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OF THE

PHILIPPINES

FROM

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MANILA
2014

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EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

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PHILIPPINE REPORTS

CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 1055

IV. CITATIONS 1101

PHILIPPINE REPORTS

Page

Abad Santos, etc., et al., Hon. Salvador –
Metropolitan Bank & Trust Company *vs.* 134
Adriatico Consortium, Inc., et al. *vs.* Land Bank
of the Philippines 1027
Aguilar, Christopher V. – Michael L. San Miguel *vs.* 1045
Albalate, Jr., Reynaldo – People of the Philippines *vs.* 437
Alday, Felipe M. – Desederio O. Monreal *vs.* 613
Aldovino, Jr., et al., Simon B. *vs.* Wilfredo F. Asilo 876
Aldovino, Jr., et al., Simon B. *vs.* Commission
on Elections, et al. 876
Anabe, Virgilio G. *vs.* Asian Construction
(Asiakonstrukt), et al. 857
Andal, Herminigildo L. – Civil Service Commission *vs.* 280
Ara *y* Mirasol, et al., SPO3 Sangki –
People of the Philippines *vs.* 939
Asian Construction (Asiakonstrukt), et al. –
Virgilio G. Anabe *vs.* 857
Asilo, Wilfredo F. – Simon B. Aldovino, Jr., et al. *vs.* 876
Aspiras, Heirs of the Late Rev. Fr. Jose O. *vs.*
Judge Clifton U. Ganay, etc. 290
Balida, etc., et al., Felimon – Heirs of Rodrigo
Yacapin, etc., et al. *vs.* 99
Bank of the Philippine Islands, etc. *vs.* SMP, Inc. 781
Barangay Maguihan, etc. – Barangay Sangalang, etc. *vs.* 711
Barangay Sangalang, etc. *vs.* Barangay Maguihan, etc. 711
Baraquia, Nelson – Purisimo Buyco *vs.* 596
Barba, etc., et al., Spouses Marcelino B. and
Fortuna Marcos-Barba – Sotero Roy
Leonero, et al. *vs.* 706
Barberos *alias* "Emie", Elmer – People of the
Philippines *vs.* 1008
Barias, Spouses Dennis and Divina *vs.* Heirs of Bartolome
Boneo, etc. 82
Batistis, Juno *vs.* People of the Philippines 246
Beltran, Lualhati – Mayon Estate Corporation, et al. *vs.* 369
Boneo, etc., Heirs of Bartolome – Spouses Dennis and
Divina Barias *vs.* 82
Buyco, Purisimo *vs.* Nelson Baraquia 596

Page

Cabales, et al., Nario – Vicente N. Luna, Jr. *vs.* 106
Cabral *y* Valencia, Quirino – People of the Philippines *vs.* 809
Cabungcal, et al., Evelyn S. *vs.* Sonia R.
Lorenzo, etc., et al. 329
Chua, Jacob M. – Rizalina P. Positos *vs.* 803
City Treasurer and City Assessor of the City of Manila –
Government Service Insurance System *vs.* 964
Civil Service Commission *vs.* Herminigildo L. Andal 280
Commission on Elections – Kabataan Party-List
Representative Raymond V. Palatino, et al. *vs.* 159
Commission on Elections, et al. – Simon B.
Aldovino, Jr., et al. *vs.* 876
– Nestor Racimo Foronda *vs.* 613
– League of Cities of the Philippines
(LCP), etc., et al. *vs.* 531
– Desederio O. Monreal *vs.* 613
– Michael L. San Miguel *vs.* 1045
Commissioner of Internal Revenue –
Kepco Philippines Corporation *vs.* 121
CRC Agricultural Trading, et al. *vs.* National Labor
Relations Commission, et al. 789
CRC Agricultural Trading, et al. *vs.* Roberto Obias 789
Cruz *y* Culala, Danilo – People of the Philippines *vs.* 261
Dampal, Omero – Susan G. Po, et al. *vs.* 523
De Koning, Manfred Jacob – Metropolitan Bank
& Trust Company *vs.* 134
Development Bank of the Philippines, et al. –
Resort Hotels Corporation, et al. *vs.* 817
Development Resources Corporation, etc., et al. –
Republic of the Philippines *vs.* 490
Equitable PCI Bank, Inc. *vs.* Maria Leticia
Fernandez, et al. 342
Estrera, et al., Executive Judge Cesar –
Heirs of Simeon Piedad, etc. *vs.* 178
Facto, Roberto – RTG Construction, Inc., and/or
Rolito Go/Russet Construction and Development
Corporation *vs.* 511

Page

Fernandez, et al., Maria Leticia – Equitable
PCI Bank, Inc. *vs.* 342
Fernandez, Representative Danilo Ramon S. *vs.*
House of Representatives Electoral Tribunal, et al. 628
Fernandez, Representative Danilo Ramon S. *vs.*
Jesus L. Vicente 628
Foronda, Nestor Racimo *vs.* Commission on
Elections, et al. 613
Foronda, Nestor Racimo *vs.* Leopoldo Cruz Manalili 613
Ganay, etc., Judge Clifton U. – Heirs of the Late
Rev. Fr. Jose O. Aspiras *vs.* 290
Genio, Jose Casim – Elvira O. Ong *vs.* 835
Government Service Insurance System *vs.* City Treasurer
and City Assessor of the City of Manila 964
Eduardo M. Santiago Substituted by his widow,
Rosario Enriquez Vda. De Santiago 453
Jean E. Raoet 690
Regional Trial Court of Pasig City, Branch 71, et al. 453
Grande, Ricardo – People of the Philippines *vs.* 745
Guerrero, Judge Juanita T. *vs.* Teresita V. Ong 168
Hernandez, Sr., etc., Heirs of Domingo *vs.*
Plaridel Mingoa, Sr., et al. 303
Herrera, et al., Efren M. *vs.* National Power
Corporation, et al. 383
House of Representatives Electoral Tribunal, et al. –
Representative Danilo Ramon S. Fernandez *vs.* 628
Indar, etc., Judge Cader P. – Mayor Hadji
Amer R. Sampiano, et al. *vs.* 495
International Copra Export Corporation (INTERCO) –
Juanito Tabigue, et al. *vs.* 866
Kepco Philippines Corporation *vs.* Commissioner
of Internal Revenue 121
Laguna Lake Development Authority –
Pacific Steam Laundry, Inc. *vs.* 351
Land Bank of the Philippines – Adriatico
Consortium, Inc., et al. *vs.* 1027
Lara, et al., Edgar R. – Manuel N. Mamba, et al. *vs.* 63

Page

League of Cities of the Philippines (LCP), etc., et al. *vs.* Commission on Elections, et al. 531
Leonero, et al., Sotero Roy *vs.* Spouses Marcelino B. Barba and Fortuna Marcos-Barba, etc., et al. 706
Leonor, et al., Ignacio – Republic of the Philippines *vs.* 729
Lorenzo, etc., et al., Sonia R. – Evelyn S. Cabungcal, et al. *vs.* 329
Luna, Jr., Vicente N. *vs.* Nario Cabales, et al. 106
Mamba, et al., Manuel N. *vs.* Edgar R. Lara, et al. 63
Manalili, Leopoldo Cruz – Nestor Racimo Foronda 613
Manila Electric Company – Arsenio S. Quiambao *vs.* 416
Mari, etc., Pedro C. – Arsenio Olegario, et al. *vs.* 48
Mariwasa Siam Ceramics, Inc. *vs.* Samahan ng mga Manggagawa sa Mariwasa Siam Ceramics, Inc. (SMMSC-Independent) 603
Mariwasa Siam Ceramics, Inc. *vs.* The Secretary of the Department of Labor and Employment, et al. 603
Maruhom, et al., Omar G. – National Power Corporation *vs.* 844
Mayon Estate Corporation, et al. *vs.* Lualhati Beltran 369
Mendoza-Bolos, Adoracion – Lily O. Orbase *vs.* 764
Metropolitan Bank & Trust Company *vs.* Hon. Salvador Abad Santos, etc., et al. 134
Metropolitan Bank & Trust Company *vs.* Manfred Jacob De Koning 134
Metropolitan Manila Development Authority *vs.* Trackworks Rail Transit Advertising, Vending and Promotions, Inc. 236
Mingoa, Sr., et al., Plaridel – Heirs of Domingo Hernandez, Sr., etc. *vs.* 303
MOF Company, Inc. *vs.* Shin Yang Brokerage Corporation 424
Monreal, Desederio O. *vs.* Felipe M. Alday 613
Monreal, Desederio O. *vs.* Commission on Elections, et al. 613
National Labor Relations Commission, et al. – CRC Agricultural Trading, et al. *vs.* 789
National Power Corporation *vs.* Omar G. Maruhom, et al. 844
National Power Corporation, et al. – Efren M. Herrera, et al. *vs.* 383

Page

Obias, Roberto – CRC Agricultural Trading, et al. *vs.* 789
Office of the Ombudsman, et al. – Lily O. Orbase *vs.* 764
Okol, Leslie *vs.* Slimmers World International, et al. 13
Olegario, et al., Arsenio *vs.* Pedro C. Mari, etc. 48
Ong, Elvira O. *vs.* Jose Casim Genio 835
Ong, Teresita V. – Judge Juanita T. Guerrero *vs.* 168
Orbase, Lily O. *vs.* Adoracion Mendoza-Bolos 764
Orbase, Lily O. *vs.* Office of the Ombudsman, et al. 764
Pacific Steam Laundry, Inc. *vs.* Laguna Lake
Development Authority 351
Palatino, et al., Kabataan Party-List Representative
Raymond V. *vs.* Commission on Elections 159
Palgan, Felix – People of the Philippines *vs.* 620
Paneda, Atty. Agustin F. – Cesar Talento, et al. *vs.* 662
Pearl City Manufacturing Corporation, et al. –
Philippine Economic Zone Authority (PEZA), et al. *vs.* 191
People of the Philippines – Juno Batistis *vs.* 246
People of the Philippines *vs.* Reynaldo Albalate, Jr. 437
SPO3 Sangki Ara *y* Mirasol, et al. 939
Elmer Barberos *alias* "Emie" 1008
Quirino Cabral *y* Valencia 809
Danilo Cruz *y* Culala 261
Ricardo Grande 745
Felix Palgan 620
Mike Talib *y* Mama, et al. 939
Jan Michael Tan, et al. 1
Joey Tion *y* Cabaddu 209
Philippine Amusement and Gaming Corporation –
Yun Kwan Byung *vs.* 23
Philippine Deposit Insurance Corporation *vs.* Stockholders
of Intercity Savings and Loan Bank, Inc. 128
Philippine Economic Zone Authority (PEZA), et al. *vs.*
Pearl City Manufacturing Corporation, et al. 191
Piedad, etc., Heirs of Simeon *vs.* Executive Judge
Cesar O. Estrera, et al. 178
Po, et al., Susan G. *vs.* Omero Dampal 523
Positos, Rizalina P. *vs.* Jacob M. Chua 803
Quiambao, Arsenio S. *vs.* Manila Electric Company 416

Page

Ragot, etc., Apollo R. – Emma B. Ramos *vs.* 673
Ramos, Emma B. *vs.* Apollo R. Ragot, etc. 673
Raoet, Jean E. – Government Service Insurance System *vs.* 690
Regional Trial Court of Pasig City, Branch 71, et al. –
Government Service Insurance System *vs.* 453
Republic of the Philippines *vs.* Development Resources
Corporation, etc., et al. 490
Republic of the Philippines *vs.* Ignacio Leonor, et al. 729
Resort Hotels Corporation, et al. *vs.* Development Bank
of the Philippines, et al. 817
RTG Construction, Inc., and/or Rolito Go/Russet
Construction and Development Corporation *vs.*
Roberto Facto 511
Samahan ng mga Manggagawa sa Mariwasa
Siam Ceramics, Inc. (SMMSC-Independent) –
Mariwasa Siam Ceramics, Inc. *vs.* 603
Sampiano, et al., Mayor Hadji Amer R. *vs.*
Judge Cader P. Indar, etc. 495
San Miguel, Michael L. *vs.* Christopher V. Aguilar 1045
San Miguel, Michael L. *vs.* Commission
on Elections, et al. 1045
Santiago Substituted by his widow, Rosario Enriquez
Vda. De Santiago, Eduardo M. – Government
Service Insurance System *vs.* 453
Shin Yang Brokerage Corporation –
MOF Company, Inc. *vs.* 424
Slimmers World International, et al. – Leslie Okol *vs.* 13
SMP, Inc. – Bank of the Philippine Islands, etc. *vs.* 781
Stockholders of Intercity Savings and Loan Bank, Inc. –
Philippine Deposit Insurance Corporation *vs.* 128
Tabigue, et al., Juanito *vs.* International Copra
Export Corporation (INTERCO) 866
Talento, et al., Cesar *vs.* Atty. Agustin F. Paneda 662
Talib *y* Mama, et al., Mike – People of the Philippines *vs.* 939
Tan, et al., Jan Michael – People of the Philippines *vs.* 1
Temic Automotive Philippines, Inc. *vs.* Temic Automotive
Philippines, Inc., Employees Union-FFW 986
Temic Automotive Philippines, Inc., Employees Union-FFW
– Temic Automotive Philippines, Inc. *vs.* 986

Page

The District Engineer, Mountain Province Engineering District, Department of Public Works and Highways (MPED-DPWH) – The Episcopal Diocese of Northern Philippines, etc. *vs.* 149
The Episcopal Diocese of Northern Philippines, etc. *vs.* The District Engineer, Mountain Province Engineering District, Department of Public Works and Highways (MPED-DPWH) 149
The Secretary of the Department of Labor and Employment, et al. – Mariwasa Siam Ceramics, Inc. *vs.* 603
Tiangco, et al., Gina M. *vs.* Uniwide Sales Warehouse Club, Inc., et al. 89
Tion *y* Cabaddu, Joey – People of the Philippines *vs.* 209
Trackworks Rail Transit Advertising, Vending and Promotions, Inc. – Metropolitan Manila Development Authority *vs.* 236
Uniwide Sales Warehouse Club, Inc., et al. – Gina M. Tiangco, et al. *vs.* 89
Vicente, Jesus L. – Representative Danilo Ramon S. Fernandez *vs.* 628
Yacapin, etc., et al., Heirs of Rodrigo *vs.* Felimon Balida, etc., et al. 99
Yun Kwan Byung *vs.* Philippine Amusement and Gaming Corporation 23

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 182310. December 9, 2009]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **JAN MICHAEL TAN and ARCHIE TAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; IMPLIES IRRATIONAL BEHAVIOR; THE NEW JUDGE'S REEXAMINATION AND REVERSAL OF HIS PREDECESSOR'S FINDING OF ABSENCE OF PROBABLE CAUSE AGAINST THE RESPONDENTS NOT TAINTED WITH GRAVE ABUSE OF DISCRETION.— The CA pointed out that since the prosecution did not submit additional evidence before the RTC, its new presiding judge (Judge Justalero) gravely abused his discretion when he re-examined and reversed his predecessor's finding of lack of probable cause against respondents Archie and Jan-Jan. But the record shows that, although Judge Aguilar, the former presiding judge, found no probable cause against respondents Archie and Jan-Jan, he did not altogether close the issue. In fact, he ignored their motion to dismiss the case and even directed the City Prosecutor's Office to submit additional evidence. This indicates that he still had doubts about his finding. Meanwhile, the DOJ, looking at the evidence, affirmed the City Prosecutor's decision to file charges against Archie and Jan-Jan. After Judge Justalero took over, he gave

the prosecution the additional time it asked for complying with the court's order. On April 2, 2007 the prosecution filed its compliance together with its amended resolution in the case. Actually, therefore, two new developments were before Judge Justalero: first, the DOJ's denial of the appeal of the two accused and its finding that probable cause existed against them and, two, the local prosecutor's submittal, if not of some new evidence, of additional arguments respecting the issue of probable cause. Grave abuse of discretion implies an irrational behavior. Surely, this cannot be said of Judge Justalero who re-examined in the light of the new developments what in the first place appeared to be an unsettled position taken by his predecessor.

2. **ID.; ORDERS; INTERLOCUTORY ORDERS; THE NEW JUDGE WHO HAS STILL FULL CONTROL OF THE INTERLOCUTORY ORDERS ISSUED BY HIS PREDECESSOR COULD RECONSIDER AND RECALL THE SAME EITHER *MOTU PROPIO* OR ON MOTION WHEN THE CIRCUMSTANCES WARRANTED.—** What is more, the previous judge did not yet act on respondents Archie and Jan-Jan's motion to dismiss the criminal case against them. Consequently, the new judge still had full control of the interlocutory orders that his predecessor had issued in the case, including the order finding not enough evidence to justify the issuance of warrants of arrest against them. The new judge could reconsider and recall such order either *motu propio* or on motion when the circumstances warranted.

3. **ID.; CRIMINAL PROCEDURE; PROBABLE CAUSE; REQUIRES NEITHER ABSOLUTE CERTAINTY NOR CLEAR AND CONVINCING EVIDENCE OF GUILT; CASE AT BAR.—** Probable cause assumes the existence of facts that would lead a reasonably discreet and prudent man to believe that a crime has been committed and that it was likely committed by the person sought to be arrested. It requires neither absolute certainty nor clear and convincing evidence of guilt.

4. **ID.; ID.; ARREST; WARRANT OF ARREST; EXISTENCE OF A *PRIMA FACIE* CASE AGAINST THE ACCUSED, SUFFICIENT GROUND TO ISSUE A WARRANT OF ARREST; CASE AT BAR.—** The test for issuing a warrant of arrest is less stringent than that used for establishing the guilt

of the accused. As long as the evidence shows a *prima facie* case against the accused, the trial court has sufficient ground to issue a warrant for his arrest. Here, admittedly, the evidence against respondents Archie and Jan-Jan is merely circumstantial. The prosecution evidence shows that they had motive in that they had been at odds with their father and stepmother. They had opportunity in that they were still probably home when the crime took place. Archie took two pairs of new gloves from his car late that evening. Cindy was apparently executed inside Archie's room. The separate rooms of the two accused had, quite curiously, been wiped clean even of their own fingerprints. A trial, unlike preliminary investigations, could yield more evidence favorable to either side after the interrogations of the witnesses either on direct examination or on cross-examination. What is important is that there is some rational basis for going ahead with judicial inquiry into the case. This Court does not subscribe to the CA's position that the prosecution had nothing to go on with.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Fortun Narvasa & Salazar for respondents.

D E C I S I O N

ABAD, *J*.:

The Facts and the Case

The facts are based on the affidavits of the witnesses adduced at the preliminary investigation of the case.

Francisco "Bobby" Tan (Bobby), a businessman, lived with his family and a big household in a compound on M.H. del Pilar St., Molo, Iloilo City. His immediate family consisted of his wife, Cynthia Marie (Cindy), and their six children, namely, Raffy, Kristine, Katrina, Karen, Katherine, and Kathleen. Bobby's two older but illegitimate sons by another woman, respondents Archie and Jan Michael (Jan-Jan), also lived with him. Cindy treated them as her stepsons.

There were others in Bobby's house: his aunt Conchita Tan, his cousin Shirley Young, Shirley's daughter Sheryl, eight servants, and Vini Gulmatico, a former family security guard who was transferred to another post on January 2, 2006 after being caught asleep on the job. The family had a frequent guest, Mike Zayco, Cindy's brother, and his sidekick Miguel Sola.[1]

At around 6:00 p.m. on January 8, 2006, Bobby and Raffy, Bobby's eldest son by Cindy, left the house for a cockfight. About that time, Bobby's other son, respondent Archie, drove out with the rest of the family to go to mass. They returned around 7:10 p.m. and had dinner. They were joined by Bobby's aunt Conchita, his cousin Shirley, and the latter's daughter Sheryl. At about 7:45 p.m., Bobby and Raffy returned from the cockfight but did not join the dinner, having already eaten elsewhere. Bobby went up directly to the master's bedroom on the second floor.

After dinner, all the members of the family went to their respective rooms. Cindy joined her husband in the master's bedroom with their second to the youngest, Katherine, and her nanny. Katrina, one of the daughters, went to the girls' bedroom to study. Shirley's daughter Sheryl went to the master's bedroom at around 8:10 p.m. to let Cindy try the new pair of jeans given to her by another cousin. Sheryl left afterwards to go to her bedroom.[2]

At around 8:35 p.m., Borj, a blind masseur, and an escort arrived at the house for Bobby's massage in his room. At around 8:55 p.m., Emelita Giray, the regular masseuse of Shirley and Sheryl, arrived with her husband.

About 9:30 p.m., Kristine, Bobby's second to the oldest, went to her parents' room to get a bottle of shampoo and say goodnight.[3] Borj and his escort left Bobby's residence at around 9:53 p.m., followed about an hour later by Emelita and her husband.

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[1] *Rollo*, pp. 128-129.

[2] *Id.* at 130.

[3] *Id.* at 131.

Around 10:30 p.m., Cindy's stepson, respondent Archie, went to the garage and took two pairs of gloves, still wrapped in plastic, from his car. Archie also picked up a pack of cigarettes that he left earlier with their security guard, Ramel Lobreza, before going back upstairs.[4]

At around 10:45 p.m., respondents Archie and Jan-Jan joined Raffy, Bobby's oldest child by Cindy, and their driver Julito Geronda in watching a DVD movie on Raffy's laptop at the carport. Jan-Jan went back to his room at around 11:00 p.m. but Archie remained to finish his cigarette. He, too, left afterwards for his room to change.[5] By 11:55 p.m. Raffy turned off the video.[6]

A few minutes later or at 12:17 a.m. of the next day (January 9, 2006), while security guard Lobreza was making his inspection rounds of the compound, he noticed that the lights were still on in the rooms of Cindy's stepsons, respondents Archie and Jan-Jan.

According to respondents Archie and Jan-Jan, they climbed down the high concrete fence of the compound at about 12:45 a.m. to go out. They took a cab to *Calzada* Bar, Camp Jefferson Club, and Caltex Starmart.[7] They returned home at around 3:30 a.m.

Respondent Jan-Jan entered the house ahead of his brother. On reaching the door of his room at the end of the hallway, he noticed his stepsister Katherine, the second to the youngest, lying on the floor near the master's bedroom. As Jan-Jan switched on the light in his room, he beheld her lying on a pool of blood. He quickly stepped into the master's bedroom and there saw his father, Bobby, lying on the bed with his chest drenched in blood.[8]

Almost simultaneously, respondent Archie who had come into the house after his brother Jan-Jan noticed that the door of

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[4] *Id.* at 136.

[5] *Id.* at 318.

[6] *Id.* at 132.

[7] *Id.*

[8] *Id.* at 133.

his room, which he locked earlier, was partly open. As he went in and switched on the light, he saw his stepmother Cindy, lying in her blood near the wall below the air conditioner. He then heard Jan-Jan shouting to him that their father was dead. Archie immediately ran downstairs to call security guard Lobreza while his brother Jan-Jan went around and awakened the rest of the family. Because Lobreza did not respond to shouts, Archie ran to his room to rouse him up. He told him what he discovered then awakened the other house-helps.[9]

Respondent Archie then phoned police officer Nelson Alacre, told him what had happened, and requested him to come immediately. Officer Alacre arrived after a few minutes with some other officers. They questioned Archie and Jan-Jan and took urine samples from them. The tests showed them negative for illegal drug use.[10]

Around 4:20 a.m., Officer Alacre rode with respondent Archie on the latter's Toyota Rav4 and they drove to the house of Col. John Tarrosa, a family friend. They then went to the house of Manolo Natal, Bobby's cockfight *llamador*, to pick him up before driving back to Bobby's residence.[11] Meanwhile, on hearing about the crime, the Criminal Investigation and Detection Group (CIDG) Regional Chief directed his own men to investigate the crime scene.[12]

On the afternoon of January 11, 2006, two days after the remains of the victims were brought home for the wake, Atty. Leonardo E. Jiz supposedly asked respondents Archie and Jan-Jan, Cindy's stepsons, to sign a statement that the police prepared. The lawyer did not, however, let them read the document or explain to them its contents. They signed it on Atty. Jiz's assurance that they would have the chance to read the statement later at the public prosecutor's office and correct

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[9] *Id.*

[10] *Id.* at 106, 318.

[11] *Id.* at 135.

[12] *Id.*

any mistakes before swearing to the same. The complainants did not, however, present this statement during the preliminary investigation nor did Archie and Jan-Jan swear to it before a public prosecutor.[13]

Another two days later or on January 13, 2006, police officers from the Regional CIDG submitted their investigation report to the City Prosecutor's Office of Iloilo City. This pointed to respondents Archie and Jan-Jan as principal suspects in the brutal killing of their parents and a young stepsister.[14] On January 18, 2006 police officer Eldy Bebit of the CIDG filed a complaint-affidavit with the City Prosecutor's Office, accusing the two brothers of parricide and double murder.[15] The parties submitted their affidavits and pieces of evidence at the preliminary investigation.[16]

On September 29, 2006 the City Prosecutor's Office filed separate informations for two murders and parricide against respondents Archie and Jan-Jan before the Regional Trial Court (RTC) of Iloilo City in Criminal Cases 06-63030 to 06-63032.[17]

On October 3, 2006 respondents Archie and Jan-Jan filed a motion for judicial determination of probable cause with a prayer to suspend the issuance of warrants of arrest against them in the meantime.[18] Further, on October 5, 2006 they asked the RTC to defer further proceedings in order to give them the opportunity to question the public prosecutor's resolution in the case before the Secretary of Justice.[19]

On October 6, 2006 the acting presiding judge of the RTC issued an order, directing the prosecution to correct certain

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[13] *Id.* at 106-107, 318-319.

[14] *Id.* at 107.

[15] *Id.* at 285.

[16] *Id.* at 107.

[17] *Id.* at 367-369.

[18] *Id.* at 371-373.

[19] *Id.* at 374-376.

deficiencies in its evidence against respondents.[20] On October 20, 2006, the City Prosecutor of Iloilo City filed a manifestation, informing the RTC of his partial compliance with its order. He also filed an urgent *ex parte* motion for clarificatory exception.[21]

On December 23, 2008 Rosalinda Garcia-Zayco, Cindy's mother and court-appointed guardian *ad litem* of her minor grandchildren, opposed respondents Archie and Jan-Jan's petition for review before the Department of Justice (DOJ).[22] She pointed out that the two had sufficient motive to commit the crimes of which they were charged. They openly showed disrespect towards their father, Bobby, and constantly had heated arguments with him. They also nurtured ill feelings and resentment towards Cindy, their stepmother, they being illegitimate children. They never accepted the fact that Bobby married Cindy rather than their mother. The National Bureau of Investigation report classified the crimes as motivated by hatred.[23]

Cindy's mother made capital of the absence of respondents Archie's and Jan-Jan's fingerprints in any part of their own rooms, particularly the light switches and the doorknobs. She cited the Investigating Prosecutor's theory that either of the accused used the wet red shirt hanging in Jan-Jan's bathroom to erase all fingerprints at the crime scene, something that forensic science can justify.[24]

Moreover, while investigators were still examining the crime scene, Bobby's aunt Conchita called a locksmith to force open Bobby's safes in the master's bedroom as well as in his office on De Leon Street. This fact came to the surface during the preliminary investigation of a complaint for robbery that Conchita filed against Cindy's brother, Mike Zayco, his sidekick Miguel Sola, Natividad Zayco, and police superintendent Gumban of

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[20] *Id.* at 377-378.

[21] *Id.* at 460-462.

[22] *Id.* at 403-459.

[23] *Id.* at 140-145.

[24] *Id.* at 146.

the CIDG. The police surmised that Conchita brought this criminal action to divert attention from the murder case and from respondents Archie and Jan-Jan.[25]

Lastly, nine days after the victims' burial, respondent Archie filed a petition for the settlement of Bobby and Cindy's estate, nominating Conchita as administratrix of the estate. He filed an *ex parte* motion for her appointment as special administrator for the meantime without consulting his half-siblings. The estate court granted the motion. Archie reportedly continued with his nightly bar hopping even during the wake of his father.

Respondents Archie and Jan-Jan's defense is alibi. They claimed that they were away when the crimes took place at the house. Based on Dr. Lebaquin's forensic computation, however, the victims probably died at about midnight, more or less. The two were still at home when the killings happened.

On October 27, 2006 the RTC, then temporarily presided over by Judge Narciso Aguilar, found no probable cause against respondents Archie and Jan-Jan. Judge Aguilar thus granted their motion to suspend the issuance of warrants for their arrest and to defer the proceedings.[26] The two respondents then filed a motion to dismiss the case.[27] On January 12, 2007 the RTC issued an order, directing the City Prosecutor's Office to submit additional evidence in the case but the latter office asked for more time to comply.[28] Meanwhile, the DOJ issued a resolution dismissing respondents Archie and Jan-Jan's petition for review.[29]

After a new presiding judge, Judge Globert Justalero, took over the RTC, he issued an order on March 30, 2007 granting the prosecution's request for additional time within which to comply with the court's order of January 12, 2007.[30] On April 2,

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[25] *Id.* at 163-166.

[26] *Id.* at 463-469.

[27] *Id.* at 470-494.

[28] *Id.* at 495-497.

[29] *Id.* at 500.

[30] *Id.* at 504.

2007 the prosecutor's office filed its compliance and submitted its amended resolution in the case.[31] The petitioners assailed this amended resolution and pointed out that the public prosecutor did not submit any additional evidence.[32]

On April 23, 2007 Judge Justalero reversed the order of the previous presiding judge. He found probable cause against respondents Archie and Jan-Jan this time and ordered the issuance of warrants for their arrest.[33] Without seeking reconsideration of Judge Justalero's order, Archie and Jan-Jan filed the present petition for *certiorari* with the Court of Appeals (CA) of Cebu City in CA-G.R. CEB-SP 02659.[34] After hearing, the CA granted the petition, set aside the RTC order of April 23, 2007, and annulled the warrants of arrest that Judge Justalero issued. The CA also dismissed the criminal cases against the respondents.[35] The public prosecutor filed a motion for reconsideration of the CA's decision through the Office of the Solicitor General but the latter court denied it,[36] hence, this petition.

The Issues Presented

Respondents Archie and Jan-Jan present the following issues for resolution by this Court:

a) Whether or not the CA committed error in ruling that Judge Justalero gravely abused his discretion when he re-examined his predecessor's previous finding that no probable cause existed against respondents Archie and Jan-Jan despite the absence of new evidence in the case; and

b) Whether or not the CA committed error in ruling that Judge Justalero gravely abused his discretion when he made a

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[31] *Id.* at 505-525.

[32] *Id.* at 531-532.

[33] *Id.* at 232-238.

[34] *Id.* at 239-277.

[35] *Id.* at 9-31.

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

finding that there is probable cause to issue a warrant for the arrest of the two.

The Court's Rulings

One. The CA pointed out that since the prosecution did not submit additional evidence before the RTC, its new presiding judge (Judge Justalero) gravely abused his discretion when he re-examined and reversed his predecessor's finding of lack of probable cause against respondents Archie and Jan-Jan.

But the record shows that, although Judge Aguilar, the former presiding judge, found no probable cause against respondents Archie and Jan-Jan, he did not altogether close the issue. In fact, he ignored their motion to dismiss the case and even directed the City Prosecutor's Office to submit additional evidence. This indicates that he still had doubts about his finding. Meanwhile, the DOJ, looking at the evidence, affirmed the City Prosecutor's decision to file charges against Archie and Jan-Jan. After Judge Justalero took over, he gave the prosecution the additional time it asked for complying with the court's order. On April 2, 2007 the prosecution filed its compliance together with its amended resolution in the case.

Actually, therefore, two new developments were before Judge Justalero: first, the DOJ's denial of the appeal of the two accused and its finding that probable cause existed against them and, two, the local prosecutor's submittal, if not of some new evidence, of additional arguments respecting the issue of probable cause. Grave abuse of discretion implies an irrational behavior. Surely, this cannot be said of Judge Justalero who re-examined in the light of the new developments what in the first place appeared to be an unsettled position taken by his predecessor.

What is more, the previous judge did not yet act on respondents Archie and Jan-Jan's motion to dismiss the criminal case against them. Consequently, the new judge still had full control of the interlocutory orders that his predecessor had issued in the case, including the order finding not enough evidence to justify the issuance of warrants of arrest against them. The new judge

could reconsider and recall such order either *motu propio* or on motion when the circumstances warranted.

Two. The CA held that Judge Justalero gravely abused his discretion when he made a finding that there is probable cause to warrant the arrest of Archie and Jan-Jan.

But what is probable cause? Probable cause assumes the existence of facts that would lead a reasonably discreet and prudent man to believe that a crime has been committed and that it was likely committed by the person sought to be arrested.[37] It requires neither absolute certainty nor clear and convincing evidence of guilt.[38] The test for issuing a warrant of arrest is less stringent than that used for establishing the guilt of the accused. As long as the evidence shows a *prima facie* case against the accused, the trial court has sufficient ground to issue a warrant for his arrest.

Here, admittedly, the evidence against respondents Archie and Jan-Jan is merely circumstantial. The prosecution evidence shows that they had motive in that they had been at odds with their father and stepmother. They had opportunity in that they were still probably home when the crime took place. Archie took two pairs of new gloves from his car late that evening. Cindy was apparently executed inside Archie's room. The separate rooms of the two accused had, quite curiously, been wiped clean even of their own fingerprints. A trial, unlike preliminary investigations, could yield more evidence favorable to either side after the interrogations of the witnesses either on direct examination or on cross-examination. What is important is that there is some rational basis for going ahead with judicial inquiry into the case. This Court does not subscribe to the CA's position that the prosecution had nothing to go on with.

WHEREFORE, the Court *REVERSES and SETS ASIDE* the Court of Appeals' decision dated December 19, 2007 and resolution

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[37] *Webb v. De Leon*, 317 Phil. 759, 779 (1995).

[38] *People v. Aruta*, 351 Phil. 868, 880 (1998).

dated March 25, 2008, and *AFFIRMS and REINSTATES* the Regional Trial Court's order dated April 23, 2007.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Brion, and *Del Castillo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 160146. December 11, 2009]

LESLIE OKOL, *petitioner, vs.* **SLIMMERS WORLD INTERNATIONAL, BEHAVIOR MODIFICATIONS, INC., and RONALD JOSEPH MOY,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION LAW; CORPORATIONS; CORPORATE OFFICER DISTINGUISHED FROM AN EMPLOYEE.—** The issue revolves mainly on whether petitioner was an employee or a corporate officer of Slimmers World. Section 25 of the Corporation Code enumerates corporate officers as the president, secretary, treasurer and such other officers as may be provided for in the by-laws. In *Tabang v. NLRC*, we held that an "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.

2. **ID.; ID.; ID.; A CORPORATE OFFICER'S DISMISSAL IS AN INTRA-CORPORATE CONTROVERSY; QUESTION OF REMUNERATION INVOLVING A STOCKHOLDER AND OFFICER IS NOT A SIMPLE LABOR PROBLEM, BUT A CORPORATE CONTROVERSY.—** In the present case,

the respondents, in their motion to dismiss filed before the labor arbiter, questioned the jurisdiction of the NLRC in taking cognizance of petitioner's complaint. In the motion, respondents attached the General Information Sheet (GIS) dated 14 April 1998, Minutes of the meeting of the Board of Directors dated 14 April 1997 and Secretary's Certificate, and the Amended By-Laws dated 1 August 1994 of Slimmers World as submitted to the SEC to show that petitioner was a corporate officer whose rights do not fall within the NLRC's jurisdiction. The GIS and minutes of the meeting of the board of directors indicated that petitioner was a member of the board of directors, holding one subscribed share of the capital stock, and an elected corporate officer. x x x Clearly, from the documents submitted by respondents, petitioner was a director and officer of Slimmers World. The charges of illegal suspension, illegal dismissal, unpaid commissions, reinstatement and back wages imputed by petitioner against respondents fall squarely within the ambit of intra-corporate disputes. In a number of cases, we have held that a corporate officer's dismissal is always a corporate act, or an intra-corporate controversy which arises between a stockholder and a corporation. The question of remuneration involving a stockholder and officer, not a mere employee, is not a simple labor problem but a matter that comes within the are of corporate affairs and management and is a corporate controversy in contemplation of the Corporation Code.

3. ID.; ID.; ID.; THE DETERMINATION OF THE RIGHTS OF A DISMISSED DIRECTOR AND CORPORATE OFFICER, AS WELL AS THE CORRESPONDING LIABILITY OF A CORPORATION, IS AN INTRA-CORPORATE DISPUTE SUBJECT TO THE JURISDICTION OF THE REGULAR COURTS.— Prior to its amendment, Section 5(c) of Presidential Decree No. 902-A (PD 902-A) provided that intra-corporate disputes fall within the jurisdiction of the Securities and Exchange Commission (SEC): x x x Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving: x x x c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations. Subsection 5.2, Section 5 of

Republic Act No. 8799, which took effect on 8 August 2000, transferred to regional trial courts the SEC's jurisdiction over all cases listed in Section 5 of PD 902-A: x x x 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court. x x x It is a settled rule that jurisdiction over the subject matter is conferred by law. The determination of the rights of a director and corporate officer dismissed from his employment as well as the corresponding liability of a corporation, if any, is an intra-corporate dispute subject to the jurisdiction of the regular courts. Thus, the appellate court correctly ruled that it is not the NLRC but the regular courts which have jurisdiction over the present case.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Offices for petitioner.
Follosco Morallos & Herce for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated 18 October 2002 and Resolution dated 22 September 2003 of the Court of Appeals in CA-G.R. SP No. 69893, which set aside the Resolutions dated 29 May 2001 and 21 December 2001 of the National Labor Relations Commission (NLRC).

The Facts

Respondent Slimmers World International operating under the name Behavior Modifications, Inc. (Slimmers World) employed petitioner Leslie Okol (Okol) as a management trainee

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 32-39. Penned by Justice Danilo B. Pine with Justices Ruben T. Reyes (retired member of this Court) and Marina L. Buzon, concurring.

on 15 June 1992. She rose up the ranks to become Head Office Manager and then Director and Vice President from 1996 until her dismissal on 22 September 1999.

On 28 July 1999, prior to Okol's dismissal, Slimmers World preventively suspended Okol. The suspension arose from the seizure by the Bureau of Customs of seven Precor elliptical machines and seven Precor treadmills belonging to or consigned to Slimmers World. The shipment of the equipment was placed under the names of Okol and two customs brokers for a value less than US$500. For being undervalued, the equipment were seized.

On 2 September 1999, Okol received a memorandum that her suspension had been extended from 2 September until 1 October 1999 pending the outcome of the investigation on the Precor equipment importation.

On 17 September 1999, Okol received another memorandum from Slimmers World requiring her to explain why no disciplinary action should be taken against her in connection with the equipment seized by the Bureau of Customs.

On 19 September 1999, Okol filed her written explanation. However, Slimmers World found Okol's explanation to be unsatisfactory. Through a letter dated 22 September 1999 signed by its president Ronald Joseph Moy (Moy), Slimmers World terminated Okol's employment.

Okol filed a complaint[3] with the Arbitration branch of the NLRC against Slimmers World, Behavior Modifications, Inc. and Moy (collectively called respondents) for illegal suspension, illegal dismissal, unpaid commissions, damages and attorney's fees, with prayer for reinstatement and payment of backwages.

On 22 February 2000, respondents filed a Motion to Dismiss[4] the case with a reservation of their right to file a Position Paper at the proper time. Respondents asserted that the NLRC had no jurisdiction over the subject matter of the complaint.

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[3] Docketed as NLRC NCR Case No. 30-12-00989-99.

[4] *Rollo*, pp. 45-54.

In an Order,[5] dated 20 March 2000, the labor arbiter granted the motion to dismiss. The labor arbiter ruled that Okol was the vice-president of Slimmers World at the time of her dismissal. Since it involved a corporate officer, the dispute was an intra-corporate controversy falling outside the jurisdiction of the Arbitration branch.

Okol filed an appeal with the NLRC. In a Resolution[6] dated 29 May 2001, the NLRC reversed and set aside the labor arbiter's order. The dispositive portion of the resolution states:

> WHEREFORE, the Order appealed from is SET ASIDE and REVERSED. A new one is hereby ENTERED ordering respondent Behavior Modification, Inc./Slimmers World International to reinstate complainant Leslie F. Okol to her former position with full back wages which to date stood in the amount of ₱10,000,000.00 computed from July 28, 1999 to November 28, 2000 until fully reinstated; and the further sum of ₱1,250,000.00 as indemnity pay plus attorney's fee equivalent to ten (10%) of the total monetary award. However, should reinstatement be not feasible separation pay equivalent to one month pay per year of service is awarded, a fraction of at least six months considered one whole year.
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> All other claims are dismissed for lack of factual or legal basis.
>
> SO ORDERED.[7]

Respondents filed a Motion for Reconsideration with the NLRC. Respondents contended that the relief prayed for was confined only to the question of jurisdiction. However, the NLRC not only decided the case on the merits but did so in the absence of position papers from both parties. In a Resolution[8] dated 21 December 2001, the NLRC denied the motion for lack of merit.

Respondents then filed an appeal with the Court of Appeals, docketed as CA-G.R. SP No. 69893.

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[5] *Id.* at 74-75.

[6] *Id.* at 83-89.

[7] *Id.* at 88.

[8] *Id.* at 91-92.

The Ruling of the Court of Appeals

In a Decision[9] dated 18 October 2002, the appellate court set aside the NLRC's Resolution dated 29 May 2001 and affirmed the labor arbiter's Order dated 20 March 2000. The Court of Appeals ruled that the case, being an intra-corporate dispute, falls within the jurisdiction of the regular courts pursuant to Republic Act No. 8799.[10] The appellate court added that the NLRC had acted without jurisdiction in giving due course to the complaint and deprived respondents of their right to due process in deciding the case on the merits.

Okol filed a Motion for Reconsideration which was denied in a Resolution[11] dated 22 September 2003.

Hence, the instant petition.

The Issue

The issue is whether or not the NLRC has jurisdiction over the illegal dismissal case filed by petitioner.

The Court's Ruling

The petition lacks merit.

Petitioner insists that the Court of Appeals erred in ruling that she was a corporate officer and that the case is an intra-corporate dispute falling within the jurisdiction of the regular courts. Petitioner asserts that even as vice-president, the work that she performed conforms to that of an employee rather than a corporate officer. Mere title or designation in a corporation will not, by itself, determine the existence of an employer-employee relationship. It is the "four-fold" test, namely (1) the power to hire, (2) the payment of wages, (3) the power to dismiss, and (4) the power to control, which must be applied.

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[9] *Id.* at 32-39.

[10] The Securities Regulation Code, approved on 19 July 2000 and took effect on 8 August 2000.

[11] *Rollo*, p. 41.

Petitioner enumerated the instances that she was under the power and control of Moy, Slimmers World's president: (1) petitioner received salary evidenced by pay slips, (2) Moy deducted Medicare and SSS benefits from petitioner's salary, and (3) petitioner was dismissed from employment not through a board resolution but by virtue of a letter from Moy. Thus, having shown that an employer-employee relationship exists, the jurisdiction to hear and decide the case is vested with the labor arbiter and the NLRC.

Respondents, on the other hand, maintain that petitioner was a corporate officer at the time of her dismissal from Slimmers World as supported by the General Information Sheet and Director's Affidavit attesting that petitioner was an officer. Also, the factors cited by petitioner that she was a mere employee do not prove that she was not an officer of Slimmers World. Even the alleged absence of any resolution of the Board of Directors approving petitioner's termination does not constitute proof that petitioner was not an officer. Respondents assert that petitioner was not only an officer but also a stockholder and director; which facts provide further basis that petitioner's separation from Slimmers World does not come under the NLRC's jurisdiction.

The issue revolves mainly on whether petitioner was an employee or a corporate officer of Slimmers World. Section 25 of the Corporation Code enumerates corporate officers as the president, secretary, treasurer and such other officers as may be provided for in the by-laws. In *Tabang v. NLRC*,[12] we held that an "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.

In the present case, the respondents, in their motion to dismiss filed before the labor arbiter, questioned the jurisdiction of the NLRC in taking cognizance of petitioner's complaint. In the

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[12] G.R. No. 121143, 21 January 1997, 266 SCRA 462, 467.

motion, respondents attached the General Information Sheet[13] (GIS) dated 14 April 1998, Minutes[14] of the meeting of the Board of Directors dated 14 April 1997 and Secretary's Certificate,[15] and the Amended By-Laws[16] dated 1 August 1994 of Slimmers World as submitted to the SEC to show that petitioner was a corporate officer whose rights do not fall within the NLRC's jurisdiction. The GIS and minutes of the meeting of the board of directors indicated that petitioner was a member of the board of directors, holding one subscribed share of the capital stock, and an elected corporate officer.

The relevant portions of the Amended By-Laws of Slimmers World which enumerate the power of the board of directors as well as the officers of the corporation state:

Article II
The Board of Directors

1. Qualifications and Election – The general management of the corporation shall be vested in a board of five directors who shall be stockholders and who shall be elected annually by the stockholders and who shall serve until the election and qualification of their successors.

x x x x x x x x x

Article III
Officers

x x x x x x x x x

4. Vice-President – Like the Chairman of the Board and the President, the Vice-President shall be elected by the Board of Directors from [its] own members.

The Vice-President shall be vested with all the powers and authority and is required to perform all the duties of the President during the absence of the latter for any cause.

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[13] *Rollo*, pp. 58-59.

[14] *Id.* at 60.

[15] *Id.* at 61.

[16] *Id.* at 62-71.

