedly purchased his parents' rice land stating that:

> Q: You never knew that your parents and the plaintiffs in this case have cases in the past prior to this case now, is that right?
>
> A: Yes, sir. I knew about it.
>
> Q: And in spite of your knowledge, that there was a pending case between your parents and the plaintiffs here, you still purchased these two (2) lots 850 and 852 from your parents, is that what you are telling us?
>
> A: All I knew was that, that case was a different case from the subject matter then [sic] the lot now in question.[42]

On these findings of fact, petitioner Jesus Campos cannot be considered as an innocent buyer and for value.

Since both the transferees, Rosemarie and Jesus Campos, are not innocent purchasers for value, the subsequent registration

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[42] TSN, June 22, 1999, p. 11.

procured by the presentation of the void deeds of absolute sale is likewise null and void.

The action for the declaration of the inexistence of the assailed Deeds of Absolute Sale does not prescribe.

Petitioners argue that respondents' cause of action had prescribed when they filed the Nullity of the Sale Case on October 14, 1997, or seven years after the registration of the questioned sales in 1990.

We cannot agree. As discussed above, the sale of subject properties to herein petitioners are null and void. And under Article 1410 of the Civil Code, an action or defense for the declaration of the inexistence of a contract is imprescriptible. Hence, petitioners' contention that respondents' cause of action is already barred by prescription is without legal basis.

Since the assailed Deeds of Absolute Sale are null and void, the Civil Code provisions on rescission have no application in the instant case.

Finally, petitioners' argument that the applicable law in this case is Article 1381(3) of the Civil Code on rescissible contracts and not Article 1409 on void contracts is not a question of first impression. This issue had already been settled several decades ago when we held that "an action to rescind is founded upon and presupposes the existence of a contract."[43] A contract which is null and void is no contract at all and hence could not be the subject of rescission.[44]

In the instant case, we have declared the Deeds of Absolute Sale to be fictitious and inexistent for being absolutely simulated contracts. It is true that the CA cited instances that may constitute

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[43] *Onglengco v. Ozaeta,* 70 Phil 43, 47 (1940).

[44] *Perez v. Court of Appeals*, 380 Phil. 592, 602 (2000).

badges of fraud under Article 1387 of the Civil Code on rescissible contracts. But there is nothing else in the appealed decision to indicate that rescission was contemplated under the said provision of the Civil Code. The aforementioned badges must have been considered merely as grounds for holding that the sale is fictitious. Consequently, we find that the CA properly applied the governing law over the matter under consideration which is Article 1409 of the Civil Code on void or inexistent contracts.

WHEREFORE, the petition is *DENIED*. Costs against petitioners.

SO ORDERED.

Carpio (Chairperson),[**] *Leonardo-de Castro,*[***] *Brion,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 177384. December 8, 2009]

JOSEPHINE WEE, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; APPLICANT FOR REGISTRATION OF LAND TITLE MUST PROVE BY CLEAR, POSITIVE AND CONVINCING EVIDENCE THAT HER POSSESSION OR THAT OF HER PARENTS, WAS OF THE NATURE AND DURATION REQUIRED BY LAW; CASE AT BAR NOT A CASE OF. — In *Director, Land*

[**] Per Special Order No. 775 dated November 3, 2009.

[***] Additional member per Special Order No. 776 dated November 3, 2009.

Management Bureau v. Court of Appeals, we explained that — x x x The phrase "adverse, continuous, open, public, peaceful and in concept of owner," by which characteristics private respondent describes his possession and that of his parents, are mere conclusions of law requiring evidentiary support and substantiation. The burden of proof is on the private respondent, as applicant, to prove by clear, positive and convincing evidence that the alleged possession of his parents was of the nature and duration required by law. His bare allegations without more, do not amount to preponderant evidence that would shift the burden of proof to the oppositor. Here, we find that petitioner's possession of the lot has not been of the character and length of time required by law.

2. ID.; ID.; ID.; INTERMITTENT AND SPORADIC ASSERTION OF OWNERSHIP DOES NOT PROVE OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION; ABSENT OTHER COMPETENT EVIDENCE, TAX DECLARATIONS DO NOT CONCLUSIVELY ESTABLISH EITHER POSSESSION OR DECLARANT'S RIGHT TO REGISTRATION OF TITLE. — Unfortunately, petitioner failed to prove that she and her predecessor-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the subject property under a *bona fide* claim of ownership since June 12, 1945. First, there is nothing in the records which would substantiate her claim that Julian Gonzales was in possession of Lot No. 8349 since 1945, other than the bare allegations of Juana Gonzales. Certainly, these unsubstantiated statements do not meet the required quantum of evidence in land registration cases. In fact, contrary to her testimony that her late husband inherited the property from his parents "a long time ago," or even prior to 1945, the earliest tax declaration that was presented in this case is one declared by Julian Gonzales only in 1957 — long after June 1945. It bears stressing that petitioner presented only five tax declarations (for the years 1957, 1961, 1967, 1980 and 1985) for a claimed possession and occupation of more than 45 years (1945-1993). This type of intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession and occupation. In any event, in the absence of other competent evidence, tax declarations do not conclusively establish either possession or declarant's right to registration of title.

3. **ID.; ID.; ID.; THE APPLICANT FOR REGISTRATION OF LAND TITLE MUST DEMONSTRATE THAT HER POSSESSION OF THE PROPERTY WAS IN THE CONCEPT OF AN OWNER. —** [W]e agree with the CA that petitioner was unable to demonstrate that the alleged possession was in the concept of an owner, since she could not point to any acts of occupation, development, cultivation or maintenance over the property. Petitioner claims that because the property is planted with coffee, a fruit-bearing tree, it automatically follows that the lot is cultivated, showing actual possession and occupation. However, petitioner failed to explain who planted the coffee, whether these plants are maintained or harvested or if any other acts were undertaken by petitioner or her predecessor-in-interest to cultivate the property.

4. **ID.; ID.; ID.; ID.; MERE CASUAL CULTIVATION OF THE LAND DOES NOT AMOUNT TO EXCLUSIVE AND NOTORIOUS POSSESSION THAT WOULD GIVE RISE TO OWNERSHIP. —** Even if we were to assume that the coffee was planted by petitioner's predecessor-in-interest, "mere casual cultivation" of the land does not amount to exclusive and notorious possession that would give rise to ownership. The presence of an unspecified number of coffee plants, without proof that petitioner or her predecessor-in-interest actually and deliberately cultivated them is not sufficient to support a claim of title. In fact, the five tax declarations in the name of Julian Gonzales described the lot as "unirrigated riceland." No improvements or plantings were declared or noted in any of these tax declarations. It was only in petitioner's 1993 tax declaration that the land was described as planted with coffee. We are, therefore, constrained to conclude that the mere existence of an unspecified number of coffee plants, *sans* any evidence as to who planted them, when they were planted, whether cultivation or harvesting was made or what other acts of occupation and ownership were undertaken, is not sufficient to demonstrate petitioner's right to the registration of title in her favor.