The Vice-President will perform such duties as the Board of Directors may impose upon him from time to time.

x x x x x x x x x

Clearly, from the documents submitted by respondents, petitioner was a director and officer of Slimmers World. The charges of illegal suspension, illegal dismissal, unpaid commissions, reinstatement and back wages imputed by petitioner against respondents fall squarely within the ambit of intra-corporate disputes. In a number of cases,[17] we have held that a corporate officer's dismissal is always a corporate act, or an intra-corporate controversy which arises between a stockholder and a corporation. The question of remuneration involving a stockholder and officer, not a mere employee, is not a simple labor problem but a matter that comes within the area of corporate affairs and management and is a corporate controversy in contemplation of the Corporation Code.[18]

Prior to its amendment, Section 5(c) of Presidential Decree No. 902-A[19] (PD 902-A) provided that intra-corporate disputes fall within the jurisdiction of the Securities and Exchange Commission (SEC):

Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

x x x x x x x x x

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

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[17] *Estrada v. NLRC*, G.R. No. 106722, 4 October 1996, 262 SCRA 709; *Lozon v. NLRC,* 310 Phil. 1 (1995); *Espino v. NLRC*, 310 Phil. 61 (1995); *Fortune Cement Corporation v. NLRC*, G.R. No. 79762, 24 January 1991, 193 SCRA 258.

[18] *Supra* note 12, *citing Dy v. NLRC*, 229 Phil. 234 (1986).

[19] Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the said Agency under the Administrative Supervision of the Office of the President. Took effect on 11 March 1976.

Subsection 5.2, Section 5 of Republic Act No. 8799, which took effect on 8 August 2000, transferred to regional trial courts the SEC's jurisdiction over all cases listed in Section 5 of PD 902-A:

> 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court.
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> x x x x x x x x x

It is a settled rule that jurisdiction over the subject matter is conferred by law.[20] The determination of the rights of a director and corporate officer dismissed from his employment as well as the corresponding liability of a corporation, if any, is an intra-corporate dispute subject to the jurisdiction of the regular courts. Thus, the appellate court correctly ruled that it is not the NLRC but the regular courts which have jurisdiction over the present case.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 18 October 2002 Decision and 22 September 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 69893. This Decision is without prejudice to petitioner Leslie Okol's taking recourse to and seeking relief through the appropriate remedy in the proper forum.

SO ORDERED.

Carpio Morales,[*] *Leonardo-de Castro,*[**] *Del Castillo,* and *Abad, JJ.,* concur.

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[20] See *Estrada v. NLRC, supra* note 17; *Paguio v. NLRC*, 323 Phil. 203 (1996).

[*] Designated additional member per Special Order No. 807.

[**] Designated additional member per Special Order No. 776.

SECOND DIVISION

[G.R. No. 163553. December 11, 2009]

YUN KWAN BYUNG, *petitioner, vs.* **PHILIPPINE AMUSEMENT AND GAMING CORPORATION,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; ILLEGAL GAMBLING; RULE; ALL FORMS OF GAMBLING ARE ILLEGAL; EXCEPTION.—** Gambling is prohibited by the laws of the Philippines as specifically provided in Articles 195 to 199 of the Revised Penal Code, as amended. Gambling is an act beyond the pale of good morals, and is thus prohibited and punished to repress an evil that undermines the social, moral, and economic growth of the nation. Presidential Decree No. 1602 (PD 1602), which modified Articles 195-199 of the Revised Penal Code and repealed inconsistent provisions, prescribed stiffer penalties on illegal gambling. As a rule, all forms of gambling are illegal. The only form of gambling allowed by law is that stipulated under Presidential Decree No. 1869, which gave PAGCOR its franchise to maintain and operate gambling casinos.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT AGENCY; PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR); EXTENT OF THE GRANT OF LEGISLATIVE FRANCHISE THEREON ON ITS AUTHORITY TO OPERATE GAMBLING CASINOS.—** Section 3(h) of PAGCOR's charter states: Section 3. *Corporate Powers*. – The Corporation shall have the following powers and functions, among others: x x x h) to enter into, make, perform, and carry out contracts of every kind and for any lawful purpose pertaining to the business of the Corporation, or in any manner incident thereto, as principal, agent or otherwise, with any person, firm, association, or corporation. x x x The Junket Agreement would be valid if under Section 3(h) of PAGCOR's charter, PAGCOR could share its gambling franchise with another entity. In *Senator Jaworski v. Phil. Amusement and Gaming Corp.,* the Court discussed the extent

of the grant of the legislative franchise to PAGCOR on its authority to operate gambling casinos: x x x. In the case at bar, PAGCOR executed an agreement with SAGE whereby the former grants the latter the authority to operate and maintain sports betting stations and Internet gaming operations. In essence, the grant of authority gives SAGE the privilege to actively participate, partake and share PAGCOR's franchise to operate a gambling activity. The grant of franchise is a special privilege that constitutes a right and a duty to be performed by the grantee. The grantee must not perform its activities arbitrarily and whimsically but must abide by the limits set by its franchise and strictly adhere to its terms and conditionalities. A corporation as a creature of the State is presumed to exist for the common good. Hence, the special privileges and franchises it receives are subject to the laws of the State and the limitations of its charter. There is therefore a reserved right of the State to inquire how these privileges had been employed, and whether they have been abused. Thus, PAGCOR has the sole and exclusive authority to operate a gambling activity. While PAGCOR is allowed under its charter to enter into operator's or management contracts, PAGCOR is not allowed under the same charter to relinquish or share its franchise. PAGCOR cannot delegate its power in view of the legal principle of *delegata potestas delegare non potest*, inasmuch as there is nothing in the charter to show that it has been expressly authorized to do so.

3. ID.; ID.; ID.; ID.; ID.; JUNKET AGREEMENT IN CASE AT BAR DECLARED VOID; EFFECT THEREOF.— Similarly, in this case, PAGCOR, by taking only a percentage of the earnings of ABS Corporation from its foreign currency collection, allowed ABS Corporation to operate gaming tables in the dollar pit. The Junket Agreement is in direct violation of PAGCOR's charter and is therefore void. Since the Junket Agreement violates PAGCOR's charter, gambling between the junket player and the junket operator under such agreement is illegal and may not be enforced by the courts. Article 2014 of the Civil Code, which refers to illegal gambling, states that no action can be maintained by the winner for the collection of what he has won in a game of chance.

4. **ID.; ID.; ID.; ID.; REPUBLIC ACT 9487 WHICH AMENDED THE PAGCOR CHARTER HAS NO RETROACTIVE EFFECT.—** RA 9487 amended the PAGCOR charter, granting PAGCOR the power to enter into special agreement with third parties to share the privileges under its franchise for the operation of gambling casinos: x x x PAGCOR sought the amendment of its charter precisely to address and remedy the legal impediment raised in *Senator Jaworski v. Phil. Amusement and Gaming Corp.* Unfortunately for petitioner, RA 9487 cannot be applied to the present case. The Junket Agreement was entered into between PAGCOR and ABS Corporation on 25 April 1996 when the PAGCOR charter then prevailing (PD 1869) prohibited PAGCOR from entering into any arrangement with a third party that would allow such party to actively participate in the casino operations. It is a basic principle that laws should only be applied prospectively unless the legislative intent to give them retroactive effect is expressly declared or is necessarily implied from the language used. RA 9487 does not provide for any retroactivity of its provisions. All laws operate prospectively absent a clear contrary language in the text, and that in every case of doubt, the doubt will be resolved against the retroactive operation of laws.

5. **ID.; ID.; ID.; ID.; ID.; THE COURT CANNOT ASSIST IN ENFORCING DEBTS ARISING FROM ILLEGAL GAMBLING; CASE AT BAR.—** Thus, petitioner cannot avail of the provisions of RA 9487 as this was not the law when the acts giving rise to the claimed liabilities took place. This makes the gambling activity participated in by petitioner illegal. Petitioner cannot sue PAGCOR to redeem the cash value of the gambling chips or recover damages arising from an illegal activity for two reasons. First, petitioner engaged in gambling with ABS Corporation and not with PAGCOR. Second, the court cannot assist petitioner in enforcing an illegal act. Moreover, for a court to grant petitioner's prayer would mean enforcing the Junket Agreement, which is void.

6. **CIVIL LAW; SPECIAL CONTRACTS; AGENCY; IMPLIED AGENCY DISTINGUISHED FROM AGENCY BY ESTOPPEL; NO PRESUMPTION OF AGENCY.—** Article 1869 of the Civil Code states that implied agency is derived from the acts of the principal, from his silence or lack

of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority. Implied agency, being an actual agency, is a fact to be proved by deductions or inferences from other facts. On the other hand, apparent authority is based on estoppel and can arise from two instances. First, the principal may knowingly permit the agent to hold himself out as having such authority, and the principal becomes estopped to claim that the agent does not have such authority. Second, the principal may clothe the agent with the indicia of authority as to lead a reasonably prudent person to believe that the agent actually has such authority. In an agency by estoppel, there is no agency at all, but the one assuming to act as agent has apparent or ostensible, although not real, authority to represent another. The law makes no presumption of agency and proving its existence, nature and extent is incumbent upon the person alleging it. Whether or not an agency has been created is a question to be determined by the fact that one represents and is acting for another.

7. ID.; ID.; ID.; BASIS.— The basis for agency is representation, that is, the agent acts for and on behalf of the principal on matters within the scope of his authority and said acts have the same legal effect as if they were personally executed by the principal. On the part of the principal, there must be an actual intention to appoint or an intention naturally inferable from his words or actions, while on the part of the agent, there must be an intention to accept the appointment and act on it. Absent such mutual intent, there is generally no agency.

8. ID.; ID.; ID.; EXISTENCE OF IMPLIED AGENCY OR AN AGENCY BY ESTOPPEL NEGATED BY PAGCOR'S ACTS AND CONDUCT.— There is no implied agency in this case because PAGCOR did not hold out to the public as the principal of ABS Corporation. PAGCOR's actions did not mislead the public into believing that an agency can be implied from the arrangement with the junket operators, nor did it hold out ABS Corporation with any apparent authority to represent it in any capacity. The Junket Agreement was merely a contract of lease of facilities and services. The players brought in by ABS Corporation were covered by a different set of rules in acquiring and encashing chips. The players used a different kind of chip than what was used in the regular gaming areas of PAGCOR,

and that such junket players played specifically only in the third floor area and did not mingle with the regular patrons of PAGCOR. Furthermore, PAGCOR, in posting notices stating that the players are playing under special rules, exercised the necessary precaution to warn the gaming public that no agency relationship exists.

9. **ID.; ID.; ID.; AGENCY BY ESTOPPEL; REQUISITES.—** The Court of Appeals correctly used the intent of the contracting parties in determining whether an agency by estoppel existed in this case. An agency by estoppel, which is similar to the doctrine of apparent authority requires proof of reliance upon the representations, and that, in turn, needs proof that the representations predated the action taken in reliance. There can be no apparent authority of an agent without acts or conduct on the part of the principal and such acts or conduct of the principal must have been known and relied upon in good faith and as a result of the exercise of reasonable prudence by a third person as claimant, and such must have produced a change of position to its detriment. Such proof is lacking in this case.

10. **ID.; ID.; ID.; ID.; ID.; PETITIONER CANNOT BE CONSIDERED AS AN INNOCENT THIRD PARTY.—** In the entire duration that petitioner played in Casino Filipino, he was dealing only with ABS Corporation, and availing of the privileges extended only to players brought in by ABS Corporation. The facts that he enjoyed special treatment upon his arrival in Manila and special accommodations in Grand Boulevard Hotel, and that he was playing in special gaming rooms are all indications that petitioner cannot claim good faith that he believed he was dealing with PAGCOR. Petitioner cannot be considered as an innocent third party and he cannot claim entitlement to equitable relief as well.

11. **ID.; ID.; VOID CONTRACTS; GAMBLING CONTRACTS CANNOT BE RATIFIED.—** The trial court has declared, and we affirm, that the Junket Agreement is void. A void or inexistent contract is one which has no force and effect from the very beginning. Hence, it is as if it has never been entered into and cannot be validated either by the passage of time or by ratification. Article 1409 of the Civil Code provides that contracts expressly prohibited or declared void by law, such as gambling contracts, "cannot be ratified."

APPEARANCES OF COUNSEL

Agabin Verzola Hermoso & Layaoen Law Offices for petitioner.

Bautista Consolacion Mortel Del Prado Gloria Apigo Salvosa Sevilla & Durante for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Yun Kwan Byung (petitioner) filed this Petition for Review[1] assailing the Court of Appeals' Decision[2] dated 27 May 2003 in CA-G.R. CV No. 65699 as well as the Resolution[3] dated 7 May 2004 denying the Motion for Reconsideration. In the assailed decision, the Court of Appeals (CA) affirmed the Regional Trial Court's Decision[4] dated 6 May 1999. The Regional Trial Court of Manila, Branch 13 (trial court), dismissed petitioner's demand against respondent Philippine Amusement and Gaming Corporation (PAGCOR) for the redemption of gambling chips.

The Facts

PAGCOR is a government-owned and controlled corporation tasked to establish and operate gambling clubs and casinos as a means to promote tourism and generate sources of revenue for the government. To achieve these objectives, PAGCOR is vested with the power to enter into contracts of every kind and for any lawful purpose that pertains to its business. Pursuant to this authority, PAGCOR launched its Foreign Highroller Marketing

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 30-38. Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Conrado M. Vasquez, Jr. and Mercedes Gozo-Dadole, concurring.

[3] *Id.* at 57. Penned by Associate Justice Rosmari D. Carandang with Associate Justices Conrado M. Vasquez, Jr. and Mercedes Gozo-Dadole, concurring.

[4] *Id.* at 58-62. Penned by RTC Judge Mario Guariña III.

Program (Program). The Program aims to invite patrons from foreign countries to play at the dollar pit of designated PAGCOR-operated casinos under specified terms and conditions and in accordance with industry practice.[5]

The Korean-based ABS Corporation was one of the international groups that availed of the Program. In a letter-agreement dated 25 April 1996 (Junket Agreement), ABS Corporation agreed to bring in foreign players to play at the five designated gaming tables of the Casino Filipino Silahis at the Grand Boulevard Hotel in Manila (Casino Filipino). The relevant stipulations of the Junket Agreement state:

1. PAGCOR will provide ABS Corporation with separate junket chips. The junket chips will be distinguished from the chips being used by other players in the gaming tables.

2. ABS Corporation will distribute these junket chips to its players and at the end of the playing period, ABS Corporation will collect the junket chips from its players and make an accounting to the casino treasury.

3. ABS Corporation will assume sole responsibility to pay the winnings of its foreign players and settle the collectibles from losing players.

4. ABS Corporation shall hold PAGCOR absolutely free and harmless from any damage, claim or liability which may arise from any cause in connection with the Junket Agreement.

5. In providing the gaming facilities and services to these foreign players, PAGCOR is entitled to receive from ABS Corporation a 12.5% share in the gross winnings of ABS Corporation or 1.5 million US dollars, whichever is higher, over a playing period of 6 months. PAGCOR has the option to extend the period.[6]

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

[6] Records, pp. 23-24.

Petitioner, a Korean national, alleges that from November 1996 to March 1997, he came to the Philippines four times to play for high stakes at the Casino Filipino.[7] Petitioner claims that in the course of the games, he was able to accumulate gambling chips worth US$2.1 million. Petitioner presented as evidence during the trial gambling chips with a face value of US$1.1 million. Petitioner contends that when he presented the gambling chips for encashment with PAGCOR's employees or agents, PAGCOR refused to redeem them.[8]

Petitioner brought an action against PAGCOR seeking the redemption of gambling chips valued at US$2.1 million. Petitioner claims that he won the gambling chips at the Casino Filipino, playing continuously day and night. Petitioner alleges that every time he would come to Manila, PAGCOR would extend to him amenities deserving of a high roller. A PAGCOR official who meets him at the airport would bring him to Casino Filipino, a casino managed and operated by PAGCOR. The card dealers were all PAGCOR employees, the gambling chips, equipment and furnitures belonged to PAGCOR, and PAGCOR enforced all the regulations dealing with the operation of foreign exchange gambling pits. Petitioner states that he was able to redeem his gambling chips with the cashier during his first few winning trips. But later on, the casino cashier refused to encash his gambling chips so he had no recourse but to deposit his gambling chips at the Grand Boulevard Hotel's deposit box, every time he departed from Manila.[9]

PAGCOR claims that petitioner, who was brought into the Philippines by ABS Corporation, is a junket player who played in the dollar pit exclusively leased by ABS Corporation for its junket players. PAGCOR alleges that it provided ABS Corporation with distinct junket chips. ABS Corporation distributed these chips to its junket players. At the end of each playing period, the junket players would surrender the chips to ABS Corporation.

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[7] *Rollo*, p. 8.

[8] *Id.* at 6-7.

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

Only ABS Corporation would make an accounting of these chips to PAGCOR's casino treasury.[10]

As additional information for the junket players playing in the gaming room leased to ABS Corporation, PAGCOR posted a notice written in English and Korean languages which reads:

NOTICE

This GAMING ROOM is exclusively operated by ABS under arrangement with PAGCOR, the former is solely accountable for all PLAYING CHIPS wagered on the tables. Any financial ARRANGEMENT/TRANSACTION between PLAYERS and ABS shall only be binding upon said PLAYERS and ABS.[11]

PAGCOR claims that this notice is a standard precautionary measure[12] to avoid confusion between junket players of ABS Corporation and PAGCOR's players.

PAGCOR argues that petitioner is not a PAGCOR player because under PAGCOR's gaming rules, gambling chips cannot be brought outside the casino. The gambling chips must be converted to cash at the end of every gaming period as they are inventoried every shift. Under PAGCOR's rules, it is impossible for PAGCOR players to accumulate two million dollars worth of gambling chips and to bring the chips out of the casino premises.[13]

Since PAGCOR disclaimed liability for the winnings of players recruited by ABS Corporation and refused to encash the gambling chips, petitioner filed a complaint for a sum of money before the trial court.[14] PAGCOR filed a counterclaim against petitioner. Then, trial ensued.

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[10] *Id.* at 69.

[11] *Id.* at 70.

[12] *Id.* Petitioner showed a similar notice posted with regard to another junket operator GIT.

[13] *Id.*

[14] *Id.* at 121.

On 6 May 1999, the trial court dismissed the complaint and counterclaim. Petitioner appealed the trial court's decision to the CA. On 27 May 2003, the CA affirmed the appealed decision. On 27 June 2003, petitioner moved for reconsideration which was denied on 7 May 2004.

Aggrieved by the CA's decision and resolution, petitioner elevated the case before this Court.

The Ruling of the Trial Court

The trial court ruled that based on PAGCOR's charter,[15] PAGCOR has no authority to lease any portion of the gambling tables to a private party like ABS Corporation. Section 13 of Presidential Decree No. 1869 or the PAGCOR's charter states:

Sec. 13. Exemptions –

x x x x x x x x x

4. Utilization of Foreign Currencies – The Corporation shall have the right and authority, solely and exclusively in connection with the operations of the casino(s), to purchase, receive, exchange and disburse foreign exchange, subject to the following terms and conditions:

(a) A specific area in the casino(s) or gaming pit shall be put up solely and exclusively for players and patrons utilizing foreign currencies;

(b) The Corporation shall appoint and designate a duly accredited commercial bank agent of the Central Bank, to handle, administer and manage the use of foreign currencies in the casino(s);

(c) The Corporation shall provide an office at casino(s) exclusively for the employees of the designated bank, agent of the Central Bank, where the Corporation shall maintain a dollar account which will be utilized exclusively for the above purpose and the casino dollar treasury employees;

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[15] Presidential Decree No. 1869, Consolidating and Amending Presidential Decree Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632 Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR). Took effect on 11 July 1983.

(d) Only persons with foreign passports or certificates of identity (for Hong Kong patron only) duly issued by the government or country of their residence will be allowed to play in the foreign exchange gaming pit;

(e) Only foreign exchange prescribed to form part of the Philippine International Reserve and the following foreign exchange currencies: Australian Dollar, Singapore Dollar, Hong Kong Dollar, shall be used in this gaming pit;

(f) The disbursement, administration, management and recording of foreign exchange currencies used in the casino(s) shall be carried out in accordance with existing foreign exchange regulations, and periodical reports of the transactions in such foreign exchange currencies by the Corporation shall be duly recorded and reported to the Central Bank thru the designated Agent Bank; and

(g) The Corporation shall issue the necessary rules and regulations for the guidance and information of players qualified to participate in the foreign exchange gaming pit, in order to make certain that the terms and conditions as above set forth are strictly complied with.

The trial court held that only PAGCOR could use foreign currency in its gaming tables. When PAGCOR accepted only a fixed portion of the dollar earnings of ABS Corporation in the concept of a lease of facilities, PAGCOR shared its franchise with ABS Corporation in violation of the PAGCOR's charter. Hence, the Junket Agreement is void. Since the Junket Agreement is not permitted by PAGCOR's charter, the mutual rights and obligations of the parties to this case would be resolved based on agency and estoppel.[16]

The trial court found that the petitioner wanted to redeem gambling chips that were specifically used by ABS Corporation at its gaming tables. The gambling chips come in distinctive orange or yellow colors with stickers bearing denominations of 10,000 or 1,000. The 1,000 gambling chips are smaller in size and the words "no cash value" marked on them. The 10,000

[16] *Rollo*, pp. 60-61.

gambling chips do not reflect the "no cash value" sign. The senior treasury head of PAGCOR testified that these were the gambling chips used by the previous junket operators and PAGCOR merely continued using them. However, the gambling chips used in the regular casino games were of a different quality.[17]

The trial court pointed out that PAGCOR had taken steps to warn players brought in by all junket operators, including ABS Corporation, that they were playing under special rules. Apart from the different kinds of gambling chips used, the junket players were confined to certain gaming rooms. In these rooms, notices were posted that gambling chips could only be encashed there and nowhere else. A photograph of one such notice, printed in Korean and English, stated that the gaming room was exclusively operated by ABS Corporation and that ABS Corporation was solely accountable for all the chips wagered on the gaming tables. Although petitioner denied seeing this notice, this disclaimer has the effect of a negative evidence that can hardly prevail against the positive assertions of PAGCOR officials whose credibility is also not open to doubt. The trial court concluded that petitioner had been alerted to the existence of these special gambling rules, and the mere fact that he continued to play under the same restrictions over a period of several months confirms his acquiescence to them. Otherwise, petitioner could have simply chose to stop gambling.[18]

In dismissing petitioner's complaint, the trial court concluded that petitioner's demand against PAGCOR for the redemption of the gambling chips could not stand. The trial court stated that petitioner, a stranger to the agreement between PAGCOR and ABS Corporation, could not under principles of equity be charged with notice other than of the apparent authority with which PAGCOR had clothed its employees and agents in dealing with petitioner. Since petitioner was made aware of the special rules by which he was playing at the Casino Filipino, petitioner could not now claim that he was not bound by them. The trial

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[17] *Id.*

[18] *Id.*

court explained that in an unlawful transaction, the courts will extend equitable relief only to a party who was unaware of all its dimensions and whose ignorance of them exposed him to the risk of being exploited by the other. Where the parties enter into such a relationship with the opportunity to know all of its ramifications, as in this case, there is no room for equitable considerations to come to the rescue of any party. The trial court ruled that it would leave the parties where they are.[19]

The Ruling of the Court of Appeals

In dismissing the appeal, the appellate court addressed the four errors assigned by petitioner.

First, petitioner maintains that he was never a junket player of ABS Corporation. Petitioner also denies seeing a notice that certain gaming rooms were exclusively operated by entities under special agreement.[20]

The CA ruled that the records do not support petitioner's theory. Petitioner's own testimony reveals that he enjoyed special accommodations at the Grand Boulevard Hotel. This similar accommodation was extended to players brought in by ABS Corporation and other junket operators. Petitioner cannot disassociate himself from ABS Corporation for it is unlikely that an unknown high roller would be accorded choice accommodations by the hotel unless the accommodation was facilitated by a junket operator who enjoyed such privilege.[21]

The CA added that the testimonies of PAGCOR's employees affirming that notices were posted in English and Korean in the gaming areas are credible in the absence of any convincing proof of ill motive. Further, the specified gaming areas used only special chips that could be bought and exchanged at certain cashier booths in that area.[22]

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[19] *Id.* at 61-62.

[20] *Id.* at 33.

[21] *Id.*

[22] *Id.* at 34.

Second, petitioner attacks the validity of the contents of the notice. Since the Junket Agreement is void, the notice, which was issued pursuant to the Junket Agreement, is also void and cannot affect petitioner.[23]

The CA reasoned that the trial court never declared the notice valid and neither did it enforce the contents thereof. The CA emphasized that it was the act of cautioning and alerting the players that was upheld. The trial court ruled that signs and warnings were in place to inform the public, petitioner included, that special rules applied to certain gaming areas even if the very agreement giving rise to these rules is void.[24]

Third, petitioner takes the position that an implied agency existed between PAGCOR and ABS Corporation.[25]

The CA disagreed with petitioner's view. A void contract has no force and effect from the very beginning. It produces no effect either against or in favor of anyone. Neither can it create, modify or extinguish the juridical relation to which it refers. Necessarily, the Junket Agreement, being void from the beginning, cannot give rise to an implied agency. The CA explained that it cannot see how the principle of implied agency can be applied to this case. Article 1883[26] of the Civil Code applies only to a situation where the agent is authorized by the principal to enter into a particular transaction, but instead of contracting on behalf of the principal, the agent acts in his own name.[27]

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[23] *Id.*

[24] *Id.* at 34-35.

[25] *Id.*

[26] Art. 1883. If an agent acts in his own name, the principal has no right of action against the persons with whom the agent has contracted, neither have such persons against the principal.

In such case, the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own, except when the contract involves things belonging to the principal.

The provisions of this article shall be understood to be without prejudice to the actions between the principal and agent.

[27] *Rollo*, p. 35.

The CA concluded that no such legal fiction existed between PAGCOR and ABS Corporation. PAGCOR entered into a Junket Agreement to lease to ABS Corporation certain gaming areas. It was never PAGCOR's intention to deal with the junket players. Neither did PAGCOR intend ABS Corporation to represent PAGCOR in dealing with the junket players. Representation is the basis of agency but unfortunately for petitioner none is found in this case.[28]

The CA added that the special gaming chips, while belonging to PAGCOR, are mere accessories in the void Junket Agreement with ABS Corporation. In Article 1883, the phrase "things belonging to the principal" refers only to those things or properties subject of a particular transaction authorized by the principal to be entered into by its purported agent. Necessarily, the gambling chips being mere incidents to the void lease agreement cannot fall under this category.[29]

The CA ruled that Article 2152[30] of the Civil Code is also not applicable. The circumstances relating to *negotiorum gestio* are non-existent to warrant an officious manager to take over the management and administration of PAGCOR.[31]

Fourth, petitioner asks for equitable relief.[32]

The CA explained that although petitioner was never a party to the void Junket Agreement, petitioner cannot deny or feign blindness to the signs and warnings all around him. The notices, the special gambling chips, and the separate gaming areas were more than enough to alert him that he was playing under different

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[28] *Id.*

[29] *Id.* at 36.

[30] Art. 2152. The officious manager is personally liable for contracts which he has entered into with third persons, even though he acted in the name of the owner, and there shall be no right of action between the owner and third persons. These provisions shall not apply:

(1) If the owner has expressly or tacitly ratified the management, or

(2) When the contract refers to things pertaining to the owner of the business.

[31] *Rollo*, p. 36.

[32] *Id.*

terms. Petitioner persisted and continued to play in the casino. Petitioner also enjoyed the perks extended to junket players of ABS Corporation. For failing to heed these signs and warnings, petitioner can no longer be permitted to claim equitable relief. When parties do not come to court with clean hands, they cannot be allowed to profit from their own wrong doing.[33]

The Issues

Petitioners raise three issues in this petition:

1. Whether the CA erred in holding that PAGCOR is not liable to petitioner, disregarding the doctrine of implied agency, or agency by estoppel;
2. Whether the CA erred in using intent of the contracting parties as the test for creation of agency, when such is not relevant since the instant case involves liability of the presumed principal in implied agency to a third party; and
3. Whether the CA erred in failing to consider that PAGCOR ratified, or at least adopted, the acts of the agent, ABS Corporation.[34]

The Ruling of the Court

The petition lacks merit.

Courts will not enforce debts arising from illegal gambling

Gambling is prohibited by the laws of the Philippines as specifically provided in Articles 195 to 199 of the Revised Penal Code, as amended. Gambling is an act beyond the pale of good morals,[35] and is thus prohibited and punished to repress an evil that undermines the social, moral, and economic growth of the nation.[36] Presidential Decree No. 1602 (PD 1602),[37] which

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[33] *Id.* at 36, 38.

[34] *Id.* at 12.

[35] *United States v. Salaveria,* 39 Phil. 102, 112 (1918).

[36] *People v. Punto,* 68 Phil. 481, 482 (1939).

[37] Prescribing Stiffer Penalties on Illegal Gambling. Took effect on 11 June 1978.

modified Articles 195-199 of the Revised Penal Code and repealed inconsistent provisions,[38] prescribed stiffer penalties on illegal gambling.[39]

As a rule, all forms of gambling are illegal. The only form of gambling allowed by law is that stipulated under Presidential Decree No. 1869, which gave PAGCOR its franchise to maintain and operate gambling casinos. The issue then turns on whether PAGCOR can validly share its franchise with junket operators to operate gambling casinos in the country. Section 3(h) of PAGCOR's charter states:

> Section 3. *Corporate Powers*. - The Corporation shall have the following powers and functions, among others:
>
> x x x x x x x x x
>
> h) to enter into, make, perform, and carry out contracts of every kind and for any lawful purpose pertaining to the business of the

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[38] Gambling and Illegal Lottery are crimes covered by Chapter One, Title VI (Crimes against Public Morals) of the Revised Penal Code.

[39] Section 1. *Penalties.* The following penalties are hereby imposed:

(a) The penalty of *prision correccional* in its medium period or a fine ranging from one thousand to six thousand pesos, and in case of recidivism, the penalty of *prision mayor* in its medium period or a fine ranging from five thousand to ten thousand pesos shall be imposed upon:

1. Any person other than those referred to in the succeeding sub-sections who in any manner, shall directly or indirectly take part in any illegal or unauthorized activities or games of cockfighting, jueteng, jai alai or horse racing to include bookie operations and game fixing, numbers, bingo and other forms of lotteries; cara y cruz, pompiang and the like; 7-11 and any game using dice; black jack, lucky nine, poker and its derivatives, monte, baccarat, cuajo, pangguingue and other card games; piak que, high and low, mahjong, domino and other games using plastic tiles and the likes; slot machines, roulette, pinball and other mechanical contraptions and devices; dog racing, boat racing, car racing and other forms of races, basketball, boxing, volleyball, bowling, pingpong and other forms of individual or team contests to include game fixing, point shaving and other machinations; banking or percentage game, or any other game scheme, whether upon chance or skill, wherein wagers consisting of money, articles of value or representative of value are at stake or made;

Corporation, or in any manner incident thereto, as principal, agent or otherwise, with any person, firm, association, or corporation.

x x x x x x x x x

The Junket Agreement would be valid if under Section 3(h) of PAGCOR's charter, PAGCOR could share its gambling franchise with another entity. In *Senator Jaworski v. Phil. Amusement and Gaming Corp.,*[40] the Court discussed the extent of the grant of the legislative franchise to PAGCOR on its authority to operate gambling casinos:

A legislative franchise is a special privilege granted by the state to corporations. It is a privilege of public concern which cannot be exercised at will and pleasure, but should be reserved for public control and administration, either by the government directly, or by public agents, under such conditions and regulations as the government may impose on them in the interest of the public. It is Congress that prescribes the conditions on which the grant of the franchise may be made. Thus the manner of granting the franchise, to whom it may be granted, the mode of conducting the business, the charter and the quality of the service to be rendered and the duty of the grantee to the public in exercising the franchise are almost always defined in clear and unequivocal language.

After a circumspect consideration of the foregoing discussion and the contending positions of the parties, **we hold that PAGCOR has acted beyond the limits of its authority when it passed on or shared its franchise to SAGE.**

In the *Del Mar* case where a similar issue was raised when PAGCOR entered into a joint venture agreement with two other entities in the operation and management of jai alai games, the Court, in an *En Banc* Resolution dated 24 August 2001, partially granted the motions for clarification filed by respondents therein insofar as it prayed that PAGCOR has a valid franchise, but only by itself (*i.e.* not in association with any other person or entity), to operate, maintain and/or manage the game of jai-alai.

In the case at bar, PAGCOR executed an agreement with SAGE whereby the former grants the latter the authority to operate and maintain sports betting stations and Internet gaming operations. In

[40] 464 Phil. 375, 385-386 (2004).

essence, the grant of authority gives SAGE the privilege to actively participate, partake and share PAGCOR's franchise to operate a gambling activity. The grant of franchise is a special privilege that constitutes a right and a duty to be performed by the grantee. The grantee must not perform its activities arbitrarily and whimsically but must abide by the limits set by its franchise and strictly adhere to its terms and conditionalities. A corporation as a creature of the State is presumed to exist for the common good. Hence, the special privileges and franchises it receives are subject to the laws of the State and the limitations of its charter. There is therefore a reserved right of the State to inquire how these privileges had been employed, and whether they have been abused. (Emphasis supplied)

Thus, PAGCOR has the sole and exclusive authority to operate a gambling activity. While PAGCOR is allowed under its charter to enter into operator's or management contracts, PAGCOR is not allowed under the same charter to relinquish or share its franchise. PAGCOR cannot delegate its power in view of the legal principle of *delegata potestas delegare non potest*, inasmuch as there is nothing in the charter to show that it has been expressly authorized to do so.[41]

Similarly, in this case, PAGCOR, by taking only a percentage of the earnings of ABS Corporation from its foreign currency collection, allowed ABS Corporation to operate gaming tables in the dollar pit. The Junket Agreement is in direct violation of PAGCOR's charter and is therefore void.

Since the Junket Agreement violates PAGCOR's charter, gambling between the junket player and the junket operator under such agreement is illegal and may not be enforced by the courts. Article 2014[42] of the Civil Code, which refers to illegal gambling, states that no action can be maintained by the winner for the collection of what he has won in a game of chance.

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[41] *Id.*

[42] Art. 2014. No action can be maintained by the winner for the collection of what he has won in a game of chance. But any loser in a game of chance may recover his loss from the winner, with legal interest from the time he paid the amount lost, and subsidiarily from the operator or manager of the gambling house.

Although not raised as an issue by petitioner, we deem it necessary to discuss the applicability of Republic Act No. 9487[43] (RA 9487) to the present case.

RA 9487 amended the PAGCOR charter, granting PAGCOR the power to enter into special agreement with third parties to share the privileges under its franchise for the operation of gambling casinos:

> Section 1. The Philippine Amusement and Gaming Corporation (PAGCOR) franchise granted under Presidential Decree No. 1869 otherwise known as the PAGCOR Charter, is hereby further amended to read as follows:
>
> x x x x x x x x x
>
> (2) Section 3(h) is hereby amended to read as follows:
>
> "SEC. 3. *Corporate Powers*. –
>
> x x x x x x x x x
>
> "(h) to enter into, make, conclude, perform, and carry out contracts of every kind and nature and for any lawful purpose which are necessary, appropriate, proper or incidental to any business or purpose of the PAGCOR, including but not limited to investment agreements, **joint venture agreements**, management agreements, agency agreements, whether as principal or as an agent, manpower supply agreements, or any other similar agreements or arrangements with any person, firm, association or corporation." (Boldfacing supplied)

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[43] An Act Further Amending Presidential Decree No. 1869, Otherwise Known as PAGCOR Charter. Took effect on 20 June 2007.

Prior to the amendment, Section 3(h) of the PAGCOR Charter (PD 1869) reads as follows:

SEC. 3. *Corporate Powers.* – The Corporation shall have the following powers and functions, among others:

x x x x x x x x x

h) to enter into, make, perform, and carry out contracts of every kind and for any lawful purpose pertaining to the business of the Corporation, or in any manner incident thereto, as principal, agent or otherwise, with any person, firm, association or corporation.

PAGCOR sought the amendment of its charter precisely to address and remedy the legal impediment raised in *Senator Jaworski v. Phil. Amusement and Gaming Corp.*

Unfortunately for petitioner, RA 9487 cannot be applied to the present case. The Junket Agreement was entered into between PAGCOR and ABS Corporation on 25 April 1996 when the PAGCOR charter then prevailing (PD 1869) prohibited PAGCOR from entering into any arrangement with a third party that would allow such party to actively participate in the casino operations.

It is a basic principle that laws should only be applied prospectively unless the legislative intent to give them retroactive effect is expressly declared or is necessarily implied from the language used.[44] RA 9487 does not provide for any retroactivity of its provisions. All laws operate prospectively absent a clear contrary language in the text,[45] and that in every case of doubt, the doubt will be resolved against the retroactive operation of laws.[46]

Thus, petitioner cannot avail of the provisions of RA 9487 as this was not the law when the acts giving rise to the claimed liabilities took place. This makes the gambling activity participated in by petitioner illegal. Petitioner cannot sue PAGCOR to redeem the cash value of the gambling chips or recover damages arising from an illegal activity for two reasons. First, petitioner engaged in gambling with ABS Corporation and not with PAGCOR. Second, the court cannot assist petitioner in enforcing an illegal act. Moreover, for a court to grant petitioner's prayer would mean enforcing the Junket Agreement, which is void.

Now, to address the issues raised by petitioner in his petition, petitioner claims that he is a third party proceeding against the liability of a presumed principal and claims relief, alternatively, on the basis of implied agency or agency by estoppel.

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[44] *Erectors, Inc. v. National Labor Relations Commission,* 326 Phil. 640, 646 (1996).

[45] Agpalo, Ruben, *STATUTORY CONSTRUCTION* (5th ed., 2003), p. 355.

[46] *Cebu Portland Cement Co. v. Collector of Internal Revenue*, 134 Phil. 735, 740 (1968).

Article 1869 of the Civil Code states that implied agency is derived from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority. Implied agency, being an actual agency, is a fact to be proved by deductions or inferences from other facts.[47]

On the other hand, apparent authority is based on estoppel and can arise from two instances. First, the principal may knowingly permit the agent to hold himself out as having such authority, and the principal becomes estopped to claim that the agent does not have such authority. Second, the principal may clothe the agent with the indicia of authority as to lead a reasonably prudent person to believe that the agent actually has such authority.[48] In an agency by estoppel, there is no agency at all, but the one assuming to act as agent has apparent or ostensible, although not real, authority to represent another.[49]

The law makes no presumption of agency and proving its existence, nature and extent is incumbent upon the person alleging it.[50] Whether or not an agency has been created is a question to be determined by the fact that one represents and is acting for another.[51]

Acts and conduct of PAGCOR negates the existence of an implied agency or an agency by estoppel

Petitioner alleges that there is an implied agency. Alternatively, petitioner claims that even assuming that no actual agency existed between PAGCOR and ABS Corporation, there is still an agency

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[47] De Leon, Hector S., *COMMENTS AND CASES ON PARTNERSHIP, AGENCY AND TRUSTS*, 5th edition, 1999, p. 411.

[48] *Woodchild Holdings, Inc. v. Roxas Electric and Construction Company, Inc.*, 479 Phil. 896, 914 (2004).

[49] *Supra* note 47 at 410.

[50] *Tuazon v. Heirs of Bartolome Ramos*, G.R. No. 156262, 14 July 2005, 463 SCRA 408, 415.

[51] *Angeles v. Philippine National Railways*, G.R. No. 150128, 31 August 2006, 500 SCRA 444, 452.

by estoppel based on the acts and conduct of PAGCOR showing apparent authority in favor of ABS Corporation. Petitioner states that one factor which distinguishes agency from other legal precepts is control and the following undisputed facts show a relationship of implied agency:

1. Three floors of the Grand Boulevard Hotel[52] were leased to PAGCOR for conducting gambling operations;[53]
2. Of the three floors, PAGCOR allowed ABS Corporation to use one whole floor for foreign exchange gambling, conducted by PAGCOR dealers using PAGCOR facilities, operated by PAGCOR employees and using PAGCOR chips bearing the PAGCOR logo;[54]
3. PAGCOR controlled the release, withdrawal and return of all the gambling chips given to ABS Corporation in that part of the casino and at the end of the day, PAGCOR conducted an inventory of the gambling chips;[55]
4. ABS Corporation accounted for all gambling chips with the Commission on Audit (COA), the official auditor of PAGCOR;[56]
5. PAGCOR enforced, through its own manager, all the rules and regulations on the operation of the gambling pit used by ABS Corporation.[57]

Petitioner's argument is clearly misplaced. The basis for agency is representation,[58] that is, the agent acts for and on behalf of the principal on matters within the scope of his authority and said acts have the same legal effect as if they were personally

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[52] Formerly known as Silahis Hotel.

[53] *Rollo*, p. 124.

[54] *Id.*

[55] *Id.* at 125.

[56] *Id.*

[57] *Id.*

[58] *Bordador v. Luz*, 347 Phil. 654, 662 (1997).

executed by the principal.[59] On the part of the principal, there must be an actual intention to appoint or an intention naturally inferable from his words or actions, while on the part of the agent, there must be an intention to accept the appointment and act on it.[60] Absent such mutual intent, there is generally no agency.[61]

There is no implied agency in this case because PAGCOR did not hold out to the public as the principal of ABS Corporation. PAGCOR's actions did not mislead the public into believing that an agency can be implied from the arrangement with the junket operators, nor did it hold out ABS Corporation with any apparent authority to represent it in any capacity. The Junket Agreement was merely a contract of lease of facilities and services.

The players brought in by ABS Corporation were covered by a different set of rules in acquiring and encashing chips. The players used a different kind of chip than what was used in the regular gaming areas of PAGCOR, and that such junket players played specifically only in the third floor area and did not mingle with the regular patrons of PAGCOR. Furthermore, PAGCOR, in posting notices stating that the players are playing under special rules, exercised the necessary precaution to warn the gaming public that no agency relationship exists.

For the second assigned error, petitioner claims that the intention of the parties cannot apply to him as he is not a party to the contract.

We disagree. The Court of Appeals correctly used the intent of the contracting parties in determining whether an agency by estoppel existed in this case. An agency by estoppel, which is similar to the doctrine of apparent authority requires proof of reliance upon the representations, and that, in turn, needs proof that the representations predated the action taken in reliance.[62]

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[59] *Eurotech Industrial Technologies, Inc. v. Cuizon*, G.R. No. 167552, 23 April 2007, 521 SCRA 584, 593.

[60] *Victorias Milling Co., Inc. v. Court of Appeals*, 389 Phil. 184, 196 (2000).

[61] *Supra* note 50 at 415.

[62] *Litonjua, Jr. v. Eternit Corporation*, G.R. No. 144805, 8 June 2006, 490 SCRA 204, 225.

There can be no apparent authority of an agent without acts or conduct on the part of the principal and such acts or conduct of the principal must have been known and relied upon in good faith and as a result of the exercise of reasonable prudence by a third person as claimant, and such must have produced a change of position to its detriment.[63] Such proof is lacking in this case.

In the entire duration that petitioner played in Casino Filipino, he was dealing only with ABS Corporation, and availing of the privileges extended only to players brought in by ABS Corporation. The facts that he enjoyed special treatment upon his arrival in Manila and special accommodations in Grand Boulevard Hotel, and that he was playing in special gaming rooms are all indications that petitioner cannot claim good faith that he believed he was dealing with PAGCOR. Petitioner cannot be considered as an innocent third party and he cannot claim entitlement to equitable relief as well.

For his third and final assigned error, petitioner asserts that PAGCOR ratified the acts of ABS Corporation.

The trial court has declared, and we affirm, that the Junket Agreement is void. A void or inexistent contract is one which has no force and effect from the very beginning. Hence, it is as if it has never been entered into and cannot be validated either by the passage of time or by ratification.[64] Article 1409 of the Civil Code provides that contracts expressly prohibited or declared void by law, such as gambling contracts, "cannot be ratified."[65]

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[63] *Supra* note 48 at 914.

[64] *Francisco v. Herrera*, 440 Phil. 841, 849 (2002).

[65] Art. 1409. The following contracts are inexistent and void from the beginning:

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(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Court of Appeals' Decision dated 27 May 2003 as well as the Resolution dated 7 May 2004 as modified by this Decision.

SO ORDERED.

Carpio Morales, Leonardo-de Castro,** Del Castillo,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 147951. December 14, 2009]

ARSENIO OLEGARIO AND HEIRS OF ARISTOTELES F. OLEGARIO, represented by CARMELITA GUZMAN-OLEGARIO, *petitioners, vs.* **PEDRO C. MARI, represented by LILIA C. MARI-CAMBA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW ARE PROPER SUBJECTS THEREOF; EXCEPTION APPLIES TO CASE AT BAR.— Considering the conflicting findings of the RTC and the CA, a circumstance that constitutes an exception to the general rule that only questions of law are proper subjects of a petition under Rule 45, we shall assess and weigh the evidence adduced by the parties and shall resolve the questions of fact raised by petitioners.

2. CIVIL LAW; OWNERSHIP; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; UNLESS COUPLED WITH THE ELEMENT OF HOSTILITY TOWARDS THE TRUE OWNER, OCCUPATION AND USE, HOWEVER

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* Designated additional member per Special Order No. 807.

** Designated additional member per Special Order No. 776.

LONG, WILL NOT CONFER TITLE BY PRESCRIPTION OR ADVERSE POSSESSION.— Based on Article 538 of the Civil Code, the respondent is the preferred possessor because, benefiting from his father's tax declaration of the subject realty since 1916, he has been in possession thereof for a longer period. On the other hand, petitioners acquired joint possession only sometime in 1965. Despite 25 years of occupying the disputed lots, therefore, petitioners did not acquire ownership. Firstly, they had no just title. Petitioners did not present any document to show how the titles over Lot Nos. 17526 and 17533 were transferred to them, whether from respondent, his predecessor, or any other person. Petitioners, therefore, could not acquire the disputed real property by ordinary prescription through possession for 10 years. Secondly, it is settled that ownership cannot be acquired by mere occupation. Unless coupled with the element of hostility towards the true owner, occupation and use, however long, will not confer title by prescription or adverse possession. In other words, possession, to constitute the foundation of a prescriptive right, must be possession under claim of title, that is, it must be adverse.

3. ID.; ID.; ID.; ID.; MERE MATERIAL POSSESSION OF LAND IS NOT ADVERSE POSSESSION AS AGAINST THE OWNER AND IS INSUFFICIENT TO VEST TITLE, UNLESS SUCH POSSESSION IS ACCOMPANIED BY THE INTENT TO POSSESS AS AN OWNER.— Petitioners' acts of a possessory character – acts that might have been merely tolerated by the owner – did not constitute possession. No matter how long tolerated possession is continued, it does not start the running of the prescriptive period. Mere material possession of land is not adverse possession as against the owner and is insufficient to vest title, unless such possession is accompanied by the intent to possess as an owner. There should be a hostile use of such a nature and exercised under such circumstance as to manifest and give notice that the possession is under a claim of right.

4. ID.; ID.; ID.; ID.; ID.; TAX DECLARATIONS PROVE THAT THE HOLDER HAS A CLAIM OF TITLE OVER THE PROPERTY.— Petitioners have failed to prove that their possession was adverse or under claim of title or right. Unlike respondent, petitioners did not have either the courage or

forthrightness to publicly declare the disputed lots as owned by them for tax purposes. Tax declarations "prove that the holder has a claim of title over the property. Aside from manifesting a sincere desire to obtain title thereto, they announce the holder's adverse claim against the state and other interested parties." Petitioners' omission, when viewed in conjunction with respondent's continued unequivocal declaration of ownership over, payment of taxes on and possession of the subject realty, shows a lack of sufficient adverseness of the formers' possession to qualify as being one in the concept of owner. The only instance petitioners assumed a legal position sufficiently adverse to respondent's ownership of the disputed properties was when they declared Lot No. 17526 for tax purposes in their name in 1989. Since then and until the filing of the complaint for recovery of possession in 1990, only one year had elapsed. Hence, petitioners never acquired ownership through extraordinary prescription of the subject realty.

5. ID.; ID.; ID.; EXTRAORDINARY PRESCRIPTION; OPEN, EXCLUSIVE AND UNDISPUTED POSSESSION OF ALIENABLE PUBLIC LAND FOR THE PERIOD PRESCRIBED BY LAW CREATES THE LEGAL FICTION WHEREBY THE LAND, UPON COMPLETION OF THE REQUISITE PERIOD *IPSO JURE* AND WITHOUT NEED OF JUDICIAL OR OTHER SANCTION, CEASES TO BE PUBLIC LAND AND BECOMES PRIVATE PROPERTY.— On the other hand, being the sole transferree of his father, respondent showed through his tax declarations which were coupled with possessory acts that he, through his predecessor, had been in possession of the land for more than 30 years since 1916. "Open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period – *ipso jure* and without the need of judicial or other sanction, ceases to be public land and becomes private property." Ownership of immovable property is acquired by extraordinary prescription through possession for 30 years. For purposes of deciding the instant case, therefore, the possession by respondent and his predecessor had already ripened into ownership of the subject realty by virtue of prescription as early as 1946.

6. ID.; LACHES; ESSENCE; ESSENTIAL ELEMENTS; NOT PRESENT IN CASE AT BAR.— Petitioners cannot find refuge in the principle of laches. It is not just the lapse of time or delay that constitutes laches. The essence of laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, through due diligence, could or should have been done earlier, thus giving rise to a presumption that the party entitled to assert it had earlier abandoned or declined to assert it. The essential elements of laches are: (a) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation complained of; (b) delay in asserting complainant's rights after he had knowledge of defendant's acts and after he has had the opportunity to sue; (c) lack of knowledge or notice by defendant that the complainant will assert the right on which he bases his suit and (d) injury or prejudice to the defendant in the event the relief is accorded to the complainant. In the instant case, the second and third elements are missing. x x x. Upon discovery of this clear and unequivocal change in status of petitioners' position over the disputed land respondent immediately acted. He filed in 1990 the complaint for recovery of possession and nullification of tax declaration. Hence, we find no laches in the instant case.

7. ID.; DAMAGES; ATTORNEY'S FEES; NO BASIS FOR AN AWARD THEREOF IN CASE AT BAR.— In conclusion, we find no reversible error on the part of the CA in recognizing the ownership and right of possession of respondent over Lot Nos. 17526, 17553 and 14356. There is, thus, also no basis for an award of damages and attorney's fees in favor of petitioners.

APPEARANCES OF COUNSEL

Aquino and Martinez Law Offices for petitioners.
Rogelio O. Montero for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Possession, to constitute the foundation of acquisitive prescription, must be possession under a claim of title or must

be adverse. Acts of a possessory character performed by one who holds the property by mere tolerance of the owner are clearly not in the concept of an owner and such possessory acts, no matter how long continued, do not start the running of the period of prescription.

In the present Petition for Review on *Certiorari*,[1] petitioners assail the April 18, 2001 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 52124, reversing the October 13, 1995 Decision[3] of the Regional Trial Court (RTC) of Pangasinan, Branch 39. The CA declared the respondent herein as the owner of Lot Nos. 17553, 17526 and 14356 of the Mangatarem cadastral survey.

Factual antecedents

As early as 1916,[4] Juan Mari, the father of respondent, declared his ownership over a parcel of land in Nancasalan, Mangatarem for tax purposes. He took possession of the same by delineating the limits with a bamboo fence,[5] planting various fruit bearing trees and bamboos[6] and constructing a house thereon.[7] After a survey made in 1950, Tax Declaration No. 8048[8] for the year 1951 specified the subject realty as a residential land with an area of 897 square meters and as having the following boundaries: North - Magdalena Fernandez; South - Catalina Cacayorin; East - Camino Vecinal; and West - Norberto Bugarin. In 1974, the subject realty was transferred to respondent, Pedro Mari, by virtue of a deed of sale.

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[1] *Rollo*, pp. 18-43.

[2] CA *rollo*, pp. 81-92; penned by Associate Justice Fermin A. Martin, Jr. and concurred in by Associate Justices Portia Aliño-Hormachuelos and Mercedes Gozo-Dadole.

[3] Records, pp. 280-286; penned by Judge Eugenio G. Ramos.

[4] Tax No. 17893.

[5] Records, p. 68.

[6] *Id.* at 189.

[7] See tax declarations.

[8] This cancelled Tax No. 32661 which in turn cancelled Tax No. 17893.

Meanwhile, in 1947, Wenceslao Olegario, the husband of Magdalena Fernandez and father of petitioner Arsenio Olegario, filed a new tax declaration[9] for a certain 50-square meter parcel of land, indicating the following boundaries: North - Cesario and Antonio Fernandez; South - Juan Mari; East - Barrio Road; and West - Norberto Bugarin. Then on May 14, 1961, Wenceslao Olegario executed a "Deed of Quit-Claim of Unregistered Property"[10] in favor of Arsenio Olegario transferring to the latter *inter alia* the aforementioned 50-square meter property.

In the cadastral survey conducted from 1961 to 1962, the subject realty was identified as Lot Nos. 17526, 17553 and 14356 of the Mangatarem Cadastre. At this time, Wenceslao Olegario disputed Juan Mari's claim over Lot Nos. 17526 and 17553. Hence, on the two corresponding survey notification cards dated September 28, 1968,[11] the claimant appeared as "Juan Mari v. Wenceslao Olegario." With regard to Lot No. 14356, the survey notification card named Juan Mari as the claimant.

Sometime around 1988, respondent filed with the Department of Environment and Natural Resources Regional Office in Pangasinan a protest against the petitioners because of their encroachment into the disputed realty. After investigation, said office decided in favor of the respondent and found the latter to be the owner of Lot Nos. 17526, 17553 and 14356. Petitioners did not appeal and the said decision became final and executory.

In 1989, Arsenio Olegario caused the amendment of his tax declaration[12] for the 50-square meter property to reflect 1) an increased area of 341 square meters; 2) the Cadastral Lot No. as 17526, Pls-768-D;[13] and 3) the boundaries as: North-NE Lot 16385 & Road; South-NW-Lots 14363 & 6385, Pls-768-D; East-SE-Lot 17552, Pls-768-D and West-SW-Lot 14358, Pls-768-D.

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[9] Exhibit "12", records, p. 216.

[10] Exhibit "R", *id.* at 220.

[11] Exhibits "A" and "B", *id.* at 202-203.

[12] No. 4107-R.

[13] Prior to 1989 this item remained blank.

Proceedings before the Regional Trial Court

In 1990, after discovering the amended entries in Arsenio Olegario's Tax Declaration No. 4107-R, respondent filed a complaint[14] with the RTC of Lingayen, Pangasinan, for Recovery of Possession and Annulment of Tax Declaration No. 4107-R. Respondent alleged, *inter alia*, that Juan Mari, and subsequently his successor, was deprived by the Olegarios of the possession of portions of subject realty which respondent owned. Trial thereafter ensued.

On October 13, 1995, the RTC rendered judgment in favor of the petitioners, *viz*:

WHEREFORE, in the light of the foregoing considerations, judgment is hereby rendered as follows:

1. Declaring the defendants-Olegario the owners of Lots 17553 and 17526 of the Mangatarem cadastral survey.

2. Dismissing the plaintiff's Complaint on the ground of prescription of action and on the further ground that [he] failed to prove [his] ownership of any portion of the two lots mentioned in the next preceding paragraph (assuming *arguendo* that [his] action has not prescribed);

3. Ordering the plaintiff to pay the costs of this suit. No damages are awarded by the Court.

SO ORDERED.[15]

Proceedings before the Court of Appeals

Respondent appealed to the CA which reversed the trial court's findings. The CA found respondent to have adduced stronger evidence of prior possession and ownership of the disputed realty. The dispositive portion of the CA Decision states:

WHEREFORE, the trial court's Decision dated October 13, 1995 is REVERSED and SET ASIDE and a new one is hereby entered declaring appellant Pedro C. Mari represented by Lilia C. Mari-Camba

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[14] Records, pp. 1-4.

[15] *Id.* at 286.

the lawful owner of Lot Nos. 17526, 17553 and 14356 of the Mangatarem Cadastre, without pronouncement as to costs.

SO ORDERED.[16]

Petitioners, without filing a motion for reconsideration of the CA Decision, thereafter filed the present petition for review.

Issues

Petitioners raise the following issues:

1. Whether or not there was failure on [the part of] the Court of Appeals to appreciate and give weight to the evidence presented by the petitioners;

2. Whether or not the Court of Appeals erred in its decision in adjudicating ownership of the said lots in favor of the respondent and [in] giving great weight to the respondent's evidence;

3. Whether or not the Court of Appeals erred in its failure to declare the action as barred by laches;

4. Whether or not the Court of Appeals failed to find an[d] declare the petitioners as having acquired ownership of the disputed lots by acquisitive prescription;

5. Whether or not the Court of Appeals erred in adjudicating the lot in favor of respondent and also [in] denying award of damages to petitioners.[17]

Petitioners' Arguments

Petitioners contend that they have been in possession of the disputed lots since 1948 or thereabouts, or for more than 30 years already. Hence, they acquired ownership thereover by virtue of prescription. They also impute negligence or failure on the part of respondent to assert his alleged rights within a reasonable time.

Respondent's Arguments

On the other hand, respondent asserts that petitioners claim ownership over only a certain 50-square meter parcel of land,

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[16] CA *rollo*, pp. 91-92.

[17] *Rollo*, pp. 200-201.

as evidenced by their tax declaration which consistently declared only such area. It was only in September 1989 that petitioners sought to expand the area of their claim to 341 square meters by virtue of a letter to the Provincial Assessor of Pangasinan. Hence, respondent asserts that prescription has not set in. Respondent also contends that petitioners' occupancy has been illegal from the point of inception and thus, such possession can never ripen into a legal status.

Our Ruling

The petition has no merit.

Petitioners' Evidence is Weak

Considering the conflicting findings of the RTC and the CA, a circumstance that constitutes an exception[18] to the general rule that only questions of law are proper subjects of a petition under Rule 45, we shall assess and weigh the evidence adduced by the parties and shall resolve the questions of fact raised by petitioners.

A study of the evidence presented by petitioners shows that the CA did not err in finding such evidence weaker than that of respondent. Arsenio Olegario testified that as early as 1937 their family had built a nipa house on the land where they lived. Yet he also testified that the former owner of the land was his mother, Magdalena Fernandez.[19] Significantly, Magdalena Fernandez has never claimed and was never in possession or ownership of Lot Nos. 17553, 17526 and 14356. Petitioners' evidence thus supports the conclusion that in 1937 they were in possession, not of Lot No. 17526, but of their mother's land, possibly 50 square meters of it, which is the approximate floor area of the house. Conversely, petitioners' evidence fails to clearly prove that in 1937 they were already occupying the disputed lots. The records, in fact, do not show exactly when the Olegarios entered and started occupying the disputed lots.

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[18] *Philippine Phosphate Fertilizer Corporation v. Kamalig Resources, Inc.*, G.R. No. 165608, December 13, 2007, 540 SCRA 139, 151; *Republic v. Enriquez*, G.R. No. 160990, September 11, 2006, 501 SCRA 436, 442.

[19] TSN, November 3, 1993, p. 7.

The evidence shows that a hollow block fence, an improvement introduced by the Olegarios in 1965, now exists somewhere along the disputed lots. Petitioners' claim that they were in possession of the disputed lots even prior to 1965 based on the existence of the bamboo fence on the boundary of their land preceding the existence of the hollow block fence, however, holds no water. The testimony of Marcelino Gutierrez shows that formerly there was a bamboo fence demarcating between the land of the Olegarios and the Maris and that in 1964 or 1965 a hollow block fence was constructed. He did not say, however, that the place where the hollow block fence was constructed was the exact same place where the bamboo boundary fence once stood. Even the testimony of Arsenio Olegario was ambiguous on this matter, *viz*:

Q When was the [concrete] hollow block [fence] separating your property [from] the property of Juan Mari constructed?

A It was constructed in 1965.

Q Before the construction of that concrete hollow block fence between your land and the land of Juan Mari [in] 1965, what was the visible boundary between your land and the land of Juan Mari?

A Bamboo fence, sir.[20]

Arsenio merely testified that a bamboo fence was formerly the visible boundary between his land and the land of Juan Mari; and that a concrete hollow block fence was constructed in 1965. His testimony failed to show that the concrete hollow block fence was constructed in the same position where the bamboo boundary fence once stood.

On the other hand, there is ample evidence on record, embodied in Tax Declaration No. 9404 for the year 1947; the survey sketch plan of 1961; and the survey plan of 1992, that the boundary claimed by the Olegarios kept moving in such a way that the portion they occupied expanded from 50 square meters (in the land of his mother) to 377 square meters.[21] Viewed in relation to the entire

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[20] TSN, Nov. 3, 1993, p. 9.

[21] 341 square meters of Lot No. 17526 plus 36 square meters of Lot No. 14356.

body of evidence presented by the parties in this case, these documents cannot plausibly all be mistaken in the areas specified therein. As against the bare claim of Arsenio[22] that his predecessor merely made an inaccurate estimate in providing 50 square meters as the area claimed by the latter in 1947 in the tax declaration,[23] we find it more plausible to believe that each of the documents on record stated the true area measurements of the parties' claims at the particular time each document was executed.

As correctly found by the CA, the earliest that petitioners can be considered to have occupied the disputed property was in 1965 when the concrete hollow block fence was constructed on the disputed lots.

Ownership and Prescription

As previously mentioned, respondent's predecessor, Juan Mari, had declared the disputed realty[24] for tax purposes as early as 1916. The tax declarations show that he had a two storey house on the realty. He also planted fruit bearing trees and bamboos thereon. The records[25] also show that the 897-square meter property had a bamboo fence along its perimeter. All these circumstances clearly show that Juan Mari was in possession of subject realty in the concept of owner, publicly and peacefully since 1916 or long before petitioners entered the disputed realty sometime in 1965.

Based on Article 538 of the Civil Code,[26] the respondent is the preferred possessor because, benefiting from his father's tax declaration of the subject realty since 1916, he has been in

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[22] He testified that the 50-square meter area was just an estimate of the floor area of the house but not of the entire lot area claimed by them.

[23] Significantly, the same area of 50 square meters was mentioned in the Deed of Quit-Claim of Unregistered Real property dated May 14, 1961.

[24] Surveyed as Lots No. 17553, 17526 and 14356.

[25] Records, p. 68.

[26] Art. 538 of the Civil Code states:

Possession as a fact cannot be recognized at the same time in two different personalities except in the cases of co-possession. Should a question arise regarding the fact of possession, the present possessor shall be preferred; if there are two possessors, the one longer in possession; if the dates of the

possession thereof for a longer period. On the other hand, petitioners acquired joint possession only sometime in 1965.

Despite 25 years of occupying the disputed lots, therefore, petitioners did not acquire ownership. Firstly, they had no just title. Petitioners did not present any document to show how the titles over Lot Nos. 17526 and 17533 were transferred to them, whether from respondent, his predecessor, or any other person.[27] Petitioners, therefore, could not acquire the disputed real property by ordinary prescription through possession for 10 years. Secondly, it is settled that ownership cannot be acquired by mere occupation. Unless coupled with the element of hostility towards the true owner, occupation and use, however long, will not confer title by prescription or adverse possession.[28] In other words, possession, to constitute the foundation of a prescriptive right, must be possession under claim of title, that is, it must be adverse.[29]

Petitioners' acts of a possessory character – acts that might have been merely tolerated by the owner – did not constitute possession. No matter how long tolerated possession is continued, it does not start the running of the prescriptive period.[30] Mere material possession of land is not adverse possession as against the owner and is insufficient to vest title, unless such possession is accompanied by the intent to possess as an owner. There should be a hostile use of such a nature and exercised under such circumstance as to manifest and give notice that the possession is under a claim of right.[31]

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possession are the same, the one who presents a title; and if all these conditions are equal, the thing shall be placed in judicial deposit pending determination of its possession or ownership through proper proceedings.

[27] What is on record is a "Deed of Quitclaim of Unregistered Real Property" over a 50-square meter realty, which has not been proven to be the same as Lots 17526 and 17533.

[28] *Cequeña v. Bolante*, 386 Phil. 419, 430 (2000).

[29] *Bogo-Medellin Milling Co., Inc. v. Court of Appeals*, 455 Phil. 285, 298-299 (2003).

[30] *Larena v. Mapili*, 455 Phil. 944, 954-955 (2003).

[31] *Bogo-Medellin Milling Co., Inc. v. Court of Appeals*, *supra* note 29 at 300; The *Director of Lands v. Court of Appeals*, 367 Phil. 597 (1999).

Petitioners have failed to prove that their possession was adverse or under claim of title or right. Unlike respondent, petitioners did not have either the courage or forthrightness to publicly declare the disputed lots as owned by them for tax purposes. Tax declarations "prove that the holder has a claim of title over the property. Aside from manifesting a sincere desire to obtain title thereto, they announce the holder's adverse claim against the state and other interested parties."[32] Petitioners' omission, when viewed in conjunction with respondent's continued unequivocal declaration of ownership over, payment of taxes on and possession of the subject realty, shows a lack of sufficient adverseness of the formers' possession to qualify as being one in the concept of owner.

The only instance petitioners assumed a legal position sufficiently adverse to respondent's ownership of the disputed properties was when they declared Lot No. 17526 for tax purposes in their name in 1989.[33] Since then and until the filing of the complaint for recovery of possession in 1990, only one year had elapsed. Hence, petitioners never acquired ownership through extraordinary prescription of the subject realty.

On the other hand, being the sole transferree of his father, respondent showed through his tax declarations which were coupled with possessory acts that he, through his predecessor, had been in possession of the land for more than 30 years since 1916. "Open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period - *ipso jure* and without the need of judicial or other sanction, ceases to be public land and becomes private property."[34] Ownership of immovable property is acquired by extraordinary prescription through possession for 30 years.[35] For purposes of deciding the instant case, therefore,

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[32] *Cequeña v. Bolante*, *supra* note 28 at 430, citing *Republic of the Phils. v. Court of Appeals*, 328 Phil. 238, 248 (1996).

[33] Exhibit "U", records p. 223.

[34] *San Miguel Corporation v. Court of Appeals*, G.R. No. 57667, May 28, 1990, 185 SCRA 722, 724-725.

[35] CIVIL CODE, ART. 1137.

the possession by respondent and his predecessor had already ripened into ownership of the subject realty by virtue of prescription as early as 1946.

Laches

Petitioners cannot find refuge in the principle of laches. It is not just the lapse of time or delay that constitutes laches. The essence of laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, through due diligence, could or should have been done earlier, thus giving rise to a presumption that the party entitled to assert it had earlier abandoned or declined to assert it.

The essential elements of laches are: (a) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation complained of; (b) delay in asserting complainant's rights after he had knowledge of defendant's acts and after he has had the opportunity to sue; (c) lack of knowledge or notice by defendant that the complainant will assert the right on which he bases his suit and (d) injury or prejudice to the defendant in the event the relief is accorded to the complainant.[36]

In the instant case, the second and third elements are missing. Petitioners had notice and knew all along the position of the respondent and his predecessor Juan Mari – they were standing pat on his ownership over the subject realty. This stand of respondent and his predecessor was recorded and clearly visible from the notification survey cards.[37] From 1968, the date of the cards, until 1989 there was nothing to indicate any change in the position of any of the parties. Moreover, that respondent had not conceded ownership and possession of the land to petitioners is clear also from the fact that Pedro Mari continued to declare the entire 897-square meter property in his name and pay taxes for the entire area after his father transferred the property to him.

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[36] *Bogo-Medellin Milling Co., Inc. v. Court of Appeals*, *supra* note 29 at 302 citing *Avisado v. Rumbaua*, 406 Phil. 704 (2001).

[37] Exhibits "A" and "B", records, pp. 202-203.

On the other hand, it was petitioners who suddenly changed their position in 1989 by changing the area of the property declared in their name from 50 square meters to 341 square meters and specifying the details to make it appear that the tax declaration for the 50-square meter property pertained to Lot No. 17526. As previously discussed, it was only at this point, in 1989, that it can be clearly stated that petitioners were making their claim of ownership public and unequivocal and converting their possession over Lot No. 17526 into one in the concept of owner.

Upon discovery of this clear and unequivocal change in status of petitioners' position over the disputed land respondent immediately acted. He filed in 1990 the complaint for recovery of possession and nullification of tax declaration. Hence, we find no laches in the instant case.

In conclusion, we find no reversible error on the part of the CA in recognizing the ownership and right of possession of respondent over Lot Nos. 17526, 17553 and 14356. There is, thus, also no basis for an award of damages and attorney's fees in favor of petitioners.

WHEREFORE, the instant petition is *DENIED*. The assailed Decision of the Court of Appeals dated April 18, 2001 is *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson),[*] *Carpio Morales,*[**] *Leonardo-de Castro,*[***] and *Abad, JJ.,* concur.

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[*] Per Special Order No. 775 dated November 3, 2009.

[**] In lieu of Justice Arturo D. Brion who is on leave per Special Order No. 807 dated December 7, 2009.

[***] Additional member per Special Order No. 776 dated November 3, 2009.

SECOND DIVISION

[G.R. No. 165109. December 14, 2009]

MANUEL N. MAMBA, RAYMUND P. GUZMAN and LEONIDES N. FAUSTO, *petitioners, vs.* **EDGAR R. LARA, JENERWIN C. BACUYAG, WILSON O. PUYAWAN, ALDEGUNDO Q. CAYOSA, JR., NORMAN A. AGATEP, ESTRELLA P. FERNANDEZ, VILMER V. VILORIA, BAYLON A. CALAGUI, CECILIA MAEVE T. LAYOS, PREFERRED VENTURES CORP., ASSET BUILDERS CORP., RIZAL COMMERCIAL BANKING CORPORATION, MALAYAN INSURANCE CO., and LAND BANK OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; TAXPAYER'S SUIT; REQUISITES TO PROSPER; AS LONG AS TAXES ARE INVOLVED, A TAXPAYER NEED NOT BE A PARTY TO THE GOVERNMENT CONTRACT TO CHALLENGE ITS VALIDITY.— A taxpayer is allowed to sue where there is a claim that public funds are illegally disbursed, or that the public money is being deflected to any improper purpose, or that there is wastage of public funds through the enforcement of an invalid or unconstitutional law. A person suing as a taxpayer, however, must show that the act complained of directly involves the illegal disbursement of public funds derived from taxation. He must also prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation and that he will sustain a direct injury because of the enforcement of the questioned statute or contract. In other words, for a taxpayer's suit to prosper, two requisites must be met: (1) public funds derived from taxation are disbursed by a political subdivision or instrumentality and in doing so, a law is violated or some irregularity is committed and (2) the petitioner is directly affected by the alleged act. In light of the foregoing, it is apparent that contrary to the view of the RTC, a taxpayer need not be a party to the contract to challenge its validity. As long

as taxes are involved, people have a right to question contracts entered into by the government.

2. ID.; ID.; ID.; MET IN CASE AT BAR; ORDINARY CITIZENS AND TAXPAYERS ARE ALLOWED TO SUE EVEN IF THEY FAILED TO SHOW DIRECT INJURY WERE THEY INVOKED "TRANSCENDENTAL IMPORTANCE," "PARAMOUNT PUBLIC INTEREST," OR "FAR-REACHING IMPLICATIONS."— In this case, although the construction of the town center would be primarily sourced from the proceeds of the bonds, which respondents insist are not taxpayer's money, a government support in the amount of ₱187 million would still be spent for paying the interest of the bonds. In fact, a Deed of Assignment was executed by the governor in favor of respondent RCBC over the Internal Revenue Allotment (IRA) and other revenues of the provincial government as payment and/or security for the obligations of the provincial government under the Trust Indenture Agreement dated September 17, 2003. Records also show that on March 4, 2004, the governor requested the *Sangguniang Panlalawigan* to appropriate an amount of ₱25 million for the interest of the bond. Clearly, the first requisite has been met. As to the second requisite, the court, in recent cases, has relaxed the stringent "direct injury test" bearing in mind that *locus standi* is a procedural technicality. By invoking "transcendental importance," "paramount public interest," or "far-reaching implications," ordinary citizens and taxpayers were allowed to sue even if they failed to show direct injury. In cases where serious legal issues were raised or where public expenditures of millions of pesos were involved, the court did not hesitate to give standing to taxpayers. We find no reason to deviate from the jurisprudential trend.

3. ID.; ID.; LIBERAL APPROACH MUST BE ADOPTED IN DETERMINING *LOCUS STANDI* IN PUBLIC SUITS; REASONS; CASE AT BAR.— What is more, the provincial government would be shelling out a total amount of ₱187 million for the period of seven years by way of subsidy for the interest of the bonds. Without a doubt, the resolution of the present petition is of paramount importance to the people of Cagayan who at the end of the day would bear the brunt of these agreements. Another point to consider is that local government

units now possess more powers, authority and resources at their disposal, which in the hands of unscrupulous officials may be abused and misused to the detriment of the public. To protect the interest of the people and to prevent taxes from being squandered or wasted under the guise of government projects, a liberal approach must therefore be adopted in determining *locus standi* in public suits. In view of the foregoing, we are convinced that petitioners have sufficient standing to file the present suit. Accordingly, they should be given the opportunity to present their case before the RTC.

4. **ID.; POLITICAL QUESTION; A QUESTION OF POLICY; ISSUES AS TO THE LEGALITY OF THE ACTS COMPLAINED OF FALL WITHIN THE AMBIT OF JUDICIAL REVIEW; CASE AT BAR.—** A political question is a question of policy, which is to be decided by the people in their sovereign capacity or by the legislative or the executive branch of the government to which full discretionary authority has been delegated. In filing the instant case before the RTC, petitioners seek to restrain public respondents from implementing the bond flotation and to declare null and void all contracts related to the bond flotation and construction of the town center. In the petition before the RTC, they alleged grave abuse of discretion and clear violations of law by public respondents. They put in issue the overpriced construction of the town center; the grossly disadvantageous bond flotation; the irrevocable assignment of the provincial government's annual regular income, including the IRA, to respondent RCBC to cover and secure the payment of the bonds floated; and the lack of consultation and discussion with the community regarding the proposed project, as well as a proper and legitimate bidding for the construction of the town center. Obviously, the issues raised in the petition do not refer to the wisdom but to the legality of the acts complained of. Thus, we find the instant controversy within the ambit of judicial review. Besides, even if the issues were political in nature, it would still come within our powers of review under the expanded jurisdiction conferred upon us by Section 1, Article VIII of the Constitution, which includes the authority to determine whether grave abuse of discretion amounting to excess or lack of jurisdiction has been committed by any branch or instrumentality of the government.

5. **REMEDIAL LAW; MOTIONS; DENIAL OF THE MOTION TO ADMIT AMENDED PETITION, PROPER.—** However, as to the denial of petitioners' Motion to Admit Amended Petition, we find no reason to reverse the same. The inclusion of the province of Cagayan as a petitioner would not only change the theory of the case but would also result in an absurd situation. The provincial government, if included as a petitioner, would in effect be suing itself considering that public respondents are being sued in their official capacity. In any case, there is no need to amend the petition because petitioners, as we have said, have legal standing to sue as taxpayers.

6. **ID.; ID.; MOTION FOR RECONSIDERATION; NOTICE REQUIREMENT; FAILURE TO NOTIFY ALL THE PARTIES, NOT FATAL; NOTICE REQUIREMENT SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR.—** A perusal of the Motion for Reconsideration filed by petitioners would show that the notice of hearing was addressed only to the Clerk of Court in violation of Section 5, Rule 15 of the Rules of Court, which requires the notice of hearing to be addressed to all parties concerned. This defect, however, did not make the motion a mere scrap of paper. The rule is not a ritual to be followed blindly. The purpose of a notice of hearing is simply to afford the adverse parties a chance to be heard before a motion is resolved by the court. In this case, respondents were furnished copies of the motion, and consequently, notified of the scheduled hearing. Counsel for public respondents in fact moved for the postponement of the hearing, which the court granted. Moreover, respondents were afforded procedural due process as they were given sufficient time to file their respective comments or oppositions to the motion. From the foregoing, it is clear that the rule requiring notice to all parties was substantially complied with. In effect, the defect in the Motion for Reconsideration was cured.

7. **ID.; RULES OF PROCEDURE; PROCEDURAL DEFECTS OR LAPSES, IF NEGLIGIBLE, SHOULD BE EXCUSED IN THE HIGHER INTEREST OF JUSTICE.—** We cannot overemphasize that procedural rules are mere tools to aid the courts in the speedy, just and inexpensive resolution of cases. Procedural defects or lapses, if negligible, should be excused in the higher interest of justice as technicalities should not

override the merits of the case. Dismissal of cases due to technicalities should also be avoided to afford the parties the opportunity to present their case. Courts must be reminded that the swift unclogging of the dockets although a laudable objective must not be done at the expense of substantial justice.

APPEARANCES OF COUNSEL

Vicente D. Lasam for petitioners.

Jessie B. Usita for Hon. Edgar Ramones Lara and Members of Cagayan Sangguniang Panlalawigan.

Ma. Regina Mercedes B. Gatmaytan for Malayan Insurance Co., Inc.

Ephraim Z. Lasam for Preferred Ventures & Asset Builders Corporation.

Reynaldo A. Deray for Rizal Commercial Banking Corporation.

D E C I S I O N

DEL CASTILLO, *J.*:

The decision to entertain a taxpayer's suit is discretionary upon the Court. It can choose to strictly apply the rule or take a liberal stance depending on the controversy involved. Advocates for a strict application of the rule believe that leniency would open floodgates to numerous suits, which could hamper the government from performing its job. Such possibility, however, is not only remote but also negligible compared to what is at stake – "the lifeblood of the State." For this reason, when the issue hinges on the illegal disbursement of public funds, a liberal approach should be preferred as it is more in keeping with truth and justice.

This Petition for Review on *Certiorari* with prayer for a Temporary Restraining Order/Writ of Preliminary Injunction, under Rule 45 of the Rules of Court, seeks to set aside the April 27, 2004 Order[1] of the Regional Trial Court (RTC), Branch 5, Tuguegarao City, dismissing the Petition for Annulment of Contracts and Injunction with prayer for the issuance of a Temporary

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[1] *Rollo*, pp. 221-230; penned by Judge Elmo M. Alameda.

Restraining Order/Writ of Preliminary Injunction,[2] docketed as Civil Case No. 6283. Likewise assailed in this Petition is the August 20, 2004 Resolution[3] of RTC, Branch 1, Tuguegarao City denying the Motion for Reconsideration of the dismissal.

Factual Antecedents

On November 5, 2001, the *Sangguniang Panlalawigan* of Cagayan passed Resolution No. 2001-272[4] authorizing Governor Edgar R. Lara (Gov. Lara) to engage the services of and appoint Preferred Ventures Corporation as financial advisor or consultant for the issuance and flotation of bonds to fund the priority projects of the governor without cost and commitment.

On November 19, 2001, the *Sangguniang Panlalawigan,* through Resolution No. 290-2001,[5] ratified the Memorandum of Agreement (MOA)[6] entered into by Gov. Lara and Preferred Ventures Corporation. The MOA provided that the provincial government of Cagayan shall pay Preferred Ventures Corporation a one-time fee of 3% of the amount of bonds floated.

On February 15, 2002, the *Sangguniang Panlalawigan* approved Resolution No. 2002-061-A[7] authorizing Gov. Lara to negotiate, sign and execute contracts or agreements pertinent to the flotation of the bonds of the provincial government in an amount not to exceed ₱500 million for the construction and improvement of priority projects to be approved by the *Sangguniang Panlalawigan.*

On May 20, 2002, the majority of the members of the *Sangguniang Panlalawigan* of Cagayan approved Ordinance No. 19-2002,[8] authorizing the bond flotation of the provincial government in an amount not to exceed ₱500 million to fund

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[2] *Id.* at 36-54.

[3] *Id.* at 256-258; penned by Judge Jimmy H. F. Luczon, Jr.

[4] *Id.* at 55-56.

[5] *Id.* at 57-59.

[6] *Id.* at 60-63.

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

[8] *Id.* at 66-68.

the construction and development of the new Cagayan Town Center. The Resolution likewise granted authority to Gov. Lara to negotiate, sign and execute contracts and agreements necessary and related to the bond flotation subject to the approval and ratification by the *Sangguniang Panlalawigan.*

On October 20, 2003, the *Sangguniang Panlalawigan* approved Resolution No. 350-2003[9] ratifying the Cagayan Provincial Bond Agreements entered into by the provincial government, represented by Gov. Lara, to wit:

a. Trust Indenture with the Rizal Commercial Banking Corporation (RCBC) – Trust and Investment Division and Malayan Insurance Company, Inc. (MICO).

b. Deed of Assignment by way of security with the RCBC and the Land Bank of the Philippines (LBP).

c. Transfer and Paying Agency Agreement with the RCBC – Trust and Investment Division.

d. Guarantee Agreement with the RCBC – Trust and Investment Division and MICO.

e. Underwriting Agreement with RCBC Capital Corporation.

On even date, the *Sangguniang Panlalawigan* also approved Resolution No. 351-2003,[10] ratifying the Agreement for the Planning, Design, Construction, and Site Development of the New Cagayan Town Center[11] entered into by the provincial government, represented by Gov. Lara and Asset Builders Corporation, represented by its President, Mr. Rogelio P. Centeno.

On May 20, 2003, Gov. Lara issued the Notice of Award to Asset Builders Corporation, giving to the latter the planning, design, construction and site development of the town center project for a fee of ₱213,795,732.39.[12]

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[9] *Id.* at 69-70.

[10] *Id.* at 71-72.

[11] *Id.* at 78-90.

[12] *Id.* at 440.

Proceedings before the Regional Trial Court

On December 12, 2003, petitioners Manuel N. Mamba, Raymund P. Guzman and Leonides N. Fausto filed a Petition for Annulment of Contracts and Injunction with prayer for a Temporary Restraining Order/Writ of Preliminary Injunction[13] against Edgar R. Lara, Jenerwin C. Bacuyag, Wilson O. Puyawan, Aldegundo Q. Cayosa, Jr., Norman A. Agatep, Estrella P. Fernandez, Vilmer V. Viloria, Baylon A. Calagui, Cecilia Maeve T. Layos, Preferred Ventures Corporation, Asset Builders Corporation, RCBC, MICO and LBP.

At the time of the filing of the petition, Manuel N. Mamba was the Representative of the 3rd Congressional District of the province of Cagayan[14] while Raymund P. Guzman and Leonides N. Fausto were members of the *Sangguniang Panlalawigan* of Cagayan.[15]

Edgar R. Lara was sued in his capacity as governor of Cagayan,[16] while Jenerwin C. Bacuyag, Wilson O. Puyawan, Aldegundo Q. Cayosa, Jr., Norman A. Agatep, Estrella P. Fernandez, Vilmer V. Viloria, Baylon A. Calagui and Cecilia Maeve T. Layos were sued as members of the *Sangguniang Panlalawigan* of Cagayan.[17] Respondents Preferred Ventures Corporation, Asset Builders Corporation, RCBC, MICO and LBP were all impleaded as indispensable or necessary parties.

Respondent Preferred Ventures Corporation is the financial advisor of the province of Cagayan regarding the bond flotation undertaken by the province.[18] Respondent Asset Builders Corporation was awarded the right to plan, design, construct and develop the proposed town center.[19] Respondent RCBC,

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[13] *Id.* at 36-54.

[14] *Id.* at 36.

[15] *Id.* at 36-37.

[16] *Id.* at 37.

[17] *Id.*

[18] *Id.* at 437.

[19] *Id.*

through its Trust and Investment Division, is the trustee of the seven-year bond flotation undertaken by the province for the construction of the town center,[20] while respondent MICO is the guarantor.[21] Lastly, respondent LBP is the official depositary bank of the province.[22]

In response to the petition, public respondents filed an Answer with Motion to Dismiss,[23] raising the following defenses: a) petitioners are not the proper parties or they lack *locus standi* in court; b) the action is barred by the rule on state immunity from suit and c) the issues raised are not justiciable questions but purely political.

For its part, respondent Preferred Ventures Corporation filed a Motion to Dismiss[24] on the following grounds: a) petitioners have no cause of action for injunction; b) failure to join an indispensable party; c) lack of personality to sue and d) lack of *locus standi*. Respondent MICO likewise filed a Motion to Dismiss[25] raising the grounds of lack of cause of action and legal standing. Respondent RCBC similarly argued in its Motion to Dismiss[26] that: a) petitioners are not the real parties-in-interest or have no legal standing to institute the petition; b) petitioners have no cause of action as the flotation of the bonds are within the right and power of both respondent RCBC and the province of Cagayan and c) the viability of the construction of a town center is not a justiciable question but a political question.

Respondent Asset Builders Corporation, on the other hand, filed an Answer[27] interposing special and affirmative defenses

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[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.* at 126-141.

[24] *Id.* at 142-150.

[25] *Id.* at 179-189.

[26] *Id.* at 163-171.

[27] *Id.* at 151-162.

of lack of legal standing and cause of action. Respondent LBP also filed an Answer[28] alleging in the main that petitioners have no cause of action against it as it is not an indispensable party or a necessary party to the case.

Two days after the filing of respondents' respective memoranda on the issues raised during the hearing of the special and/or affirmative defenses, petitioners filed a Motion to Admit Amended Petition[29] attaching thereto the amended petition.[30] Public respondents opposed the motion for the following reasons: 1) the motion was belatedly filed; 2) the Amended Petition is not sufficient in form and in substance; 3) the motion is patently dilatory and 4) the Amended Petition was filed to cure the defect in the original petition.[31]

Petitioners also filed a Consolidated Opposition to the Motion to Dismiss[32] followed by supplemental pleadings[33] in support of their prayer for a writ of preliminary injunction.

On April 27, 2004, the RTC issued the assailed Order denying the Motion to Admit Amended Petition and dismissing the petition for lack of cause of action. It ruled that:

> The language of Secs. 2 & 3 of Rule 10 of the 1997 Rules of Civil Procedure dealing on the filing of an amended pleading is quite clear. As such, the Court rules that the motion was belatedly filed. The granting of leave to file amended pleadings is a matter peculiarly within the sound discretion of the trial court. But the rule allowing amendments to pleadings is subject to the general but inflexible limitation that the cause of action or defense shall not be substantially changed or the theory of the case altered to the prejudice of the other party (*Avecilla vs. Yatcvo*, 103 Phil. 666).

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[28] *Id.* at 172-178.

[29] *Id.* at 98-100.

[30] *Id.* at 101-118.

[31] *Id.* at 119-125.

[32] *Id.* at 190-204.

[33] *Id.* at 205-215 and 216-220.

On the assumption that the controversy presents justiciable issues which this Court may take cognizance of, petitioners in the present case who presumably presented legitimate interests in the controversy are not parties to the questioned contract. Contracts produce effect as between the parties who execute them. Only a party to the contract can maintain an action to enforce the obligations arising under said contract (*Young vs. CA*, 169 SCRA 213). Since a contract is binding only upon the parties thereto, a third person cannot ask for its rescission if it is in fraud of his rights. One who is not a party to a contract has no rights under such contract and even if the contrary may be voidable, its nullity can be asserted only by one who is a party thereto; a third person would have absolutely no personality to ask for the annulment (*Wolfson vs. Estate of Martinez*, 20 Phil. 340; *Ibañez vs. Hongkong & Shanghai Bank*, 22 Phil. 572; *Ayson vs. CA*, G.R. Nos. L-6501 & 6599, May 21, 1955).

It was, however, held that a person who is not a party obliged principally or subsidiarily in a contract may exercise an action for nullity of the contract if he is prejudiced in his rights with respect to one of the contracting parties and can show the detriment which would positively result to him from the contract in which he had no intervention (*Bañez vs. CA*, 59 SCRA 15; *Anyong Hsan vs. CA*, 59 SCRA 110, 112-113; *Leodovica vs. CA,* 65 SCRA 154-155). In the case at bar, petitioners failed to show that they were prejudiced in their rights [or that a] detriment x x x would positively result to them. Hence, they lack *locus standi* in court.

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To the mind of the Court, procedural matters in the present controversy may be dispensed with, stressing that the instant case is a political question, a question which the court cannot, in any manner, take judicial cognizance. Courts will not interfere with purely political questions because of the principle of separation of powers (*Tañada vs. Cuenco*, 103 Phil. 1051). Political questions are those questions which, under the Constitution, are to be decided by the people in their sovereign capacity or in regard to which full discretionary authority has been delegated to the legislative or [to the] executive branch of the government *(Nuclear Free Phils. Coalition vs. NPC*, 141 SCRA 307 (1986); *Torres vs. Gonzales*, 152 SCRA 272; *Citizen's Alliance for Consumer Protection vs. Energy Regulatory Board*, G.R. No. 78888-90, June 23, 1988).

The citation made by the provincial government[, to] which this Court is inclined to agree, is that the matter falls under the discretion of another department, hence the decision reached is in the category of a political question and consequently may not be the subject of judicial jurisdiction (Cruz in *Political Law*, 1998 Ed., page 81) is correct.

It is [a] well-recognized principle that purely administrative and discretionary functions may not be interfered with by the courts (Adm. Law Test & Cases, 2001 Ed., De Leon, De Leon, Jr.).

The case therefore calls for the doctrine of ripeness for judicial review. This determines the point at which courts may review administrative action. The basic principle of ripeness is that the judicial machinery should be conserved for problems which are real and present or imminent and should not be squandered on problems which are future, imaginary or remote. This case is not ripe for judicial determination since there is no imminently x x x substantial injury to the petitioners.

In other words, the putting up of the New Cagayan Town Center by the province over the land fully owned by it and the concomitant contracts entered into by the same is within the bounds of its corporate power, an undertaking which falls within the ambit of its discretion and therefore a purely political issue which is beyond the province of the court x x x. [Consequently, the court cannot,] in any manner, take judicial cognizance over it. The act of the provincial government was in pursuance of the mandate of the Local Government Code of 1991.

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Indeed, adjudication of the procedural issues presented for resolution by the present action would be a futile exercise in exegesis.

What defeats the plea of the petitioners for the issuance of a writ of preliminary injunction is the fact that their averments are merely speculative and founded on conjectures. An injunction is not intended to protect contingent or future rights nor is it a remedy to enforce an abstract right (*Cerebo vs. Dictado*, 160 SCRA 759; *Ulang vs. CA*, 225 SCRA 637). An injunction, whether preliminary or final, will not issue to protect a right not in *in esse* and which may never arise, or to restrain an act which does not give rise to a cause of action. The complainant's right on title, moreover, must be clear and unquestioned [since] equity, as a rule, will not take cognizance of suits to establish title and will not lend its preventive aid by injunction where the complainant's title or right is doubtful or disputed.

The possibility of irreparable damage, without proof of violation of an actual existing right, is no ground for injunction being a mere *damnum, absque injuria* (*Talisay-Silay Milling Company, Inc. vs. CFI of Negros Occidental, et al*. 42 SCRA 577, 582).

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For lack of cause of action, the case should be dismissed.

The facts and allegations [necessarily] suggest also that this court may dismiss the case for want of jurisdiction.

The rule has to be so because it can *motu propio* dismiss it as its only jurisdiction is to dismiss it if it has no jurisdiction. This is in line with the ruling in *Andaya vs. Abadia*, 46 SCAD 1036, G.R. No. 104033, Dec. 27, 1993 where the court may dismiss a complaint even without a motion to dismiss or answer.

Upon the foregoing considerations, the case is hereby dismissed without costs.