APPEARANCES OF COUNSEL

Agabin Verzola & Layaoen Law Offices for petitioner.
The Solicitor General for respondent.

DECISION

DEL CASTILLO, *J.*:

In land registration cases, the applicant has the burden to show that he or she is the real and absolute owner in fee simple of the land sought to be registered.[1] It is also important to bear in mind that one who seeks registration of title must prove his or her claim with "well-nigh incontrovertible" evidence.[2] In this case, petitioner miserably failed to show that she is the real and absolute owner in fee simple of the land sought to be registered.

Assailed in this Petition for Review on *Certiorari*[3] under Rule 45 of the Rules of Court are the April 28, 2006 Decision[4] of the Court of Appeals (CA) and its subsequent Resolution[5] dated April 3, 2007 in CA-G.R. CV No. 76519. Said Decision and Resolution reversed and set aside the April 2, 2002 Judgment[6] of the Regional Trial Court (RTC) of Tagaytay City, Branch 18 and held that petitioner was not entitled to the requested registration of title.

Proceedings before the Regional Trial Court

On December 22, 1994, petitioner filed an Application for Registration of Title[7] over a 4,870-square meter parcel of land situated in Barangay Puting Kahoy, Silang, Cavite, designated as Lot No. 8349 (Cadastral Lot. No. 452-D).

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[1] *Diaz-Enriquez v. Republic of the Phils.*, 480 Phil. 787, 800 (2004).

[2] *Turquesa v. Valera,* 379 Phil. 618, 631 (2000).

[3] *Rollo*, pp. 9-33.

[4] CA *rollo,* pp. 94-101; penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Aurora Santiago-Lagman and Arcangelita Romilla-Lontok.

[5] *Id.* at 135-137.

[6] Records, pp. 241-242, penned by Presiding Judge Alfonso S. Garcia.

[7] *Id.* at 1-12. Petitioner attached the following documents to her Application: Plan Ap. 04-006774 in tracing cloth and blueprint, technical descriptions, tax declaration no. 32282-A, receipts of payments of real estate taxes and the Deed of Absolute Sale between Julian Gonzales and Josephine Wee.

In brief, petitioner alleged in her application that she is the owner in fee simple of the subject property by virtue of a Deed of Absolute Sale[8] dated February 1, 1993 executed by Julian Gonzales in her favor. Petitioner claimed the benefits of the Property Registration Decree[9] or, should said Decree be inapplicable, the benefits of Chapter VIII of Commonwealth Act No. 141 (1936),[10] because she and her predecessor-in-interest have been in open, continuous, public, peaceful and adverse possession of the land since time immemorial.

On March 15, 1995, the Republic of the Philippines, through the Office of the Solicitor General (OSG), filed its Opposition[11] alleging that neither the petitioner nor her predecessor-in-interest has been in open, continuous, exclusive and notorious possession and occupation of Lot No. 8349 since June 12, 1945 or prior thereto. The OSG likewise averred that the muniments of title and tax payment receipts submitted by the petitioner do not constitute competent or sufficient evidence of a *bona fide* acquisition of the subject lot, or of the petitioner's open, continuous, exclusive and notorious possession and occupation thereof in the concept of owner since June 12, 1945 or prior thereto. It asserted that Lot No. 8349 is part of the public domain and consequently prayed for the dismissal of the application for registration.

Petitioner presented the following pieces of documentary evidence before the trial court:

1) Deed of Absolute Sale between Josephine Wee and Julian Gonzales dated February 1, 1993;[12]

2) Tax Declarations in the name of Julian Gonzales for the years 1957, 1961, 1967, 1980, and 1985;[13]

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[8] *Id.* at 7-9.

[9] Presidential Decree No. 1529 (1978).

[10] The Public Land Act.

[11] Records, pp. 17-19.

[12] *Id.* at 7-9.

[13] *Id.* at 103-109.

3) Tax Declarations in the name of Josephine Wee from 1993 onwards;[14]

4) Receipts for tax payments made by Josephine Wee from 1993-1999;[15]

5) Affidavit of Seller-Transferor executed by Julian Gonzales on February 10, 1993;[16]

6) Affidavit of Ownership, Aggregate Land Holding and Non-Tenancy executed by Julian Gonzales on February 10, 1993;[17]

7) Affidavit of Non-Tenancy executed by Julian Gonzales on February 10, 1993;[18]

8) *Salaysay* executed by Juana Macatangay Gonzales, Erlinda Gonzales Batingal and Remedios Gonzales Bayan;[19]

9) Certification dated March 2, 2000 by the Department of Environment and Natural Resources (DENR) stating that Lot No. 8349 was shown to be within the Alienable or Disposable Land per Land Classification Map No. 3013 established under FAO-4-1656 on March 15, 1982;[20]

10) Survey Plan of Lot No. 8349;[21] and

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[14] *Id.* at 110-113.

[15] *Id.* at 114-121.

[16] *Id.* at 130, stating that the land sold to Josephine Wee is his only land owned, in compliance with Department of Agrarian Reform Administrative Order No. 1 (series 1989).

[17] *Id.* at 131, indicating the technical description of Lot No. 8349.

[18] *Id.* at 132, stating that Julian Gonzales is the "absolute and register[ed] owner of a certain parcel of land situated at Puting Kahoy, Silang Cavite covered by Tax Declaration 15196 of the Assessor's Office of Silang x x x."

[19] *Id.* at 125-126, affirming the due execution and authenticity of the documents signed by Julian Gonzales.

[20] *Id.* at 202.

[21] *Id.*

11) Surveyor's Certificate, Technical Description and Tracing Cloth.[22]

She also presented the testimonies of the following witnesses who were all cross-examined by the Republic through the public prosecutor:

1) Josephine Wee, who testified that she purchased Lot No. 8349 from Julian Gonzales through a Deed of Absolute Sale dated February 1, 1993 and immediately took possession thereof after the sale; that she did not cultivate it because it is planted with coffee; that she paid for all the real property taxes subsequent to the sale; that she caused the preparation of a survey plan; that the property is not part of the public domain or any river or military reservation; that there are no adverse claimants and no cases were filed against her after the sale involving said lot and that she is not doing anything with the property because it is not "productive."[23]

2) Juana Gonzales, the 75-year old widow of Julian Gonzales, who declared that she and her husband sold Lot No. 8349 to the petitioner and identified her husband's signature and her own thumbmark. She testified that she and her late husband had been in possession of Lot No. 8349 prior to the sale to Josephine Wee; that her husband inherited the property from his parents "a long time ago"; that her husband already had the property when they got married and that she and Julian Gonzales began living together in 1946. She also identified and affirmed the due execution and authenticity of her *Salaysay*, as well as the documents signed by her husband.[24]

3) Remedios Gonzales Bayan, the 39-year old daughter of Julian and Juana Gonzales, who testified that she

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[22] *Id.* at 211-213.

[23] TSN, February 24, 2000, pp. 1-25.

[24] TSN, March 9, 2000, pp. 1-16.

> witnessed the execution of the Deed of Absolute Sale between her father whose signature she identified and the applicant in February 1993. She also identified and affirmed the due execution and authenticity of her *Salaysay*.[25]

Ruling of the Regional Trial Court

On April 2, 2002, the RTC promulgated in favor of the petitioner a Judgment,[26] pertinent portions of which read:

> Culled from the evidence on record, both testimonial and documentary, are facts which satisfactorily establish applicant's ownership in fee simple of the parcel of land, subject matter of the instant proceedings, to wit: that by means of an appropriate deed of sale, the applicant has acquired said property by purchase from Julian Gonzales on February 1, 1993; that the same parcel was declared for taxation purposes; that all the realty taxes due thereon have been duly paid. Likewise, this Court could well-discern from the survey plan covering the same property and other documents presented, more particularly the tracing cloth plan which was presented as additional evidence in support of the application, that the land sought to be registered is agricultural and not within any forest zone or the public domain; that the land is not covered by any public land application/patent, and that there is no other adverse claimant thereof; and further, that tacking her predecessors-in-interest's possession to applicant's, the latter appears to be in continuous and public possession thereof for more than thirty (30) years.
>
> On the basis of the foregoing facts and considering that applicant is a Filipino citizen not otherwise disqualified from owning real property, this Court finds that she has satisfied all the conditions essential to the grant of her application pursuant to the provisions of the Land Registration Law, as amended.
>
> WHEREFORE, this Court hereby approves this application for registration and thus places under the operation of Act 141, Act 496 and/or P.D. 1529, otherwise known as Property Registration Law, the lands described in Plan Ap-04-010262, Lot 8349 and containing an area of Four Thousand Eight Hundred Seventy (4,870)

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[25] TSN, May 18, 2000, pp. 1-8.

[26] Records, pp. 241-242; reference as to exhibits were omitted.

Square Meters as supported by its technical description now forming part of the record of this case, in addition to other proofs adduced in the name of JOSEPHINE WEE, who is of legal age, single and with residence at 1345 Claro M. Recto Avenue, Sta, Cruz, Manila.

Once this Decision becomes final and executory, the corresponding decree of registration shall forthwith issue.

SO ORDERED.

Proceedings before the Court of Appeals

Unsatisfied, the Republic, through the OSG, filed its Notice of Appeal on April 26, 2002, alleging that the RTC erred in granting the application for registration considering that petitioner failed to comply with all the legal requirements for judicial confirmation of her alleged title. In particular, the OSG claimed that Lot No. 8349 was classified as alienable and disposable land only on March 15, 1982, as per Certification issued by the DENR. Thus, petitioner and her predecessor-in-interest could not have been in possession of the property since June 12, 1945, or earlier. The OSG also pointed out that the tax declarations presented by petitioner are fairly recent and do not show petitioner and her predecessor-in-interest's nature of possession. Furthermore, the original tracing cloth plan was not presented in evidence.

Ruling of the Court of Appeals

The CA reversed the RTC Judgment. It held that petitioner failed to prove that she and her predecessor-in-interest have been in possession and occupation of the subject lot under a *bona fide* claim of ownership since June 12, 1945. Thus:

In granting the application for registration of title, the court *a quo* merely relied on the deed of sale executed by Julian Gonzales, in favor of applicant-appellee on February 1, 1993, the tax declarations and tax receipts. It is interesting to note that Juana Gonzales, widow of Julian Gonzales, after identifying the deed of sale executed by her deceased husband in favor of applicant-appellee, merely stated that the lot subject thereof was inherited by Julian from his parents a long time ago and that Julian was in possession of the lot since 1946 when they started living together. For her part, applicant-appellee

testified that she immediately took possession of the subject lot, which was planted with coffee, after acquiring the same and that she is not doing anything on the lot because it is not productive. As pointed out by the Republic, applicant-appellee and Juana Gonzales failed to specify what acts of development, cultivation, and maintenance were done by them on the subject lot. x x x

x x x x x x x x x

In the case at bar, applicant-appellee merely claimed that the subject lot is planted with coffee. However, no evidence was presented by her as to who planted the coffee trees thereon. In fact, applicant-appellee admitted that she is not doing anything on the subject lot because it is not productive, thereby implying that she is not taking care of the coffee trees thereon. Moreover, tax declarations and tax receipts are not conclusive evidence of ownership but are merely indicia of a claim of ownership, aside from the fact that the same are of recent vintage.[27]

Hence, this petition.

Issues

Petitioner's arguments

1) The testimony of Juana Gonzales proves that petitioner's predecessor-in-interest, Julian Gonzales, occupied Lot No. 8349 even prior to 1946;

2) The fact that the property is planted with coffee, a fruit bearing tree, reveals that the lot is planted, cultivated and cared for. Thus, there was not only effective and active possession and occupation but actual cultivation and tending of the coffee plantation; and

3) The fact that the land was declared for tax purposes as early as 1957 shows that the land was actively possessed and occupied by petitioner and her predecessor-in-interest.

Respondent's arguments:

1) Since Lot No. 8349 became part of the alienable and disposable land only on March 15, 1982, petitioner could

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[27] CA *rollo*, pp. 99-101.

not have been considered as having been in open, continuous, exclusive and notorious possession and occupation of subject property under a *bona fide* claim of ownership; and

2) There is no proof that petitioner or Julian Gonzales undertook any clear act of dominion or ownership over Lot No. 8349, since there are no structures, improvements, or plantings on the property.

Our Ruling

The petition lacks merit.

Petitioner failed to prove open, continuous, exclusive and notorious possession of the subject property.

In *Director, Land Management Bureau v. Court of Appeals*,[28] we explained that —

> x x x The phrase "adverse, continuous, open, public, peaceful and in concept of owner," by which characteristics private respondent describes his possession and that of his parents, are mere conclusions of law requiring evidentiary support and substantiation. The burden of proof is on the private respondent, as applicant, to prove by clear, positive and convincing evidence that the alleged possession of his parents was of the nature and duration required by law. His bare allegations without more, do not amount to preponderant evidence that would shift the burden of proof to the oppositor.

Here, we find that petitioner's possession of the lot has not been of the character and length of time required by law. The relevant provision of the Property Registration Decree relied upon by petitioner reads —

> SEC. 14. *Who may apply*. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

[28] 381 Phil. 761, 772 (2000).

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws. x x x

Unfortunately, petitioner failed to prove that she and her predecessor-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the subject property under a *bona fide* claim of ownership since June 12, 1945.

First, there is nothing in the records which would substantiate her claim that Julian Gonzales was in possession of Lot No. 8349 since 1945, other than the bare allegations of Juana Gonzales.[29] Certainly, these unsubstantiated statements do not meet the required quantum of evidence in land registration cases. In fact, contrary to her testimony that her late husband inherited the property from his parents "a long time ago," or even prior to 1945, the earliest tax declaration that was presented in this

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[29] In the hearing on March 9, 2000 (TSN, pp. 14-15), Juana Gonzales testified as follows:

Q.	How did you and your husband, Mr. Julian Gonzales, acquire the property?
A.	My husband inherited it from his parents, sir.
Q.	Can you recall, more or less, when your husband inherited this property?
A.	Long time ago, sir.
COURT	When you were already married to him or before your marriage?
A.	When we got married, it was already with him, sir.
FISCAL VELAZCO:	And do you still recall when you got married with Mr. Julian Gonzales?
WITNESS	Since the year 1946, we started living together, sir.
FISCAL VELAZCO:	And you continuously owned and possessed this property up to the time you sold the same?
A.	Yes, sir.

case is one declared by Julian Gonzales only in 1957 — long after June 1945.