SO ORDERED.[34]

Petitioners filed a Motion for Reconsideration[35] to which respondents filed their respective Oppositions.[36] Petitioners then filed a Motion to Inhibit, which the court granted. Accordingly, the case was re-raffled to Branch 1 of the RTC of Tuguegarao City.[37]

On August 20, 2004, Branch 1 of the RTC of Tuguegarao City issued a Resolution denying petitioners' plea for reconsideration. The court found the motion to be a mere scrap of paper as the notice of hearing was addressed only to the Clerk of Court in violation of Section 5, Rule 15 of the Rules of Court. As to the merits, the court sustained the findings of Branch 5 that petitioners lack legal standing to sue and that the issue involved is political.

Issues

Hence, the present recourse where petitioners argue that:

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[34] *Id.* at 224-230.

[35] *Id.* at 231-241.

[36] *Id.* at 242-246 and 247-254.

[37] *Id.* at 718.

A. The lower court decided a question of substance in a way not in accord with law and with the applicable decision of the Supreme Court, and

B. The lower court has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision in that:

I. It denied *locus standi* to petitioners;

II. [It] determined that the matter of contract entered into by the provincial government is in the nature of a political question;

III. [It] denied the admission of Amended Petition; and

IV. [It] found a defect of substance in the petitioners' Motion for Reconsideration.[38]

Our Ruling

The petition is partially meritorious.

Petitioners have legal standing to sue as taxpayers

A taxpayer is allowed to sue where there is a claim that public funds are illegally disbursed, or that the public money is being deflected to any improper purpose, or that there is wastage of public funds through the enforcement of an invalid or unconstitutional law.[39] A person suing as a taxpayer, however, must show that the act complained of directly involves the illegal disbursement of public funds derived from taxation.[40] He must also prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation and that he will sustain a direct injury because of the enforcement of the questioned statute or contract.[41] In

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[38] *Id.* at 15.

[39] *Constantino, Jr. v. Cuisia,* G.R. No. 106064, October 13, 2005, 472 SCRA 505, 518-519.

[40] *Bayan (Bagong Alyansang Makabayan) v. Zamora,* 396 Phil. 623, 647 (2000).

[41] *Bugnay Construction and Development Corporation v. Judge Laron,* 257 Phil. 245, 256 (1989).

other words, for a taxpayer's suit to prosper, two requisites must be met: (1) public funds derived from taxation are disbursed by a political subdivision or instrumentality and in doing so, a law is violated or some irregularity is committed and (2) the petitioner is directly affected by the alleged act.[42]

In light of the foregoing, it is apparent that contrary to the view of the RTC, a taxpayer need not be a party to the contract to challenge its validity.[43] As long as taxes are involved, people have a right to question contracts entered into by the government.

In this case, although the construction of the town center would be primarily sourced from the proceeds of the bonds, which respondents insist are not taxpayer's money, a government support in the amount of ₱187 million would still be spent for paying the interest of the bonds.[44] In fact, a Deed of Assignment[45] was executed by the governor in favor of respondent RCBC over the Internal Revenue Allotment (IRA) and other revenues of the provincial government as payment and/or security for the obligations of the provincial government under the Trust Indenture Agreement dated September 17, 2003. Records also show that on March 4, 2004, the governor requested the *Sangguniang Panlalawigan* to appropriate an amount of ₱25 million for the interest of the bond.[46] Clearly, the first requisite has been met.

As to the second requisite, the court, in recent cases, has relaxed the stringent "direct injury test" bearing in mind that *locus standi* is a procedural technicality.[47] By invoking "transcendental importance," "paramount public interest," or "far-reaching implications," ordinary

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[42] *Bagatsing v. San Juan*, 329 Phil. 8, 13 (1996).

[43] *Abaya v. Ebdane, Jr.*, G.R. No. 167919, February 14, 2007, 515 SCRA 720, 758.

[44] *Rollo*, p. 129; Answer with Motion to Dismiss of public respondents.

[45] *Id.* at 93-95.

[46] *Id.* at 215.

[47] *Garcillano v. House of Representatives Committees on Public Information, Public Order and Safety, National Defense and Security, Information and Communications Technology, and Suffrage and Electoral Reforms,* G.R. Nos. 1708338 & 179275, December 23, 2008, 575 SCRA 170, 185.

citizens and taxpayers were allowed to sue even if they failed to show direct injury.[48] In cases where serious legal issues were raised or where public expenditures of millions of pesos were involved, the court did not hesitate to give standing to taxpayers.[49]

We find no reason to deviate from the jurisprudential trend.

To begin with, the amount involved in this case is substantial. Under the various agreements entered into by the governor, which were ratified by the *Sangguniang Panlalawigan*, the provincial government of Cagayan would incur the following costs:[50]

Compensation to Preferred Ventures (3% of ₱205M)[51] Resolution No. 290-2001	-	₱ 6,150,000.00
Management and Underwriting Fees (1.5% of ₱205M)[52]	-	3,075,000.00
Documentary Tax (0.75% of ₱205M)[53]	-	1,537,500.00
Guarantee Fee[54]	-	7,350,000.00
Construction and Design of town center[55]	-	213,795,732.39
Total Cost	**-**	**₱231,908,232.39**

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[48] *David v. Macapagal-Arroyo,* G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 489 SCRA 160.

[49] See *Constantino, Jr. v. Cuisia, supra* at note 39; *Abaya v. Ebdane, Jr., supra* at note 43; *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP),* G.R. Nos. 183591, 183752, 183893, 183951 & 183962, October 14, 2008, 568 SCRA 402; *Garcillano v. House of Representatives Committees on Public Information, Public Order and Safety, National Defense and Security, Information and Communications Technology, and Suffrage and Electoral Reforms, supra* at note 47.

[50] See *Rollo*, p. 11.

[51] *Id.* at 58; Resolution No. 290-2001.

[52] *Id.* at 73; Underwriting Agreement, paragraph 7.1.

[53] *Id.* at 74; Underwriting Agreement, paragraph 7.3.

[54] *Id.* at 77; Guarantee Agreement, paragraph 3.1.

[55] *Id.* at 83; Agreement for the Planning, Design, Construction and Site Development of the New Cagayan Town Center, paragraph 7.1.

What is more, the provincial government would be shelling out a total amount of ₱187 million for the period of seven years by way of subsidy for the interest of the bonds. Without a doubt, the resolution of the present petition is of paramount importance to the people of Cagayan who at the end of the day would bear the brunt of these agreements.

Another point to consider is that local government units now possess more powers, authority and resources at their disposal,[56] which in the hands of unscrupulous officials may be abused and misused to the detriment of the public. To protect the interest of the people and to prevent taxes from being squandered or wasted under the guise of government projects, a liberal approach must therefore be adopted in determining *locus standi* in public suits.

In view of the foregoing, we are convinced that petitioners have sufficient standing to file the present suit. Accordingly, they should be given the opportunity to present their case before the RTC.

Having resolved the core issue, we shall now proceed to the remaining issues.

The controversy involved is justiciable

A political question is a question of policy, which is to be decided by the people in their sovereign capacity or by the legislative or the executive branch of the government to which full discretionary authority has been delegated.[57]

In filing the instant case before the RTC, petitioners seek to restrain public respondents from implementing the bond flotation and to declare null and void all contracts related to the bond flotation and construction of the town center. In the petition before

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[56] REPUBLIC ACT NO. 7160, Section 2, otherwise known as the "Local Government Code of 1991".

[57] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform,* G.R. Nos. 78742, 79310, 79744 & 79777, July 14, 1989, 175 SCRA 343, 377.

the RTC, they alleged grave abuse of discretion and clear violations of law by public respondents. They put in issue the overpriced construction of the town center; the grossly disadvantageous bond flotation; the irrevocable assignment of the provincial government's annual regular income, including the IRA, to respondent RCBC to cover and secure the payment of the bonds floated; and the lack of consultation and discussion with the community regarding the proposed project, as well as a proper and legitimate bidding for the construction of the town center.

Obviously, the issues raised in the petition do not refer to the wisdom but to the legality of the acts complained of. Thus, we find the instant controversy within the ambit of judicial review. Besides, even if the issues were political in nature, it would still come within our powers of review under the expanded jurisdiction conferred upon us by Section 1, Article VIII of the Constitution, which includes the authority to determine whether grave abuse of discretion amounting to excess or lack of jurisdiction has been committed by any branch or instrumentality of the government.[58]

The Motion to Admit Amended Petition was properly denied

However, as to the denial of petitioners' Motion to Admit Amended Petition, we find no reason to reverse the same. The inclusion of the province of Cagayan as a petitioner would not only change the theory of the case but would also result in an absurd situation. The provincial government, if included as a petitioner, would in effect be suing itself considering that public respondents are being sued in their official capacity.

In any case, there is no need to amend the petition because petitioners, as we have said, have legal standing to sue as taxpayers.

Section 5, Rule 15 of the Rules of Court was substantially complied with

This brings us to the fourth and final issue.

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[58] *Daza v. Singson,* G.R. No. 86344, December 21, 1989, 180 SCRA 496, 507.

A perusal of the Motion for Reconsideration filed by petitioners would show that the notice of hearing was addressed only to the Clerk of Court in violation of Section 5, Rule 15 of the Rules of Court, which requires the notice of hearing to be addressed to all parties concerned. This defect, however, did not make the motion a mere scrap of paper. The rule is not a ritual to be followed blindly.[59] The purpose of a notice of hearing is simply to afford the adverse parties a chance to be heard before a motion is resolved by the court.[60] In this case, respondents were furnished copies of the motion, and consequently, notified of the scheduled hearing. Counsel for public respondents in fact moved for the postponement of the hearing, which the court granted.[61] Moreover, respondents were afforded procedural due process as they were given sufficient time to file their respective comments or oppositions to the motion. From the foregoing, it is clear that the rule requiring notice to all parties was substantially complied with.[62] In effect, the defect in the Motion for Reconsideration was cured.

We cannot overemphasize that procedural rules are mere tools to aid the courts in the speedy, just and inexpensive resolution of cases.[63] Procedural defects or lapses, if negligible, should be excused in the higher interest of justice as technicalities should not override the merits of the case. Dismissal of cases due to technicalities should also be avoided to afford the parties the opportunity to present their case. Courts must be reminded that the swift unclogging of the dockets although a laudable objective must not be done at the expense of substantial justice.[64]

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[59] *KKK Foundation, Inc. v. Calderon-Bargas,* G.R. No. 163785, December 27, 2007, 541 SCRA 432, 441.

[60] *Vlason Enterprises Corporation v. Court of Appeals,* 369 Phil. 269, 299 (1999).

[61] *Rollo*, p. 255.

[62] See *Philippine National Bank v. Paneda,* G.R. No. 149236, February 14, 2007, 515 SCRA 639, 652.

[63] *Incon Industrial Corporation v. Court of Appeals,* G.R. No. 161871, July 24, 2007, 528 SCRA 139, 144.

[64] *Tacloban II Neighborhood Association, Inc. v. Office of the President,* G.R. No. 168561, September 26, 2008, 566 SCRA 493, 510.

WHEREFORE, the instant Petition is *PARTIALLY GRANTED.* The April 27, 2004 Order of Branch 5 and the August 20, 2004 Resolution of Branch 1 of the Regional Trial Court of Tuguegarao City are hereby *REVERSED* and *SET ASIDE* insofar as the dismissal of the petition is concerned. Accordingly, the case is hereby *REMANDED* to the court *a quo* for further proceedings.

SO ORDERED.

Carpio (Chairperson),[*] *Carpio Morales,*[**] *Leonardo-de Castro,*[***] and *Abad, JJ.,* concur.

FIRST DIVISION

[G.R. No. 166941. December 14, 2009]

SPOUSES DENNIS BARIAS and DIVINA BARIAS, *petitioners, vs.* **HEIRS OF BARTOLOME BONEO, namely, JUANITA, LEOPOLDO, ANTONIO, CARMELO, NIMFA, EDWIN, ELPIDIO, ANGELICA, EMILIO, BARTOLOME, JR., and EPIFANIO, all surnamed BONEO, represented by JUANITA VOLANTE BONEO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; FORUM SHOPPING; REQUISITES; NOT PRESENT IN CASE AT BAR.—** The test in determining the presence of forum shopping is whether in two or more cases pending, there is identity of (1) parties,

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[*] Per Special Order No. 775 dated November 3, 2009.

[**] In lieu of Justice Arturo D. Brion who is on leave per Special Order No. 807 dated December 7, 2009.

[***] Additional member per Special Order No. 776 dated November 3, 2009.

(2) rights or causes of action, and (3) reliefs sought. The case filed by Silvestra, which was pending when respondents filed the complaint *for unlawful detainer*, was for *annulment of the deed of sale* that she executed in favor of petitioner Divina Barias' mother. Thus, the causes of action of that case and respondents' complaint for *unlawful detainer* subject of the present petition are different: the cause of action of the first is the alleged fraud in inducing Silvestra to execute the deed of sale, while the cause of action of the second is the alleged unlawful possession of petitioners of that portion of the property which was allegedly sold by Silvestra. The reliefs sought in both cases are likewise different.

2. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; SOLE ISSUE FOR RESOLUTION IS PHYSICAL OR MATERIAL POSSESSION OF THE PROPERTY INVOLVED; ADJUDICATION ON THE ISSUE OF OWNERSHIP IS MERELY PROVISIONAL.— In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property. The adjudication is, however, merely provisional and would not bar or prejudice an action between the same parties involving title to the property.

3. ID.; ID.; ID.; THE DETERMINATION OF OWNERSHIP IS ONLY INITIAL AND WILL NOT PREJUDICE THE CASE FOR ANNULMENT OF THE DEED OF SALE.— As both parties raise the issue of ownership in the unlawful detainer case, its resolution boils down to which of their respective documentary evidence deserves more weight. Respondents have a Torrens title over the property which was issued in 1991. The age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof. The deed of sale which was executed by Silvestra in 1994 and was the subject of a case for annulment could not affect the herein respondents-registered owners' superior right to possess the property. It bears emphasis that this determination of ownership in an ejectment case is only initial and only for the sole purpose of settling the issue of possession. It does not prejudice the case for annulment of the deed of sale.

APPEARANCES OF COUNSEL

Rodolfo B. Bonafe, Jr. for petitioners.
Gener T. Caño for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondents, Heirs of Bartolome Boneo, are registered owners of a parcel of land (the property) identified as Lot No. 1086, Cad-483-D in Sta. Teresa, Malilipot, Albay, covered by Original Certificate of Title No. P-29864 which was issued on the basis of a free patent granted on October 3, 1991.[1]

Respondents, alleging that the Spouses Dennis and Divina Barias (petitioners) have been occupying a portion of the property for residential purposes on their (respondents') mere tolerance, and that despite verbal demands and a written demand by letter of August 18, 2001, petitioners refused to vacate the premises, filed a complaint[2] for unlawful detainer and damages.

In their Answer,[3] petitioners charged respondents with forum shopping, claiming that the portion of the property subject of the complaint was also the subject of a case between petitioners and respondents' predecessor-in-interest Silvestra Bo Boneo (Silvestra) pending appeal before the Court of Appeals. They also claimed that Carmen Bendicio-Belir, the mother of petitioner Divina Barias, bought a portion of the property from Silvestra, respondents' stepmother, by a Deed of Absolute Sale[4] dated August 8, 1994.

The MCTC, which found respondents guilty of forum shopping,[5] dismissed respondents' complaint in this wise:

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[1] RTC records, p. 7.

[2] *Id.* at 1-4.

[3] *Id.* at 14-18.

[4] *Id.* at 38-39, 47.

[5] *Id.* at 63-64.

x x x The defendant-spouses submitted to the court a Deed of Absolute Sale dated August 8, 1994 xxx which showed that Silvestra Bo Boneo, the plaintiffs' predecessor-in-interest, had sold a portion of the lot in question (Lot No. 1086) to the former consisting of 1,143 square meters. This deed was duly registered in the Office of the Register of Deeds on August 9, 1994. The sale of a portion of Lot No. 1086 by Silvestra Bo Boneo to the defendants binds the plaintiffs in this case. The rule is settled that plaintiffs as successor-in-interest over the lot, merely stepped into the shoes of the original owner, Silvestra. They are deemed to succeed only to such remaining interest of Silvestra over Lot No. 1086. This rule applies even if plaintiffs were able to secure a title x x x only in the year 2000. Until such Deed of Sale executed in defendant[']s favor has been declared null and void by final judgment, the court has no recourse but to respect the same.[6] (underscoring supplied)

On appeal to the Regional Trial Court (RTC), respondents denied that they are Silvestra's successors-in-interest. They claimed that she was the second wife of Crispin Boneo and stepmother of the late Bartolome Boneo, their father and immediate predecessor-in-interest, hence, they can not be considered as the legal heirs or even successors-in-interest of Silvestra. They thus concluded that the Deed of Absolute Sale over the disputed portion of the property executed by Silvestra in favor of the herein petitioners has no binding effect upon them.[7]

While the RTC did not find respondents guilty of forum shopping, it nevertheless dismissed their appeal, holding that petitioners have a superior right to possess the property.[8] Brushing aside respondents' argument that they are not Silvestra's successors-in-interest, the RTC held that when Silvestra died, respondents moved to substitute her in the case between her and petitioners.[9]

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[6] *Id.* at 63.

[7] *Id.* at 78.

[8] *Vide id.* at 104-111.

[9] *Id.* at 110.

On appeal, the Court of Appeals *reversed* the RTC decision[10] in this wise:

> It was error for both the RTC and MTC to have sustained respondents'[-herein petitioners'] claim which was based on a deed of sale, as against the claim of petitioners[-herein respondents], which was based on a free patent (OCT No. P-29864) issued by the Bureau of Lands on October 3, 1991.
>
> In *Pitargue v. Sorilla*,[11] the plaintiff was considered as having a better right to the possession of the public land which he applied for against any other public land applicant, which right may be protected by the possessory action of forcible entry or by another suitable remedy that the rules provide, even while his application was still pending consideration, and while title to the land was still with the government.
>
> If in said case, a mere applicant was held to have acquired superior possessory right over a portion of public land, with more reason, therefore, that . . . **petitioners'[-herein respondents'] right to the possession** of the subject property ought to be upheld. For here, petitioners'[-herein respondents'] claim **predicated upon Free Patent** No. 050509-91143P issued in the name of "Hrs. of BARTOLOME BONEO Rep. by Juanita Boneo." This free patent has the force and effect of a Torrens Title. And it is axiomatic that a Torrens Title cannot be indirectly or collaterally attacked, as respondents apparently sought to do in this case. On the other hand, respondents'[-herein petitioners'] predecessor-in-interest, Silvestra Boneo, does not at all appear to be a patentee or grantee of the disputed premises by any of the means recognized by law as she is only the **stepmother** of Bartolome Boneo. Neither was it shown that Silvestra Boneo was ever a prior applicant to the contested lot.
>
> It was also reversible error for the RTC to hold that petitioners merely stepped into the shoes of Silvestra Boneo on the basis mainly of the motion for substitution that they filed in CA-G.R. SP No. 62015.
>
> For, the records showed that petitioners [herein respondents] sought to substitute Silvestra Boneo not necessarily because they

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[10] Decision of February 3, 2005, penned by Court of Appeals Associate Justice Renato C. Dacudao, with the concurrence of Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao. CA *rollo*, pp. 142-150.

[11] 92 Phil. 5 (1952).

are her successors-in-interest, but because, among other things, it was the heirs of Bartolome Boneo, alleged collateral relations of Silvestra Boneo, who bankrolled the expenses in the prosecution of this case. x x x.[12] (emphasis partly in the original, partly supplied; underscoring supplied)

Hence, petitioners' present petition faulting the Court of Appeals

-I-

X X X IN HOLDING THAT: "IT WAS ERROR FOR BOTH THE RTC AND THE MTC TO HAVE SUSTAINED RESPONDENTS' CLAIM, WHICH WAS BASED ON A DEED OF SALE, AS AGAINST THE CLAIM OF PETITIONERS WHICH WAS BASED ON A FREE PATENT (OCT No. P-29864) ISSUED BY THE BUREAU OF LANDS ON OCTOBER 3, 1991."

-II-

X X X IN HOLDING THAT: "IT WAS ALSO REVERSIBLE ERROR FOR THE RTC TO HOLD THAT PETITIONERS MERELY STEPPED INTO THE SHOES OF SILVESTRA BONEO ON THE BASIS MAINLY OF THE MOTION FOR SUBSTITUTION THAT THEY FILED IN CA-G.R. SP NO. 62015."

-III-

X X X IN NOT FINDING PETITIONERS GUILTY OF "FORUM SHOPPING" WARRANTING OUTRIGHT DISMISSAL OF THEIR PETITION.[13]

The petition is bereft of merit.

The test in determining the presence of forum shopping is whether in two or more cases pending, there is identity of (1) parties, (2) rights or causes of action, and (3) reliefs sought.[14]

The case filed by Silvestra, which was pending when respondents filed the complaint *for unlawful detainer*, was for

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[12] CA *rollo*, pp. 147-148. Citations omitted.

[13] *Rollo*, p. 12.

[14] *De Chavez v. Office of the Ombudsman*, G.R. No. 168830-31, February 6, 2007, 514 SCRA 638, 655.

annulment of the deed of sale that she executed in favor of petitioner Divina Barias' mother.[15] Thus, the causes of action of that case and respondents' complaint for *unlawful detainer* subject of the present petition are different: the cause of action of the first is the alleged fraud in inducing Silvestra to execute the deed of sale, while the cause of action of the second is the alleged unlawful possession of petitioners of that portion of the property which was allegedly sold by Silvestra. The reliefs sought in both cases are likewise different.

In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties.[16] Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property.[17] The adjudication is, however, merely provisional and would not bar or prejudice an action between the same parties involving title to the property.[18]

As both parties raise the issue of ownership in the unlawful detainer case, its resolution boils down to which of their respective documentary evidence deserves more weight.[19]

Respondents have a Torrens title over the property which was issued in 1991. The age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof.[20] The deed of sale which was executed by Silvestra in 1994 and was the subject of a case for annulment could not affect the herein respondents-registered owners' superior right to possess the property.[21]

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[15] *Vide* Decision in Civil Case No. T-1837, RTC records, pp. 48-54.

[16] *Pascual v. Coronel*, G.R. No. 159292, July 12, 2007, 527 SCRA 474, 482.

[17] *Vide ibid.*

[18] *Vide ibid.*

[19] *Vide id.* at 483.

[20] *Arambulo v. Gungab*, G.R. No. 156581, September 30, 2005, 471 SCRA 640, 649-650.

[21] *Vide Pascual v. Coronel*, G.R. No. 159292, July 12, 2007, 527 SCRA 474, 484.

It bears emphasis that this determination of ownership in an ejectment case is only initial and only for the sole purpose of settling the issue of possession.[22] It does not prejudice the case for annulment of the deed of sale.

WHEREFORE, the petition is *DENIED*.

Costs against petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 168697. December 14, 2009]

GINA M. TIANGCO and SALVACION JENNY MANEGO, *petitioners, vs.* **UNIWIDE SALES WAREHOUSE CLUB, INC. and JIMMY GOW,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; PRESIDENTIAL DECREE NO. (PD) 902-A, AS AMENDED; GOVERNS CORPORATE REHABILITATION; TERM "CLAIM," DEFINED; LABOR CLAIMS ARE SUSPENDED ONCE THE EMPLOYER-CORPORATION IS PLACED UNDER REHABILITATION.—** The relevant law dealing with the suspension of payments for money claims against corporations under rehabilitation is Presidential Decree No. (PD) 902-A, as amended. x x x The term "claim," as contemplated in Section 6 (c), refers to debts or demands of a pecuniary nature. It is the assertion of rights for the payment of money. Here, petitioners have pecuniary claims—the payment of separation

[22] *Supra* note 20 at 650.

pay and moral and exemplary damages. In *Rubberworld*, we held that a labor claim is a "claim" within the contemplation of PD 902-A, as amended. This is consistent with the Interim Rules of Procedure on Corporate Rehabilitation which came out in 2000. Section 1, Rule 2 of the Interim Rules defines "claims" as follows: Sec. 1. *Definition of Terms* - For purposes of these Rules: xxx xxx xxx "Claim" shall include all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise. Thus, labor claims are included among the actions suspended upon the placing under rehabilitation of employer-corporations. xxx.

2. **ID.; ID.; ID.; ID.; ID.; ID.; RULING IN RUBBERWORLD CASE (365 PHIL. 273 1999) APPLIED TO CASE AT BAR.—** We stated in Rubberworld: The law is clear: upon the creation of a management committee or the appointment of a rehabilitation receiver, all claims for actions "shall be suspended accordingly." **No exception in favor of labor claims is mentioned in the law.** Since the law makes no distinction or exemptions, neither should this Court. *Ubi lex non distinguit nec nos distinguere debemos.* Allowing labor cases to proceed clearly defeats the purpose of the automatic stay and severely encumbers the management committee's time and resources. The said committee would need to defend against these suits, to the detriment of its primary and urgent duty to work towards rehabilitating the corporation and making it viable again. To rule otherwise would open the floodgates to other similarly situated claimants and forestall if not defeat the rescue efforts. Besides, even if the NLRC awards the claims of private respondents, as it did, its ruling could not be enforced as long as the petitioner is under the management committee. xxx. In *Philippine Airlines, Inc. v. Zamora*, we emphasized that "this Court's adherence to the abovestated rule has been resolute and steadfast as evidenced by its oft-repeated application in a plethora of cases."

3. **ID.; ID.; ID.; ID.; SUSPENSIVE EFFECT OF THE STAY ORDER IS NOT TIME BOUND.—** Petitioners seek to have the suspension of proceedings lifted on the ground that the SEC already approved respondent USWCI's SARP. However, there is no legal ground to do so because the suspensive effect of the stay order is not time-bound. As we held in *Rubberworld*, it continues to be in effect as long as reasonably necessary to accomplish its purpose.

4. **ID.; ID.; ID.; ID.; THE 2000 INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION GOVERNS THE RESPONDENT'S PETITION FOR REHABILITATION.—** We ruled in *Sobrejuanite v. ASB Development Corporation* that the Interim Rules, under Section 1, Rule 1 thereof, are applicable although (as in this case) the petition for declaration of suspension of payments was filed prior to the effectivity of such rules: Section 1. *Scope* — These Rules shall apply to petitions for rehabilitation filed by corporations, partnerships, and associations pursuant to [PD 902-A], as amended. We note that the Rules of Procedure on Corporate Rehabilitation was approved on December 2, 2008 and took effect on January 16, 2009. Section 2, Rule 9 thereof provides: Sec. 2. *Transitory Provision*. – Unless the court orders otherwise to prevent manifest injustice, any pending petition for rehabilitation that has not undergone the initial hearing prescribed under the Interim Rules or Procedure for Corporate Rehabilitation at the time of effectivity of these Rules shall be governed by these Rules. Considering that respondent USWCI's SARP had already been approved before then, the 2000 Interim Rules still govern this case.

APPEARANCES OF COUNSEL

Jesus M. Sy, Jr. for petitioners.
Alampay Gatchalian Mawis & Alampay for respondents.

R E S O L U T I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of the February 9, 2005 decision[2] and June 28, 2005 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 85474.

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Delilah Vidallon-Magtolis (retired) and concurred in by Associate Justices Perlita J. Tria Tirona (retired) and Jose C. Reyes, Jr. of the Fourth Division of the Court of Appeals. *Rollo*, pp. 26-34.

[3] *Id.*, p. 41.

Petitioners Gina M. Tiangco and Salvacion Jenny Manego[4] were employees of respondent Uniwide Sales Warehouse Club, Inc. (USWCI), a domestic corporation. Respondent Jimmy N. Gow was the president of the corporation.[5]

Petitioner Tiangco was employed by respondent USWCI on June 10, 1997 as concession manager. In 1998, she was designated as group merchandising manager for the fashion and personal care department with a monthly salary of ₱45,000. On the other hand, petitioner Manego was initially employed as buyer on January 16, 1984 but was promoted as senior category head with a monthly salary of ₱25,000.[6]

On July 5, 2001 and July 13, 2001, petitioners Tiangco and Manego respectively filed separate complaints for illegal dismissal, payment of separation pay as well as award of moral and exemplary damages in the National Labor Relations Commission (NLRC). The complaints, docketed as NLRC NCR Case Nos. 00-09-03512-2001 and 00-09-04757-2001, were consolidated.[7]

In his order dated January 11, 2002, the labor arbiter[8] considered the consolidated cases as submitted for decision.[9]

On February 13, 2002, the respondents filed a manifestation and motion praying that the proceedings on the consolidated cases be suspended on the ground that respondent USWCI had been placed in a state of suspension of payments by the Securities and Exchange Commission (SEC) as early as April 11, 2000 and a receivership committee had in fact been appointed.[10]

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[4] "Salvacion Jenny Samañego" in some parts of the records.

[5] *Id.*, p. 27.

[6] *Id.*

[7] *Id.*

[8] Melquiades Sol D. Del Rosario. *Id.*, p. 236.

[9] *Id.*, p. 27.

[10] *Id.*, pp. 28, 306-330. On June 25, 1999, respondent USWCI filed a Petition for Declaration of Suspension of Payments, Formation and Appointment of a Rehabilitation Receiver/Committee and Approval of Rehabilitation Plan docketed as SEC Case No. 06-99-6340. *Id.*, p. 289.

On February 26, 2002, the labor arbiter suspended the proceedings until further orders from the SEC.[11]

On March 23, 2004, petitioners filed a motion to reopen case on the ground that the SEC, in its order dated December 23, 2002, had already approved the second amendment to the rehabilitation plan (SARP) of respondent USWCI.[12]

In their opposition to the motion, respondents argued that the proceedings in the consolidated cases must remain suspended inasmuch as the mere approval of the SARP did not constitute a valid ground for their reopening.[13]

On June 16, 2004, the labor arbiter issued an order directing the parties to file their memoranda. He further stated that even without the memoranda, the cases would be ordered submitted for decision after the lapse of the period for filing.[14]

This prompted respondents to file a petition for *certiorari*[15] with prayer for a temporary restraining order (TRO) in the CA, imputing grave abuse of discretion on the part of the labor arbiter.

On September 17, 2004, the CA granted the application for a TRO.[16] In its February 9, 2005 decision, it granted the petition and reversed the June 16, 2004 order of the labor arbiter. It ruled that proceedings on the cases should remain suspended until further orders from the SEC citing *Rubberworld (Phils.), Inc. v. NLRC*[17] and Sections 6(b), 11 and 27, Rule 4 of the 2000 Interim Rules of Procedure on Corporate Rehabilitation.[18] It denied reconsideration on June 28, 2005.

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[11] *Id.*

[12] *Id.*, p. 29.

[13] *Id.*

[14] *Id.*

[15] Under Rule 65 of the Rules of Court.

[16] *Rollo*, p. 30.

[17] 365 Phil. 273 (1999).

[18] *Rollo*, pp. 31-32.

Hence, this petition.

The issue determinative of this case is whether the consolidated illegal dismissal cases can be reopened at this point of the SEC proceedings for respondent USWCI's rehabilitation.

This issue is far from novel. We resolved the same question as early as 1999 in *Rubberworld (Phils.), Inc. v. NLRC*[19] and since then, we have reiterated the ruling in several other cases.[20]

The relevant law dealing with the suspension of payments for money claims against corporations under rehabilitation is Presidential Decree No. (PD) 902-A,[21] as amended. Section 6 (c) thereof provides:

> Sec. 6. In order to effectively exercise such jurisdiction, the [SEC][22] shall possess the following powers:
>
> x x x x x x x x x
>
> c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the [SEC] in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors: xxx Provided, finally, that **upon appointment of a management committee, rehabilitation receiver, board, or body, pursuant to this Decree, all actions for <u>claims</u> against corporations**, partnerships or associations **under**

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[19] *Supra* note 17.

[20] *Philippine Airlines, Inc. v. Philippine Airlines Employees Association (PALEA)*, G.R. No. 142399, 19 June 2007, 525 SCRA 29; *Philippine Airlines, Inc. v. Zamora*, G.R. No. 166996, 6 February 2007, 514 SCRA 584; *Philippine Airlines, Inc. v. NLRC*, G.R. No. 123294, 4 September 2000; *Rubberworld [Phils.], Inc. v. [NLRC]*, 391 Phil. 318 (2000).

[21] Reorganization of the [SEC] with Additional Powers and Placing the said Agency under the Administrative Supervision of the Office of the President.

[22] Under RA 8799 (the Securities Regulation Code), jurisdiction over rehabilitation and suspension of payments was transferred from the SEC to the Regional Trial Courts. However, the SEC, pursuant to Section 5.2 of the same law, retains jurisdiction over pending suspension of payments/rehabilitation cases filed as of June 30, 2000 until finally disposed.

management or receivership pending before any court, tribunal, board or body shall be suspended accordingly. (Emphasis supplied)

The term "claim," as contemplated in Section 6 (c), refers to debts or demands of a pecuniary nature.[23] It is the assertion of rights for the payment of money.[24] Here, petitioners have pecuniary claims—the payment of separation pay and moral and exemplary damages.

In *Rubberworld*, we held that a labor claim is a "claim" within the contemplation of PD 902-A, as amended. This is consistent with the Interim Rules of Procedure on Corporate Rehabilitation which came out in 2000.[25] Section 1, Rule 2 of the Interim Rules defines "claims" as follows:

Sec. 1. *Definition of Terms* – For purposes of these Rules:

x x x x x x x x x

"Claim" shall include all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise.

Thus, labor claims are included among the actions suspended upon the placing under rehabilitation of employer-corporations. We stated in *Rubberworld*:

It is plain from the foregoing provisions of law that "upon the appointment [by the SEC] of a management committee or a rehabilitation receiver," all actions for claims against the corporation pending before any court, tribunal or board shall *ipso jure* be suspended. The justification for the automatic stay of all pending actions for claims "is to enable the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the 'rescue' of the debtor company. To allow such other actions to continue would only add to the burden of the management committee

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[23] *Uniwide Holdings, Inc. v. Jandecs Transportation Co., Inc.*, G.R. No. 168522, 19 December 2007, 541 SCRA 158, 163, citations omitted.

[24] *Id.*, citing *Sobrejuanite v. ASB Development Corporation*, *infra* note 3.

[25] A.M. No. 00-8-10-SC.

or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation."

x x x x x x x x x

The law is clear: upon the creation of a management committee or the appointment of a rehabilitation receiver, all claims for actions "shall be suspended accordingly." **No exception in favor of labor claims is mentioned in the law.** Since the law makes no distinction or exemptions, neither should this Court. *Ubi lex non distinguit nec nos distinguere debemos.* Allowing labor cases to proceed clearly defeats the purpose of the automatic stay and severely encumbers the management committee's time and resources. The said committee would need to defend against these suits, to the detriment of its primary and urgent duty to work towards rehabilitating the corporation and making it viable again. To rule otherwise would open the floodgates to other similarly situated claimants and forestall if not defeat the rescue efforts. Besides, even if the NLRC awards the claims of private respondents, as it did, its ruling could not be enforced as long as the petitioner is under the management committee.

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Article 217 of the Labor Code[26] should be construed not in isolation but in harmony with PD 902-A, according to the basic rule in statutory construction that implied repeals are not favored. Indeed, it is axiomatic that each and every statute must be construed in a way that would avoid conflict with existing laws. True, the NLRC has the power to hear and decide labor disputes, but such authority is deemed suspended when PD 902-A is put into effect by the [SEC].

x x x x x x x x x

This Court notes that PD 902-A itself does not provide for the duration of the automatic stay. Neither does the Order of the SEC. Hence, the suspensive effect has no time limit and remains in force

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[26] Art. 217. *Jurisdiction of [LAs] and the [NLRC].* – (a) Except as otherwise provided under this Code, the LAs shall have original and exclusive jurisdiction to hear and decide, xxx the following cases involving all workers, xxx

x x x x x x x x x

2. Termination disputes; xxx

as long as reasonably necessary to accomplish the purpose of the Order.[27] (Emphasis supplied)

In *Philippine Airlines, Inc. v. Zamora*,[28] we emphasized that "this Court's adherence to the abovestated rule has been resolute and steadfast as evidenced by its oft-repeated application in a plethora of cases."[29]

Petitioners seek to have the suspension of proceedings lifted on the ground that the SEC already approved respondent USWCI's SARP. However, there is no legal ground to do so because the suspensive effect of the stay order is not time-bound. As we held in *Rubberworld*, it continues to be in effect as long as reasonably necessary to accomplish its purpose.[30] This is clarified in the Interim Rules:

Rule 4

x x x x x x x x x

Sec. 6. *Stay Order*. – If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order (a) appointing a Rehabilitation Receiver and fixing his bond; (b) **staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise**, against the debtor, its guarantors and sureties not solidarily liable with the debtor; xxx

x x x x x x x x x

Sec. 11. ***Period of the Stay Order***. – The stay order shall be effective from the date of issuance until the dismissal of the petition or **the termination of the rehabilitation proceedings**.

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[27] *Supra* note 17, pp. 280-285.

[28] *Supra* note 20.

[29] *Id.*, p. 605.

[30] *Supra* note 17, p. 285, citing *BF Homes Incorporated v. Court of Appeals*, G.R. No. 76879, 3 October 1990, 190 SCRA 262, 268.

Sec. 27. ***Termination of Proceedings***. – In case of the failure of the debtor to submit the rehabilitation plan, or the disapproval thereof by the court, or the failure of the rehabilitation of the debtor because of failure to achieve the desired targets or goals as set forth therein, or the failure of the said debtor to perform its obligations under the said plan, or a determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions, or assumptions, the court shall upon motion, *motu proprio,* or upon the recommendation of the Rehabilitation Receiver, terminate the proceedings. **The proceedings shall also terminate upon the successful implementation of the rehabilitation plan**. (Emphasis supplied)

We ruled in *Sobrejuanite v. ASB Development Corporation*[31] that the Interim Rules, under Section 1, Rule 1 thereof, are applicable although (as in this case) the petition for declaration of suspension of payments was filed prior to the effectivity of such rules:[32]

Section 1. *Scope* — These Rules shall apply to petitions for rehabilitation filed by corporations, partnerships, and associations pursuant to [PD 902-A], as amended.

We note that the Rules of Procedure on Corporate Rehabilitation was approved on December 2, 2008 and took effect on January 16, 2009. Section 2, Rule 9 thereof provides:

Sec. 2. *Transitory Provision*. – Unless the court orders otherwise to prevent manifest injustice, any pending petition for rehabilitation that has not undergone the initial hearing prescribed under the Interim Rules or Procedure for Corporate Rehabilitation at the time of effectivity of these Rules shall be governed by these Rules.

Considering that respondent USWCI's SARP had already been approved before then, the 2000 Interim Rules still govern this case.

In sum, when the labor arbiter proceeded with the consolidated cases despite the SEC suspension order, he exceeded his jurisdiction to hear and decide illegal dismissal cases and the CA correctly reversed his June 16, 2004 order.

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[31] G.R. No. 165675, 30 September 2005, 471 SCRA 763.

[32] *Id.*, p. 772.

WHEREFORE, the petition is hereby *DENIED*.

No costs.

SO ORDERED.

Velasco, Jr., Peralta, Del Castillo,[*] and *Villarama, Jr.,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 171669. December 14, 2009]

HEIRS OF RODRIGO YACAPIN, namely: SOL BELNAS, NANCY VALLEJOS, SUSAN YACAPIN, ESTACIO YACAPIN, JULIA YACAPIN, LINDA YACAPIN, JUAN YACAPIN, VICENTE YACAPIN, ADELFA PRENIO, CELSO YACAPIN, JULIE PUNZALAN, RUBEN YACAPIN, EDWIN YACAPIN, NOEL YACAPIN, GONZALO YACAPIN, SALVACION CABABAN, TERESITS DINAGUIT, VICENTA YACAPIN and VICENTE YACAPIN; HEIRS OF ESTEBAN YACAPIN, namely: LUZVIMINDA YACAPIN KEE, ALFONZITA MACALE, EMMANUEL YACAPIN, MARIA BELLA YACAPIN, ESTEBAN YACAPIN II, CONCHITA YACAPIN TAGOCON, FILIPINA EBLACAS, ROSTECO CANADA, EMELY SUYAT, ROLDAN TAGOCON, LEVY CARDONA, LEA GACAYAN, LOTA DAGUITA, LEYRA CARDONA, LAREDO CARDONA, EDNA YACAPIN ABADAY, HELDA DALAGUIT, SALOME Y. GUZMAN, RESSIE Y. DOTDOT, JOSEPINA Y. QUIA,

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[*] Per Special Order No. 805 dated December 4, 2009.

[**] Per Special Order No. 802 dated November 25, 2009.

RODOLFO YACAPIN, LEO SAARENAS, RONALDO SAARENAS, ELSA GABUTAN and BELLA YACAPIN-AGUSTIN; HEIRS OF DONATO YACAPIN, namely, PROFETISA DAPANAS, ERMA SALARDA, NARCESO YACAPIN, LUZ Y. CHAVEZ, ANNABELLA YACAPIN, ADELA YACAPIN, THERESA YACAPIN, EDUARDO YACAPIN, DANILO YACAPIN, EVA LISTAN, MERLYN YACAPIN, AMIR YACAPIN, WENCESLAO BUBA, all represented by NANCY YACAPIN VALLEJOS as attorney-in-fact, *petitioners, vs.* **FELIMON BALIDA (deceased), represented by MERLYN B. PALOS, JOSEPH BALIDA, SELVERIO BALIDA, EXEQUIEL BALIDA, JOSE MARCOS BALIDA, AGATONA PASTOR, ANTONIO BALIDA, GREGORIA BALIDA, represented by LIGAYA BALIDA; ATTY. BONAFEBE LEYSON in his capacity as Register of Deeds of Cagayan de Oro City; Cagayan de Oro City; CHARLIE GO, RUBEN GO and RAC COMMERCIAL CORPORATION,** *respondents.*

SYLLABUS

REMEDIAL LAW; JUDGMENTS; ANNULMENT OF JUDGMENT; GROUNDS; CANNOT BE RESORTED TO WHEN THE PETITIONER HAS PREVIOUSLY AVAILED OF THE ORDINARY REMEDIES OF NEW TRIAL, APPEAL OR PETITION FOR RELIEF, OR HAS LOST THE SAID REMEDIES DUE TO CAUSES ATTRIBUTABLE TO HIMSELF; CASE AT BAR.— Section 1, Rule 47 of the Rules of Court provides that a petition for annulment of judgment is available only when a party is precluded from filing a motion for new trial, an appeal or a petition for relief without fault on his part. Moreover, such petition will only be allowed in the presence of either extrinsic fraud or lack of jurisdiction. In view of these provisions, recourse to a petition for annulment of judgment is improper if petitioner lost the ordinary remedies of new trial, appeal or petition for relief due to a cause or causes attributable to petitioner himself. Nor can it be resorted to if petitioner has previously availed

of any of the aforementioned remedies. In this case, petitioners filed an appeal and a motion for new trial. They also failed to establish any of the grounds for a petition for annulment of judgment. Obviously, petitioners simply intended to unduly delay the enforcement of the December 5, 1993 RTC decision and defeat its execution. Thus, petitioners should be held solidarily liable with their counsel (who abetted petitioners' frivolous appeal, motion for new trial and this petition for annulment of judgment) for treble the costs of suit.

APPEARANCES OF COUNSEL

Emelie P. Bangot, Jr. for petitioners.

Neil Y. Pacamalan for Felimon Balida (Deceased) represented by Merlin Palos, *et al.*

Rodolfo D. Uy for Charles Go, *et al.*

D E C I S I O N

CORONA, *J.*:

This petition[1] seeks to set aside the resolutions dated June 4, 2004[2] and March 6, 2005[3] of the Court of Appeals (CA) in CA-G.R. SP No. 82968 dismissing the petition to annul the December 5, 1993 decision[4] of the Regional Trial Court (RTC) of Cagayan de Oro, Branch 24 in Civil Case Nos. 91-080 and 91-261.

At the center of this controversy are three parcels of land in Gusa, Cagayan de Oro City, namely, the 96,919 sq. m. lot no. 2384, the 25,202 sq. m. lot no. 2478 and the 824 sq. m. lot no. 2338.

Records of the Registry of Deeds of Cagayan de Oro City reveal that lot no. 2384 was covered by OCT No. RO-363 and

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[1] Under Rule 45 of the Rules of Court.

[2] Both penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Teresita Dy Liacco-Flores and Rodrigo F. Lim, Jr. of the Twenty Third Division of the Court of Appeals. *Rollo,* pp. 57-59.

[3] *Id.*, pp. 60-64.

[4] Penned by Judge Leonardo N. Demecillo. *Id.*, pp. 204-221.

registered in the names of Donato Yacapin, Martina Yacapin and Valentina Yacapin. In 1973, petitioners, the respective heirs of Donato and Martina, entered into an extrajudicial settlement partitioning lot no. 2384 among themselves. Pursuant to this agreement, OCT No. RO-363 was cancelled and individual titles were issued to them.

The records likewise reveal that lot no. 2478 was covered by OCT No. 7227 issued to Rodrigo Yacapin, Donato Yacapin, Valentina Yacapin, Martina Yacapin, Anastacia Yacapin, Esteban Yacapin and Felino San Jose.

Lastly, lot no. 2338 used to be covered by OCT No. 7318 issued to Valentina Yacapin and Anastacia Yacapin. Pursuant to an extrajudicial settlement executed by respondents, heirs of Valentina, OCT No. 7318 was cancelled and TCT No. T-54890 was issued in lieu thereof.

In 1991, respondents filed an action for partition, annulment of titles and damages against petitioners in the RTC.[5] They asserted that their mother, Valentina, was one of the registered owners of lot no. 2384. Upon her death, they (as compulsory heirs of Valentina) inherited her pro-indiviso share in the said property by operation of law. Since they were excluded in the execution of the extrajudicial settlement, the said agreement was void. Concomitantly, those titles issued in lieu of OCT No. RO-363 were likewise void.