It bears stressing that petitioner presented only five tax declarations (for the years 1957, 1961, 1967, 1980 and 1985) for a claimed possession and occupation of more than 45 years (1945-1993). This type of intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession and occupation. In any event, in the absence of other competent evidence, tax declarations do not conclusively establish either possession or declarant's right to registration of title.[30]

Petitioner failed to prove possession in the concept of an owner.

Second, and more importantly, we agree with the CA that petitioner was unable to demonstrate that the alleged possession was in the concept of an owner, since she could not point to any acts of occupation, development, cultivation or maintenance over the property. Petitioner claims that because the property is planted with coffee, a fruit-bearing tree, it automatically follows that the lot is cultivated, showing actual possession and occupation. However, petitioner failed to explain who planted the coffee, whether these plants are maintained or harvested or if any other acts were undertaken by petitioner or her predecessor-in-interest to cultivate the property.

Even if we were to assume that the coffee was planted by petitioner's predecessor-in-interest, "mere casual cultivation" of the land does not amount to exclusive and notorious possession that would give rise to ownership.[31] The presence of an unspecified number of coffee plants, without proof that petitioner or her

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[30] *Director of Forestry v. Villareal*, 252 Phil. 622, 635 (1989); *Government of the Philippine Islands v. Adriano*, 41 Phil. 112 (1920); *Cruado v. Bustos and Escaler*, 34 Phil. 17 (1916); *Evangelista v. Tabayuyong*, 7 Phil 607 (1907).

[31] *Director of Lands v. Judge Reyes*, 160-A Phil. 832, 851 (1975); *Ramirez v. Director of Lands*, 60 Phil. 114 (1934).

predecessor-in-interest actually and deliberately cultivated them is not sufficient to support a claim of title. In fact, the five tax declarations in the name of Julian Gonzales described the lot as "unirrigated riceland." No improvements or plantings were declared or noted in any of these tax declarations. It was only in petitioner's 1993 tax declaration that the land was described as planted with coffee. We are, therefore, constrained to conclude that the mere existence of an unspecified number of coffee plants, *sans* any evidence as to who planted them, when they were planted, whether cultivation or harvesting was made or what other acts of occupation and ownership were undertaken, is not sufficient to demonstrate petitioner's right to the registration of title in her favor.

WHEREFORE, the petition is *DENIED*. The Court of Appeals' April 28, 2006 Decision in CA-G.R. CV No. 76519 and its Resolution dated April 3, 2007 denying petitioner's Motion for Reconsideration are both *AFFIRMED*.

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.

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Appeals involving money claims in labor cases — Article 223 of the Labor Code which prescribes the appeal bond requirement is a rule of jurisdiction and not of procedure; non-compliance with such legal requirement is fatal and has the effect of rendering the judgment final and executory. (Ramirez *vs.* CA, G.R. No. 182626, Dec. 04, 2009) p. 782

— Basis of determination of amount of bond to be posted. *(Id.)*

— Nothing in the Labor Code or the NLRC Rules of Procedure authorizes the posting of a bond that is less than the monetary award in the judgment, or deems such insufficient posting as sufficient to perfect appeal. *(Id.)*

— Posting of a bond is not only indispensable and mandatory but also a jurisdictional requirement that must be complied with in order to confer jurisdiction upon the NLRC. *(Id.)*

Factual findings of quasi-judicial bodies — 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. (Formantes *vs.* Duncan Pharmaceuticals, Phils., Inc., G.R. No. 170661, Dec. 04, 2009) p. 287

(Roxas & Co., Inc. *vs.* DAMBA-NFSW, G.R. No. 149548, Dec. 04, 2009) p. 38

Factual findings of the Court of Appeals — Generally conclusive and binding on the parties and are not reviewable by this Court; exceptions. (Campos *vs.* Pastrana, G.R. No. 175994, Dec. 08, 2009) p. 926

Perfection of — Perfection of appeals in the manner and within the period permitted by law is not only mandatory but jurisdictional. (Roxas & Co., Inc. *vs*. DAMBA-NFSW, G.R. No. 149548, Dec. 04, 2009) p. 38

Petition for review on certiorari — Distinguished from special civil action for *certiorari* under Rule 65. (Cua, Jr. *vs*. Tan, G.R. No. 181455-56, Dec. 04, 2009) p. 654

Points of law, theories, issues and arguments — Alleged issue of impairment of legitime cannot be considered, as the same was only raised for the first time on appeal. (Gutierrez *vs*. Mendoza-Plaza, G.R. No. 185477, Dec. 04, 2009) p. 844

ATTORNEYS

Code of Professional Responsibility — Duty of lawyer to observe rules and procedures, and not misuse them to defeat the ends of justice; violated when lawyer abused court procedures and processes to shield a client from execution of final judgment. (Que *vs*. Atty. Revilla, Jr., A.C. No. 7054, Dec. 04, 2009) p. 1

Duties — Duty of lawyer to observe candor and fairness in his dealings with the court; violated when lawyer committed willful, intentional and deliberate falsehood in the pleadings he filed. (Que *vs*. Atty. Revilla, Jr., A.C. No. 7054, Dec. 04, 2009) p. 1

— Lawyer's discretion to determine legal strategy can never be at the expense of truth and justice. *(Id.)*

— Lawyer must conduct himself with courtesy, fairness, and candor toward his professional colleagues; violated when respondent lawyer imputed wrongdoing to another lawyer without bases. *(Id.)*

— Lawyer must represent client with zeal within the bounds of law; lawyer obligated to employ only such means as is consistent with truth and honor. *(Id.)*

Professional misconduct — Committed when lawyer represented parties without proper authorization in violation of Sections

21 and 27, Rule 138 of the Rules of Court. (Que *vs*. Atty. Revilla, Jr., A.C. No. 7054, Dec. 04, 2009) p. 1

ATTORNEY'S FEES

Award of — The award of attorney's fees is limited to ten percent (10%) of the monetary award. (Abante *vs*. KJGS Fleet Management Manila and/or Guy Domingo A. Macapayag, G.R. No. 182430, Dec. 04, 2009) p. 761

— When deemed just and equitable. (Iloreta *vs*. Phil. Transmarine Carriers, Inc., G.R. No. 183908, Dec. 04, 2009) p. 832

BILL OF RIGHTS

Right to speedy trial — The time limit set by the Speedy Trial Act of 1998 does not preclude justifiable postponements and delays when so warranted by the situation. (Olbes *vs*. Judge Buemio, G.R. No. 173319, Dec. 04, 2009) p. 357

CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY

Nature — The proceedings contemplated therein may generally be used only to correct clerical, spelling, typographical and other innocuous errors. (Braza *vs*. City Civil Registrar of Himamaylan City, Negros Occidental, G.R. No. 181174, Dec. 04, 2009) p. 654

CERTIORARI

Grave abuse of discretion as a ground — Construed. (Carabeo *vs*. CA, G.R. Nos. 178000 and 178003, Dec. 04, 2009) p. 413

— No grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Special Sixth Division of the Court of Appeals in not giving due deference to the decision of its co-division because the decision of its co-division is not binding on its other division. (Quasha Ancheta Peña & Nolasco Law Office *vs*. Special Sixth Division of the CA, G.R. No. 182013, Dec. 04, 2009) p. 738

— Present when trial court judge admitted the amended information despite full knowledge that the COMELEC ordered the City Prosecutor to suspend further implementation of the questioned resolution until final resolution of the appeal before it. (Diño *vs*. Olivarez, G.R. No. 170447, Dec. 04, 2009) p. 269

Petition for — No reversible error on the part of the Court of Appeals in dismissing the petition on the ground of failure to state material dates; three material dates that must be stated in the petition. (Ramirez *vs*. CA, G.R. No. 182626, Dec. 04, 2009) p. 782

— When available. (Fua, Jr. *vs*. COA, G.R. No. 175803, Dec. 04, 2009) p. 368

CIVIL SERVICE

Gross neglect of duty — Classified as grave offense punishable by dismissal; first offense as mitigating circumstance, negated by the gravity of the offense. (Atty. Francisco *vs*. Galvez, A.M. No. P-09-2636, Dec. 04, 2009) p. 25

CLERKS OF COURT

Conduct — Required decorum, discussed. (Atty. Francisco *vs*. Galvez, A.M. No. P-09-2636, Dec. 04, 2009) p. 25

COMMISSION ON ELECTIONS

COMELEC Rules of Procedure — Continuing delegation of authority to other prosecuting arms of the government (Sec. 2, Rule 34) and appeals from the action of the state prosecutor, provincial or city fiscal (Sec. 10); COMELEC has power to revoke delegated authority, or modify and reverse the resolution of the Chief State Prosecutor, all provincial and city fiscals, and/or their respective assistants. (Diño *vs*. Olivarez, G.R. No. 170447, Dec. 04, 2009) p. 269

Powers and functions — COMELEC's power to investigate and prosecute election cases, discussed. (Diño *vs*. Olivarez, G.R. No. 170447, Dec. 04, 2009) p. 269

CONTRACTS

Elements — Cited. (First Philippine Holdings Corp. *vs*. Trans Middle East [Phils.] Equities Inc., G.R. No. 179505, Dec. 04, 2009) p. 623

Voidable contracts — Action for annulment of voidable contracts shall be filed within four years from the discovery of the fraud. (First Philippine Holdings Corp. *vs*. Trans Middle East (Phils.) Equities Inc.,G.R. No. 179505, Dec. 04, 2009) p. 623

— Construed. *(Id.)*

CORPORATIONS

Board of Directors — Powers and functions, cited. (Cua, Jr. *vs*. Tan, G.R. No. 181455-56, Dec. 04, 2009) p. 654

Corporate powers — All corporate powers shall be exercised and all corporate business shall be conducted by the Board of Directors; clarified. (First Philippine Holdings Corp. *vs*. Trans Middle East [Phils.] Equities Inc., G.R. No. 179505, Dec. 04, 2009) p. 623

Derivative suit — Distinguished from individual and representative or class suits. (Cua, Jr. *vs*. Tan, G.R. No. 181455-56, Dec. 04, 2009) p. 654

— Effect of filing two derivative suits arising from the same factual background, explained. *(Id.)*

— The real party-in-interest in a derivative suit is the corporation. *(Id.)*

Liability of officers — Corporate officers of a corporation cannot be made personally liable for obligations of the corporation absent any proof that the officers maliciously and deliberately caused the default on their obligation without any valid reason. (Shrimp Specialists, Inc. *vs*. Fuji-Triumph Agri-Industrial Corp., G.R. No. 168756, Dec. 07, 2009) p. 870

Stockholders — When stockholder may institute a suit in behalf of himself and other stockholders and for the benefit of the

corporation. (Cua, Jr. *vs*. Tan, G.R. No. 181455-56, Dec. 04, 2009) p. 654

Stockholder's appraisal rights — Defined and construed. (Cua, Jr. *vs*. Tan, G.R. No. 181455-56, Dec. 04, 2009) p. 654

— Instances when available. *(Id.)*

Stockholder's right to institute a derivative suit — When proper; requirements. (Cua, Jr. *vs*. Tan, G.R. No. 181455-56, Dec. 04, 2009) p. 654

COURT PERSONNEL

Code of Conduct for Court Personnel — Duty to perform official duties properly and with diligence; certifying a photocopy without verifying the truthfulness thereof from the records, not proper. (Atty. Francisco *vs*. Galvez, A.M. No. P-09-2636, Dec. 04, 2009) p. 25

Conduct — Required decorum. (Atty. Francisco *vs*. Galvez, A.M. No.P-09-2636, Dec. 04, 2009) p. 25

Gross neglect of duty – Committed when court employee certified a spurious and non-existent decision; defense of good faith, not acceptable. (Atty. Francisco *vs*. Galvez, A.M. No. P-09-2636, Dec. 04, 2009) p. 25

COURTS

Jurisdiction — When acquired. (Pascual *vs*. Pascual, G.R. No. 171916, Dec. 04, 2009) p. 307

DAMAGES

Attorney's fees — Award thereof is limited to ten percent (10%) of the monetary award. (Abante *vs*. KJGS Fleet Management Manila, G.R. No. 182430, Dec. 04, 2009) p. 761

— When award thereof deemed just and equitable. (Iloreta *vs*. Phil. Transmarine Carriers, Inc., G.R. No. 183908, Dec. 04, 2009) p. 832

Exemplary damages — Grant thereof if the defendant acted with gross negligence, sustained. (Metropolitan Bank and Trust Co. *vs*. BA Finance Corp., G.R. No. 179952, Dec. 04, 2009) p. 637

Interest — Legal interest of 12% should be granted only for an obligation which arose out of a loan or forbearance of money. (Metropolitan Bank and Trust Co. *vs*. BA Finance Corp., G.R. No. 179952, Dec. 04, 2009) p. 637

Moral and exemplary damages — Cannot be granted there being no concrete showing of bad faith or malice on the part of respondent. (Abante *vs*. KJGS Fleet Management Manila, G.R. No. 182430, Dec. 04, 2009) p. 761

Nominal damages — Proper in case of dismissal of employee with valid cause but without due process of law. (Formantes *vs*. Duncan Pharmaceuticals, Phils., Inc., G.R. No. 170661, Dec. 04, 2009) p. 287

DANGEROUS DRUGS

Illegal possession of dangerous drugs — Elements. (People *vs*. Gutierrez, G.R. No. 177777, Dec. 04, 2009) p. 396