Subsequently, petitioners filed a similar action in the same RTC against respondents.[6] They claimed that Valentina and Anastacia died single and childless in 1943. Thus, being the nearest collateral relatives of the said registered owners, they inherited the shares of Valentina and Anastacia as their intestate heirs. Petitioners likewise sought to annul TCT No. T-54890 which was issued to respondents. They asserted that respondents could not have been the children of their aunt but of another "Valentina Yacapin" who died in Kiliog, Libona, Bukidnon.

[5] Docketed as Civil Case No. 91-080.

[6] Docketed as Civil Case No. 91-261.

Due to the seeming confusion regarding the identity of the parties and issues, the RTC consolidated the complaints and tried them jointly.

After trial, the RTC found that the 1973 extrajudicial settlement only involved 53,612 sq. m. out of the 96, 919 sq. m. of lot no. 2384 and, at that time, the remaining portion (or 43,307 sq. m.) was unoccupied. If Valentina indeed died childless in 1943, petitioners, as her only intestate heirs, should have partitioned the entire property unto themselves in 1973 and occupied their respective portions thereafter. But they did not. Thus, it concluded that petitioners must have known that Valentina had children of her own.

In a decision dated December 5, 1993, the RTC recognized respondents as Valentina's children and compulsory heirs. It therefore nullified the parties' respective titles to lot nos. 2384 and 2338. Furthermore, it ordered the division of the said properties and lot no. 2478 among petitioners, respondents and the heirs of the other registered owners who were not parties to the complaints.

Unsatisfied with the said decision, petitioners filed a notice of appeal on February 14, 1994.[7] However, on July 25, 1994, they filed a motion to withdraw appeal stating:

> [Petitioners] move to withdraw the entire appeal of [the December 5, 1993 decision of the RTC], on the ground that **the findings of fact of the trial court ... are now final and conclusive before the Honorable Court of Appeals, and appellants have no sufficient and convincing evidence**.[8] (emphasis supplied)

In a resolution dated October 12, 1994, the Court of Appeals (CA) granted petitioners' motion and dismissed the appeal.[9]

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[7] Docketed as CA-G.R. CV No. 48896. *Rollo*, pp. 222-223.

[8] *Id.*, pp. 224-225.

[9] Penned by Associate Justice Conchita Carpio Morales (now a member of this Court) and concurred by Associate Justices Emeterio C. Cui (retired) and Consuelo Ynares-Santiago (now a retired member of this Court) of the Eighth Division of the Court of Appeals. *Id.*, p. 226.

The said resolution later became final and entry of judgment was made in due course.[10]

Subsequently, petitioners moved for new trial on the ground of newly discovered evidence in the RTC but it was denied.

Respondents moved for the execution of the December 5, 1993 RTC decision. Accordingly, a partial writ of execution was issued to respondents on April 22, 1995. Undaunted, petitioners moved to quash the said writ but their motion was denied. They therefore filed a petition for *certiorari*[11] in the CA but it was dismissed for lack of merit.[12]

A decade later, petitioners filed a petition for annulment of judgment[13] in the CA, asserting that the December 5, 1993 decision of the RTC was procured through extrinsic fraud. They claimed that the presiding judge of the court *a quo* colluded with respondents when he admitted as evidence a falsified death certificate of Valentina. Petitioners asserted that because the said document was not signed by the local civil registrar of Baguyan, Agusan, it was spurious.

In a resolution dated June 4, 2004,[14] the CA dismissed the petition on the ground that petitioners failed to establish when they discovered the alleged extrinsic fraud. Furthermore, if petitioners had sufficient evidence to prove that the presiding judge colluded with respondents, they should have filed an administrative case against the said judge early on.

Petitioners moved for reconsideration but their motion was denied.[15] Hence, this recourse, with petitioners insisting that

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[10] Entry of judgment was made on May 24, 1994.

[11] Docketed as CA-G.R. SP No. 77761.

[12] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and concurred in by Associate Justices Mario L. Guarina III and Jose C. Reyes, Jr. of the Seventeenth Division of the Court of Appeals. Dated October 20, 2003. *Rollo,* pp. 227-235.

[13] Docketed as CA-G.R. SP No. 89268.

[14] *Supra*, note 3.

[15] *Supra*, note 4.

the December 5, 1993 decision of the RTC was procured through extrinsic fraud. They likewise implead as respondents RAC Commercial Corporation, owner of three hectares of land formerly part of lot no. 2384, and its majority shareholders, Charlie Go and Ruben Go. RAC purchased its properties from respondents.

We deny the petition.

Section 1, Rule 47 of the Rules of Court[16] provides that a petition for annulment of judgment is available only when a party is precluded from filing a motion for new trial, an appeal or a petition for relief without fault on his part. Moreover, such petition will only be allowed in the presence of either extrinsic fraud or lack of jurisdiction.[17]

In view of these provisions, recourse to a petition for annulment of judgment is improper if petitioner lost the ordinary remedies of new trial, appeal or petition for relief due to a cause or causes attributable to petitioner himself. Nor can it be resorted to if petitioner has previously availed of any of the aforementioned remedies.

In this case, petitioners filed an appeal and a motion for new trial. They also failed to establish any of the grounds for a petition for annulment of judgment. Obviously, petitioners simply intended to unduly delay the enforcement of the December 5, 1993 RTC decision and defeat its execution. Thus, petitioners should be held solidarily liable with their counsel (who abetted petitioners' frivolous appeal, motion for new trial and this petition for annulment of judgment) for treble the costs of suit.

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[16] RULES OF COURT, Sec. 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.

[17] *See* RULES OF COURT, Sec. 2 which provides:

Section 2. *Grounds for annulment.*— The annulment of judgment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

WHEREFORE, the petition is hereby *DENIED*.

Treble costs, to be imposed solidarily, against petitioners and their counsel, Atty. Emelie P. Bangot, Jr.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro,[*] *Peralta,* and *Del Castillo,*[**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 173533. December 14, 2009]

VICENTE N. LUNA, JR., *petitioner, vs.* **NARIO CABALES, OSCAR PABALAN, JEREMIAS JUARBAL and REMEDIOS ROSIL,** *respondents.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; THE TAX DECLARATIONS, COUPLED WITH THE ACTUAL POSSESSION OF THE PROPERTY, PROVIDE INCONTROVERTIBLE PROOF OF POSSESSION IN THE CONCEPT OF AN OWNER; CASE AT BAR.—** The Court appreciates no cogent reasons to disturb the findings of the appellate court that respondent is the lawful possessor of the lot in question and that petitioner was not a buyer in good faith. Remedios has established that her grandmother Martina was the owner and possessor of the *northwestern* portion of the entire property as early as 1946 as evidenced by Tax Declaration Nos. 7161, 5900 and 175. These tax declarations mention the name of Eustaquia, the predecessor-in-interest of Ciriaco,

[*] Per Special Order No. 809 dated December 9, 2009.

[**] Per Special Order No. 805 dated December 4, 2009.

as the owner and possessor of the *southern* portion of the entire property adjoining the *northwestern* portion thereof. Such documentary evidence, coupled with the actual possession of Remedios, provides incontrovertible proof of possession in the concept of an owner which strengthens her *bona fide* claim of acquisition of ownership. On the other hand, the testimony of petitioner's witness attorney-in-fact Martinez to the effect that he did not see any occupants in the subject lot merits scant consideration. As the appellate court observed, the witness could not even cite dates of the events he was testifying on, and even gave conflicting statements on material points. Petitioner, who was noted by the appellate court to be "the proper person to prove that he is a buyer in good faith and an innocent purchaser for value," chose not to take the witness stand.

2. **ID.; ID.; ID.; ONE WHO DELIBERATELY IGNORES A SIGNIFICANT FACT WHICH WOULD NATURALLY GENERATE WARINESS IS NOT AN INNOCENT PURCHASER FOR VALUE.—** While every person dealing with registered land can safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property, one will not be permitted to benefit from this general rule if there exist important facts which create suspicion to call for an investigation of the real condition of the land. One who deliberately ignores a significant fact which would naturally generate wariness is not an innocent purchaser for value.

3. **ID.; ID.; CERTIFICATE OF TITLE; COUNTER CLAIM IS CONSIDERED AN ORIGINAL COMPLAINT AND, AS SUCH, THE ATTACK ON THE TITLE IN A CASE ORIGINALLY FOR RECOVERY OF POSSESSION IS A DIRECT NOT A COLLATERAL ATTACK ON THE TITLE.—** [R]emedios filed her Answer to the Amended Complaint with Counterclaim. A counterclaim is considered an original complaint and, as such, the attack on the title in a case originally for recovery of possession is not considered as a collateral attack on the title. *Development Bank of the Philippines v. Court of Appeals* enlightens: Nor is there any obstacle to the determination of the validity of TCT No. 10101.

It is true that the indefeasibility of [T]orrens title cannot be collaterally attacked. In the instant case, the original complaint is for recovery of possession filed by petitioner against private respondent, not an original action filed by the latter to question the validity of TCT No. 10101 on which petitioner bases its right. To rule on the issue of validity in a case for recovery of possession is tantamount to a collateral attack. However, it should not [b]e overlooked that private respondent filed a counterclaim against petitioner, **claiming ownership** over the land and seeking damages. Hence, we could rule on the question of the validity of TCT No. 10101 for **the counterclaim can be considered a direct attack on the same**. 'A counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff . . . It stands on the same footing and is to be tested by the same rules as if it were an independent action.' x x x.

4. ID.; ID.; ID.; THE REGISTRATION OF A PROPERTY IN ONE'S NAME, WHETHER BY MISTAKE OR FRAUD, THE REAL OWNER BEING ANOTHER, IMPRESSES UPON THE TITLE SO ACQUIRED THE CHARACTER OF A CONSTRUCTIVE TRUST FOR THE REAL OWNER; CASE AT BAR.— The registration of a property in one's name, whether by mistake or fraud, the real owner being another, impresses upon the title so acquired the character of a *constructive trust* for the real owner. The person in whose name the land is registered holds it as a mere trustee, and the real owner is entitled to file an action for reconveyance of the property. The Torrens system does not protect a usurper from the true owner. Respondent Remedios having established that she has a better right to subject lot, petitioner must, by virtue of constructive trust, reconvey it to her.

APPEARANCES OF COUNSEL

Elpidio I. Digaum for petitioner.

DECISION

CARPIO MORALES, *J.*:

After the death of the Spouses Pablo Martinez and Gregoria Acevedo, owners of a three-hectare parcel of land situated in Tandag, Surigao del Sur, their two heirs-daughters Eustaquia Martinez (Eustaquia) and Martina Martinez (Martina) partitioned the property. To Eustaquia was allotted the *southwestern* portion, and to Martina the *northwestern* portion.[1]

Since 1946, Martina declared her share of the property in her name for taxation purposes.[2] After her death, her share was adjudicated to her daughter Petronila de Dios who resided there until her death on May 7, 1959 upon which her daughter–herein respondent Maria Remedios Rosil (Remedios) took over.[3]

Meanwhile, Eustaquia got married and bore three children, namely Ciriaco, Damaso and Valentina. Ciriaco filed an application for a free patent over his mother's (Eustaquia's) share of the property as well as that of Martina's which was granted, hence, he was issued on May 9, 1968, Original Certificate of Title (TCT) No. 5028 (OCT No. 5028) covering 2.9751 hectares.[4]

It appears that in 1971, Ciriaco started gathering the coconuts planted on Martina's share of the property, drawing Martina's granddaughter-herein respondent Remedios to file a complaint for recovery of possession against Ciriaco. The complaint was dismissed, however, for failure to state a cause of action.[5]

Upon Ciriaco's death, his heirs subdivided in 1974 the entire property into eight lots and caused the cancellation of OCT

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[1] Records, p. 87.

[2] *Id.* at 388-390; Exhibits "3", "4" and "5".

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

[4] *Id.* at 203-204.

[5] *Id.* at 171; Exhibit "K"; Transcript of Stenographic Notes (TSN), August 13, 1996, pp. 5-6.

No. 5028 upon which a new TCT No. T-2364 was on May 21, 1975[6] issued in their names.

Ciriaco's heirs sold to Vicente Luna, Jr. (petitioner) one of the lots, said to contain 480 sq.m., to "be taken from the northern part southward" via Deed of Absolute Sale of May 13, 1975[7] reading:

x x x x x x x x x

Portion of that land covered by Property Tax Declaration No. 16971, Original Certificate of Title No. 5208, Free Patent No. 401395, issued in the name of the deceased Ciriaco Quiñonez, father of the herein vendors. Which land according to [OCT No. 5208] contains an area of 29,751 square meters and according to Tax Declaration No. 16971 it contains an area of 37,700 square meters. **The portion of the abovementioned property which is the subject of this sale is only *four hundred eighty (480) square meters***. The entire above-mentioned land is more particularly described as follows:

North : Telaje river and Ignacio Falscon
East : Capitol road, Juanita Cañedo, Marcos Juarbal
South : Maria Luna and Galo Suarez
West : Miguel Dayao, Tandag river and fish pond

x x x x x x x x x

The portion subject of this sale shall be taken from the northern part southward with a measurement of forty (40) meters in length and twelve (12) meters in width. This sale includes all kinds of improvements or buildings found on the land and any other existing objects. x x x.

x x x (italics, emphasis and underscoring supplied)

It bears recalling that the *northwestern* portion of the entire property was, following its partition, allotted to Martina.

On March 10, 1993, the heirs of Ciriaco executed an Affidavit of Confirmation of Sale stating that the actual area of the lot sold

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[6] *Id.* at 206; Exhibit "E".

[7] *Id.* at 210; Exhibit "G" and Exhibit "9".

to petitioner was 557 square meters.[8] Eighteen years after the sale on May 13, 1975 of that lot now identified as Lot 3040-F (the subject lot), or on March 22, 1993, TCT No. T-5891 was issued in petitioner's name.[9] Thereafter or on July 27, 1993, petitioner declared the subject lot for taxation purposes.[10]

On October 6, 1993, petitioner, through his administrator and attorney-in-fact Antonio Martinez (Martinez), filed a complaint for recovery of possession against Pedro Belano (Belano) and herein respondents Nario Cabales (Cabales), Oscar Pabalan (Pabalan) and Jeremias Juarbal (Juarbal) before the Regional Trial Court of Surigao del Sur. More than two months later or on December 13, 1993, he amended the complaint to also implead as defendant respondent Remedios,[11] Martina's granddaughter.

Only Remedios filed an answer to the complaint. In her Answer to Amended Complaint with Counterclaim, Remedios asserted that she inherited the subject lot from her predecessors-in-interest on which she and her children were born and raised; and that Belano is her son-in-law while Cabales, Pabalan, and Juarbal are mere tenants.[12] As Counterclaim, Remedios alleged, among other things, the bases of her claim for damages and accordingly prayed for the dismissal of the complaint, award of damages and attorney's fees, and for such other reliefs and remedies as are deemed just and equitable in the premises.

By Decision[13] of September 29, 1997, the trial court rendered judgment in favor of petitioner and ordered Remedios to vacate the subject lot, holding that:

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[8] *Id.* at pp. 373, 442; Plaintiff's Formal Offer of Exhibits mentions an Exhibit "M" as the Affidavit of Confirmation while Defendant's Formal Offer of Exhibits mentions it as Exhibit "12".

[9] *Id.* at 212-213.

[10] *Id.* at 214.

[11] *Id.* at 20-24.

[12] *Id.* at 86-93.

[13] *Id.* at 540-554.

x x x. To begin with, subject lot is registered in the name of [petitioner] and is covered by [TCT No. T-5891] (Exhibit "A"). It is a portion of a bigger parcel of land denominated as Lot No. 3040, Cad. 392-D, registered as early as July 1, 1968 in the name of Ciriaco Quiñonez who was issued [OCT No. 5028] (Exhibit "B"). x x x. Mother Lot No. 3040, Cad. 392-D was surveyed in the name of Ciriaco Quiñonez as early as August 18, 1966, during the Cadastral Survey of lands in Tandag, Surigao del Sur. On the other hand, Lot No. 3040-F was surveyed on December 3, 1974.

x x x x x x x x x

In the instant case, the Cadastral Survey was conducted in August, 1966 still. If as claimed by [respondent] she had been staying on subject land since birth, all her children were born there, and they never changed residence, in other words, they had continuously and uninterruptively [*sic*] stayed there, it is difficult to believe that she and/or her husband and children had not noticed and had no knowledge of the Cadastral Survey and, specifically, of the fact that the land she was occupying was included in the land surveyed in the name of Ciriaco Quiñonez and/or not to have filed her protest to the survey and/or laid claim over the land during investigation conducted by the Bureau of Lands of the Free Patent Application of said Ciriaco Quiñonez and/or not to have knowledge of the subdivision survey in December, 1974; but she had not, which fact supports [petitioner's] claim that [respondent] and her co-defendants occupied subject land after the same was purchased by petitioner in 1975, even if assuming that they had occupied it earlier than 1984. (underscoring supplied)

On appeal, the appellate court, by Decision[14] of March 28, 2006, *reversed and set aside* the decision of the trial court, it finding that OCT No. 5028 was procured by fraud and petitioner was not an innocent purchaser for value. Thus the appellate court expounded:

The records clearly show that the first title-holder Ciriaco Quiñones inherited the property from his mother, Eustaquia Quiñones. Eustaquia, together with her sister, Martina, inherited it from their father Pablo Martinez who was the original owner thereof. When Pablo Martinez died, Eustaquia and Martina partitioned the property equally, with

[14] Penned by Justice Teresita Dy-Liacco Flores with the concurrence of Justices Rodrigo F. Lim, Jr. and Ramon R. Garcia; CA *rollo*, pp. 169-192.

the northern half as Martina's share and the southern half as Eustaquia's share. Pursuant to said partition, **Martina declared her property for tax purposes in 1946 and regularly paid the land taxes thereof**. Surprisingly, Ciriaco, Eustaquia's son, had the entire property, including Martina's share, titled in his name. There is no way for Ciriaco to be deemed innocent about the equal sharing of the property between his mother and his aunt. Neither can he claim ignorance of his aunt's family's presence and actual possession under claim of ownership of the one-half northern portion. **In addition, that claim is documented by Martina's tax declaration.** The inclusion of his aunt's share when he caused the survey of the property was not accidental or innocent. Instead, it was deliberate and willful. Knowing that his mother's share of the property is only one half of it, then when he included his aunt's share of the property when he applied for his free patent title, the same was fraudulently done.

x x x x x x x x x

[Petitioner] cannot be considered an innocent purchaser for value because if indeed a survey was conducted when [petitioner] bought the subject property, as [petitioner's] witnesses claim, it would be **inconceivable for him not to have seen the houses** which [respondent] and her children had built on the subject property. [Respondent's] house on the area sold should have provoked [petitioner's] curiosity. The house had been there for a long time. If [petitioner] inspected the area before the sale, as every prudent buyer is wont to do, then he could not have missed seeing [respondent's] house which had been there all along. x x x. (emphasis and underscoring supplied)

The appellate court, noting that Remedios filed a Counterclaim, thus ordered the reconveyance of the subject lot by petitioner to respondent Remedios.

Although the initiatory complaint is denominated as one for "recovery of possession", a perusal of [respondent]'s answer shows that it interposes a counterclaim against [petitioner]. A **counterclaim** partakes of the nature of a complaint and/or cause of action against a plaintiff in a case such that the counterclaimant is the plaintiff in his counterclaim.

x x x x x x x x x

While [respondent] does not specifically ask for the remedy of reconveyance but the above-quoted assertions coupled with **her prayer for "such other reliefs and remedies** prayed for as are deemed just and equitable in the premises," sufficiently empowers this Court, **acting a court of law and a court of equity, to order reconveyance** of title to [respondent] to forestall any further conflict in the future over the subject lot in question. The title of Luna, unless disabled, may eventually land in mischievous hands and start a new round of conflict in the future. To order the title to be reconveyed to [respondent] will put an effective block to such possible event.

x x x. (emphasis and underscoring supplied)

Thus the appellate court disposed:

WHEREFORE, premises considered, the instant Appeal is GRANTED. The assailed Decision of the court a quo is REVERSED. The ownership and possession of Remedios Rosil over the Lot No. 3040-F is upheld. The Register of Deeds of Tandag, Surigao del Sur is DIRECTED to **cancel TCT No. 5891 in the name of Atty. Vicente Luna [Jr.] and** in lieu thereof, to **issue a new transfer certificate of title over the subject lot in the name of Remedios Rosil**. (emphasis and underscoring supplied)

His motion for reconsideration having been denied, petitioner filed the present petition for review, faulting the appellate court for rendering a decision "not in accord with law and jurisprudence."[15]

To petitioner, the Torrens title issued in his name must prevail over the verbal claim of respondent Remedios that she acquired the subject lot through inheritance. He asserts that the tax declarations and tax receipts presented by Remedios are not conclusive proof of ownership, the best evidence being the Torrens title in his name.[16]

Moreover, petitioner disputes the appellate court's findings that he was not an innocent purchaser for value; that Remedios

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[15] *Rollo*, pp. 5-6.

[16] *Id.* at 8-10.

and her children were in actual possession of the subject lot; and that no cadastral survey thereof was conducted in 1968. To petitioner, these findings are negated by Remedios' admission that she filed a case against his predecessor-in-interest Ciriaco to recover possession of the subject lot. He adds that the presumption of regularity in the performance of official functions of the surveyor who conducted the cadastral survey was never rebutted during the trial. [17]

Finally, petitioner contends that the appellate court's order for reconveyance does not lie since a decree of registration is no longer open to review or attack after the lapse of one year, even if its issuance was attended by fraud, citing Section 32 of the Property Registration Decree.[18]

Respondent failed to file her comment to the petition despite opportunities given her.[19]

The Court finds the petition bereft of merit.

The Court appreciates no cogent reasons to disturb the findings of the appellate court that respondent is the lawful possessor of the lot in question and that petitioner was not a buyer in good faith.

Remedios has established that her grandmother Martina was the owner and possessor of the *northwestern* portion of the entire property as early as 1946 as evidenced by Tax Declaration Nos. 7161, 5900 and 175.[20] These tax declarations mention the name of Eustaquia, the predecessor-in-interest of Ciriaco, as the owner and possessor of the *southern* portion of the entire

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[17] *Id.* at 11-13.

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

[19] By Compliance dated August 13, 2007, respondent alleged that her counsel of record Atty. Elias Irizari died and requested for an additional twenty (20) days to file her comment. By Resolution of December 10, 2007, the Court granted her request but respondent failed to file a comment within the extended period. By Resolution of November 10, 2008, the Court resolved that respondent was deemed to have waived the filing of comment.

[20] *Supra* note 2.

property adjoining the *northwestern* portion thereof.[21] Such documentary evidence, coupled with the actual possession of Remedios, provides incontrovertible proof of possession in the concept of an owner which strengthens her *bona fide* claim of acquisition of ownership.[22]

On the other hand, the testimony of petitioner's witness attorney-in-fact Martinez to the effect that he did not see any occupants in the subject lot merits scant consideration. As the appellate court observed, the witness could not even cite dates of the events he was testifying on, and even gave conflicting statements on material points.[23] Petitioner, who was noted by the appellate court to be "the proper person to prove that he is a buyer in good faith and an innocent purchaser for value," chose not to take the witness stand.

While every person dealing with registered land can safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property,[24] one will not be permitted to benefit from this general rule if there exist important

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[21] The property is surrounded in the north by the "Telahe [R]iver & E. Falcon; east by a "swamp; and west by "Daniel Martinez."

[22] *Republic v. Candy Maker Inc*., G.R. No. 163766, June 22, 2006, 492 SCRA 272, 296.

[23] The CA enumerated the inconsistencies as follows: "1. He allegedly saw the TCT in the name of the heirs on the date of purchase, 13 May 1975, because he was an instrumental witness thereof. But the TCT itself indicates that it was issued on 21 May 1975. Witness could not explain the discrepancy; 2. He claimed that [petitioner] left a written instruction for him to administer the property in 1977. Upon clarification, he admitted that the instruction was merely verbal[;] 3. <u>Although he was appointed as administrator of the subject property, he failed to perform his duties as such: he rarely visited the property and when he [did], he never entered it and merely checked it from afar; he did not plant nor harvest the fruits [thereon]; he [did] not render an accounting to [petitioner]; he did not even personally realize that [respondent and her children] had 'entered' into the property until a certain Angel reported the same to him</u>; 4. He [claimed] that defendants Nario Cabales, Jeremias Juarbal, and Oscar Pabalan entered the property in 1992 and built their houses therein in but in truth the three were merely renting the houses constructed by [respondent] and her children."

[24] *Heirs of Tajonera v. Court of Appeals*, 191 Phil. 55, 63 (1981).

facts which create suspicion to call for an investigation of the real condition of the land. One who deliberately ignores a significant fact which would naturally generate wariness is not an innocent purchaser for value.[25]

Recall that the lot was registered in petitioner's name in 1993 or 18 years after its sale in 1975. Yet even before the issuance of a certificate of title in his name, petitioner was made aware by his attorney-in-fact-purported property administrator-witness Martinez that respondent and other persons were in actual possession of the subject lot as early as 1984.

Q. What happened to the land in question in **1984**?

A. Two families entered the land in question.

Q. Who are these two families you mentioned?

A. [Respondent] and Pedro Belano.

Q. Did they ask permission as an administrator of this land?

A. No, sir.

x x x x x x x x x

Q. After Pedro Belano and [respondent] continued or they did not heed your plea not to build a house, what did they do?

A. **I informed [petitioner] that there are persons who entered in [*sic*] the land and erected a house.**

Q. **Where was [petitioner] at that time?**

A. **In Manila, sir.**

Q. Do you recall if [petitioner] made any action after you informed him that there are two people or families who entered in this land and erected a house?

A. I know, sir.

Q. **What did [petitioner] do?**

A. **[He] talked to these people.**

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[25] *Development Bank of the Philippines v. Court of Appeals*, 387 Phil. 283, 303 (2000).

Q. **What happened after [he] talked to these people?**

A. **They did not heed.**

Q. In 1992, Mr. Martinez, as administrator of the same land, do you recall what happened to the land in question?

x x x x x x x x x

A. In **1992**, there were three families again who entered in the land.

x x x x x x x x x

Q. What did [petitioner], if you know, after you informed him that another group of three families entered and constructed their houses inside his lot?

A. **[Petitioner] called them and told them not to erect a house there** because that is his land.

Q. Did these people heed the advice of [petitioner]?

A. No, sir.[26] (emphasis and underscoring supplied)

As reflected earlier, petitioner did not take the witness stand. Why he never bothered to inquire from Ciriaco's heirs or from respondent herself whatever interest she had in the subject lot, despite the telling circumstances, does not speak well of his cause.

Glaringly noticeable is a lack of showing that petitioner inspected the subject lot before, during and after the sale in 1975. It surfaces that it was only in 1984, when respondent Remedios allegedly entered the subject lot to construct a house thereon, that petitioner, following his witness' account, became aware of Remedios' possession thereof.

Aside from the testimony of Martinez then, which is too simplistic to be believed, petitioner failed to proffer evidence to show that he was a purchaser in good faith. While he presented a tax declaration over the subject lot under his name,[27] he paid

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[26] TSN, February 16, 1996, pp. 12-15.

[27] Records, p. 214; Exhibit "J" and Exhibit "8" as common exhibit for the parties.

the real property taxes thereon only on July 27, 1993 or 18 years after he bought it.

More. Petitioner amended his complaint to implead Remedios as a defendant.[28] If indeed he had met with her as early as 1984, as testified on by his attorney-in-fact Martinez, he could have, at the time he filed the original complaint on October 6, 1993, readily identified her as one of the occupants of the subject lot and at once named her a defendant. His subsequent amendment of his complaint on December 13, 1993[29] betrays, as it contradicts, Martinez's testimony and reinforces the belief that petitioner had not been to the subject lot.

And the Affidavit of Confirmation of Sale executed in 1993 states that the subject lot contains a total area of 557 square meters, whereas the 1975 Deed of Sale[30] states that it contains 480 square meters. No explanation for the discrepancy was even proffered.

Respecting petitioner's assertion that respondent Remedios' filing in 1971 of a complaint to recover possession of subject lot against Ciriaco shows that she was not in actual possession thereof at the time, the same does not impress. For there is no showing that the action involved the same lot as the subject lot. In any event, that action only serves to reinforce Remedios' assertion that she has been the lawful possessor of the subject lot, whether in the concept of owner or holder.

On the issue of whether the appellate court's order of reconveyance is in order, petitioner's disputations are without merit.

As reflected above, Remedios filed her Answer to the Amended Complaint with Counterclaim. A counterclaim is considered an original complaint and, as such, the attack on the title in a case

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[28] *Vide*: Records, pp. 32-36.

[29] *Ibid.*

[30] Neither the Ciriaco heirs as vendors and petitioner as vendee explained such discrepancy.

originally for recovery of possession is not considered as a collateral attack on the title. *Development Bank of the Philippines v. Court of Appeals*[31] enlightens:

> Nor is there any obstacle to the determination of the validity of TCT No. 10101. It is true that the indefeasibility of [T]orrens title cannot be collaterally attacked. In the instant case, the original complaint is for recovery of possession filed by petitioner against private respondent, not an original action filed by the latter to question the validity of TCT No. 10101 on which petitioner bases its right. To rule on the issue of validity in a case for recovery of possession is tantamount to a collateral attack. However, it should not [b]e overlooked that private respondent filed a counterclaim against petitioner, **claiming ownership** over the land and seeking damages. Hence, we could rule on the question of the validity of TCT No. 10101 for **the counterclaim can be considered a direct attack on the same**. 'A counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff . . . It stands on the same footing and is to be tested by the same rules as if it were an independent action.' x x x. (emphasis and underscoring supplied)

The registration of a property in one's name, whether by mistake or fraud, the real owner being another, impresses upon the title so acquired the character of a *constructive trust* for the real owner.[32] The person in whose name the land is registered holds it as a mere trustee, and the real owner is entitled to file an action for reconveyance of the property.[33] The Torrens system does not protect a usurper from the true owner.[34]

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[31] *Development Bank of the Phils. v. Court of Appeals*, *supra* note 25 at 300.

[32] Article 1456 of the Civil Code states: "If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes."

[33] *Mendizabel v. Apao*, G.R. No. 143185, 482 SCRA 587, 607 (2006) citing *Bustarga v. Navo II*, 214 Phil. 86, 89 (1984).

[34] *Ringor v. Ringor*, 480 Phil. 141, 161 (2004).

Respondent Remedios having established that she has a better right to subject lot, petitioner must, by virtue of constructive trust, reconvey it to her.

WHEREFORE, in light of the foregoing discussions, the petition is *DENIED*.

Costs against petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 179356. December 14, 2009]

KEPCO PHILIPPINES CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; REVENUE REGULATIONS NO. 7-95; CAPITAL GOODS; PURCHASES OF DOMESTIC GOODS AND SERVICES, WHEN CONSIDERED AS "CAPITAL GOODS OR PROPERTIES"; CASE AT BAR.—** For petitioner's purchases of domestic goods and services to be considered as "capital goods or properties," three requisites must concur. *First*, useful life of goods or properties must exceed one year; *second*, said goods or properties are treated as depreciable assets under Section 34 (f) and; *third*, goods or properties must be used directly or indirectly in the production or sale of taxable goods and services. From petitioner's evidence, the account vouchers specifically indicate that the disallowed purchases were recorded under inventory accounts, instead of depreciable

accounts. That petitioner failed to indicate under its fixed assets or depreciable assets account, goods and services allegedly purchased pursuant to the rehabilitation and maintenance of Malaya Power Plant Complex, militates against its claim for refund. As correctly found by the CTA, the goods or properties must be recorded and treated as depreciable assets under Section 34 (F) of the NIRC.

2. ID.; ID.; ID.; PURCHASES HELD AS INVENTORY ITEMS CANNOT QUALIFY AS CAPITAL GOODS.— A general ledger is a record of a business entity's accounts which make up its financial statements. Information contained in a general ledger is gathered from source documents such as account vouchers, purchase orders and sales invoices. In case of variance between the source document and the general ledger, the former is preferred. The account vouchers presented by petitioner confirm that the purchases cannot qualify as capital goods for they are held as inventory items and not charged to any depreciable asset account. Petitioner has proffered no explanation why the disallowed items were not listed under depreciable asset accounts.

3. ID.; TAX EXEMPTIONS; CONSTRUED *STRICTISSIMI JURIS* AGAINST THE TAXPAYER; TAX REFUNDS ARE IN THE NATURE OF TAX EXEMPTIONS.— It is settled that tax refunds are in the nature of tax exemptions. Laws granting exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Where the taxpayer claims a refund, the CTA as a court of record is required to conduct a formal trial (*trial de novo*) to prove every minute aspect of the claim.

4. ID.; COURT OF TAX APPEALS; ABSENT ABUSE OR RECKLESS EXERCISE OF AUTHORITY, THE DECISION THEREOF, AFFIRMED BY THE APPELLATE COURT, WILL NOT BE DISTURBED.— By the very nature of its functions, the CTA is dedicated exclusively to the resolution of tax problems and has consequently developed an expertise on the subject. Absent a showing of abuse or reckless exercise of authority, the Court appreciates no ground to disturb the appellate court's Decision affirming that of the CTA.

APPEARANCES OF COUNSEL

Zambrano & Gruba Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Korea Electric Power Corporation (KEPCO) Philippines Corporation (petitioner) is an independent power producer engaged in selling electricity to the National Power Corporation (NPC).

After its incorporation and registration with the Securities and Exchange Commission on June 15, 1995, petitioner forged a Rehabilitation Operation Maintenance and Management Agreement with NPC for the rehabilitation and operation of Malaya Power Plant Complex in Pililia, Rizal.[1]

On September 30, 1998, petitioner filed with the Commissioner of Internal Revenue (respondent) administrative claims for tax refund in the amounts of ₱4,895,858.01 representing unutilized input Value Added Tax (VAT) payments on domestic purchases of goods and services for the 3rd quarter of 1996 and ₱4,084,867.25 representing creditable VAT withheld from payments received from NPC for the months of April and June 1996.

Petitioner also filed a judicial claim before the Court of Tax Appeals (CTA), docketed as CTA Case No. 5765, also based on the above-stated amounts.

Petitioner filed before respondent on December 28, 1998 still another claim for refund representing unutilized input VAT payments attributable to its zero-rated sale transactions with NPC, including input VAT payments on domestic goods and services in the amount of ₱13,191,278.00 for the 4th quarter of 1996. Petitioner also filed the same claim before the CTA on December 29, 1998, docketed as CTA Case No. 5704.

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[1] *Rollo*, p. 241 – Note 1 to Balance Sheets in petitioner's Annual Audited Financial Statement for 1996.

The two petitions before the CTA for a refund in the total amount of ₱22,172,003.26 were consolidated.

In his report, the court-commissioned auditor, Ruben R. Rubio, concluded that the claimed amount of ₱20,550,953.93 was properly substantiated for VAT purposes and subject of a valid refund.

By Decision of March 18, 2003, the CTA granted petitioner partial refund with respect to **unutilized input VAT payment on domestic goods and services qualifying as capital goods** purchased for the 3rd and 4th quarters of 1996 in the amount of ₱8,325,350.35. All other claims were disallowed.

Petitioner filed an urgent motion for reconsideration, claiming an additional amount of ₱5,012,875.67.

By Resolution of July 8, 2003,[2] the CTA denied petitioner's motion, it holding that part of the additional amount prayed for — ₱1,557,676.13 — involved purchases for the year 1997, and with respect to the remaining amount of ₱3,455,199.54, it was not recorded under depreciable asset accounts, hence, it cannot be considered as capital goods.

Petitioner appealed under Rule 43 of the Rules of Court before the Court of Appeals,[3] praying only for the refund of ₱3,455,199.54, claiming that the purchases represented thereby were used in the rehabilitation of the Malaya Power Plant Complex which should be considered as capital expense to fall within the purview of capital goods.

The appellate court, by Decision of December 11, 2006, **affirmed** that of the CTA. In arriving at its decision, the appellate court considered, among other things, the account vouchers submitted by petitioner which listed the purchases under inventory accounts as follows:

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[2] *Id.* at 99-102.

[3] The appeal was filed before the passage of Republic Act No. 9282, elevating the rank of the Court of Tax Appeals to the level of the Court of Appeals.

1) Inventory supplies/materials
2) Inventory supplies/lubricants
3) Inventory supplies/spare parts
4) Inventory supplies/supplies
5) Cost/O&M Supplies
6) Cost/O&M Uniforms and Working Clothes
7) Cost/O&M/Supplies
8) Cost/O&M/Repairs and Maintenance
9) Office Supplies
10) Repair and Maintenance/Mechanics
11) Repair and Maintenance/Common/General
12) Repair and Maintenance/Chemicals

Reconsideration of the appellate court's decision having been denied by Resolution of August 17, 2007, the present petition for review on *certiorari* was filed.

In the main, petitioner faults the appellate court for not considering the purchases amounting to ₱3,455,199.54 as falling under the definition of "capital goods."

The petition is bereft of merit.

Section 4.106-1 (b) of Revenue Regulations No. 7-95 defines capital goods and its scope in this wise:

x x x x x x x x x

(b) Capital Goods. – Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations, the input tax refundable shall only be the ratable portion corresponding to taxable operations.

"Capital goods or properties" refer to goods or properties with estimated useful life greater that one year and which are treated

as depreciable assets under Section 29 (f),[4] used directly or indirectly in the production or sale of taxable goods or services. (underscoring supplied)

For petitioner's purchases of domestic goods and services to be considered as "capital goods or properties," three requisites must concur. *First*, useful life of goods or properties must exceed one year; *second*, said goods or properties are treated as depreciable assets under Section 34 (f) and; *third*, goods or properties must be used directly or indirectly in the production or sale of taxable goods and services.

From petitioner's evidence, the account vouchers specifically indicate that the disallowed purchases were recorded under inventory accounts, instead of depreciable accounts. That petitioner failed to indicate under its fixed assets or depreciable assets account, goods and services allegedly purchased pursuant to the rehabilitation and maintenance of Malaya Power Plant Complex, militates against its claim for refund. As correctly found by the CTA, the goods or properties must be recorded and treated as depreciable assets under Section 34 (F) of the NIRC.

Petitioner further contends that since the disallowed items are treated as capital goods in the general ledger and accounting records, as testified on by its senior accountant, Karen Bulos, before the CTA, this should have been given more significance than the account vouchers which listed the items under inventory accounts.

A general ledger is a record of a business entity's accounts which make up its financial statements. Information contained

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[4] Now Section 34 (F) Depreciation. –

(1) General Rule – There shall be allowed as depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including reasonable allowance for obsolescence) of property used in the trade or business. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustees in accordance with the pertinent provisions of the instrument creating the trust, or in the absence of such provisions, on the basis of the trust income allowable to each. x x x

in a general ledger is gathered from source documents such as account vouchers, purchase orders and sales invoices. In case of variance between the source document and the general ledger, the former is preferred.

The account vouchers presented by petitioner confirm that the purchases cannot qualify as capital goods for they are held as inventory items and not charged to any depreciable asset account. Petitioner has proffered no explanation why the disallowed items were not listed under depreciable asset accounts.

It is settled that tax refunds are in the nature of tax exemptions. Laws granting exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[5] Where the taxpayer claims a refund, the CTA as a court of record is required to conduct a formal trial (*trial de novo*) to prove every minute aspect of the claim.[6]

By the very nature of its functions, the CTA is dedicated exclusively to the resolution of tax problems and has consequently developed an expertise on the subject. Absent a showing of abuse or reckless exercise of authority,[7] the Court appreciates no ground to disturb the appellate court's Decision affirming that of the CTA.

IN FINE, petitioner having failed to establish that the disallowed items should be classified as capital goods, the assailed Decision of the Court of Appeals must be upheld.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[5] *Philippine Phosphate Fertilizer v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005, 461 SCRA 369, 381.

[6] *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005, 468 SCRA 571, 588-589.

[7] *Commissioner of Internal Revenue v. Cebu Toyo Corp.*, G.R. No. 149073, February 16, 2005, 451 SCRA 447.

FIRST DIVISION

[G.R. No. 181556. December 14, 2009]

IN RE: PETITION FOR ASSISTANCE IN THE LIQUIDATION OF INTERCITY SAVINGS AND LOAN BANK, INC.

PHILIPPINE DEPOSIT INSURANCE CORPORATION, *petitioner, vs.* **STOCKHOLDERS OF INTERCITY SAVINGS AND LOAN BANK, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; ISSUE AS TO WHETHER A STATUTE MAY BE APPLIED RETROACTIVELY IS A PURE QUESTION OF LAW WHICH IS DIRECTLY APPEALABLE BEFORE THE SUPREME COURT VIA PETITION FOR REVIEW ON *CERTIORARI*; RULES MAY BE RELAXED IN THE INTEREST OF JUSTICE.—** Indeed, PDIC's appeal to the appellate court raised the lone issue of whether Section 12 of RA 9302 may be applied retroactively in order to award surplus dividends to Intercity Bank creditors, which was, as stated above, what the parties had stipulated upon as the sole legal issue in PDIC's Motion for Approval of the Final Distribution of Assets and Termination of the Liquidation Proceedings. Whether a statute has retroactive effect is undeniably a pure question of law. PDIC should thus have directly appealed to this Court by filing a petition for review on *certiorari* under Rule 45, not an ordinary appeal with the appellate court under Rule 41. The appellate court did not err, thus, in holding that PDIC availed of the wrong mode of appeal. In the interest of justice, however, and in order to write *finis* to this controversy, the Court relaxes the rules and decides the petition on the merits.

2. **COMMERCIAL LAW; BANKS AND BANKING; REPUBLIC ACT NO. 9302; NO RETROACTIVE EFFECT; STATUTES ARE PROSPECTIVE AND NOT RETROACTIVE IN THEIR OPERATION, UNLESS THE CONTRARY IS PROVIDED; RATIONALE.—** A perusal of RA 9302 shows that nothing indeed therein authorizes its retroactive application. In fact,

its effectivity clause indicates a clear legislative intent to the contrary: Section 28**.** Effectivity Clause. - This Act shall **take effect fifteen (15) days following the completion of its publication** in the Official Gazette or in two (2) newspapers of general circulation. Statutes are prospective and not retroactive in their operation, they being the formulation of rules for the future, not the past. Hence, the legal maxim *lex de futuro, judex de praeterito* — the law provides for the future, the judge for the past, which is articulated in Article 4 of the Civil Code: "Laws shall have no retroactive effect, unless the contrary is provided." The reason for the rule is the tendency of retroactive legislation to be unjust and oppressive on account of its liability to unsettle vested rights or disturb the legal effect of prior transactions.

3. REMEDIAL LAW; EVIDENCE; FOREIGN LAW; RESORT TO FOREIGN JURISPRUDENCE, WHEN PROPER.— *En passant,* PDIC's citation of foreign jurisprudence that supports the award of surplus dividends is unavailing. Resort to foreign jurisprudence is proper only if no local law or jurisprudence exists to settle the controversy. And even then, it is only persuasive.

APPEARANCES OF COUNSEL

Balane Tamase Alampay Law Office for petitioner.
Danilo C. Cunanan for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

The Central Bank of the Philippines, now known as *Bangko Sentral ng Pilipinas*, filed on June 17, 1987 with the Regional Trial Court (RTC) of Makati a Petition for Assistance in the Liquidation of Intercity Savings and Loan Bank, Inc. (Intercity Bank) alleging that, *inter alia*, said bank was already insolvent and its continuance in business would involve probable loss to depositors, creditors and the general public.[1]

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[1] Records, pp. 1-7.

Finding the petition sufficient in form and substance, the trial court gave it due course.[2] Petitioner Philippine Deposit Insurance Corporation (PDIC) was eventually substituted as the therein petitioner, liquidator of Intercity Bank.[3]

In the meantime, Republic Act No. 9302 (RA 9302)[4] was enacted, Section 12 of which provides:

SECTION 12. Before any distribution of the assets of the closed bank in accordance with the preferences established by law, the Corporation shall periodically charge against said assets reasonable receivership expenses and subject to approval by the proper court, reasonable liquidation expenses, it has incurred as part of the cost of receivership/liquidation proceedings and collect payment therefor from available assets.

After the payment of all liabilities and claims against the closed bank, the Corporation shall pay any surplus dividends at the legal rate of interest, from date of takeover to date of distribution, **to creditors** and claimants of the closed bank in accordance with legal priority before distribution to the shareholders of the closed bank. (emphasis supplied)

Relying thereon, PDIC filed on August 8, 2005 a Motion for Approval of the Final Distribution of Assets and Termination of the Liquidation Proceedings,[5] praying that an Order be issued for:

1. The reimbursement of the liquidation fees and expenses incurred and/or advanced by herein petitioner, PDIC, in the amount of ₱3,795,096.05;

2. The provision of ₱700,000.00 for future expenses in the implementation of this distribution and the winding-up of the liquidation of Intercity Savings and Loan Bank, Inc.;

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[2] *Id.* at 22.

[3] *Id.* at 84.

[4] AN ACT AMENDING REPUBLIC ACT NO. 3591, AS AMENDED, OTHERWISE KNOWN AS THE "CHARTER OF THE PHILIPPINE DEPOSIT INSURANCE CORPORATION" AND FOR OTHER PURPOSES; APPROVED ON JULY 27, 2004.

[5] Records, pp. 304-314.