Illegal sale of dangerous drugs — Imposable penalty. (People *vs*. Gutierrez, G.R. No. 177777, Dec. 04, 2009) p. 396

DENIAL OF THE ACCUSED

Defense of — Cannot prevail over positive and credible declarations of the victim and her witnesses testifying on affirmative matters. (People *vs*. Teodoro, G.R. No. 172372, Dec. 04, 2009) p. 328

DONATION

Validity of — Non-registration of the deed of donation does not affect the validity of the donation. (Gutierrez *vs*. Mendoza-Plaza, G.R. No. 185477, Dec. 04, 2009) p. 844

DUE PROCESS

Essence — The essence of due process is a hearing before conviction and before an impartial and disinterested tribunal but due process as a constitutional precept does

not, always and in all situations, require a trial-type proceeding. (Formantes *vs.* Duncan Pharmaceuticals, Phils., Inc., G.R. No. 170661, Dec. 04, 2009) p. 287

EMINENT DOMAIN

Just compensation — Obligation of the state to pay just compensation, emphasized. (Apo Fruits Corp. *vs*. CA, G.R. No. 164195, Dec. 04, 2009; *Chico-Nazario, J., dissenting opinion*) p. 215

— Taking of property under the Comprehensive Agrarian Reform Law (CARL); just compensation; interest therein proper only in case of delay in payment. *(Id.)*

— When legal interest therein is in order; elucidated. *(Id.)*

EMPLOYER-EMPLOYEE RELATIONSHIP

Existence of — The contract between the principal and the contractor is not the final word on how the contracted workers relate to the principal and the purported contractor; the relationships must be tested on the basis of how they actually operated. (Coca-Cola Bottlers Phils., Inc. *vs.* Dela Cruz, G.R. No. 184977, Dec. 07, 2009) p. 886

— The contracted personnel engaged in the component functions in the main business of the company under the latter's supervision and control are considered regular employees of the company. *(Id.)*

EMPLOYMENT, TERMINATION OF

Constructive dismissal — Exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment. (Formantes *vs*. Duncan Pharmaceuticals, Phils., Inc., G.R. No. 170661, Dec. 04, 2009) p. 287

Due process — Failure to give formal notice of the just cause will not eradicate the same if it actually exists and is established during the proceedings. (Formantes *vs.* Duncan Pharmaceuticals, Phils., Inc., G.R. No. 170661, Dec. 04, 2009) p. 287

— The National Labor Relations Commission did not err in considering the issue of the veracity of the confirmatory tests even if the same was raised only in employees' motion for reconsideration of its decision, it being crucial in determining the validity of employees' dismissal from their employment. (Plantation Bay Resort & Spa *vs*. Dubrico, G.R. No. 182216, Dec. 04, 2009) p. 753

Sexual harassment committed against a subordinate — Sexual harassment is a valid cause for separation from service. (Formantes *vs*. Duncan Pharmaceuticals, Phils., Inc., G.R. No. 170661, Dec. 04, 2009) p. 287

EXECUTIVE DEPARTMENT

Department of Finance Revenue Integrity Protection Service (DOF-RIPS) — Creation thereof through Executive Order 259, sustained. (Carabeo *vs*. CA, G.R. Nos. 178000 and 178003, Dec. 04, 2009) p. 413

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine of — The general rule is that before a party may seek the intervention of the court, he should first avail himself of all the means afforded him by administrative processes. (Fua, Jr. *vs*. COA, G.R. No. 175803. Dec. 04, 2009) p. 368

EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (ACT NO. 3135)

Posting and publication requirement — The law does not intend that notices to the public be posted in specific bulletin boards or information areas of a public place; what the law directs is for notices to be placed in an area where the same is perceptible to the public. (Sps. Marcelo *vs*. PCI Bank, G.R. No. 182735, Dec. 04, 2009) p. 813

— The newspaper need not have the largest publication so long as it is of general circulation. *(Id.)*

FORUM SHOPPING

Certificate of non-forum shopping — Alleged defect in the verification and certification is a minor and technical one

which should not defeat the petition and one that can be overlooked in the interest of substantial justice taking into account the merits of the case. (Coca-Cola Bottlers Phils., Inc. *vs*. Dela Cruz, G.R. No. 184977, Dec. 07, 2009) p. 886

Definition — Forum shopping is the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. (Cua, Jr. *vs*. Tan, G.R. No. 181455-56, Dec. 04, 2009) p. 654

GRAVE COERCION

Commission of — Elements. (Navarra *vs*. Office of the Ombudsman, G.R. No. 176291, Dec. 04, 2009) p. 376

JUDGMENTS

Conclusiveness of — Rationale for respecting conclusiveness of judgment. (Quasha Ancheta Peña & Nolasco Law Office *vs*. Special Sixth Division of the CA, G.R. No. 182013, Dec. 04, 2009) p. 738

Execution of — May be achieved by motion or by independent action; distinguished. (Ty *vs*. Queen's Row Subdivision, Inc., G.R. No. 173158, Dec. 04, 2009) p. 346

Finality of judgment — Importance thereof, explained. (Pascual *vs*. Pascual, G.R. No. 171916, Dec. 04, 2009) p. 307

— No cogent reason that would sway the court to make a radical departure from its hesitancy to reopen a case that has attained finality. (Sps. Marcelo *vs*. PCI Bank, G.R. No. 182735, Dec. 04, 2009) p. 813

— Once a judgment has become final and executory, it can no longer be disturbed, altered or modified except for clerical errors. *(Id.)*

— Rule on finality of decisions, orders and resolutions of a judicial, quasi-judicial or administrative body; construed. (Fua, Jr. *vs*. COA, G.R. No. 175803, Dec. 04, 2009) p. 368

— Void judgment can never become final. (Pascual *vs*. Pascual, G.R. No. 171916, Dec. 04, 2009) p. 307

Immutability of judgment — Elucidated. (Apo Fruits Corp. *vs*. CA, G.R. No. 164195, Dec. 04, 2009; *Bersamin, J., dissenting opinion)* p. 215

— Exceptions; not applicable in case at bar which concerns only a private claim for interest and attorney's fees. *(Id.)*

— Recall of entries of judgment still possible in the interest of substantial justice. *(Id.)*

Law of the Case Doctrine — The same issue can no longer be re-litigated. (Dela Cruz *vs*. Sandiganbayan, G.R. No. 161929, Dec. 08, 2009) p. 908

Res judicata — Two concepts of *res judicata*, discussed. (Quasha Ancheta Peña & Nolasco Law Office *vs*. Special Sixth Division of the CA, G.R. No. 182013, Dec. 04, 2009) p. 738

JUST COMPENSATION

Determination of — Remand of the case to the court of origin is proper for the determination of the correct valuation of the subject land. (Land Bank of the Phils. *vs*. Kumassie Plantation Co., Inc., G.R. No. 177404, Dec. 04, 2009) p. 387

LABOR DISPUTES

Certification to the National Labor Relations Commission — Certifying the labor dispute to the NLRC for compulsory arbitration, enjoining the striking union members to return to work and the employer to admit them under the same terms and conditions prevailing before the strike, proper. (YSS Employees Union–Phil. Transport and General Workers Organization *vs*. YSS Laboratories, Inc., G.R. No. 155125, Dec. 04, 2009) p. 201

Return to work order — Return to work order is mandatory, not discretionary to the employer. (YSS Employees Union – Phil. Transport and General Workers Organization *vs*. YSS Laboratories, Inc., G.R. No. 155125, Dec. 04, 2009) p. 201

LABOR-ONLY CONTRACTING

Existence of — Elements; the "right to control" refers to the prerogative of a party to determine, not only the end result sought to be achieved, but also the means and manner to be used to achieve the end. (Coca-Cola Bottlers Phils., Inc. *vs*. Dela Cruz, G.R. No. 184977, Dec. 07, 2009) p. 886

— Necessary party issue proceeds from a misapprehension of the relationships in a contracting relationship; issue rendered academic with the conclusion that labor-only contracting exists. *(Id.)*

Prohibition on — Labor Code allows contracting and subcontracting involving services but closely regulates the activities for the protection of workers; "labor-only" contracting, prohibited. (Coca-Cola Bottlers Phils., Inc. *vs*. Dela Cruz, G.R. No. 184977, Dec. 07, 2009) p. 886

LABOR STANDARDS

Labor-only contracting — Elements; the "right to control" refers to the prerogative of a party to determine, not only the end result sought to be achieved, but also the means and manner to be used to achieve the end. (Coca-Cola Bottlers Phils., Inc. *vs*. Dela Cruz, G.R. No. 184977, Dec. 07, 2009) p. 886

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Prohibition on labor-only contracting — Labor Code allows contracting and subcontracting involving services but closely regulates the activities for the protection of workers; "labor-only" contracting, prohibited. (Coca-Cola Bottlers Phils., Inc. *vs*. Dela Cruz, G.R. No. 184977, Dec. 07, 2009) p. 886

LACHES

Principle of — Defined. (Ty *vs*. Queen's Row Subdivision, Inc., G.R. No. 173158, Dec. 04, 2009) p. 346

LAND REGISTRATION

Application for registration — Applicant for registration of land title must prove by clear, positive, and convincing evidence that her possession or that of her parents, was of the nature and duration required by law. (Wee *vs*. Rep. of the Phils., G.R. No. 177384, Dec. 08, 2009) p. 944

— The applicant for registration of land title must demonstrate that her possession of the property was in the concept of an owner. *(Id.)*

Claim of ownership — Intermittent and sporadic assertion of ownership does not prove open, continuous, exclusive, and notorious possession and occupation, absent other competent evidence. (Wee *vs*. Rep. of the Phils., G.R. No. 177384, Dec. 08, 2009) p. 944

— Mere casual cultivation of the land does not amount to exclusive and notorious possession that would give rise to ownership. *(Id.)*

— Tax declarations do not conclusively establish either possession or declarant's right to registration of title. *(Id.)*

MORAL AND EXEMPLARY DAMAGES

Award of — Cannot be granted there being no concrete showing of bad faith or malice on the part of respondent. (Abante *vs*. KJGS Fleet Management Manila, G.R. No. 182430, Dec. 04, 2009) p. 761

MORTGAGES

Extrajudicial Foreclosure of Real Estate Mortgage (Act No. 3135, As amended by Act No. 4118) — The law does not intend that notices to public be posted in specific bulletin boards or information areas of a public place; what the law directs is for notices to be placed in an area where the

same is perceptible to the public. (Sps. Marcelo *vs*. PCI Bank, G.R. No. 182735, Dec. 04, 2009) p. 813

— The newspaper need not have the largest publication so long as it is of general circulation. *(Id.)*

NEGOTIABLE INSTRUMENTS LAW

Indorsement — Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others. (Metropolitan Bank and Trust Co. *vs*. BA Finance Corp., G.R. No. 179952, Dec. 04, 2009) p. 637

Liabilities of indorsees — As a rule, joint payees who indorse are deemed to indorse jointly and severally. (Metropolitan Bank and Trust Co. *vs*. BA Finance Corp., G.R. No. 179952, Dec. 04, 2009) p. 637

NOMINAL DAMAGES

Award of — Proper in case of dismissal with valid cause but without due process of law. (Formantes *vs*. Duncan Pharmaceuticals, Phils., Inc., G.R. No. 170661, Dec. 04, 2009) p. 287

OWNERSHIP, MODES OF ACQUIRING

Donation — Non-registration of the deed of donation does not affect the validity thereof. (Gutierrez *vs*. Mendoza-Plaza, G.R. No. 185477, Dec. 04, 2009) p. 844

Prescription — Acts of possessory character performed by one who holds by mere tolerance of the owner are clearly not en concepto de dueño, and such possessory acts, no matter how long so continued, do not start the running of the period of prescription. (Gutierrez *vs*. Mendoza-Plaza, G.R. No. 185477, Dec. 04, 2009) p. 844

PARTIES TO CIVIL ACTIONS

Indispensable party — Under the Rules of Court, an indispensable party is a party-in-interest, without whom there can be no

final determination of an action. (Cua, Jr. *vs*. Tan, G.R. No. 181455-56, Dec. 04, 2009) p. 654

POSSESSION

Possession acquired through force and intimidation — Possession cannot be acquired through force or intimidation as long as there is a possessor who objects thereto, and that he who believes that he has an action or a right to deprive another of the holding of a thing must invoke the aid of the competent court if the holder should refuse to deliver the thing. (Navarra *vs*. Office of the Ombudsman, G.R. No. 176291, Dec. 04, 2009) p. 376

PRESCRIPTION

Possessory acts — Acts of possessory character performed by one who holds by mere tolerance of the owner are clearly not *en concepto de dueño*, and such possessory acts, no matter how long so continued, do not start the running of the period of prescription. (Gutierrez *vs*. Mendoza-Plaza, G.R. No. 185477, Dec. 04, 2009) p. 844

PRESUMPTIONS

Authenticity and due execution of document — A notarized document enjoys a prima facie presumption of authenticity and due execution; clear and convincing evidence must be presented to overcome such legal presumption. (Gutierrez *vs*. Mendoza-Plaza, G.R. No. 185477, Dec. 04, 2009) p. 844

PREVENTIVE SUSPENSION ORDER

Nature — It is in the nature of a preliminary step in an administrative investigation and not a penalty. (Carabeo *vs*. CA, G.R. Nos. 178000 and 178003, Dec. 04, 2009) p. 413

Validity of — Requisites. (Carabeo *vs.* CA, G.R. Nos. 178000 and 178003, Dec. 04, 2009) p. 413

PROBABLE CAUSE

Definition — Such facts as are sufficient to engender a well-founded belief that a crime has been committed and that

the respondent is probably guilty thereof, and should be held for trial. (Navarra *vs.* Office of the Ombudsman, G.R. No. 176291, Dec. 04, 2009) p. 376