3. The write-off of assets in the total amount of ₱8,270,789.99, as set forth in par. 2.1 hereof;

4. The write-off of liabilities in the total amount of ₱1,562,185.35, as set forth in par. 8 hereof;

5. The Final Project of Distribution of Intercity Savings and Loan Bank as set forth in Annex "Q" hereof;

6. Authorizing petitioner to hold as trustee the liquidating and surplus dividends allocated in the project of distribution for creditors who shall have a period of three (3) years from date of last notice within which to claim payment therefor. After the lapse of said period, unclaimed payments shall be escheated to the Republic of the Philippines in accordance with Rule 91 of the Rules of Court;

7. Authorizing the disposal of all the pertinent bank records in accordance with applicable laws, rules and regulations after the lapse of one (1) year from the approval of the instant Motion.

By Order of July 5, 2006,[6] Branch 134 of the Makati RTC granted the motion except the above-quoted paragraphs 5 and 6 of its prayer, respectively praying for the approval of the Final Project of Distribution and for authority for PDIC "to hold as trustee the liquidating and surplus dividends allocated . . . for creditors" of Intercity Bank.

In granting the motion, the trial court resolved in the negative the sole issue of whether Section 12 of RA 9302 should be applied *retroactively* in order to entitle Intercity Bank creditors to surplus dividends, it otherwise holding that to so resolve would run counter to prevailing jurisprudence and unduly prejudice Intercity Bank shareholders, the creditors having been paid their principal claim in 2002 or before the passage of RA 9302 in 2004.

PDIC appealed to the Court of Appeals[7] before which respondent Stockholders of Intercity Bank (the Stockholders) moved to dismiss the appeal, arguing principally that the proper

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[6] *Id.* at 432-435.

[7] *Id.* at 441, 451.

recourse should be to this Court through a petition for review on *certiorari* since the question involved was purely one of law.[8]

By Resolution of October 17, 2007,[9] the appellate court dismissed the appeal, sustaining in the main the position of the Stockholders. Its Motion for Reconsideration having been denied by Resolution dated January 24, 2008,[10] PDIC filed the present Petition for Review on *Certiorari*.

PDIC contends that the appellate court disregarded the issue of the trial court's disapproval of the payment of additional liquidating dividends to Intercity Bank creditors, which involved a question of fact that entailed a review of the evidence; that the prayer for surplus dividends involved another question of fact as there must first be a factual finding that all claims against Intercity Bank have been paid; and that there having been previously approved but unclaimed liquidating dividends, the denial of its prayer for appointment as trustee therefor resulted in an anomalous situation where no one has the authority to handle them until they are claimed.[11]

The Stockholders, for their part, maintain that only a question of law was brought to the appellate court, the parties having stipulated in the trial court that the sole issue for determination was whether RA 9302 may be applied retroactively; that the payment of additional liquidating dividends should be deemed approved since they never opposed it and the trial court specifically disapproved only the payment of surplus dividends; and that in any event, RA 9302 cannot be given retroactive effect absent a provision therein providing for it.[12]

The petition lacks merit.

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[8] *CA rollo,* pp. 12-17.

[9] Penned by Associate Justice Ricardo R. Rosario, with the concurrence of Associate Justices Rebecca De Guia Salvador and Magdangal M. De Leon; *id.* at 86-96.

[10] *Id.* at 146-147.

[11] Vide Petition, *rollo,* pp. 3-36.

[12] Vide Comment, *id.* at 241-256.

Indeed, PDIC's appeal to the appellate court raised the lone issue of whether Section 12 of RA 9302 may be applied retroactively in order to award surplus dividends to Intercity Bank creditors, which was, as stated above, what the parties had stipulated upon as the sole legal issue in PDIC's Motion for Approval of the Final Distribution of Assets and Termination of the Liquidation Proceedings.

Whether a statute has retroactive effect is undeniably a pure question of law. PDIC should thus have directly appealed to this Court by filing a petition for review on *certiorari* under Rule 45, not an ordinary appeal with the appellate court under Rule 41. The appellate court did not err, thus, in holding that PDIC availed of the wrong mode of appeal.[13]

In the interest of justice, however, and in order to write *finis* to this controversy, the Court relaxes the rules and decides the petition on the merits.[14]

A perusal of RA 9302 shows that nothing indeed therein authorizes its retroactive application. In fact, its effectivity clause indicates a clear legislative intent to the contrary:

> Section 28. Effectivity Clause. - This Act shall **take effect fifteen (15) days following the completion of its publication** in the Official Gazette or in two (2) newspapers of general circulation. (emphasis supplied)

Statutes are prospective and not retroactive in their operation, they being the formulation of rules for the future, not the past. Hence, the legal maxim *lex de futuro, judex de praeterito* — the law provides for the future, the judge for the past, which is articulated in Article 4 of the Civil Code: "Laws shall have no retroactive effect, unless the contrary is provided." The reason for the rule is the tendency of retroactive legislation to be unjust

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[13] *Quezon City v. ABS-CBN Broadcasting Corporation*, G.R. No. 166408, October 6, 2008, 567 SCRA 496, 507.

[14] *Vide Municipality of Pateros v. Court of Appeals,* G.R. No. 157714, June 16, 2009.

and oppressive on account of its liability to unsettle vested rights or disturb the legal effect of prior transactions.[15]

En passant, PDIC's citation of foreign jurisprudence that supports the award of surplus dividends is unavailing. Resort to foreign jurisprudence is proper only if no local law or jurisprudence exists to settle the controversy. And even then, it is only persuasive.[16]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

Puno, C.J. (Chairperson), no part.

SECOND DIVISION

[G.R. No. 157867. December 15, 2009]

METROPOLITAN BANK & TRUST COMPANY, *petitioner, vs.* **HON. SALVADOR ABAD SANTOS, Presiding Judge, RTC, Br. 65, Makati City and MANFRED JACOB DE KONING,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE EXISTENCE AND AVAILABILITY OF THE RIGHT TO APPEAL ARE ANTITHETICAL TO THE AVAILMENT THEREOF.— Section 1, Rule 65 of the Rules, clearly provides that a petition for *certiorari* is available only when "*there is no appeal, or any plain, speedy and adequate remedy in*

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[15] *Curata v. Philippine Ports Authority,* G.R. Nos. 154211-12, June 22, 2009.

[16] Vide *Philippine Airlines, Inc. v. Court of Appeals,* G.R. No. 54470, May 8, 1990, 185 SCRA 110, 121.

the ordinary course of law." A petition for *certiorari* cannot coexist with an appeal or any other adequate remedy. The existence and the availability of the right to appeal are antithetical to the availment of the special civil action for *certiorari*. As we have long held, these two remedies are "*mutually exclusive*."

2. ID.; ID.; ID.; EXCEPTIONS; CASE AT BAR.— Admittedly, Metrobank's petition for *certiorari* before the CA assails the dismissal order of the RTC and, under normal circumstances, Metrobank should have filed an appeal. However, where the exigencies of the case are such that the ordinary methods of appeal may not prove adequate — either in point of promptness or completeness, so that a partial if not a total failure of justice could result – a writ of *certiorari* may still be issued. Other exceptions, Justice Florenz D. Regalado listed are as follows: (1) **where the appeal does not constitute a speedy and adequate remedy,** as where 33 appeals were involved from orders issued in a single proceeding which will inevitably result in a proliferation of more appeals; (2) **where the orders were also issued either in excess of or without jurisdiction;** (3) for certain special consideration, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) **where the order is a patent nullity;** and (6) where the decision in the *certiorari* case will avoid future litigations.

3. ID.; ID.; FORECLOSURE OF MORTGAGE; WRIT OF POSSESSION; DEFINED; WHEN MAY BE ISSUED.— A writ of possession is defined as "*a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give its possession to the person entitled under the judgment*." There are three instances when a writ of possession may be issued: (a) in land registration proceedings under Section 17 of Act No. 496; (b) in judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and (c) in extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135, as amended by Act No. 4118. The present case falls under the third instance.

4. ID.; ID.; ID.; ACT NO. 3135, AS AMENDED; NATURE OF A PETITION FOR A WRIT OF POSSESSION.— The procedure for obtaining a writ of possession in extrajudicial foreclosure cases is found in Section 7 of Act No. 3135, as amended by Act No. 4118. xxx Based on this provision, a writ of possession may issue either (1) within the one year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond. **In order to obtain a writ of possession, the purchaser in a foreclosure sale must file a petition, in the form of an *ex parte* motion, in the registration or cadastral proceedings of the registered property.** The reason why this pleading, although denominated as a petition, is actually considered a motion is best explained in *Sps. Arquiza v. CA*, where we said: **The certification against forum shopping is required only in a complaint or other *initiatory pleading*. The *ex parte* petition for the issuance of a writ of possession filed by the respondent is not an initiatory pleading**. Although the private respondent denominated its pleading as a petition, it is, nonetheless, a motion. What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but rather its purpose. The office of a motion is not to initiate new litigation, but to bring a material but incidental matter arising in the progress of the case in which the motion is filed. **A motion is not an independent right or remedy, but is confined to incidental matters in the progress of a cause. It relates to some question that is collateral to the main object of the action and is connected with and dependent upon the principal remedy. An application for a writ of possession is a mere incident in the registration proceeding**. Hence, although it was denominated as a "*petition*," it was in substance merely a motion. xxx.

5. ID.; ID.; ID.; ID.; AFTER THE CONSOLIDATION OF TITLE IN THE BUYERS NAME FOR FAILURE TO REDEEM THE PROPERTY, THE WRIT OF POSSESSION BECOMES A MATTER OF RIGHT AND THE ISSUANCE THEREOF TO A PURCHASER IN AN EXTRAJUDICIAL FORECLOSURE IS MERELY A MINISTERIAL FUNCTION.— The right to possess a property merely follows the right of ownership. Thus, after the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes

a matter of right and its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function. *Sps. Arquiza v. CA* further tells us: Indeed, it is well-settled that an ordinary action to acquire possession in favor of the purchaser at an extrajudicial foreclosure of real property is not necessary. There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale. **The basis of this right to possession is the purchaser's ownership of the property.** The mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and no bond is required.

6. **ID.; ID.; ID.; ID.; CERTIFICATE AGAINST NON-FORUM SHOPPING IS NOT REQUIRED IN A PETITION FOR A WRIT OF POSSESSION.—** Since a petition for a writ of possession under Section 7 of Act No. 3135, as amended, is neither a complaint nor an initiatory pleading, a certificate against non-forum shopping is not required. The certificate that Metrobank attached to its petition is thus a superfluity that the lower court should have disregarded.

7. **ID.; ID.; ID.; ID.; INTERVENTION IS NOT ALLOWED IN A PETITION FOR A WRIT OF POSSESSION.—** We also find merit in Metrobank's contention that the lower court should not have allowed De Koning to intervene in the proceedings. A judicial proceeding, order, injunction, *etc.*, is *ex parte* when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested. Given that the proceeding for a writ of possession, by the terms of Section 7 of Act No. 3135, is undoubtedly *ex parte* in nature, the lower court clearly erred not only when it notified De Koning of Metrobank's *ex parte* petition for the writ of possession, but also when it allowed De Koning to participate in the proceedings and when it took cognizance and upheld De Koning's motion to dismiss.

APPEARANCES OF COUNSEL

Perez Calima Law Offices for petitioner.
Gutierrez Cortez & Partners for Manfred Jacob De Koning.

D E C I S I O N

BRION, *J*.:

This petition for review on *certiorari*,[1] seeks to reverse and set aside the decision dated November 21, 2002 and subsequent ruling on motion for reconsideration of the Court of Appeals (*CA*) in CA-G.R. SP No. 62325.[2] The CA decision affirmed the order of the Regional Trial Court (*RTC*) of Makati City, Branch 65,[3] dismissing the petition filed by Metropolitan Bank & Trust Company (*Metrobank*) for the issuance of a writ of possession of a condominium unit it had previously foreclosed. This dismissal was based on the finding that the petition contained a false certification against forum shopping.

FACTUAL ANTECEDENTS

Respondent Manfred Jacob De Koning (*De Koning*) obtained a loan from Metrobank in the principal amount of Two Million, Nineteen Thousand Pesos (₱2,019,000.00), evidenced by promissory note No. TLS/97-039/382599 dated July 24, 1997. To secure the payment of this loan, De Koning executed a real estate mortgage (*REM*) in favor of Metrobank dated July 22, 1996 over a condominium unit and all its improvements. The unit is located at Unit 1703 Cityland 10 Tower 1, H.V. Dela Costa Street, Makati City, and is covered by Condominium Certificate of Title No. 10681.

When De Koning failed to pay his loan despite demand, Metrobank instituted extrajudicial foreclosure proceedings against the REM. Metrobank was the highest bidder at the public auction of the condominium unit held on November 24, 1998 and a Certificate of Sale was issued in the bank's favor. Metrobank

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[1] Dated June 4, 2003; *rollo*, pp. 10-42.

[2] Penned by Associate Justice Bernardo P. Abesamis, with the concurrence of Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Edgardo F. Sundiam; *id.* at 48-55.

[3] *Id.* at 56.

duly registered this Certificate of Sale with the Registry of Deeds for Makati City on January 18, 2000.

The redemption period lapsed without De Koning redeeming the property. Thus, Metrobank demanded that he turn over possession of the condominium unit. When De Koning refused, Metrobank filed on July 28, 2000 with the RTC Makati, Branch 65, an *ex parte* petition for a writ of possession over the foreclosed property, pursuant to Act No. 3135, as amended.

On August 1, 2000, the lower court issued an order setting the *ex parte* hearing of Metrobank's petition and directing that a copy of the order be given to De Koning to inform him of the existence of the proceedings.

During the scheduled *ex parte* hearing on August 18, 2000, De Koning's counsel appeared and manifested that he filed a motion to dismiss on the ground that Metrobank's petition violated Section 5, Rule 7 of the Rules of Court (*Rules*)[4] which requires the attachment of a certification against forum shopping to a complaint or other initiatory pleading. According to De Koning, Metrobank's petition for the issuance of a writ of possession involved the same parties, the same issues and the same subject matter as the case he had filed on October 30, 1998 with the

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[4] Sec. 5. *Certification against forum shopping*. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal

RTC of Makati,[5] to question Metrobank's right to foreclose the mortgage. De Koning also had a pending petition for *certiorari* with the CA,[6] which arose from the RTC case he filed. When Metrobank failed to disclose the existence of these two pending cases in the certification attached to its petition, it failed to comply with the mandatory requirements of the Rules so that its petition should be dismissed.

The RTC agreed with De Koning and dismissed Metrobank's petition in its September 18, 2000 order on the ground De Koning cited, *i.e.*, for having a false certification of non-forum shopping. The lower court denied Metrobank's motion for reconsideration. Metrobank thus elevated the matter to the CA on a petition for *certiorari* on January 5, 2001.

The CA affirmed the dismissal of Metrobank's petition. It explained that Section 5, Rule 7 of the Rules is not limited to actions, but covers any "*initiatory pleading*" that asserts a claim for relief. Since Metrobank's petition for writ of possession is an initiatory pleading, it must perforce be covered by this rule. Thus, Metrobank's failure to disclose in the verification and certification the existence of the two cases filed by De Koning, involving the issue of Metrobank's right to foreclose on the property, rendered the petition dismissible.

The CA denied Metrobank's subsequent motion for reconsideration. Hence, this petition for review on *certiorari*, raising the following issues:

ISSUES

I.

THE COURT OF APPEALS AND THE LOWER COURT, CONTRARY TO THE APPLICABLE DECISIONS OF THIS

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actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[5] Docketed as Civil Case No. 98-2629.

[6] Docketed as CA-G.R. SP No. 53546.

HONORABLE COURT, RULED THAT THE *EX PARTE* PETITION FOR THE ISSUANCE OF A WRIT OF POSSESSION IS AN INITIATORY PLEADING ASSERTING A CLAIM.

II.

THE COURT OF APPEALS, IN UPHOLDING THE RULING OF THE LOWER COURT, DELIBERATELY IGNORED THE FACT THAT THE PETITION FOR THE ISSUANCE OF A WRIT OF POSSESSION IS *EX PARTE* IN NATURE.

III.

THE COURT OF APPEALS COMMITTED A MISAPPREHENSION OF FACTS.

Metrobank claims that an *ex parte* petition for the issuance of a writ of possession is not an initiatory pleading asserting a claim. Rather, it is a mere incident in the transfer of title over the real property which was acquired by Metrobank through an extrajudicial foreclosure sale, in accordance with Section 7 of Act No. 3135, as amended. Thus, the petition is not covered by Section 5, Rule 7 of the Rules and a certification against forum shopping is not required.

Metrobank further argues that considering the *ex parte* nature of the proceedings, De Koning was not even entitled to be notified of the resulting proceedings, and the lower court and the CA should have disregarded De Koning's motion to dismiss.

Lastly, Metrobank posits that the CA misapprehended the facts of the case when it affirmed the lower court's finding that Metrobank's petition and the two cases filed by De Koning involved the same parties. There could be no identity of parties in these cases for the simple reason that, unlike the two cases filed by De Koning, Metrobank's petition is a proceeding *ex parte* which did not involve De Koning as a party. Nor could there be an identity in issues or subject matter since the only issue involved in Metrobank's petition is its entitlement to possess the property foreclosed, whereas De Koning's civil case involved the validity of the terms and conditions of the loan documents. Furthermore, the extra-judicial foreclosure of the mortgaged property and De Koning's petition for *certiorari* with the CA

involved the issue of whether the presiding judge in the civil case acted with grave abuse of discretion when he denied De Koning's motion to set for hearing the application for preliminary injunction.

De Koning, in opposition, maintains that Metrobank's petition was fatally defective for violating the strict requirements of Section 5, Rule 7 of the Rules. As noted by both the lower court and the CA's ruling that Metrobank failed to disclose the two pending cases he previously filed before the RTC and the CA, which both involved the bank's right to foreclose and, ultimately, the bank's right to a writ of possession by virtue of foreclosure.

De Koning also asserts that Metrobank should have appealed the lower court's decision and not filed a special civil action for *certiorari* since the order being questioned is one of dismissal and not an interlocutory order. According to De Koning, since the filing of a petition for *certiorari* cannot be a substitute for a lost appeal and does not stop the running of the period of appeal, the questioned RTC order has now become final and executory and the present petition is moot and academic.

THE COURT'S RULING

We find Metrobank's petition meritorious.

Procedural Issue

Section 1, Rule 65 of the Rules, clearly provides that a petition for *certiorari* is available only when "*there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law*." A petition for *certiorari* cannot coexist with an appeal or any other adequate remedy. The existence and the availability of the right to appeal are antithetical to the availment of the special civil action for *certiorari*. As we have long held, these two remedies are "*mutually exclusive*."[7]

Admittedly, Metrobank's petition for *certiorari* before the CA assails the dismissal order of the RTC and, under normal circumstances, Metrobank should have filed an appeal.

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[7] *Ley Construction and Development Corporation v. Hyatt Industrial Manufacturing Corporation*, 393 Phil. 633 (2000).

However, where the exigencies of the case are such that the ordinary methods of appeal may not prove adequate — either in point of promptness or completeness, so that a partial if not a total failure of justice could result — a writ of *certiorari* may still be issued.[8] Other exceptions, Justice Florenz D. Regalado listed are as follows:

(1) **where the appeal does not constitute a speedy and adequate remedy** (*Salvadades vs. Pajarillo, et al., 78 Phil. 77),* as where 33 appeals were involved from orders issued in a single proceeding which will inevitably result in a proliferation of more appeals (*PCIB vs. Escolin, et al.,* L-27860 and 27896, Mar. 29, 1974*);* (2) **where the orders were also issued either in excess of or without jurisdiction** (*Aguilar vs. Tan, L-23600, Jun 30, 1970, Cf. Bautista, et al. vs. Sarmiento, et al., L-45137, Sept. 23, 1985);* (3) for certain special consideration, as public welfare or public policy (See *Jose vs. Zulueta, et al. L-16598, May 31, 1961* and the cases cited therein); (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy *(People vs. Abalos, L-029039, Nov. 28, 1968);* (5) **where the order is a patent nullity** (*Marcelo vs. De Guzman, et al., L-29077, June 29, 1982);* and (6) where the decision in the *certiorari* case will avoid future litigations (*St. Peter Memorial Park, Inc. vs. Campos, et al., L-38280, Mar. 21, 1975).*[9] [Emphasis supplied.]

Grave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence.[10] As will be discussed in greater detail below, the RTC decision dismissing Metrobank's petition was patently erroneous and clearly contravened existing jurisprudence. For this reason, we cannot fault Metrobank for resorting to the filing of a petition for *certiorari* with the CA to remedy a patent legal error in the hope of obtaining a speedy and adequate remedy.

Nature of a petition for a writ of possession

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[8] *Land Bank of the Philippines v. Court of Appeals,* 456 Phil. 755 (2003).

[9] REMEDIAL LAW COMPENDIUM, Volume One, p. 708, (1997).

[10] *Choa v. Choa*, 441 Phil. 175 (2002).

A writ of possession is defined as "*a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give its possession to the person entitled under the judgment*."[11]

There are three instances when a writ of possession may be issued: (a) in land registration proceedings under Section 17 of Act No. 496; (b) in judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and (c) in extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135, as amended by Act No. 4118.[12] The present case falls under the third instance.

The procedure for obtaining a writ of possession in extrajudicial foreclosure cases is found in Section 7 of Act No. 3135, as amended by Act No. 4118, which states:

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 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 and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of 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 Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the

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[11] *BLACK'S LAW DICTIONARY*, 5th ed., 1979, p. 1444.

[12] *Sps. Ong v. CA*, 388 Phil. 857 (2000).

sheriff of the province in which the property is situated, who shall execute said order immediately.

Based on this provision, a writ of possession may issue either (1) within the one year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond.[13] **In order to obtain a writ of possession, the purchaser in a foreclosure sale must file a petition, in the form of an *ex parte* motion, in the registration or cadastral proceedings of the registered property.** The reason why this pleading, although denominated as a petition, is actually considered a motion is best explained in *Sps. Arquiza v. CA*,[14] where we said:

> **The certification against forum shopping is required only in a complaint or other *initiatory pleading*. The *ex parte* petition for the issuance of a writ of possession filed by the respondent is not an initiatory pleading**. Although the private respondent denominated its pleading as a petition, it is, nonetheless, a motion. What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but rather its purpose. The office of a motion is not to initiate new litigation, but to bring a material but incidental matter arising in the progress of the case in which the motion is filed. **A motion is not an independent right or remedy, but is confined to incidental matters in the progress of a cause. It relates to some question that is collateral to the main object of the action and is connected with and dependent upon the principal remedy. An application for a writ of possession is a mere incident in the registration proceeding**. Hence, although it was denominated as a "*petition*," it was in substance merely a motion. Thus, the CA correctly made the following observations:
>
> > Such petition for the issuance of a writ of possession is filed in the form of an *ex parte* motion, *inter alia*, in the registration or cadastral proceedings if the property is

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[13] *Navarra v. CA*, G.R. No. 86237, December 17, 1991, 204 SCRA 850; *UCPB v. Reyes*, G.R. No. 95095, February 7, 1991, 193 SCRA 756; *Banco Filipino Savings and Mortgage Bank v. Intermediate Appellate Court*, 225 Phil. 530 (1986); *Marcelo Steel Corp. v. Court of Appeals*, 153 Phil. 362 (1973); *De Garcia v. San Jose*, 94 Phil. 623 (1954).

[14] 498 Phil. 793 (2005).

registered. *Apropos*, as an incident or consequence of the original registration or cadastral proceedings, the motion or petition for the issuance of a writ of possession, not being an initiatory pleading, dispels the requirement of a forum-shopping certification. Axiomatic is that the petitioner need not file a certification of non-forum shopping since his claims are not initiatory in character (*Ponciano vs. Parentela*, *Jr.*, 331 SCRA 605 [2000]) [Emphasis supplied.]

The right to possess a property merely follows the right of ownership. Thus, after the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right and its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function.[15] *Sps. Arquiza v. CA* further tells us:[16]

Indeed, it is well-settled that an ordinary action to acquire possession in favor of the purchaser at an extrajudicial foreclosure of real property is not necessary. There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale. **The basis of this right to possession is the purchaser's ownership of the property.** The mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and no bond is required. [Emphasis supplied.]

Since a petition for a writ of possession under Section 7 of Act No. 3135, as amended, is neither a complaint nor an initiatory pleading, a certificate against non-forum shopping is not required. The certificate that Metrobank attached to its petition is thus a superfluity that the lower court should have disregarded.

No intervention allowed in ex parte proceedings

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[15] *Sps. Yulienco v. Court of Appeals*, 441 Phil. 397 (2002); *A.G. Development Corp. v. CA*, 346 Phil. 136 (1997); *Navarra v. CA*, G.R. No. 86237, December 17, 1991, 204 SCRA 850.

[16] *Supra* note 10.

We also find merit in Metrobank's contention that the lower court should not have allowed De Koning to intervene in the proceedings.

A judicial proceeding, order, injunction, *etc.*, is ex parte when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.[17]

Given that the proceeding for a writ of possession, by the terms of Section 7 of Act No. 3135, is undoubtedly *ex parte* in nature, the lower court clearly erred not only when it notified De Koning of Metrobank's *ex parte* petition for the writ of possession, but also when it allowed De Koning to participate in the proceedings and when it took cognizance and upheld De Koning's motion to dismiss.

As we held in *Ancheta v. Metropolitan Bank and Trust Company, Inc.*:[18]

In *GSIS v. Court of Appeals*, this Court discussed the inappropriateness of intervening in a summary proceeding under Section 7 of Act No. 3135:

> The proceedings in which respondent Knecht sought to intervene is an *ex parte* proceeding pursuant to Sec. 7 of Act No. 3135, and, as pointed out by petitioner, is a "judicial proceeding brought for the benefit of one party only, and without notice to, or consent by any person adversely interested (*Stella vs. Mosele*, 19 N.E., 2d. 433, 435, 299 III App. 53; *Imbrought v. Parker*, 83 N.E. 2d 42, 43, 336 III App. 124; *City Nat. Bank & Trust Co. v. Aavis Hotel Corporation*, 280 III App. 247), x x x or a proceeding wherein relief is granted without an opportunity for the person against whom the relief is sought to be heard" (Restatement, Torts, S 674, p. 365, *Rollo*).
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> x x x x x x x x x
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> *Intervention* is defined as "a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims

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[17] *Supra* note 11, p. 517.

[18] G.R. No. 163410, September 16, 2005, 470 SCRA 157.

> of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original party to pending legal proceedings, by which such person becomes a party thereto for the protection of some right of interest alleged by him to be affected by such proceedings" (33 C.J., 477, cited in *Eulalio Garcia, et al. vs. Sinforoso David, et al*., 67 Phil. 279, at p. 282).
>
> *Action*, under Rule 2, Sec. 1, is defined as an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong.
>
> From the aforesaid definitions, it is clear that **intervention contemplates a suit, and is therefore exercisable during a trial and**, as pointed out by petitioner **is one which envisions the introduction of evidence by the parties, leading to the rendition of the decision in the case** (p. 363, *Rollo*). Very clearly, **this concept is not that contemplated by Sec. 7 of Act No. 3135, whereby, under settled jurisprudence, the Judge has to order the immediate issuance of a writ of possession 1) upon the filing of the proper motion and 2) the approval of the corresponding bond**. The rationale for the mandate is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on his right of ownership. A trial which entails delay is obviously out of the question. [Emphasis supplied.]

WHEREFORE, premises considered, we *GRANT* the petition. The Decision of the Court of Appeals in CA-G.R. SP No. 62325 dated November 21, 2002, as well as the orders of the Regional Trial Court of Makati City, Branch 65 in LRC Case No. M-4068 dated September 18, 2000 and October 23, 2000, is *REVERSED* and *SET ASIDE*. LRC Case No. M-4068 is ordered remanded to the Regional Trial Court of Makati City, Branch 65, for further proceedings and proper disposition. Costs against respondent Manfred Jacob De Koning.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Del Castillo, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 178606. December 15, 2009]

THE EPISCOPAL DIOCESE OF NORTHERN PHILIPPINES, rep. by VICTOR D. ANANAYO, Convention Secretary, *petitioner, vs.* **THE DISTRICT ENGINEER, MOUNTAIN PROVINCE ENGINEERING DISTRICT, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS [MPED-DPWH],** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICE; NOTICE; LACK OF FORMAL NOTICE TO FILE POSITION PAPER CANNOT PREVAIL AGAINST THE FACT OF ACTUAL NOTICE.—** The record shows that the MCTC addressed a copy of the order requiring the parties to file their position papers to respondent District Engineer personally rather than to the OSG and that it was his co-defendant Moises who acknowledged receipt of such copy on behalf of the District Engineer. It was this circumstance that prompted the CA to rule that no valid service of the order was made on the District Engineer. Still, the OSG in fact filed a position paper dated May 18, 2006 on behalf of respondent District Engineer. This shows that someone notified the OSG before that date of the need for it to file a position paper for its client. Apparently, it took the OSG 11 days by mail to file such paper for the MCTC received it only on May 29, 2006, the day before the MCTC promulgated its decision. The CA inferred from this that the MCTC failed to consider that position paper when it decided the case, resulting in the denial of the District Engineer's right to be heard on his defense. Although it is not known when the OSG received notice that it needed to file a position paper in the case, the fact remains that it received actual notice. As petitioner EDNP correctly pointed out, lack of formal notice cannot prevail against the fact of actual notice.

2. **ID.; ID.; ID.; ID.; ID.; THE OFFICE OF THE SOLICITOR GENERAL HAS NO RIGHT TO EXPECT THE COURT TO WAIT FOREVER FOR ITS POSITION PAPER.—** Besides,

the OSG neither complained that it did not get formal notice to file a position paper nor did it ask that it be given more time to prepare and file one. Rather, it took the risk of taking time to file its position paper. As it happened, the MCTC received the OSG's position paper just the day before the court came out with its decision. The OSG had no right to expect the MCTC to wait forever for its position paper.

3. **POLITICAL LAW; DUE PROCESS; NO DENIAL THEREOF WHERE THE PARTY FAILS TO APPEAR, DESPITE NOTICE DURING THE PRELIMINARY CONFERENCE; FAILURE OF THE RESPONDENT TO SUBMIT A POSITION PAPER ENTITLES THE PETITIONER TO A JUDGMENT BASED ON THE COMPLAINT.—** What is more, respondent District Engineer had no right to complain of the denial of his right to be heard in his defense. He did not appear despite notice during the preliminary conference in the case nor bothered to explain why he did not do so. To be strict about it, he forfeited by such omission his right to submit a position paper. Indeed, by his default, the rules entitled petitioner EDNP to a judgment based on the complaint. But, precisely to avoid any possible technical problem in the issuance of such kind of judgment, EDNP itself pleaded with the MCTC to allow the District Engineer and the other defendants the chance to file their position papers. Since the District Engineer did in fact file such a position paper with the MCTC through the OSG, it will be utterly inequitable to allow him to complain that he had not been given the opportunity to be heard on his defense.

4. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; THE ISSUE IS PRIOR POSSESSION *DE FACTO*; DETERMINATION OF THE ISSUE OF OWNERSHIP IS ONLY PROVISIONAL.—** The CA upheld respondent District Engineer's view that the MCTC should have considered the inhabitants of *Barangay* Poblacion indispensable parties to the ejectment case since the land belonged to them and since it was for their benefit that the gym was to be built. But, ownership of the land is not the issue in forcible entry actions. The issue in such actions is who among the parties has prior possession *de facto*. While the trial court may have to determine the issue of ownership, such determination is only provisional, to ascertain who among the parties has a better right of possession.

5. **ID.; ACTIONS; PARTIES; INDISPENSABLE PARTIES; PERSONS WHO ARE NOT PARTIES TO A CASE CANNOT INVOKE, IN THEIR FAVOR, THE DECISION OF THE COURT THEREIN.—** Respondent District Engineer invokes the decision of the RTC in Civil Case 787 that the people of *Barangay* Poblacion owned the lot in question. But the case was for quieting of title that petitioner EDNP filed in court. The RTC dismissed the action based on EDNP's failure to implead the people of *Barangay* Poblacion as indispensable parties whom the court believed had a valid claim to the property in dispute. Not being a party to that action, the people of *Barangay* Poblacion cannot claim that they should be deemed to have obtained a judgment of ownership of the land in their favor.

6. **ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; PETITIONER IS ENTITLED TO RECOVER POSSESSION OF THE PROPERTY IN QUESTION.—** Petitioner EDNP was entitled to a judgment in its favor in the forcible entry case because of uncontested evidence that Moises and the men he engaged entered the land by strategy and stealth or force. What is more, the defendants did not adduce evidence that they entered the land on behalf and by authority of the people of *Barangay* Poblacion and on a claim that the latter owned the property. Respondent District Engineer did not present any document, official or otherwise, that showed that the local government had an interest in the construction of the gym. On the other hand, petitioner EDNP presented Resolution 2006-38 of the *Sangguniang Bayan* of Sabangan dated August 28, 2006, denying any involvement of the Municipal Mayor, the *Sanggunian*, or its members, in the demolition of the church to give way to a gym. Unfortunately, the defendants succeeded in constructing the gym and demolishing petitioner EDNP's church building. Still, this does not prevent the Court from ruling that the defendants forcibly entered the lot and seized possession of it from EDNP, entitling the latter to recover possession. This is of course without prejudice to any further action for the determination in a proper case of the true ownership of the land.

APPEARANCES OF COUNSEL

Floyd P. Lalwet for petitioner.
The Solicitor General for respondent.

DECISION

ABAD, *J.*:

The Facts and the Case

Petitioner Episcopal Diocese of Northern Philippines or EDNP, a religious corporation, constructed a church building for its congregation on a lot in Lengey, *Barangay* Poblacion, Sabangan, Mountain Province. The property was covered by Tax Declaration 15922 in its name issued by the provincial assessor.[1]

Sometime in 2005, a certain Tomas Paredes (Paredes) told members of petitioner EDNP that the Office of the District Engineer of the Mountain Province Engineering District, Department of Public Works and Highways (MPED-DPWH) was going to build a multi-purpose gymnasium on the lot of the church. EDNP objected. After negotiations with Paredes, the parties agreed to have the gymnasium built instead on an area outside the church lot.

Later in October 2005, however, several men entered the church compound and began digging holes for the gym's foundation. In a letter, petitioner EDNP appealed to private contractor Felipe Moises (Moises) not to proceed with the construction. It sent a separate letter to respondent District Engineer Leonardo Leyaley of MPED-DPWH, also requesting him to stop the construction. But it continued unabated, forcing EDNP to file a complaint for forcible entry with prayer for a temporary restraining order (TRO) and preliminary injunction before the Municipal Circuit Trial Court (MCTC) of Bauko and Sabangan against respondent District Engineer Leyaley and Moises in Civil Case 329.

During the initial hearing for the issuance of a TRO, defendant Moises told the court that he was not the real contractor of the project but some other persons whom he named.[2] As a consequence of this revelation, petitioner EDNP amended its complaint to include the persons mentioned.

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[1] Records, p. 231.

[2] *Id.* at 24.

In their respective answers, the defendants contested the amended complaint in that it failed to show any cause of action against them, and alleged that the property in question did not belong to EDNP. They also argued that injunction will not lie against government projects. The defendants, however, would not categorically state nor admit that the construction was in fact based on any contract with the government.

Respondent District Engineer, the other defendants with him, and their counsels, did not show up at the preliminary conference set on April 27, 2006 despite notice. They submitted no explanation. Still, petitioner EDNP asked the court to allow the defendants to file their position papers. Consequently, the MCTC issued a preliminary conference order on the same date, terminating the preliminary conference and directing all parties to submit their respective position papers together with their evidence.

On May 30, 2006 the MCTC rendered judgment, recognizing petitioner EDNP's right to possession of its church lot and holding that Moises and his men had illegally intruded into the property. It thus directed them to desist from disturbing EDNP's possession and to remove all structures they had in the meantime built on it. The MCTC dismissed the case as against the respondent District Engineer and the other contractors that Moises named for lack of cause of action as against them. The MCTC did not award damages or attorney's fees for lack of basis.

Moises appealed the decision to the Regional Trial Court (RTC) of Bontoc, Mountain Province in Civil Case 1224. Although the MCTC dismissed the complaint against respondent District Engineer, the latter filed a memorandum in the case through the Office of the Solicitor General (OSG). The RTC affirmed the decision of the MCTC.

Yet again, respondent District Engineer appealed the RTC decision to the Court of Appeals (CA) in CA-G.R. SP 96849. On February 20, 2007 the CA rendered judgment, setting aside the decisions of the MCTC and the RTC. The CA held that both courts below denied the District Engineer his right to due process. Instead of sending a copy of the order requiring the

parties to file their position papers to the OSG, his counsel, the MCTC sent the same to Moises, his co-defendant.

And while the OSG filed a position paper for the District Engineer, the MCTC, said the CA, failed to consider it. Additionally, no valid judgment could be rendered in the case for failure of the plaintiff to implead the people of *Barangay* Poblacion who were indispensable parties in the ejectment suit, the gym being intended for their use. Petitioner EDNP filed a motion for reconsideration of its decision but the CA denied it.[3]

Issues Presented

The petition presents two issues:

1. Whether or not the MCTC denied respondent District Engineer's right to due process when no copy of the order requiring him to file his position papers with the MCTC was sent to his counsel, the OSG; and

2. Whether or not the people of *Barangay* Poblacion, Sabangan, Mountain Province, were indispensable parties in petitioner EDNP's action for forcible entry.

The Court's Rulings

One. The record shows that the MCTC addressed a copy of the order requiring the parties to file their position papers to respondent District Engineer personally rather than to the OSG[4] and that it was his co-defendant Moises who acknowledged receipt of such copy on behalf of the District Engineer. It was this circumstance that prompted the CA to rule that no valid service of the order was made on the District Engineer.

Still, the OSG in fact filed a position paper dated May 18, 2006 on behalf of respondent District Engineer. This shows that someone notified the OSG before that date of the need for it to file a position paper for its client. Apparently, it took the OSG 11 days by mail to file such paper for the MCTC received it

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[3] Petition for Review under Rule 45 of the Rules of Court.

[4] Records, p. 186.

only on May 29, 2006,[5] the day before the MCTC promulgated its decision. The CA inferred from this that the MCTC failed to consider that position paper when it decided the case, resulting in the denial of the District Engineer's right to be heard on his defense.[6]

Although it is not known when the OSG received notice that it needed to file a position paper in the case, the fact remains that it received actual notice. As petitioner EDNP correctly pointed out, lack of formal notice cannot prevail against the fact of actual notice.[7]

Besides, the OSG neither complained that it did not get formal notice to file a position paper nor did it ask that it be given more time to prepare and file one. Rather, it took the risk of taking time to file its position paper. As it happened, the MCTC received the OSG's position paper just the day before the court came out with its decision. The OSG had no right to expect the MCTC to wait forever for its position paper.

What is more, respondent District Engineer had no right to complain of the denial of his right to be heard in his defense. He did not appear despite notice during the preliminary conference in the case nor bothered to explain why he did not do so. To be strict about it, he forfeited by such omission his right to submit a position paper. Indeed, by his default, the rules entitled petitioner EDNP to a judgment based on the complaint.[8]

But, precisely to avoid any possible technical problem in the issuance of such kind of judgment, EDNP itself pleaded with the MCTC to allow the District Engineer and the other defendants the chance to file their position papers. Since the District Engineer

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[5] *Id.* at 361.

[6] CA *rollo*, p. 487.

[7] *Santiago v. Guadiz, Jr.*, G.R. No. 85923, February 26, 1992, 206 SCRA 590, 597. *See also Heirs of the Late Jesus Fran v. Salas*, G.R. No. 53546, June 25, 1992, 210 SCRA 303, 316 and *Melendres, Jr. v. Commission on Elections*, 377 Phil. 275, 290 (1999).

[8] Pursuant to Section 8, Rule 70 of the Rules of Court, and Section 7 of the Revised Rules on Summary Procedure.

did in fact file such a position paper with the MCTC through the OSG, it will be utterly inequitable to allow him to complain that he had not been given the opportunity to be heard on his defense.

Also, the mere fact that the MCTC decision made no mention of respondent District Engineer's position paper does not mean that the court did not consider what that paper stated. Besides, the District Engineer's position paper merely reiterated the allegations and defenses he raised in his answer[9] to the complaint, which the MCTC considered in its decision.[10] Indeed, the MCTC dismissed the forcible entry case against respondent District Engineer for lack of cause of action.

Two. The CA upheld respondent District Engineer's view that the MCTC should have considered the inhabitants of *Barangay* Poblacion indispensable parties to the ejectment case since the land belonged to them and since it was for their benefit that the gym was to be built.

But, ownership of the land is not the issue in forcible entry actions. The issue in such actions is who among the parties has prior possession *de facto*.[11] While the trial court may have to determine the issue of ownership, such determination is only provisional, to ascertain who among the parties has a better right of possession.[12]

Here, the MCTC resolved the issue of ownership, ruling that the lot on which the gym was being built belonged to petitioner EDNP. The latter's evidence clearly shows how it came to possess the lot in question. It acquired the land through a deed of donation that Pedro Compalas Aglipay executed in favor of EDNP's predecessor-in-interest, the Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America.

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[9] Records, pp. 89-103.

[10] *Id.* at 405-406.

[11] *Perez v. Falcatan*, G.R. No. 139536, September 26, 2005, 471 SCRA 21, 31.

[12] Rules of Court, Rule 70, Section 16.

Petitioner EDNP has long declared the land in its name for tax purposes. And it continued to use the land from 1960 to the time the suit was filed, as evidenced by the baptismal records it kept, its register of activities, as well as the affidavits of witnesses. While the property was admittedly also being used as a public playground, a market place, and a parking lot, this did not make the people of *Barangay* Poblacion the owners of the land. Besides such additional uses are not inconsistent with EDNP's claim of ownership since the Episcopal Church in the Philippines almost always opened its lands to public access and use.

The claim that the people of *Barangay* Poblacion owned the land was based on a deed of donation that a certain Bishop Pedro Compalas Aglipay of the Aglipayan Church, also known as the *Iglesia Filipina Independiente* (IFI), purportedly executed in favor of the people of *Barangay* Poblacion. But the MCTC doubted the authenticity of such claim.

Respondent District Engineer alleges that Pedro Compalas Aglipay from whom EDNP derives its title was merely a caretaker of the property for the IFI. EDNP admits that Pedro Compalas Aglipay was indeed the caretaker of the property, but points out that it was his name that appeared on the tax declaration which originally covered the property. EDNP, however, denies the existence of any Bishop of the Aglipayan Church by the name of Pedro Compalas Aglipay. At any rate, based on the opposing claims, one thing is certain: the property originally belonged to the IFI.

Unfortunately for respondent District Engineer, the evidence adduced by his co-defendants contradicts his stand that the lot was donated to the people of *Barangay* Poblacion. There is evidence that as early as 1963 some members of the IFI in Sabangan wrote their supreme bishop, the *Obispo Maximo*, protesting the donation that Pedro Compalas Aglipay made in petitioner EDNP's favor.[13] Obispo Maximo did not, however, take any action on such protest. On the contrary, two succeeding *Obispo Maximo* of the IFI, Rev. Tito E. Pasco and Rev.

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[13] Exhibits 8 and 9 for the private respondents. Records, pp. 323-325.

Godofredo J. David, recognized and affirmed such donation.[14] It was moreover a proposition supported by the existence of a concordat of full communion between the two churches and the fact that the IFI entrusted EDNP with jurisdiction over its members in Sabangan.

Respondent District Engineer invokes the decision of the RTC in Civil Case 787 that the people of *Barangay* Poblacion owned the lot in question. But the case was for quieting of title that petitioner EDNP filed in court. The RTC dismissed the action based on EDNP's failure to implead the people of *Barangay* Poblacion as indispensable parties whom the court believed had a valid claim to the property in dispute. Not being a party to that action, the people of *Barangay* Poblacion cannot claim that they should be deemed to have obtained a judgment of ownership of the land in their favor.

Petitioner EDNP was entitled to a judgment in its favor in the forcible entry case because of uncontested evidence that Moises and the men he engaged entered the land by strategy and stealth or force. What is more, the defendants did not adduce evidence that they entered the land on behalf and by authority of the people of *Barangay* Poblacion and on a claim that the latter owned the property. Respondent District Engineer did not present any document, official or otherwise, that showed that the local government had an interest in the construction of the gym. On the other hand, petitioner EDNP presented Resolution 2006-38 of the *Sangguniang Bayan* of Sabangan dated August 28, 2006,[15] denying any involvement of the Municipal Mayor, the *Sanggunian*, or its members, in the demolition of the church to give way to a gym.

Unfortunately, the defendants succeeded in constructing the gym and demolishing petitioner EDNP's church building. Still, this does not prevent the Court from ruling that the defendants forcibly entered the lot and seized possession of it from EDNP, entitling the latter to recover possession. This is of course without

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[14] *Id.* at 234-236.

[15] *Id.* at 867-868.

prejudice to any further action for the determination in a proper case of the true ownership of the land.

WHEREFORE, the court *GRANTS* the petition, *REVERSES and SETS ASIDE* the Decision dated February 20, 2007 and Resolution dated June 28, 2007 of the Court of Appeals in CA-G.R. SP 96849, and *REINSTATES* the Decision of the Municipal Circuit Trial Court of Bauko and Sabangan in Civil Case 329 in its entirety.

SO ORDERED.

Carpio (Chairperson), Carpio Morales,[*] *Leonardo-de Castro,* and *Del Castillo, JJ.,* concur.

EN BANC

[G.R. No. 189868. December 15, 2009]

KABATAAN PARTY-LIST REPRESENTATIVE RAYMOND V. PALATINO, ALVIN A. PETERS, PRESIDENT OF THE NATIONAL UNION OF STUDENTS OF THE PHILIPPINES (NUSP), MA. CRISTINA ANGELA GUEVARRA, CHAIRPERSON OF THE STUDENT CHRISTIAN MOVEMENT OF THE PHILIPPINES (SCMP), VENCER MARI E. CRISOSTOMO, SECRETARY GENERAL OF KABATAAN PARTY-LIST, VIJAE O. ALQUISOLA, PRESIDENT OF THE COLLEGE EDITORS GUILD OF THE PHILIPPINES (CEGP), DIANNE KRISTEL M. ASUELO, SECRETARY GENERAL OF THE KABATAANG ARTISTA PARA SA TUNAY NA KALAYAAN

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[*] Designated as additional member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 807 dated December 7, 2009.

(KARATULA), KENNETH CARLISLE EARL EUGENIO, ANA KATRINA V. TEJERO, VICTOR LOUIS E. CRISOSTOMO, JACQUELINE ALEXIS S. MERCED, and JADE CHARMANE ROSE J. VALENZUELA, *petitioners, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; SUFFRAGE; RIGHT OF, ELUCIDATED.—** The right of suffrage lies at the heart of our constitutional democracy. The right of every Filipino to choose the leaders who will lead the country and participate, to the fullest extent possible, in every national and local election is so zealously guarded by the fundamental law that it devoted an entire article solely therefor x x x. Preserving the sanctity of the right of suffrage ensures that the State derives its power from the consent of the governed. The paramount importance of this right is also a function of the State policy of people empowerment articulated in the constitutional declaration that sovereignty resides in the people and all government authority emanates from them, bolstered by the recognition of the vital role of the youth in nation-building and directive to the State to encourage their involvement in public and civic affairs.

2. **ID.; ELECTION LAWS; REPUBLIC ACT NO. 8189 (THE VOTER'S REGISTRATION ACT OF 1996); REGISTRATION OF VOTERS, WHEN CONDUCTED.—** Congress mandated a system of continuing voter registration in Section 8 of RA 8189 which provides: "Section 8. *System of Continuing Registration of Voters.* The personal filing of application of **registration of voters shall be conducted daily** in the office of the Election Officer during regular office hours. No registration shall, however, be conducted during the period starting one hundred twenty (120) days before a regular election and ninety (90) days before a special election." The clear text of the law thus decrees that voters be allowed to register daily during regular office hours, except during the period starting 120 days before a regular election and 90 days before a special election. By the above provision, Congress itself has determined

that the period of 120 days before a regular election and 90 days before a special election is enough time for the COMELEC to make ALL the necessary preparations with respect to the coming elections including: (1) completion of project precincts, which is necessary for the proper allocation of official ballots, election returns and other election forms and paraphernalia; (2) constitution of the Board of Election Inspectors, including the determination of the precincts to which they shall be assigned; (3) finalizing the Computerized Voters List; (4) supervision of the campaign period; and (5) preparation, bidding, printing and distribution of Voter's Information Sheet. Such determination of Congress is well within the ambit of its legislative power, which this Court is bound to respect. And **the COMELEC's rule-making power should be exercised in accordance with the prevailing law.**

3. ID.; ID.; ID.; NOT IN CONFLICT WITH OTHER ELECTION LAWS RESPECTING THE AUTHORITY OF THE COMMISSION ON ELECTIONS TO FIX OTHER DATES FOR PRE-ELECTION ACTS.— Respecting the authority of the COMELEC under RA 6646 and RA 8436 to fix other dates for pre-election acts, the same is not in conflict with the mandate of continuing voter registration under RA 8189. This Court's primary duty is to harmonize laws rather than consider one as repealed by the other. The presumption is against inconsistency or repugnance and, accordingly, against implied repeal. For Congress is presumed to know the existing laws on the subject and not to enact inconsistent or conflicting statutes. Both R.A. No. 6646, Section 29 and R.A. No. 8436, Section 28 grant the COMELEC the power to fix other periods and dates for pre-election activities only **if the same cannot be reasonably held within the period provided by law.** This grant of power, however, is for the purpose of enabling the people to exercise the right of suffrage – the common underlying policy of RA 8189, RA 6646 and RA 8436. In the present case, the Court finds no ground to hold that the mandate of continuing voter registration cannot be reasonably held within the period provided by RA 8189, Sec. 8 – daily during office hours, except during the period starting 120 days before the May 10, 2010 regular elections. There is thus no occasion for the COMELEC to exercise its power to fix other dates or deadlines therefor.

APPEARANCES OF COUNSEL

Juluis Garcia Matibag for petitioners.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

At the threshold once again is the right of suffrage of the sovereign Filipino people – the foundation of Philippine democracy. As the country prepares to elect its next set of leaders on May 10, 2010, the Court upholds this primordial right.

On November 12, 2008, respondent Commission on Elections (COMELEC) issued Resolution No. 8514[1] which, among other things, set December 2, 2008 to December 15, 2009 as the period of continuing voter registration using the biometrics process in all areas nationwide, except in the Autonomous Region of Muslim Mindanao. Subsequently, the COMELEC issued Resolution No. 8585[2] on February 12, 2009 adjusting the deadline of voter registration for the May 10, 2010 national and local elections to October 31, 2009, instead of December 15, 2009 as previously fixed by Resolution No. 8514.

The intense public clamor for an extension of the October 31, 2009 deadline notwithstanding, the COMELEC stood firm in its decision not to extend it, arguing mainly that it needs ample time to prepare for the automated elections. Via the present Petition for *Certiorari* and *Mandamus* filed on October 30, 2009,[3] petitioners challenge the validity of COMELEC Resolution No. 8585 and seek a declaration of its nullity.

Petitioner Raymond V. Palatino, a youth sectoral representative under the Kabataan Party-list, sues as a member of the House

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[1] Rules and Regulations on the Resumption of the System of Continuing Registration of Voters in the Non-ARMM Areas.

[2] Amendments to Resolution No. 8514 Promulgated on November 12, 2008, *rollo,* pp. 39-42.

[3] *Id.* at 3-25.

of Representatives and a concerned citizen, while the rest of petitioners sue as concerned citizens.

Petitioners contend that the serious questions involved in this case and potential disenfranchisement of millions of Filipino voters justify resort to this Court in the first instance, claiming that based on National Statistics Office (NSO) data, the projected voting population for the May 10, 2010 elections is 3,758,964 for the age group 18-19 and 8,756,981 for the age group 20-24, or a total of 12,515,945.

Petitioners further contend that COMELEC Resolution No. 8585 is an unconstitutional encroachment on the legislative power of Congress as it amends the system of continuing voter registration under Section 8 of Republic Act No. 8189 (RA 8189), otherwise known as *The Voter's Registration Act of 1996*, reading:

> Section 8. *System of Continuing Registration of Voters.* The personal filing of application of registration of voters shall be conducted daily in the office of the Election Officer during regular office hours. No registration shall, however, be conducted during the period starting one hundred twenty (120) days before a regular election and ninety (90) days before a special election.

They thus pray that COMELEC Resolution No. 8585 be declared null and void, and that the COMELEC be accordingly required to extend the voter registration until January 9, 2010 which is the day before the 120-day prohibitive period starting on January 10, 2010.

The COMELEC maintains in its Comment filed on December 7, 2009 that, among other things, the Constitution and the Omnibus Election Code confer upon it the power to promulgate rules and regulations in order to ensure free, orderly and honest elections; that Section 29 of Republic Act No. 6646 (RA 6646)[4]

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[4] The Electoral Reforms Law of 1987; Section 29 provides:

Section 29. *Designation of Other Dates for certain Pre-election Acts.* — If it should no longer be reasonably possible to observe the periods and dates prescribed by law for certain pre-election acts, the Commission shall fix other periods and dates in order to ensure accomplishment of the activities so voters shall not be deprived of their right of suffrage.

and Section 28 of Republic Act No. 8436 (RA 8436)[5] authorize it to fix other dates for pre-election acts which include voter registration; and that its schedule of pre-election acts shows that the October 31, 2009 deadline of voter registration was impelled by operational and pragmatic considerations, citing *Akbayan-Youth v. COMELEC*[6] wherein the Court denied a similar prayer for an extension of the December 27, 2000 deadline of voter registration for the May 14, 2001 elections.

The petition is impressed with merit.

The right of suffrage lies at the heart of our constitutional democracy. The right of every Filipino to choose the leaders who will lead the country and participate, to the fullest extent possible, in every national and local election is so zealously guarded by the fundamental law that it devoted an entire article solely therefor:

ARTICLE V
SUFFRAGE

SECTION 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property or other substantive requirement shall be imposed on the exercise of suffrage.

SECTION 2. The Congress shall provide a system of securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad.

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[5] An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor and for Other Purposes; Section 28 provides:

Section 28. *Designation of other dates for certain pre-election acts.* – If it shall no longer be reasonably possible to observe the periods and dates prescribed by law for certain pre-election acts, the Commission shall fix other periods and dates in order to ensure accomplishment of the activities so voters shall not be deprived of their suffrage.

[6] G.R. Nos. 147066 &147179, March 26, 2001, 355 SCRA 318.

The Congress shall also design a procedure for the disabled and the illiterates to vote without the assistance of other persons. Until then, they shall be allowed to vote under existing laws and such rules as the Commission on Elections may promulgate to protect the secrecy of the ballot.

Preserving the sanctity of the right of suffrage ensures that the State derives its power from the consent of the governed. The paramount importance of this right is also a function of the State policy of people empowerment articulated in the constitutional declaration that sovereignty resides in the people and all government authority emanates from them,[7] bolstered by the recognition of the vital role of the youth in nation-building and directive to the State to encourage their involvement in public and civic affairs.[8]

It is against this backdrop that Congress mandated a system of continuing voter registration in Section 8 of RA 8189 which provides:

Section 8. *System of Continuing Registration of Voters.* The personal filing of application of **registration of voters shall be conducted daily** in the office of the Election Officer during regular office hours. No registration shall, however, be conducted during the period starting one hundred twenty (120) days before a regular election and ninety (90) days before a special election. (emphasis and underscoring supplied)

The clear text of the law thus decrees that voters be allowed to register daily during regular office hours, except during the period starting 120 days before a regular election and 90 days before a special election.

By the above provision, Congress itself has determined that the period of 120 days before a regular election and 90 days before a special election is enough time for the COMELEC to make ALL the necessary preparations with respect to the coming elections including: (1) completion of project precincts, which is necessary for the proper allocation of official ballots, election

[7] Constitution, Article II, Section 1.

[8] *Id.* at Section 13.

returns and other election forms and paraphernalia; (2) constitution of the Board of Election Inspectors, including the determination of the precincts to which they shall be assigned; (3) finalizing the Computerized Voters List; (4) supervision of the campaign period; and (5) preparation, bidding, printing and distribution of Voter's Information Sheet. Such determination of Congress is well within the ambit of its legislative power, which this Court is bound to respect. And **the COMELEC's rule-making power should be exercised in accordance with the prevailing law**.[9]

Respecting the authority of the COMELEC under RA 6646 and RA 8436 to fix other dates for pre-election acts, the same is not in conflict with the mandate of continuing voter registration under RA 8189. This Court's primary duty is to harmonize laws rather than consider one as repealed by the other. The presumption is against inconsistency or repugnance and, accordingly, against implied repeal. For Congress is presumed to know the existing laws on the subject and not to enact inconsistent or conflicting statutes.[10]

Both R.A. No. 6646, Section 29 and R.A. No. 8436, Section 28 grant the COMELEC the power to fix other periods and dates for pre-election activities only **if the same cannot be reasonably held within the period provided by law**. This grant of power, however, is for the purpose of enabling the people to exercise the right of suffrage – the common underlying policy of RA 8189, RA 6646 and RA 8436.

In the present case, the Court finds no ground to hold that the mandate of continuing voter registration cannot be reasonably held within the period provided by RA 8189, Sec. 8 – daily during office hours, except during the period starting 120 days before the May 10, 2010 regular elections. There is thus no occasion for the COMELEC to exercise its power to fix other dates or deadlines therefor.

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[9] Vide *Lanot v. Commission on Elections,* G.R. No.164858, 507 SCRA 114, 138.

[10] *Agujetas v. Court of Appeals,* G.R. No. 106560, August 23, 1996, 261 SCRA 17, 35.

The present case differs significantly from *Akbayan-Youth v. COMELEC.*[11] In said case, the Court held that the COMELEC did not commit abuse of discretion in denying the request of the therein petitioners for an extension of the December 27, 2000 deadline of voter registration for the May 14, 2001 elections. For the therein petitioners filed their petition with the Court within the 120-day prohibitive period for the conduct of voter registration under Section 8 of RA 8189, and sought the conduct of a two-day registration on February 17 and 18, 2001, clearly within the 120-day prohibitive period.

The Court in fact suggested in *Akbayan-Youth* that the therein petitioners could have, but had not, registered during the period between the December 27, 2000 deadline set by the COMELEC and before the start of the 120-day prohibitive period prior to the election date or January 13, 2001, thus:

> [T]here is no allegation in the two consolidated petitions and the records are bereft of any showing that anyone of herein petitioners has filed an application to be registered as a voter which was denied by the COMELEC nor filed a complaint before the respondent COMELEC alleging that he or she proceeded to the Office of the Election Officer to register between the period starting from December 28, 2000 to January 13, 2001, and that he or she was disallowed or barred by respondent COMELEC from filing his application for registration. **While it may be true that respondent COMELEC set the registration deadline on December 27, 2000, this Court is of the firm view that petitioners were not totally denied the opportunity to avail of the continuing registration under R.A. 8189**.[12] (emphasis and underscoring supplied)

The clear import of the Court's pronouncement in *Akbayan-Youth* is that had the therein petitioners filed their petition – and sought an extension date that was – before the 120-day prohibitive period, their prayer would have been granted pursuant to the mandate of RA 8189. In the present case, as reflected earlier, both the dates of filing of the petition (October 30,

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[11] *Supra* note 6.

[12] *Id.* at 340.

2009) and the extension sought (until January 9, 2010) are prior to the 120-day prohibitive period. The Court, therefore, finds no legal impediment to the extension prayed for.

WHEREFORE, the petition is *GRANTED*. COMELEC Resolution No. 8585 is declared null and void insofar as it set the deadline of voter registration for the May 10, 2010 elections on October 31, 2009. The COMELEC is directed to proceed with dispatch in reopening the registration of voters and holding the same until January 9, 2010. This Decision is *IMMEDIATELY EXECUTORY.*

SO ORDERED.

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

FIRST DIVISION

[A.M. No. P-09-2676. December 16, 2009]

JUDGE JUANITA T. GUERRERO, *complainant, vs.* **TERESITA V. ONG,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHOULD BEHAVE IN A MANNER THAT SHOULD UPHOLD THE HONOR AND DIGNITY OF THE JUDICIARY.—** All court personnel, from the lowliest employees to the clerks of court, are involved in the dispensation of justice like judges and justices, and parties seeking redress from the courts for grievances look upon them also as part of the Judiciary. In performing their duties

and responsibilities, court personnel serve as sentinels of justice, that any act of impropriety they commit immeasurably affects the honor and dignity of the Judiciary and the people's confidence in the Judiciary. They are, therefore, expected to act and behave in a manner that should uphold the honor and dignity of the Judiciary, if only to maintain the people's confidence in the Judiciary.

2. **ID.; ID.; ID.; ID.; GRAVE MISCONDUCT; USE OF OFFICIAL POSITION TO SECURE BENEFITS, A CASE OF.—** A court employee is not prohibited from helping individuals in the course of performing her official duties, but her actions cannot be left unchecked when the help extended puts under suspicion the integrity of the Judiciary. Indeed, she is strictly instructed not to use her official position to secure unwarranted benefits, privileges, or exemptions for herself or for others. The evident purpose of the instruction is precisely to free the court employees from suspicion of misconduct. Ong did not comply with the instruction. Instead, she used her official position as an employee of the Judiciary to attempt to influence Judge Guerrero to rule in favor of litigant Garcia, her landlord. She was thereby guilty of *misconduct,* defined as a transgression of some established or definite rule of action; or, more particularly, an unlawful behavior on the part of a public officer or employee. Her *misconduct* was *grave*, which the Court explains in *Imperial v. Santiago, viz*: "Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. **To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment**. **The misconduct must also have a direct relation to and be connected with the performance of his official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office. There must also be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law**."

3. **ID.; ID.; ID.; ID.; ID.; DISTINGUISHED FROM SIMPLE MISCONDUCT.—** In grave misconduct, as distinguished from

simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest. Corruption as an element of grave misconduct consists in the act of an official or employee who unlawfully or wrongfully uses her station or character to procure some benefit for herself or for another, contrary to the rights of others. It is established herein that Ong *knowingly* and *corruptly* tried to influence Judge Guerrero to favor Garcia in the latter's pending civil action.

4. ID.; ID.; ID.; ID.; ID.; PENALTY; CASE AT BAR.— Ong's grave misconduct was a *grave offense* that deserved the penalty of dismissal for the first offense pursuant to Sec. 52, A, of the *Uniform Rules on Administrative Cases in the Civil Service*. However, there being no record of her having previously committed a similar offense, the penalty of suspension of one year without pay and a fine of ₱20,000.00, coupled with a warning that a repetition shall be dealt with more severely, is just and proper. The penalty is commensurate with the penalty meted in *Salazar v. Barriga,* whereby the Court imposed on a sheriff found guilty of grave misconduct the penalty of suspension of one year without pay and a fine of ₱20,000.00, upon considering the length of his government service as a mitigating circumstance.

5. ID.; ID.; ID.; ID.; DISHONESTY; MAKING FALSE ENTRIES IN THE DAILY TIME RECORDS, A CASE OF; PENALTY; CASE AT BAR.— Justice Atienza found that Ong had made false entries in her DTRs by indicating therein that she had been at work although she had been elsewhere. We sustain the finding of Justice Atienza and pronounce Ong administratively liable for committing irregularities in the keeping of her DTRs. Her false entries in the DTRs constituted dishonesty, an act that Section 52, Rule IV, *Uniform Rules on Administrative Cases in the Civil Service*, classifies as a *grave offense* for which the penalty of dismissal from the service even for the first commission is imposable. Again, the Court opts not to wield the axe of outright dismissal, a penalty that may be too extreme. As earlier observed, there is no record of Ong having been previously charged with and penalized for any administrative offense. Section 53, Rule IV of the *Revised Uniform Rules on Administrative Cases in the Civil Service*

grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. The Court thus imposes upon her the penalty of suspension of one year without pay, with warning that a repetition of the offense will surely be dealt with more severely.

D E C I S I O N

BERSAMIN, *J.*:

Litigant Reynaldo N. Garcia, a plaintiff in Civil Case No. 03-045, entitled *Spouses Reynaldo and Lydia Garcia v. Spouses Joselito and Merle Arevalo,* brought an administrative complaint against Judge Juanita T. Guerrero, Presiding Judge of Branch 204 of the Regional Trial Court (RTC) in Muntinlupa City, charging her with bias and irregularities in relation to her disposition of the application for a writ of preliminary prohibitory and mandatory injunction in said case.

Answering Garcia's administrative complaint, Judge Guerrero incorporated a formal charge for improper conduct against respondent Teresita V. Ong, Court Stenographer of Branch 260, RTC, in Parañaque City, which is now the subject matter of this decision.

Antecedents

In his complaint-affidavit against Judge Guerrero,[1] Garcia averred that he and his wife, the plaintiffs in Civil Case No. 03-045, had sought the enforcement of an easement of right of way. He imputed the following acts of impropriety to Judge Guerrero, namely: (1) that she had issued an unjust order in the action; (2) that her process server had been seen in the premises involved in the litigation looking for Lito Arevalo, the defendant; and (3) that in another case involving him (Garcia) and the Manila Electric Company (Meralco), she had urged him (Garcia) to settle his obligations by telling him: "*Kinakalaban po namin ay pader at wala kaming magagawa*."

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[1] *Rollo*, pp. 2-4.

Required by the Office of the Court Administrator (OCAD) to comment on Garcia's complaint,[2] Judge Guerrero denied the imputed improprieties, averring that she resolved the incidents in Civil Case No. 03-045 based on the evidence presented by the parties during the hearings; that no bias or partiality could be noted on the assailed orders; that her process server had gone to see the defendant in Civil Case No. 03-045 only to serve the court notices; that although she had said that "Meralco was a *pader,*" she denied saying: "*Wala kayong magagawa*"*;* and that she had already recused herself from hearing Garcia's cases.

As stated, Judge Guerrero's *comment* incorporated an administrative complaint against Ong. Therein, Judge Guerrero insisted that any acts of impropriety relative to Civil Case No. 03-045 had been committed by Ong, a tenant of Garcia, who had gone to her chambers on several occasions in the guise of making a courtesy call on her, and had then discussed the merits of the case with her; that Ong had engaged in name-dropping to urge her to resolve in favor of Garcia; that Ong had attended the hearings of the case in her Supreme Court uniform; and that Ong had told her Acting Branch Clerk of Court that she (Judge Guerrero) and the defendants "*ay nagkatapatan na,*" which Ong had implied to mean that the "*Judge (had) received consideration from the defendants*."

In its memorandum dated November 22, 2004,[3] the OCAd found that Judge Guerrero had committed no act of impropriety, and recommended that the complaint against Judge Guerrero be dismissed for lack of merit, with a reminder to Judge Guerrero to exercise caution in her utterances, like remarking that Meralco was "*pader*,*"* lest they be misconstrued as bias in favor of a party litigant. The OCAd further recommended that Ong be required to comment on the allegations of improper conduct made against her by Judge Guerrero.

Through the resolution dated January 19, 2005,[4] the Court adopted the recommendations of the OCAd; dismissed the

[2] *Id.,* p. 1.

[3] *Id.*, pp. 406-408.

[4] *Id.*, p. 410.

complaint against Judge Guerrero; and required Ong to comment on Judge Guerrero's allegations of impropriety against her within 10 days from notice.

In due course, Ong submitted her comment on July 18, 2005.[5]

The Court referred Ong's *comment* to the OCAd for evaluation, report and recommendation.[6]

In turn, the OCAd recommended that the administrative matter against Ong be referred for investigation to a consultant of the OCAd in order to ascertain every act of impropriety imputed against her.

Accordingly, on February 13, 2006,[7] the Court referred the administrative matter against Ong to retired Justice Narciso T. Atienza for investigation. Justice Atienza submitted his report on July 31, 2006.[8]

On August 12, 2009, the case was re-docketed as a regular administrative case.

Justice Atienza's Report and Recommendation

During the investigation, Ong explained that her attendance at the hearings and ocular inspection had been made only upon the request of Garcia, whose plea for moral support she could not refuse; that she had not filed applications for leave because her superior had permitted her to attend the hearings and the ocular inspection; and that her sole purpose for talking with Judge Guerrero had been only to inform the latter about the case pending in her *sala*.

Justice Atienza regarded Ong's defense as incredible, and observed that Ong's real intention in talking with Judge Guerrero in her chambers while in office uniform had been to influence Judge Guerrero to resolve the pending incident in Garcia's favor.

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[5] *Id.*, pp. 413-414.

[6] *Id.*, p. 419.

[7] *Id.*, p. 424.

[8] *Id.*, pp. 540-567.

He concluded that Ong had attended several hearings and the ocular inspection in Civil Case No. 03-045 in her office uniform and during office hours; and that on those occasions, she had not filed applications for leave and had not reflected her undertime in her daily time records (DTRs).

Justice Atienza recommended, therefore, that:

> 1) Ms. Teresita V. Ong be reprimanded for improper conduct with a warning that commission of the same or similar acts of impropriety in the future shall be dealt with more severely; and,
>
> 2) Advise Ms. Ong to log out before leaving the Office during office hours and log in upon return, but when leaving the office is not on official business, the undertime should be reflected in the Daily Time Record.[9]

Ruling

The Court agrees with the findings of Justice Atienza, which were entirely substantiated by the records, but differs with his recommendation of the penalty. Ong was guilty of grave misconduct, for using her official position as a court employee to secure benefits for Garcia; and of dishonesty, for committing serious irregularities in the keeping of her DTRs.

I. Use of Official Position to Secure Benefits

All court personnel, from the lowliest employees to the clerks of court, are involved in the dispensation of justice like judges and justices, and parties seeking redress from the courts for grievances look upon them also as part of the Judiciary.[10] In performing their duties and responsibilities, court personnel serve as sentinels of justice, that any act of impropriety they commit immeasurably affects the honor and dignity of the Judiciary and the people's confidence in the Judiciary.[11] They are, therefore, expected to act and behave in a manner that should uphold the

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[9] *Id.*, p. 567.

[10] 3rd Whereas Clause, *Code of Conduct for Court Personnel.*

[11] 4th Whereas Clause, *Code of Conduct for Court Personnel.*

honor and dignity of the Judiciary, if only to maintain the people's confidence in the Judiciary.

A court employee is not prohibited from helping individuals in the course of performing her official duties, but her actions cannot be left unchecked when the help extended puts under suspicion the integrity of the Judiciary.[12] Indeed, she is strictly instructed not to use her official position to secure unwarranted benefits, privileges, or exemptions for herself or for others.[13] The evident purpose of the instruction is precisely to free the court employees from suspicion of misconduct.

Ong did not comply with the instruction. Instead, she used her official position as an employee of the Judiciary to attempt to influence Judge Guerrero to rule in favor of litigant Garcia, her landlord. She was thereby guilty of *misconduct,* defined as a transgression of some established or definite rule of action; or, more particularly, an unlawful behavior on the part of a public officer or employee.[14] Her *misconduct* was *grave*, which the Court explains in *Imperial v. Santiago,*[15] *viz*:

> Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. **To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment**. **The misconduct must also have a direct relation to and be connected with the performance of his official duties amounting either to**

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[12] *Civil Service Commission v. Belagan*, G.R. No. 132164, October 19, 2004, 440 SCRA 578; *Maguad v. De Guzman*, A.M. No. P-94-1015, March 29, 1999, 305 SCRA 469; *Estarija v. Ranada*, G.R. No. 159314, June 26, 2006, 492 SCRA 652.

[13] Section 1, Canon 1, *Code of Conduct for Court Personnel*, states:

Section 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others.

[14] *Mendoza v. Navarro*, A.M. No. P-05-2034, September 11, 2006, 501 SCRA 354, 363.

[15] A.M. No. P-01-1449, February 24, 2003, 398 SCRA 75, 85.

maladministration or willful, intentional neglect or failure to discharge the duties of the office. There must also be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law.

In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest.[16] Corruption as an element of grave misconduct consists in the act of an official or employee who unlawfully or wrongfully uses her station or character to procure some benefit for herself or for another, contrary to the rights of others.[17] It is established herein that Ong *knowingly* and *corruptly* tried to influence Judge Guerrero to favor Garcia in the latter's pending civil action.

Ong's grave misconduct was a *grave offense* that deserved the penalty of dismissal for the first offense pursuant to Sec. 52, A, of the *Uniform Rules on Administrative Cases in the Civil Service*.[18] However, there being no record of her having previously committed a similar offense, the penalty of suspension of one year without pay and a fine of ₱20,000.00, coupled with a warning that a repetition shall be dealt with more severely, is just and proper. The penalty is commensurate with the penalty meted in *Salazar v. Barriga,*[19] whereby the Court imposed on a sheriff found guilty of grave misconduct the penalty of suspension of one year without pay and a fine of ₱20,000.00, upon considering the length of his government service as a mitigating circumstance.

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[16] *Salazar v. Barriga*, A.M. No. P-05-2016, April 19, 2007, 521 SCRA 449, 455; *Civil Service Commission v. Belagan*, G.R. No. 132164, October 19, 2004, 440 SCRA 578.

[17] *Salazar v. Barriga*, *id.*

[18] Section 52. *Classification of Offenses*. xxx.

A. The following are grave offenses with their corresponding penalties:

x x x x x x x x x

3. Grave Misconduct

1st offense – Dismissal

x x x x x x x x x

[19] *Supra*, at note 16.

II. Making False Entries in the DTR

Justice Atienza found that Ong had made false entries in her DTRs by indicating therein that she had been at work although she had been elsewhere. We sustain the finding of Justice Atienza and pronounce Ong administratively liable for committing irregularities in the keeping of her DTRs.[20] Her false entries in the DTRs constituted dishonesty,[21] an act that Section 52, Rule IV, *Uniform Rules on Administrative Cases in the Civil Service*, classifies as a *grave offense* for which the penalty of dismissal from the service even for the first commission is imposable.

Again, the Court opts not to wield the axe of outright dismissal, a penalty that may be too extreme. As earlier observed, there is no record of Ong having been previously charged with and penalized for any administrative offense. Section 53, Rule IV of the *Revised Uniform Rules on Administrative Cases in the Civil Service* grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.[22] The Court thus imposes upon her the penalty of suspension of one year without pay, with warning that a repetition of the offense will surely be dealt with more severely.

WHEREFORE, we find and declare Court Stenographer Teresita V. Ong separately liable for the two administrative offenses of gross misconduct and dishonesty, and, accordingly, suspend her for one year without pay for each offense, to be served consecutively, plus a fine of ₱20,000.00 for the grave misconduct, with a warning that the repetition of either offense shall be dealt with more severely.

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[20] *Duque v. Aspiras*, A.M. No. P-05-2036, July 15, 2005, 463 SCRA 447, 454.

[21] *Gillamac-Ortiz v. Almeida, Jr.*, A.M. No. P-07-2401, November 28, 2007, 539 SCRA 20.

[22] Section 53. *Extenuating, Mitigating, Aggravating, or Alternative Circumstances*. – In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

x x x x x x x x x

Let a copy of this decision be attached to the personnel records of respondent Ong in the Office of the Administrative Services, Office of the Court Administrator.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Leonardo-de Castro, and *Villarama, Jr., JJ.,* concur.

EN BANC

[A.M. No. RTJ-09-2170. December 16, 2009]
(Formerly OCA I.P.I. No. 09-3094-RTJ)

HEIRS OF SIMEON PIEDAD, namely: ELISEO PIEDAD, JOEL PIEDAD, PUBLIO PIEDAD, JR., GLORIA PIEDAD, LOT PIEDAD, ABEL PIEDAD, ALI PIEDAD, and LEE PIEDAD, *complainants, vs.* **EXECUTIVE JUDGE CESAR O. ESTRERA and JUDGE GAUDIOSO D. VILLARIN, Regional Trial Court, Branches 29 and 59, respectively, Toledo City, Cebu,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; JURISDICTION; DOCTRINE OF JUDICIAL STABILITY OR NON-INTERFERENCE IN THE REGULAR ORDERS OR JUDGMENTS OF A CO-EQUAL COURT; EXPLAINED.— The acts of respondent Judge Estrera in issuing a TRO and of respondent Judge Villarin in extending the TRO disregard the basic precept that no court has the power to interfere by injunction with the judgments or orders of a co-equal and coordinate court of concurrent jurisdiction having the power to grant the relief sought by injunction. As held in *Cojuangco v. Villegas*: "As early as 1922 in the case of *Cabigao v. Del Rosario*, this Court laid

down the doctrine that 'no court has power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction having power to grant the relief sought by injunction.' The various branches of the court of first instance of a province or city, having as they have the same or equal authority and exercising as they do concurrent and coordinate jurisdiction, should not, cannot and are not permitted to interfere with their respective cases, much less with their orders or judgments. A contrary rule would obviously lead to confusion and seriously hamper the administration of justice." In *Yau v. The Manila Banking Corporation*, we held that undue interference by one in the proceedings and processes of another is prohibited by law. Specifically: "Thus, the doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court, as an accepted axiom in adjective law, serves as an insurmountable barrier to the *competencia* of the RTC Cebu City to entertain a motion, much less issue an order, relative to the Silverio share which is under the *custodia legis* of RTC Makati City, Branch 64, by virtue of a prior writ of attachment. Indeed, the policy of peaceful co-existence among courts of the same judicial plane, so to speak, was aptly described in *Parco v. Court of Appeals* thus: ...[J]urisdiction is vested in the court not in any particular branch or judge, and as a corollary rule, the various branches of the Court of First Instance of a judicial district are a coordinate and co-equal courts one branch stands on the same level as the other. Undue interference by one on the proceedings and processes of another is prohibited by law. In the language of this Court, the various branches of the Court of First Instance of a province or city, having as they have the same or equal authority and exercising as they do concurrent and coordinate jurisdiction should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments. It cannot be gainsaid that adherence to a different rule would sow confusion and wreak havoc on the orderly administration of justice, and in the ensuing melee, hapless litigants will be at a loss as to where to appear and plead their cause."

2. LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; INTERFERENCE WITH THE ORDER OF A CO-EQUAL AND COORDINATE COURT OF CONCURRENT JURISDICTION IN VIOLATION OF THE DOCTRINE OF

JUDICIAL STABILITY, A CASE OF.— [W]hen the respondents-judges acted on the application for the issuance of a TRO, they were aware that they were acting on matters pertaining to a co-equal court, namely, Branch 9 of the Cebu City RTC, which was already exercising jurisdiction over the subject matter in Civil Case No. 435-T. Nonetheless, respondents-judges still opted to interfere with the order of a co-equal and coordinate court of concurrent jurisdiction, in blatant disregard of the doctrine of judicial stability, a well-established axiom in adjective law. As members of the judiciary, respondents-judges ought to know the fundamental legal principles; otherwise, they are susceptible to administrative sanction for gross ignorance of the law, as in the instant case. As held in *Mactan Cebu International Airport v. Hontanosa, Jr.*: "As a judge, the respondent must have the basic rules at the palm of his hands as he is expected to maintain professional competence at all times. Judges should be diligent in keeping abreast with developments in law and jurisprudence, and regard the study of law as a never-ending and ceaseless process. Elementary is the rule that when laws or rules are clear, it is incumbent upon the respondent to apply them regardless of personal belief and predilections. To put it differently, when the law is unambiguous and unequivocal, application not interpretation thereof is imperative. Indeed, a judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules. He must be conversant with basic legal principles and well-settled doctrines. He should strive for excellence and seek the truth with passion. The failure to observe the basic laws and rules is not only inexcusable, but renders him susceptible to administrative sanction for gross ignorance of the law from which no one is excused, and surely not a judge."

3. **ID.; ID.; UNDUE DELAY IN RENDERING AN ORDER; COMMITTED IN CASE AT BAR; PENALTY.—** If respondent Judge Villarin indeed believed that the motions pending before him were defective, he could have simply acted on the said motions and indicated the supposed defects in his resolutions instead of just leaving them unresolved. The importance of judicious and prompt disposition of cases and other matters pending before the courts was aptly explained in *Biggel v. Pamintuan*: "Undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the

judiciary and unnecessarily blemishes its stature. No less than the Constitution mandates that lower courts must dispose of their cases promptly and decide them within three months from the filing of the last pleading, brief or memorandum required by the Rules of Court or by the Court concerned. In addition, a judge's delay in resolving, within the prescribed period, pending motions and incidents constitutes a violation of Rule 3.05 of the Code of Judicial Conduct requiring judges to dispose of court business promptly. There should be no more doubt that undue inaction on judicial concerns is not just undesirable but more so detestable especially now when our all-out effort is directed towards minimizing, if not totally eradicating the perennial problem of congestion and delay long plaguing our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice, for obviously, justice delayed is justice denied. An unwarranted slow down in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute." Considering the above ruling, respondent Judge Villarin is liable for Undue Delay in Rendering an Order, a less serious charge under Section 9, Rule 140, as amended, of the Revised Rules of Court. In accordance with Sec. 11(b) of Rule 140, such offense is punishable by suspension from office without salary and other benefits for not less than one (1) or more than three (3) months or a fine of more than ten thousand pesos (PhP 10,000) but not exceeding twenty thousand pesos (PhP 20,000).

D E C I S I O N

VELASCO, JR., *J.*:

This administrative case stemmed from the sworn-complaint[1] dated February 28, 2007 of the heirs of the late Simeon Piedad, namely: Eliseo Piedad, Joel Piedad, Publio Piedad, Jr., Gloria Piedad, Lot Piedad, Abel Piedad, Ali Piedad, and Lee Piedad filed with the Office of the Court Administrator (OCA), charging respondent Judges Cesar O. Estrera and Gaudioso D. Villarin with Issuing an Unlawful Order against a Co-equal Court and

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[1] *Rollo*, pp. 8-14.

Unreasonable Delay in Resolving Motions in relation to Civil Case No. 435-T, S.P. Proc. No. 463-T, and S.P. Proc. No. 457-T.

The Facts

In 1974, Simeon Piedad filed with the Cebu City Regional Trial Court (RTC) a case against Candelaria Linehan Bobilles and Mariano Bobilles for the annulment of an Absolute Deed of Sale, docketed as Civil Case No. 435-T entitled *Simeon Piedad v. Candelaria Linehan-Bobilles and Mariano Bobilles*. This was raffled to Branch 9 of the Cebu City RTC, presided by the late Judge Benigno Gaviola. Said court ruled in favor of Simeon Piedad in its Decision dated March 19, 1992,[2] the dispositive portion of which reads:

> WHEREFORE, premises considered and by preponderance of evidence, the Court hereby renders a Decision in favor of herein plaintiff Simeon Piedad and against defendants Candelaria Linehan-Bobilles and Mariano Bobilles, by declaring the deed of sale in question (Exhibit "A" or "5") to be NULL and VOID for being a mere forgery, and ordering herein defendants, their heirs and/or assigns to vacate the house and surrender their possession of said house and all other real properties which are supposed to have been covered by the voided deed of sale (Exhibit "A" or "5") to the administrator of the estate of spouses Nemesio Piedad and Fortunata Nillas. Furthermore, herein defendants are hereby ordered to pay plaintiff or his heirs the following: (1) ₱3,000.00 Moral Damages; (2) ₱2,000.00 Exemplary Damages; and (3) ₱800.00 attorney's fees, plus costs.
>
> SO ORDERED.

On appeal, the Court of Appeals, through its Decision dated September 15, 1998 in CA-G.R. CV No. 38652, affirmed the ruling of the lower court. The dispositive portion reads:

> WHEREFORE, finding no reversible error in the decision appealed from, We hereby AFFIRM the same and DISMISS the instant appeal.
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> Costs against the defendants-appellants.
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> SO ORDERED.[3]

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[2] *Id.* at 18-29.

[3] *Id.* at 15.

The foregoing decision became final and executory on November 1, 1998.[4] Subsequently, upon the instance of Simeon Piedad, an order for the issuance of the writ of demolition was issued by the late Judge Gaviola. As stated in the dispositive portion of the Order dated October 22, 2001:

WHEREFORE, let a writ of demolition issue against Candelaria Linehan Bobilles and Mariano Bobilles. The sheriff implementing the writ is ordered to allow the defendants 10 days to remove their improvements in the premises and for them to vacate. Should defendant still fail to do so within the period aforestated, the sheriff may proceed with the demolition of the improvements without any further order from this Court.

SO ORDERED.[5]

On November 5, 2001, a motion for reconsideration was then filed by defendant Candelaria, which was denied in an Order dated November 26, 2001, the dispositive portion of which reads:

WHEREFORE, the motion for reconsideration is hereby DENIED. The Order dated October 22, 2001 granting the motion for issuance of a special order for demolition, shall continue in full force and effect. Let a writ of demolition issue against Candelaria Linehan Bobilles and Mariano Bobilles. The sheriff implementing the writ is ordered to allow the defendants ten (10) days from receipt of the writ within which to remove their improvements in the premises subject of the case and for them to vacate. Should defendant still fail to do so within the period aforestated, the sheriff may proceed with the demolition of the improvements without any further order from this Court.

SO ORDERED.[6]

Thus, on December 4, 2001, a Writ of Demolition[7] was issued against the defendants therein and referred for implementation

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[4] *Id.* at 30.

[5] *Id.* at 32.

[6] *Id.* at 34-35.

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

to Sheriff Antonio A. Bellones. In a seeming attempt to stop the enforcement of the writ, Candelaria attached to the *expediente* of Civil Case No. 435-T, a Petition for Probate of the Last Will and Testament of Simeon Piedad. This was found to be untenable by the late Judge Gaviola, who ordered the filing of the said petition in its natural course and its raffling to other branches of the court in its Order dated April 22, 2002.[8]

Subsequently, Candelaria filed a Petition for Probate of the Last Will and Testament of Simeon Piedad with the Toledo City RTC, docketed as S.P. Proc. No. 457-T and raffled to Branch 59, which was presided by respondent Judge Villarin.

Also, a verified petition for the issuance of a temporary restraining order (TRO) and/or preliminary injunction was filed by Candelaria on May 16, 2002 with the Toledo City RTC, docketed as S.P. Proc. No. 463-T entitled *Candelaria Linehan v. Antonio Billones, Sheriff RTC, Branch 9, Cebu City*, against Sheriff Bellones to restrain the latter from enforcing the Writ of Demolition.[9] On the day that the said petition was filed, respondent Judge Estrera, the Executive Judge of the Toledo City RTC and presiding judge of Branch 29, ordered the raffle of the petition. Four days thereafter, respondent Judge Estrera took it upon himself to hear the case summarily. Finding that the matter was of extreme urgency and would cause grave injustice and irreparable injury to the plaintiff, Candelaria, since it involved the demolition of the properties owned by the latter, respondent Judge Estrera immediately issued a restraining order, the dispositive portion of which reads:

WHEREFORE, premises considered, defendant Court Sheriff, Antonio Billones of the RTC, Branch 9, Cebu City, and all his servants, attorneys, agent and others acting in his aid are hereby commanded to cease and desist from enforcing the Writ of Demolition issued by the RTC, Branch 9, Cebu City, over the properties of plaintiff particularly Lot No. 1157-A located at Barangay Ibo, Toledo City.

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[8] *Id.* at 37.

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

Defendant is hereby further directed to appear before this Court and file his Answer or Opposition why a Preliminary Injunction should not be granted.

Set the hearing of this case on May 23, 2002 at 8:30 o'clock in morning. Notify the parties of this setting.

SO ORDERED.[10]

On June 11, 2002, Sheriff Bellones filed his answer, alleging that he was only performing his ministerial duty, and that there was no cause of action against him.[11] Meanwhile, upon the instance of Candelaria, respondent Judge Estrera issued an order for the consolidation of the cases (S.P. Proc. No. 457-T and S.P. Proc. No. 463-T) in the Toledo City RTC, Branch 59.[12] Immediately thereafter, respondent Judge Villarin issued the Order dated May 27, 2002,[13] extending the TRO for 17 days, upon the instance of Candelaria.

Subsequently, the following motions were filed before Branch 59 of the Toledo City RTC: (1) a motion to dismiss, as amended;[14] (2) a motion requesting the issuance of an order lifting the injunction order;[15] and (3) a joint motion to resolve motions.[16] Significantly, no action was taken on these motions.

In compliance with the directive of the OCA, respondent Judge Estrera submitted his comment dated April 24, 2007, in which he clarified that what he issued was an *ex parte* TRO, not an "injunction order," and that the said *ex parte* TRO was valid only for 72 hours and would be deemed automatically vacated should the preliminary injunction remain unresolved within the said period. He also stated that the TRO was never

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[10] *Id.* at 44.

[11] *Id.* at 45-46.

[12] *Id.* at 86.

[13] *Id.* at 88.

[14] *Id.* at 51-57.

[15] *Id.* at 59-64.

[16] *Id.* at 69-72.

issued against the heirs of the late Simeon Piedad, the complainants herein, as they were never made parties to S.P. Proc. No. 463-T. He added that he was not aware of the circumstances attendant to Civil Case No. 435-T.[17]

On the other hand, respondent Judge Villarin explained in his comment that he did not act on the motion to dismiss, as amended, as this would be tantamount to a judicial interference in the order of Branch 29 of the Toledo City RTC, a court of co-equal jurisdiction. As regards his inaction on the motion requesting the issuance of an order lifting the injunction order, he justified such inaction by stating that there was no need to resolve the motion, considering that before S.P. Proc. No. 463-T was transferred to Branch 59 of the Toledo City RTC, the 72-hour restraining order had already lapsed. He then justified that the resolution of the motion requesting for the issuance of an order lifting the injunction order had already become moot.[18]

On January 16, 2009, Court Administrator Jose P. Perez submitted his recommendations to this Court.[19] He found that respondent Judges Estrera and Villarin indeed committed the acts complained of based on their very own admissions in their respective comments. He, thus, recommended that respondent judges, for gross ignorance of the law, be fined in the amount of PhP 21,000 each, and that respondent Judge Villarin be fined in the additional amount of PhP 11,000 for undue delay in rendering an order.

The recommendation of the Court Administrator and the premises holding it together are well taken.

The Acts of Respondent Judges Are Tantamount to Gross Ignorance of the Law, which Renders Them Administratively Liable

The acts of respondent Judge Estrera in issuing a TRO and of respondent Judge Villarin in extending the TRO disregard the

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[17] *Id.* at 80-84.

[18] *Id.* at 163-164.

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

basic precept that no court has the power to interfere by injunction with the judgments or orders of a co-equal and coordinate court of concurrent jurisdiction having the power to grant the relief sought by injunction. As held in *Cojuangco v. Villegas*:

> As early as 1922 in the case of *Cabigao v. Del Rosario*, this Court laid down the doctrine that "no court has power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction having power to grant the relief sought by injunction."
>
> The various branches of the court of first instance of a province or city, having as they have the same or equal authority and exercising as they do concurrent and coordinate jurisdiction, should not, cannot and are not permitted to interfere with their respective cases, much less with their orders or judgments. A contrary rule would obviously lead to confusion and seriously hamper the administration of justice.[20]

In *Yau v. The Manila Banking Corporation*, we held that undue interference by one in the proceedings and processes of another is prohibited by law. Specifically:

> Thus, the doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court, as an accepted axiom in adjective law, serves as an insurmountable barrier to the *competencia* of the RTC Cebu City to entertain a motion, much less issue an order, relative to the Silverio share which is under the *custodia legis* of RTC Makati City, Branch 64, by virtue of a prior writ of attachment. Indeed, the policy of peaceful co-existence among courts of the same judicial plane, so to speak, was aptly described in *Parco v. Court of Appeals*, thus:
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>> ...[J]urisdiction is vested in the court not in any particular branch or judge, and as a corollary rule, the various branches of the Court of First Instance of a judicial district are a coordinate and co-equal courts one branch stands on the same level as the other. Undue interference by one on the proceedings and processes of another is prohibited by law. In the language of this Court, the various branches of the Court of First Instance of a province or city, having as they have the same or equal authority and exercising as they do concurrent and coordinate

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[20] G.R. No. 76838, April 17, 1990, 184 SCRA 374, 378.