PROSECUTION OF OFFENSES

Complaint or information — It is not necessary to state therein the precise date when the offense was committed; exception. (People *vs.* Teodoro, G.R. No. 172372, Dec. 04, 2009) p. 328

Information — Defined. (People *vs.* Cinco, G.R. No. 186460, Dec. 04, 2009) p. 858

— Purpose. *(Id.)*

— When considered valid and sufficient. *(Id.)*

RAPE

Commission of — Elements. (People *vs.* Teodoro, G.R. No. 172372, Dec. 04, 2009) p. 328

— Failure to specify the exact dates or times when the rapes occurred does not ipso facto make the information defective on its face; date or time of commission of rape is not a material ingredient of the crime. (People *vs.* Cinco, G.R. No. 186460, Dec. 04, 2009) p. 858

— Imposable penalty. *(Id.)*

— Proper penalty when the woman victim is under 12 years of age. (People *vs.* Teodoro, G.R. No. 172372, Dec. 04, 2009) p. 328

Prosecution for rape — Complaint and information in prosecutions for rape which merely alleged the month and year of its commission is sufficient. (People *vs.* Cinco, G.R. No. 186460, Dec. 04, 2009) p. 858

RECLASSIFICATION OF LANDS

Presidential Proclamation 1520 (PP 1520) — Did not automatically convert the agricultural lands to non-agricultural lands. (Roxas & Co., Inc. *vs.* DAMBA-NFSW, G.R. No. 149548, Dec. 04, 2009) p. 38

RES JUDICATA

Application — Issue of whether the Special Sixth Division of the Court of Appeals gravely abused its discretion in considering the orders of the Hong Kong Court appointing liquidators for petitioner which involved enforcement and recognition of a foreign judgment is barred by *res judicata*. (Quasha Ancheta Peña & Nolasco Law Office *vs*. Special Sixth Division of the CA, G.R. No. 182013, Dec. 04, 2009) p. 738

SALES

Contract of sale — Requisites. (First Philippine Holdings Corp. *vs*. Trans Middle East [Phils.] Equities Inc., G.R. No. 179505, Dec. 04, 2009) p. 623

— Since the assailed deeds of absolute sale are null and void, the Civil Code provisions on rescission have no application in case at bar. (Campos *vs*. Pastrana, G.R. No. 175994, Dec. 08, 2009) p. 926

— The action for declaration of the inexistence of the assailed deeds of absolute sale does not prescribe. *(Id.)*

— The issuance of transfer certificates of title to petitioners did not vest upon them ownership of the properties. *(Id.)*

— The judgment debtors continue to be in actual possession of the properties in question. *(Id.)*

— There was a wide disparity in the alleged consideration specified in the deeds of absolute sale and the zonal valuation of the subject properties as per BIR certification; considerations involved in the assailed contracts of sale found to be inadequate considering the market values presented in the tax declaration and in the BIR certification. *(Id.)*

— When deemed absolutely simulated and fictitious. *(Id.)*

SEAFARERS, CONTRACT OF EMPLOYMENT

Claim for Disability benefits — Application of the Labor Code's concept of permanent total disability to seafarers; notion

of disability is intimately related to the worker's capacity to earn; what is compensated being not his injury or illness but his inability to work resulting in the impairment of his earning capacity. (Iloreta *vs*. Phil. Transmarine Carriers, Inc., G.R. No. 183908, Dec. 04, 2009) p. 832

— Findings of the third physician that seafarer is suffering from a life-risk and work-related heart ailment are final and binding on the parties. *(Id.)*

Compensation and benefits for injury and illness — Even assuming that petitioner was repatriated for medical reasons, he failed to submit himself to the company-designated doctor in accordance with the post-employment medical examination requirement of the standard contract; failure to comply bars the filing of claim for disability benefits. (Musnit *vs*. Sea Star Shipping Corp., Ltd., G.R. No. 182623, Dec. 04, 2009) p. 772

— The failure of the company-designated physician to pronounce that petitioner is fit to work within the 120-day period entitles him to total permanent disability benefit. (Abante *vs*. KJGS Fleet Management Manila, G.R. No. 182430, Dec. 04, 2009) p. 761

— The law does not preclude the seafarer from getting a second opinion as to his condition for purposes of claiming disability. *(Id.)*

— The POEA Standard Employment Contract was designed primarily for the protection and benefit of Filipino seamen; its provisions must be construed and applied fairly, reasonably and liberally in their favor. *(Id.)*

SECRETARY OF LABOR AND EMPLOYMENT

Grave abuse of discretion — No grave abuse of discretion as the end in view is preserving the status quo ante while the main issues of validity of retrenchment and legality of strike were being threshed out in the proper forum. (YSS Employees Union–Phil. Transport and General Workers Organization *vs*. YSS Laboratories, Inc., G.R. No. 155125, Dec. 04, 2009) p. 201

Powers — The grant of plenary powers to the Secretary of Labor makes it incumbent upon him to bring about soonest, a fair and just solution to the differences between the employer and the employees, so that the damage such labor dispute might cause upon the national interest may be minimized as much as possible, if not totally averted. (YSS Employees Union–Phil. Transport and General Workers Organization *vs*. YSS Laboratories, Inc., G.R. No. 155125, Dec. 04, 2009) p. 201

SETTLEMENT OF THE ESTATE OF DECEASED PERSONS

Period to appeal — In a proceeding for settlement of estate, the period of appeal from any decision rendered therein is 30 days, a notice of appeal and a record on appeal being required. (In the Matter of the Heirship of the Late Hermogenes Rodriguez *vs*. Robles, G.R. No. 182645, Dec. 04, 2009) p. 804

— The Court of Appeals erred in entertaining the appeal, knowing that the appeal was not perfected and had lapsed into finality due to the erroneous filing of a notice of appeal instead of a record on appeal as required by the Rules of Court. *(Id.)*

SPEEDY TRIAL ACT OF 1998 (R.A. NO. 8493)

Application — The Speedy Trial Act of 1998 does not preclude justifiable postponements and delays when so warranted by the situation. (Olbes *vs*. Judge Buemio, G.R. No. 173319, Dec. 04, 2009) p. 357

SUMMONS

Service of summons where action is in personam – Personal service of summons should always be the first option. (Pascual *vs*. Pascual, G.R. No. 171916, Dec. 04, 2009) p. 307

Substituted service — When may be availed of; requirements, discussed. (Pascual *vs*. Pascual, G.R. No. 171916, Dec. 04, 2009) p. 307

WITNESSES

Credibility of — As a rule, in prosecution involving illegal possession or sale of prohibited drugs, the trial court's assessment on the credibility of the apprehending officers shall prevail over the accused's self-serving and uncorroborated claim of frame-up; rationale. (People *vs*. Gutierrez, G.R. No. 177777, Dec. 04, 2009) p. 396

— Inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declarations, their veracity, or the weight of their testimonies. *(Id.)*

— Testimonies of rape victims who are young and immature deserve full credence; rationale. (People *vs*. Teodoro, G.R. No. 172372, Dec. 04, 2009) p. 328

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