> jurisdiction should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments.
>
> It cannot be gainsaid that adherence to a different rule would sow confusion and wreak havoc on the orderly administration of justice, and in the ensuing melee, hapless litigants will be at a loss as to where to appear and plead their cause.[21]

In his comment, respondent Judge Estrera categorically admitted that he issued a TRO directing Sheriff Bellones to cease and desist from enforcing the Writ of Demolition issued by Branch 9 of the Cebu City RTC over the property of Candelaria. Attached to the said comment was a copy of respondent Judge Villarin's Order dated May 27, 2002, extending the TRO for 17 days.

Clearly, when the respondents-judges acted on the application for the issuance of a TRO, they were aware that they were acting on matters pertaining to a co-equal court, namely, Branch 9 of the Cebu City RTC, which was already exercising jurisdiction over the subject matter in Civil Case No. 435-T. Nonetheless, respondents-judges still opted to interfere with the order of a co-equal and coordinate court of concurrent jurisdiction, in blatant disregard of the doctrine of judicial stability, a well-established axiom in adjective law.

As members of the judiciary, respondents-judges ought to know the fundamental legal principles; otherwise, they are susceptible to administrative sanction for gross ignorance of the law, as in the instant case. As held in *Mactan Cebu International Airport v. Hontanosa, Jr.*:

> As a judge, the respondent must have the basic rules at the palm of his hands as he is expected to maintain professional competence at all times. Judges should be diligent in keeping abreast with developments in law and jurisprudence, and regard the study of law as a never-ending and ceaseless process. Elementary is the rule that when laws or rules are clear, it is incumbent upon the respondent to apply them regardless of personal belief and predilections. To

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[21] G.R. No. 126731, July 11, 2002, 384 SCRA 340, 349-350.

put it differently, when the law is unambiguous and unequivocal, application not interpretation thereof is imperative. Indeed, a judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules. He must be conversant with basic legal principles and well-settled doctrines. He should strive for excellence and seek the truth with passion. The failure to observe the basic laws and rules is not only inexcusable, but renders him susceptible to administrative sanction for gross ignorance of the law from which no one is excused, and surely not a judge.[22]

Respondent Judge Villarin Is Additionally Liable for Undue Delay in Rendering an Order

In his comment, respondent Judge Villarin admitted that he did not act on the Motion to Dismiss, as amended, and the Motion Requesting the Issuance of an Order Lifting the Injunction Order dated May 20, 2002, which are still pending before his court. He, however, justified this by stating that he did not act on the pending motions because he did not want to interfere with the order of a co-equal court, that is, Branch 29 of the Toledo City RTC; and he believed that it was unnecessary to issue an order on the motion, which had become moot and academic.

We do not agree. If respondent Judge Villarin indeed believed that the motions pending before him were defective, he could have simply acted on the said motions and indicated the supposed defects in his resolutions instead of just leaving them unresolved. The importance of judicious and prompt disposition of cases and other matters pending before the courts was aptly explained in *Biggel v. Pamintuan*:[23]

Undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the judiciary and unnecessarily blemishes its stature. No less than the Constitution mandates that lower courts must dispose of their cases promptly and decide them within three months from the filing of the last pleading, brief or memorandum required by the Rules of Court or by the Court

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[22] A.M. No. RTJ-03-1815, October 25, 2004, 441 SCRA 229, 248.

[23] A.M. No. RTJ-08-2101 [Formerly OCA I.P.I. No. 07-2763-RTJ], July 23, 2008, 559 SCRA 344.

concerned. In addition, a judge's delay in resolving, within the prescribed period, pending motions and incidents constitutes a violation of Rule 3.05 of the Code of Judicial Conduct requiring judges to dispose of court business promptly.

There should be no more doubt that undue inaction on judicial concerns is not just undesirable but more so detestable especially now when our all-out effort is directed towards minimizing, if not totally eradicating the perennial problem of congestion and delay long plaguing our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice, for obviously, justice delayed is justice denied. An unwarranted slow down in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute.

Considering the above ruling, respondent Judge Villarin is liable for Undue Delay in Rendering an Order, a less serious charge under Section 9, Rule 140, as amended, of the Revised Rules of Court. In accordance with Sec. 11(b) of Rule 140, such offense is punishable by suspension from office without salary and other benefits for not less than one (1) or more than three (3) months or a fine of more than ten thousand pesos (PhP 10,000) but not exceeding twenty thousand pesos (PhP 20,000).

WHEREFORE, the Court finds Judge Cesar O. Estrera and Judge Gaudioso D. Villarin of the RTC in Toledo City, Cebu, Branches 29 and 59, respectively, *GUILTY* of *GROSS IGNORANCE OF THE LAW* and imposes upon them a *FINE* in the amount of twenty one thousand pesos (PhP 21,000) each, with the stern warning that a repetition of similar or analogous infractions in the future shall be dealt with more severely. Also, the Court finds Judge Gaudioso D. Villarin *GUILTY* of *UNDUE DELAY IN RENDERING AN ORDER* and imposes upon him a *FINE* in the additional amount of eleven thousand pesos (PhP 11,000).

SO ORDERED.

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

Corona, J., on official leave.

THIRD DIVISION

[G.R. No. 168668. December 16, 2009]

PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA) and PHILIPPINE ECONOMIC ZONE AUTHORITY BOARD, REPRESENTED BY ITS DIRECTOR GENERAL LILIA B. DE LIMA, *petitioners, vs.* **PEARL CITY MANUFACTURING CORPORATION, BERNARDINO ABALA, ROGINA ABALA, JOVELYN ABELLANA, CATHERINE AGAPAY, JOSEPH AGAPAY, ROLANDO AGAPAY, VIVENCIA ALANGILAN, CONCHITA ALBARACIN, LEONOR AMODIA, WILSON ARCILLA, JOAN AYING, MA. REBECCA BAYON, MARY ANN BESTEIS, MARIFI CABARDO, HAZEL CALA, CARMEN CASTIL, LEONARD CASTIL, JICARDO CASTRO, ESTHER CEBALLOS, EUSEBIO CENIZA, GEMMA CENIZA, MERCHU CHUA, LEONARDA CUEVA, VICTORIA DACAY, ESTRELLITA DEIPARINE, DEXTER DEL CASTILLO, MAURINO DEVIBAR, JOSEPHINE DIZON, IAN DIZON, LORNA DUPIT, RIZZA DURANO, LUCITA FERNANDEZ, GODOFREDO GAC-ANG, THELMA GALLARDO, MA. LOURDES GIT-GANO, SONNY GO, JULIET GUTIERREZ, SAMUEL GUTIERREZ, MELBA HERMOSISIMA, JUVANE INTO, JOSEFINA ISAGAN, LOUIE ISAGAN, FE JARON, JUDY JARON, FLORENCIA LABISTE, JOSEFINA LAMANILAO, JIMMY LATONIO, MARIFI LAVINNA, JONJON LAYOS, LOLIT LIBRES, RENFEL ALMEDA, RAUL BARBOSA, ALFIE DURADO, NOEL GO, LORENA LOMACTOD, SULPICIO MABUGAT, RODRIGO MALAZARTE, ROSALINA MANGUBAT, DARIO MANSAY, ARLENE MARIOT, MELCHOR MATOS, VERGENIA MATOS, PONSITO MATURAN, ROBINSON MEJOS, GUADALUPE MIAO, ADORACION OPONG, ROGER PAGAL, ZENA PANTONIAL, LIBRADA PAREJA,**

ARIEL PATALINGHUG, TERESA PATALINGHUG, EDESA PATIGAYON, LUCITA PAYAC, JONA PEJANA, BENJAMIN PEPITO, JOSEPHINE PEPITO, FLORDELINA PERES, RAMEL POGADO, ANASTACIA PONCE, YVES REYES, MA. DOLORES RIVERA, RUBELITA ROSACINA, MICHELLE ROSAROSO, ELEUTERIO SABERON, JR., ZENAIDA SAGUE, AIDA SATIERRA, MA. SALOME SENOC, RHODELYN SENOC, MA. VICTORIA SUSUSCO, JIMMY SY, ISRAEL TEJERO, ROGER TEJERO, ALCIDE TUICO, FRANKLIN TY, LARRY UY, RODINA YBALANE and VILMA ZAPANTA, *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; PROCEDURAL DUE PROCESS; ESSENCE IS EMBODIED IN THE BASIC REQUIREMENT OF NOTICE AND A REAL OPPORTUNITY TO BE HEARD.—** It is settled that in administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process. The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In the recent case of *Pagayanan R. Hadji-Sirad v. Civil Service Commission*, the Court had the opportunity to reiterate the following pronouncements, to wit: "In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. 'To be heard' does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process. In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and

evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected." In the present case, since PCMC was properly informed of the supposed discrepancy in its import and export liquidations, that it was given ample opportunity by the PEZA management to be heard or to explain its side in relation to its unaccounted imported materials and that it was subsequently informed of the decision of the PEZA Board to cancel its registration on the basis of its assessment of the evidence presented or lack thereof, petitioners cannot claim that they were denied their right to due process of law.

2. **ID.; STATUTES; REPUBLIC ACT NO. 7916 (THE SPECIAL ECONOMIC ZONE ACT OF 1995); PHILIPPINE ECONOMIC ZONE AUTHORITY; DIRECTOR GENERAL; HAS THE PRIMARY AUTHORITY TO CONDUCT INQUIRIES AND FACT-FINDING INVESTIGATIONS; CASE AT BAR.—** The Court agrees with the petitioner's averment that the power and authority to conduct inquiries is lodged with the PEZA Director General and not with the PEZA Board. Thus, Section 14(g) of Republic Act (R.A.) No. 7916 provides: "SEC. 14. *Powers and Functions of the Director General.* – The director general shall be the overall coordinator of the policies, plans and programs of the ECOZONES. As such, he shall provide overall supervision over and general direction to the development and operations of these ECOZONES. He shall determine the structure and the staffing pattern and personnel complement of the PEZA and establish regional offices, when necessary, subject to the approval of the PEZA Board. In addition, he shall have the following specific powers and responsibilities: x x x g) To acquire jurisdiction, as he may deem proper, over the protests, complaints and claims of the residents and enterprises in the ECOZONE concerning administrative matters;" In consonance with the above-quoted authority, the PEZA Director General is also empowered, under Section 14(h) of the same law, to recommend to the PEZA Board the grant, approval, refusal, amendment or termination of the ECOZONE franchises, licenses, permits, contracts and

agreements in accordance with the polices of the said Board. It necessarily follows from the foregoing that the primary authority to conduct inquiries and fact-finding investigations is bestowed upon the office of the PEZA Director General simply because no complaint, protest or claim can be properly addressed, and neither can any reasonable recommendation to the PEZA Board be made by the PEZA Director General without conducting any such inquiry or fact-finding. While nothing prohibits the PEZA Board to conduct its own inquiry on matters brought before it, it does not mean that the absence of such inquiry by the Board is a denial of due process on the part of the entity being investigated. In the present case, however, such inquiry, if conducted, would be a superfluity considering that a physical inventory and a full-blown audit was already made by a special team from the PEZA Head Office and the MEZ between March 2004 and June 2004. During the said inventory and audit, PCMC was given sufficient opportunity to explain whether it really incurred any shortage or whether the materials it imported were properly disposed of or withdrawn from the MEZ. The PEZA Board did not arbitrarily arrive at its decision to cancel the registration of PCMC. The results of the inventory and audit are precisely the bases upon which the cancellation was made. Stated differently, the audit and inventory conducted under the direction and authority of the PEZA Director General are sufficient for purposes of complying with the requirements of procedural due process. Conversely, the absence of formal proceedings conducted before the PEZA Board does not mean that the requirements of procedural due process were not complied with.

3. **ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; PROCEDURAL DUE PROCESS; REQUIREMENT OF NOTICE AND HEARING DOES NOT CONNOTE FULL ADVERSARIAL OR TRIAL TYPE PROCEEDINGS.—** The Court also finds it apropos to reiterate the well-settled rule that in administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense. In fact, it is well settled that, in administrative cases, the requirement of notice and hearing does not connote full adversarial or trial type proceedings. Moreover, it is not legally objectionable for an administrative

agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties, as affidavits of witnesses may take the place of their direct testimonies. In the present case, the various letters of explanation, as well as certifications, joint affidavits and other documents, submitted by the PCMC constitute evidence to support its contentions and are sufficient bases for the PEZA Board to arrive at a sound decision with respect to the present case.

4. **ID.; ID.; ID.; ID.; DEFECTS THEREIN MAY BE CURED WHERE A PARTY HAS THE OPPORTUNITY TO APPEAL OR SEEK RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF.—** In any event, the Court agrees with petitioners that any procedural defect in the proceedings before the PEZA Board was cured when the PCMC appealed PEZA Board Resolution No. 04-236 before the OP. Petitioners were also able to move for the reconsideration of the adverse ruling of the OP. In *Autencio v. Mañara,* the Court ruled that where the party has the opportunity to appeal or seek reconsideration of the action or ruling complained of, defects in procedural due process may be cured. Likewise, in *Gonzales v. Civil Service Commission*, the Court ruled that any seeming defect in the observance of due process is cured by the filing of a motion for reconsideration and that denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard thereon.

5. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEWING ERRORS OF LAW; EXCEPTIONS.—** It is already a well-settled rule that the jurisdiction of this Court in cases brought before it from the Court of Appeals by virtue of Rule 45 of the Revised Rules of Court is limited to reviewing errors of law. Findings of fact of the CA are conclusive upon this Court. There are, however, recognized exceptions to the foregoing rule, namely: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the interference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when, in making its findings, the Court of Appeals went beyond the issues of

the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) **when the findings are contrary to those of the trial court**; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. The present case falls under the seventh exception considering that the PEZA Board and the OP, on one hand, and the CA, on the other, arrived at conflicting findings of fact. This necessitates a review of the evidence on record which leads the Court to the conclusion x x x that the OP did not err in ruling that the PCMC was not denied its right to due process of law.

6. **ID.; EVIDENCE; CREDIBILITY; ADMINISTRATIVE AGENCIES ARE GIVEN WIDE LATITUDE IN THE EVALUATION OF EVIDENCE AND IN THE EXERCISE OF THEIR ADJUDICATIVE FUNCTIONS.—** Settled is the rule that Courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency. Administrative agencies are given wide latitude in the evaluation of evidence and in the exercise of their adjudicative functions, latitude which includes the authority to take judicial notice of facts within their special competence. Based on the foregoing discussions, the Court finds that the PEZA Board and the OP were correct in ruling that, based on the evidence presented, or the insufficiency thereof, the PCMC failed to account for the unexplained shortage in its imported materials between January 2003 and March 2004.

7. **POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 7916 (THE SPECIAL ECONOMIC ZONE ACT OF 1995); VIOLATED IN CASE AT BAR.—** Section 8(c), Rule XXV, Part XI of the Rules and Regulations to Implement R.A. No. 7916 provides, thus: "C. Cancellation/Revocation – Registration, permit and/or franchise of an ECOZONE enterprise may be canceled for any of the following grounds: a. Failure to maintain the qualifications of registration/permit/

franchise as required; b. Violation of any pertinent provisions of the Act/Code and/or Decree; and **c. Violation of any of these Rules and Regulations, the corresponding implementing memoranda or circulars or any of the general and specific terms and conditions of the Registration Agreement between the PEZA and the ECOZONE enterprise or violation of the terms and conditions of the permit/franchise issued by PEZA.** x x x" In this respect, it is worthy to note that on May 18, 1999, the PEZA Board issued Resolution No. 99-134 imposing a fine of ₱377,890.00 on the PCMC for having illegally withdrawn from its factory in MEZ 102 bales of used clothing, weighing approximately 5,000 kilograms, in violation of the provisions and implementing rules and regulations of R.A. No. 7916, otherwise known as the Special Economic Zone Act of 1995. The Resolution stated that the PCMC violated Section 3, Rule X, Part VI, in relation to Section 8, Rule XXV, Part XI of the Rules and Regulations Implementing R.A. No. 7916. The Resolution also contained a "final warning to the company that a similar violation in the future shall be dealt with most severely **and shall constitute a sufficient ground for the automatic cancellation of its registration with [PEZA]."** In the presently assailed PEZA Board Resolution, it is clearly stated therein that the PCMC's PEZA registration was canceled due to its failure to account for the shortage in its imported used clothing; failure to secure the required permits for the withdrawal of goods and merchandise from specified zones; and noncompliance with various EPZA/PEZA rules, procedures and guidelines on the disposition of scraps and/or excess materials, which are in violation of Section 2, Rule XI, Part VI and, again, Section 3, Rule X, Part VI of the same Implementing Rules and Regulations.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.

Alvarez Nuez Galang Espina & Lopez Law Offices for respondents.

DECISION

PERALTA, *J.*:

This resolves the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court praying for the reversal of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 00352 dated June 22, 2005. The challenged Decision of the CA reversed and set aside the Decision[2] dated September 7, 2004 and Order[3] issued on January 20, 2005 of the Office of the President (OP) in O.P. Case No. 04-G-324.

The factual and procedural antecedents, as summarized by the CA, are as follows:

> Petitioner Corporation [herein respondent Pearl City Manufacturing Corporation] is a PEZA-registered Ecozone Export Enterprise located at the Mactan Economic Zone (MEZ) I in Lapu-Lapu City, [province of Cebu] engaged in the business of recycling and processing, for export, of used clothing into wool, fiber, cotton fiber, polyester fiber, useable clothing and industrial rags. Individual petitioners are the employees of the petitioner Corporation.
>
> Sometime in March 2004, petitioner Corporation, along with two (2) other PEZA-registered companies importing used clothing, was informed of a physical inventory to be conducted by the PEZA officers in their respective zones on their businesses.
>
> After the completion of the physical inventory on the petitioner Corporation, PEZA officers discovered that it had an unaccounted importation of 8,259,645 kilograms of used clothing for the period of fifteen (15) months covering January 2003 up to March 2004.
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> Petitioner Corporation was then instructed to submit its explanation regarding the said unaccounted shortage in its import-export liquidation. After submitting the required explanation, petitioner

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[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Pampio A. Abarintos and Sesinando E. Villon, concurring; *rollo,* pp. 60-68.

[2] Annex "AA" to Petition for Review on *Certiorari, id.* at 232-233.

[3] Annex "CC" to Petition for Review on *Certiorari, id.* at 293-297.

Corporation was subjected to a special audit conducted by PEZA to determine the amount of wastage generated by the company.

On the basis of the results of the physical inventory and the special audit conducted on the petitioner Corporation, respondent [herein co-petitioner] PEZA Board passed a resolution [Resolution No. 04-236] canceling the PEZA Registration of petitioner Corporation as an Ecozone Export Enterprise at MEZ I.

An administrative appeal was filed by the petitioners to the Office of the President from the resolution canceling its registration. The case on appeal was docketed as O.P. Case No. 04-G-324. On September 7, 2004, the Office of the President rendered a decision, the dispositive portion of which reads as follows:

> WHEREFORE premises considered, the Resolution sought to be revoked on appeal is hereby AFFIRMED *in toto*.[4]

Herein respondent, Pearl City Manufacturing Corporation (PCMC), filed a Motion for Reconsideration, but the OP denied it in its Order dated January 20, 2005.

Aggrieved, PCMC filed a petition for review with the CA assailing the above-mentioned Decision and Order of the OP.

On June 22, 2005, the CA rendered a Decision disposing as follows:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case. The Decision of the Office of the President dated September 7, 2004 in O.P. Case No. 04-G-324 and the Order dated January 20, 2005 are hereby REVERSED and SET ASIDE. The Board Resolution No. 04-236 of the Philippine Economic Zone Authority (PEZA) dated July 13, 2004 canceling petitioner corporation's PEZA Registration as an Ecozone Export Enterprise at MEZ I is hereby DECLARED NULL AND VOID.
>
> The respondents are further ORDERED to REINSTATE all the Ecozone privileges of the petitioner Corporation.
>
> SO ORDERED.[5]

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

[5] Annex "A" to Petition for Review on *Certiorari*, *id.* at 68.

Hence, the instant petition raising the following issues:

1. WHETHER OR NOT RESPONDENT PCMC WAS AFFORDED DUE PROCESS.
2. WHETHER OR NOT THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT PEZA BOARD RESOLUTION NO. 04-236 AND THE OP DECISION AND ORDER.
3. WHETHER OR NOT THE CANCELLATION OF RESPONDENT PCMC'S PEZA ACCREDITATION IS PROPER.[6]

The Court finds the petition meritorious.

The Court agrees with petitioners' contention in the first issue raised that respondent PCMC was afforded due process.

On May 11, 2004, Jimmy Sy, the General Manager of PCMC sent a letter[7] to the Director General of PEZA explaining the discrepancy in its import and export liquidation. Subsequently, on May 25, 2004, Sy wrote to the Deputy Director General for Operations of the PEZA explaining PCMC's unaccounted shortage of imported used clothing which amounted to 8,259,645 kilograms between January 2003 and March 2004.[8]

Thereafter, Sy executed an Affidavit[9] dated May 26, 2004, explaining the discrepancy and shortages in its import and export accounts. This affidavit was submitted to the PEZA, the receipt of which was duly acknowledged by the PEZA Deputy Director General for Operations in her letter dated June 11, 2004 addressed to Sy.

On June 14, 2003, Sy again wrote a letter[10] to the PEZA Deputy Director General for Operations reiterating the explanations they have earlier submitted and praying that their

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[6] *Rollo*, p. 32.

[7] See Annex "O" to Petition for Review on *Certiorari, id.* at 129-130.

[8] See Annex "Q" to Petition for Review on *Certiorari, id.* at 133-134.

[9] See Annex "R" to Petition for Review on *Certiorari, id.* at 135-137.

[10] Records, Folder No. 1, pp. 31-32.

import permits be approved pending investigation of their unaccounted imported materials.

In a letter[11] dated July 5, 2004, the law firm representing PCMC wrote a letter addressed to the Group Manager, Legal Services Group of PEZA explaining in detail its supposed unaccounted shortage in its business of recycling used clothing.

In the course of explaining its position, PCMC even secured letters,[12] joint affidavits,[13] and certifications[14] from its plant manager and various persons to show that the supposed discrepancy in its import-export liquidations found by PEZA investigators represented part of the waste materials generated in its recycling business.

It is settled that in administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process.[15] The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.[16] In the recent case of *Pagayanan R. Hadji-Sirad v. Civil Service Commission*,[17] the Court had the opportunity to reiterate the following pronouncements, to wit:

> In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

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[11] See Annex "X" to Petition for Review on *Certiorari, rollo*, pp. 156-164.

[12] See Annexes "P", "P-1" and "T" to Petition for Review on *Certiorari*, *id.* at 131-132, 143.

[13] See Annex "V" to Petition for Review on *Certiorari, id.* at 146-147.

[14] See Annexes "U" and "U-1" to Petition for Review on *Certiorari, id.* at 144-145.

[15] *Department of Agrarian Reform v. Samson*, G.R. Nos. 161910 and 161930, June 17, 2008, 554 SCRA 500, 509.

[16] *Casimiro v. Tandog*, G.R. No. 146137, June 8, 2005, 459 SCRA 624, 631.

[17] G.R. No. 182267, August 28, 2009.

In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.[18]

In the present case, since PCMC was properly informed of the supposed discrepancy in its import and export liquidations, that it was given ample opportunity by the PEZA management to be heard or to explain its side in relation to its unaccounted imported materials and that it was subsequently informed of the decision of the PEZA Board to cancel its registration on the basis of its assessment of the evidence presented or lack thereof, petitioners cannot claim that they were denied their right to due process of law.

The Court cannot subscribe to the pronouncement of the CA that there should have been interrogations or inquiries conducted by the PEZA Board to give PCMC the opportunity to defend itself from any charge directed against it.

The Court agrees with the petitioner's averment that the power and authority to conduct inquiries is lodged with the PEZA Director General and not with the PEZA Board. Thus, Section 14(g) of Republic Act (R.A.) No. 7916 provides:

SEC. 14. *Powers and Functions of the Director General.* – The director general shall be the overall coordinator of the policies, plans and programs of the ECOZONES. As such, he shall provide overall supervision over and general direction to the development and operations of these ECOZONES. He shall determine the structure and the staffing pattern and personnel complement of the PEZA and establish regional offices, when necessary, subject to the approval of the PEZA Board.

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[18] *Id.*

In addition, he shall have the following specific powers and responsibilities:

x x x x x x x x x

g) To acquire jurisdiction, as he may deem proper, over the protests, complaints and claims of the residents and enterprises in the ECOZONE concerning administrative matters;

In consonance with the above-quoted authority, the PEZA Director General is also empowered, under Section 14(h) of the same law, to recommend to the PEZA Board the grant, approval, refusal, amendment or termination of the ECOZONE franchises, licenses, permits, contracts and agreements in accordance with the polices of the said Board.

It necessarily follows from the foregoing that the primary authority to conduct inquiries and fact-finding investigations is bestowed upon the office of the PEZA Director General simply because no complaint, protest or claim can be properly addressed, and neither can any reasonable recommendation to the PEZA Board be made by the PEZA Director General without conducting any such inquiry or fact-finding. While nothing prohibits the PEZA Board to conduct its own inquiry on matters brought before it, it does not mean that the absence of such inquiry by the Board is a denial of due process on the part of the entity being investigated. In the present case, however, such inquiry, if conducted, would be a superfluity considering that a physical inventory and a full-blown audit was already made by a special team from the PEZA Head Office and the MEZ between March 2004 and June 2004. During the said inventory and audit, PCMC was given sufficient opportunity to explain whether it really incurred any shortage or whether the materials it imported were properly disposed of or withdrawn from the MEZ. The PEZA Board did not arbitrarily arrive at its decision to cancel the registration of PCMC. The results of the inventory and audit are precisely the bases upon which the cancellation was made.

Stated differently, the audit and inventory conducted under the direction and authority of the PEZA Director General are sufficient for purposes of complying with the requirements of procedural due process. Conversely, the absence of formal proceedings

conducted before the PEZA Board does not mean that the requirements of procedural due process were not complied with.

The Court also finds it apropos to reiterate the well-settled rule that in administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense.[19] In fact, it is well settled that, in administrative cases, the requirement of notice and hearing does not connote full adversarial or trial type proceedings.[20]

Moreover, it is not legally objectionable for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties, as affidavits of witnesses may take the place of their direct testimonies.[21] In the present case, the various letters of explanation, as well as certifications, joint affidavits and other documents, submitted by the PCMC constitute evidence to support its contentions and are sufficient bases for the PEZA Board to arrive at a sound decision with respect to the present case.

In any event, the Court agrees with petitioners that any procedural defect in the proceedings before the PEZA Board was cured when the PCMC appealed PEZA Board Resolution No. 04-236 before the OP. Petitioners were also able to move for the reconsideration of the adverse ruling of the OP. In *Autencio v. Mañara,*[22] the Court ruled that where the party has the opportunity to appeal or seek reconsideration of the action or ruling complained of, defects in procedural due process may be cured. Likewise, in *Gonzales v. Civil Service Commission*,[23] the Court ruled that any seeming defect in the

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[19] *Atty. Emmanuel Pontejos v. Hon. Aniano A. Desierto and Restituto Aquino*, G.R. No. 148600, July 7, 2009.

[20] *Id.*

[21] *Bacsasar v. Civil Service Commission*, G.R. No. 180853, January 20, 2009, 576 SCRA 787, 794.

[22] G.R. No. 152752, January 19, 2005, 449 SCRA 46, 55-56.

[23] G.R. No. 156253, June 15, 2006, 490 SCRA 741, 746.

observance of due process is cured by the filing of a motion for reconsideration and that denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard thereon.

Respondents insist that the question of whether the PCMC was denied its right to due process of law is a question of fact which is not proper in a petition for review on *certiorari.*

It is already a well-settled rule that the jurisdiction of this Court in cases brought before it from the Court of Appeals by virtue of Rule 45 of the Revised Rules of Court is limited to reviewing errors of law. Findings of fact of the CA are conclusive upon this Court. There are, however, recognized exceptions to the foregoing rule, namely: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the interference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when, in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) **when the findings are contrary to those of the trial court**; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[24]

The present case falls under the seventh exception considering that the PEZA Board and the OP, on one hand, and the CA, on the other, arrived at conflicting findings of fact. This necessitates a review of the evidence on record which leads the Court to the conclusion, as earlier discussed, that the OP did not err in ruling that the PCMC was not denied its right to due process of law.

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[24] *Citibank, N.A. (Formerly First National City Bank) v. Sabeniano*, G.R. No. 156132, October 16, 2006, 504 SCRA 378, 409; *Herbosa v. Court of Appeals*, G.R. No. 119086, January 25, 2002, 374 SCRA 578, 591.

Anent the second issue raised, the Court agrees with the petitioners' averment that the Resolution of the PEZA Board, which was affirmed by the Decision of the OP, is supported by substantial evidence.

Petitioners correctly argue that the CA erred in holding that the PCMC was able to sufficiently explain the adverse findings of the PEZA in the audit and physical inventory that the PEZA conducted. The Court notes that the CA did not specify the reasons why it made such pronouncement. On the other hand, it is clear from the letter[25] dated June 11, 2004 of the PEZA Deputy Director General for Operations addressed to Sy that the PEZA finds Sy's explanation of PCMC's shortage as inadequate, specifying therein the grounds for such finding. In the same manner, the Group Manager of the Legal Services Group of PEZA in a subsequent letter[26] to Sy dated June 17, 2004, reiterated the findings of the PEZA Deputy Director General for Operations. He also specified the reasons why the PEZA Audit Team found the explanations of the PCMC's Plant Manager as unsatisfactory. Despite these letters directing the PCMC to submit all essential documents to substantiate its claims, PCMC still failed to do so.

In this regard, the Court quotes with approval the disquisition made by the OP in resolving petitioners' Motion for Reconsideration of the Decision of the OP, dated September 7, 2004, to wit:

> In answer to the many requests of PEZA to submit affidavits and documents in support of its position, Petitioner submitted inadequate explanations. Its statements attributing the unaccountable shortages to an honest mistake [where the clerk assigned to record its importations in kilograms *vis-a-vis* pounds was new in his job and relatively inexperienced] and that it could not produce the required importation records because these were destroyed when heavy rains drenched their office, are at best, self-serving. Thus, the failure on the part of Petitioner to account for the importation shortages, as well as

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[25] See Annex "S-1" to Petition for Review on *Certiorari, rollo*, p. 142.

[26] See Annex "W-1" to Petition for Review on *Certiorari, id.* at 155.

the proper disposal of waste, constitutes *prima facie* proof that the goods or merchandise were illegally sent out of the restricted areas.[27]

Settled is the rule that Courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency.[28] Administrative agencies are given wide latitude in the evaluation of evidence and in the exercise of their adjudicative functions, latitude which includes the authority to take judicial notice of facts within their special competence.[29] Based on the foregoing discussions, the Court finds that the PEZA Board and the OP were correct in ruling that, based on the evidence presented, or the insufficiency thereof, the PCMC failed to account for the unexplained shortage in its imported materials between January 2003 and March 2004.

Lastly, the Court agrees with petitioners that the cancellation of the PCMC's registration as an ECOZONE enterprise is warranted by the law. Section 8(c), Rule XXV, Part XI of the Rules and Regulations to Implement R.A. No. 7916 provides, thus:

C. Cancellation/Revocation – Registration, permit and/or franchise of an ECOZONE enterprise may be canceled for any of the following grounds:

a. Failure to maintain the qualifications of registration/permit/ franchise as required;

b. Violation of any pertinent provisions of the Act/Code and/or Decree; and

c. Violation of any of these Rules and Regulations, the corresponding implementing memoranda or circulars or any of the general and specific terms and conditions of the Registration Agreement between the PEZA and the ECOZONE enterprise or violation of the terms and conditions of the permit/franchise issued by PEZA. (emphasis supplied)

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[27] See Order dated January 20, 2005, *id.* at 296.

[28] *Department of Agrarian Reform v. Samson, supra* note 15, at 510-511.

[29] *Id.* at 511.

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In this respect, it is worthy to note that on May 18, 1999, the PEZA Board issued Resolution No. 99-134 imposing a fine of ₱377,890.00 on the PCMC for having illegally withdrawn from its factory in MEZ 102 bales of used clothing, weighing approximately 5,000 kilograms, in violation of the provisions and implementing rules and regulations of R.A. No. 7916, otherwise known as the Special Economic Zone Act of 1995. The Resolution stated that the PCMC violated Section 3, Rule X, Part VI,[30] in relation to Section 8, Rule XXV, Part XI of the Rules and Regulations Implementing R.A. No. 7916. The Resolution also contained a "final warning to the company that a similar violation in the future shall be dealt with most severely **and shall constitute a sufficient ground for the automatic cancellation of its registration with [PEZA].**"

In the presently assailed PEZA Board Resolution, it is clearly stated therein that the PCMC's PEZA registration was canceled due to its failure to account for the shortage in its imported used clothing; failure to secure the required permits for the withdrawal of goods and merchandise from specified zones; and noncompliance with various EPZA/PEZA rules, procedures and guidelines on the disposition of scraps and/or excess materials, which are in violation of Section 2, Rule XI, Part VI[31] and, again, Section 3, Rule X, Part VI of the same Implementing Rules and Regulations.

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[30] SEC. 3. *Permits* – Merchandise or goods may be taken into or brought out of the restricted areas of the ECOZONES only upon prior approval or permit by the PEZA in accordance with its documentation and security procedures. Permits to bring out of the ECOZONES said merchandise or goods must be secured by the Export or Free Trade Enterprise from the PEZA prior to loading or before the release of said merchandise or goods from the factory premises or warehouse of the enterprise. Merchandise or goods brought out of the factory premises or warehouse of the Export or Free Trade Enterprise without the required prior permit from the PEZA shall be considered as a violation of this Section although the said merchandise or goods are still within or inside the restricted areas or boundaries of the ECOZONE.

[31] SEC. 2. *Shortage and Overage* – In case of failure to account for shortages on raw material, machineries, equipment, supplies or goods for personal

WHEREFORE, the petition is *GRANTED*. The assailed Decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. The Decision of the Office of the President, dated September 7, 2004, and its Order dated January 20, 2005 in O.P. Case No. 04-G-324, as well as Board Resolution No. 04-236 of the Philippine Economic Zone Authority, dated July 13, 2004, are hereby *REINSTATED*.

SO ORDERED.

Carpio,[*] *Corona (Chairperson), Velasco, Jr.,* and *Del Castillo,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 172092. December 16, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEY TION *y* CABADDU,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; BUY-BUST OPERATION; NATURE.— A buy-bust operation is a form of entrapment legally employed by peace officers as an effective way of apprehending drug dealers in the act of committing an offense. Such police operation has judicial sanction as long as it is carried out with

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usage, imported tax and duty free pursuant to the Act, the same shall constitute *prima facie* proof that such goods or merchandise were illegally sent out of the restricted areas of the ECOZONE and/or to the customs territory. In such case, the enterprise concerned shall be imposed the corresponding fines, taxes and duties in accordance with the applicable provisions of these Rules, Customs and Internal Revenue Laws.

[*] Additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per raffle dated December 2, 2009.

[**] Additional member per Special Order No. 805 dated December 4, 2009.

due respect to constitutional and legal safeguards. There is no rigid or textbook method in conducting buy-bust operations.

2. **ID.; ID.; OBJECTIVE TEST IN SCRUTINIZING BUY-BUST OPERATIONS.—** *People v. Doria* provides the "objective" test in scrutinizing buy-bust operations in this wise: "We therefore stress that the 'objective' test in buy-bust operations demands that the **details of the purported transaction must be clearly and adequately shown**. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the 'buy-bust' money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement."

3. **ID.; INSTIGATION AND ENTRAPMENT, DISTINGUISHED.—** Where the criminal intent originates in the mind of the accused and the criminal offense is completed, the fact that a person, acting as a decoy for the state, or that public officials furnished the accused an opportunity for the commission of the offense, or that the accused is aided in the commission of the crime in order to secure the evidence necessary to prosecute him, there is permissible entrapment and the accused must be convicted. What the law forbids is the inducing of another to violate the law, the "seduction" of an otherwise innocent person into a criminal career. In instigation, the instigator practically induces the would-be accused into the commission of the offense and himself becomes a co-principal, while in entrapment, the peace officer resorts to ways and means to trap and capture the lawbreaker in the execution of the latter's criminal plan.

4. **ID.; ILLEGAL SALE OF PROHIBITED DRUGS; IN DRUG CASES, THE FACT OF AGREEMENT AND THE ACT CONSTITUTING THE SALE AND DELIVERY OF PROHIBITED DRUGS ARE MATERIAL.—** [I]n many cases, drug pushers sell their prohibited articles to prospective customers, be they strangers or not, in private as well as in public places, even in daytime. What matters is not the existing familiarity between the buyer and the seller, or the time and venue of the sale, but the fact of agreement as well as the act constituting the sale and delivery of prohibited drugs.

5. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTION; SUSTAINED IN BUY-BUST OPERATIONS IN THE ABSENCE OF IMPROPER MOTIVE ON THE PART OF THE BUY-BUST TEAM.—** Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the buy-bust operation deserve full faith and credit. Settled is the rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties. The records do not show any allegation of improper motive on the part of the buy-bust team. Thus, the presumption of regularity in the performance of duties of the police officers must be upheld.

6. **CRIMINAL LAW; PROSECUTION OF ILLEGAL SALE OF DANGEROUS DRUGS; REQUISITES; ILLEGAL SALE OF MARIJUANA, ELEMENTS.—** In a prosecution for illegal sale of dangerous drugs, the following must be proved: (1) that the transaction took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. With respect to illegal sale of *marijuana*, its essential elements are: (1) identity of the buyer and the seller, the object of the sale, and the consideration; and (2) delivery of the thing sold and the payment.

7. **ID.; ILLEGAL SALE OF DRUGS; ACCUSED COMMITS THE CRIME AS SOON AS HE CONSUMMATES THE SALE TRANSACTION WHETHER PAYMENT PRECEDES OR FOLLOWS DELIVERY OF THE DRUGS SOLD.—** The fact of the payment of PhP 6,250 was proved and admitted by Joey. The delivery of 5.2 kilos of *marijuana* by Joey to poseur-buyer P/Insp. Castillo was likewise proved and admitted by Joey. With these certainties, it is clear that Joey was caught *in flagrante delicto* of selling *marijuana* to poseur-buyer P/Insp. Castillo. The well-entrenched principle is that the accused commits the crime of illegal sale of drugs as soon as he consummates the sale transaction whether payment precedes or follows delivery of the drugs sold.

8. **REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION OF EVIDENCE; CHAIN OF CUSTODY RULE; COMPLIED WITH IN CASE AT BAR.—** Despite the admission of Joey in his testimony that he delivered the *marijuana*, the prosecution is nonetheless tasked to prove the existence, and presentation in court, of the confiscated *marijuana*, the *corpus delicti* and object of the illegal sale. One with the courts *a quo*, we hold that the prosecution has sufficiently carried the burden of proving this beyond reasonable doubt. The confiscated bricks of *marijuana* were photographed in front of the three accused in the police station, and duly issued a confiscation receipt. The specimens were duly passed on to the Provincial Crime Laboratory Office, Regional Command 02 in Ilagan, Isabela, covered by a letter-request dated April 8, 1999 for laboratory testing and confirmation of the suspected *marijuana*. The laboratory tests on the specimens were conducted by forensic chemist P/SInsp. Luis of the Provincial Crime Laboratory Office, who issued Physical Science Report No. D-53-99 confirming the specimens to be *marijuana*. During her testimony on March 20, 2001, P/SInsp. Luis also presented in court the bricks of *marijuana,* the object of the illegal sale. Hence, the integrity of the custody of the specimens composed of bricks of *marijuana* has not been broken from the police station to the Provincial Crime Laboratory Office until their presentation in court during the trial. The bricks of *marijuana* were presented as prosecution Exhibits "G" to "L". The confiscation receipt issued by the arresting officers and signed by the accused was

presented as prosecution Exhibit "M", and the letter-request for the laboratory tests of the specimens as prosecution Exhibit "N", while Physical Science Report No. D-53-99 is prosecution Exhibit "O".

9. **CRIMINAL LAW; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); INAPPLICABLE IN CASE AT BAR.—** Joey contends that the presentation of the bricks of *marijuana* is barred by prescription and in violation of Sec. 21 (2) and (3) of RA 9165 that requires the submission and examination of the specimens within 24 hours from confiscation, and the examination report under oath by the one who conducted the examination, also issued within 24 hours after receipt of the specimens. Joey's contention is specious at best. For one, the confiscation of the *marijuana* on March 4, 1999 and its examination and presentation in open court during the testimony of P/SInsp. Luis on March 20, 2001 were made way before the passage of RA 9165 in 2002. For another, the principle that whatever is favorable to the accused must be applied retroactively does not obtain in this instance, for its applicability is primarily on the substantive aspect. The procedure followed in the custody and examination of suspected dangerous drug specimens before the passage of RA 9165 and before the creation of the Philippine Drug Enforcement Agency cannot be put aside by the mere operation of the later law. x x x Moreover, the prosecution, at the end of presentation of its evidence, filed its Formal Offer of Documentary Evidence on August 13, 2001, way before the passage of RA 9165.

10. **ID.; ILLEGAL SALE OF DANGEROUS DRUGS; PRESENTATION OF MARKED MONEY, NOT INDISPENSABLE IN DRUG CASES.—** [T]he presentation of "marked money" is not essential in the prosecution of the crime of selling dangerous drugs. The marked money used in the buy-bust operation is not indispensable in drug cases; it is merely corroborative evidence. Neither law nor jurisprudence requires the presentation of any of the money used in a "buy-bust" operation. Besides, payment of consideration is immaterial in the distribution of illicit drugs.

11. **ID.; ID.; PENALTY; CASE AT BAR.—** [T]he penalty imposed by the courts *a quo* upon Joey, which is *reclusion perpetua*, is proper, considering that the *marijuana* confiscated in this

case as a result of the buy-bust operation weighs more than 750 grams, *i.e.*, 5.2 kilograms. The penalty of death cannot be imposed anymore due to its abolition under RA 9346. In the same vein, the fine of PhP 500,000 imposed by the courts *a quo* on accused-appellant Joey is also in order, as this fine is the minimum of the range of fines imposable on any person who sells prohibited drugs without any authority as clearly provided in Sec. 4, Art. II of RA 6425, as amended.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Macario A. Aggarao for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Accused-appellant Joey Tion *y* Cabaddu seeks before us his acquittal through the reversal of the September 15, 2005 Decision[1] and January 2, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00212. The CA affirmed the judgment in Criminal Case No. 08-1163 of the Regional Trial Court (RTC), Branch 8 in Aparri, Cagayan, convicting Joey of violation of Section 4, Article II of Republic Act No. (RA) 6425, as amended.

The Facts

An Information[3] dated August 18, 1999 charged accused-appellant Joey, Ronald Diaz *y* Gario, and Allan Letan *y* Diaz with violation of Sec. 4, Art. II of RA 6425, as amended. The Information reads:

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[1] *Rollo*, pp. 3-56. Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Andres B. Reyes, Jr. and Lucas P. Bersamin (now a member of this Court).

[2] CA *rollo*, pp. 271-273.

[3] *Id.* at 6.

That on or about March 4, 1999, in the Municipality of Aparri, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, being private individuals, conspiring together and helping each other, did then and there willfully, unlawfully and feloniously sell, distribute and/or deliver 5.2 kilos of marijuana, a prohibited drug, to operatives of the Philippine National Police Force stationed at Aparri, Cagayan, the said accused knowing fully well and aware that it is prohibited for any person to sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug unless authorized by law.

CONTRARY TO LAW.

Upon arraignment on November 9, 1999, Joey, Ronald, and Allan, assisted by counsel, uniformly entered a plea of "not guilty." During pre-trial, the defense admitted the identity of the three accused, the arrest of the accused on March 4, 1999, and the existence of Physical Science Report No. D-53-99 on the dried leaves suspected to be *marijuana* issued by the Provincial Crime Laboratory Office, Regional Command 02 in Ilagan, Isabela.

The Prosecution's Version of Facts

To bolster its case against the three accused, the prosecution presented the testimonies of arresting police officers Police Superintendent (P/Supt.) Feliciano Caranguian and Police Inspector (P/Insp.) Marlo Castillo, and Police Senior Inspector (P/SInsp.) Previ Fabros Luis of the Provincial Crime Laboratory Office in Ilagan, Isabela.

During the period pertinent to the incident, P/Supt. Caranguian and P/Insp. Castillo were both assigned in Aparri, Cagayan, with the former as Chief of Police.

On March 2, 1999, P/Supt. Caranguian directed P/Insp. Castillo, along with a police informant, to conduct a test buy operation in Agusi, Camalaniugan, Cagayan to verify the information that *marijuana* was being sold there. On that day, the police informant initially bought PhP 100 worth of *marijuana* from drug pushers in the locality.

On March 3, 1999, P/Supt. Caranguian instructed P/Insp. Castillo to do the test buy himself by having the police informant introduce

him to the drug pushers. Forthwith, P/Insp. Castillo and two police informants proceeded to the *horno*[4] in Agusi, Camalaniugan, where the latter introduced the undercover policeman as a student. As a result, P/Insp. Castillo was able to buy PhP 100 worth of *marijuana* sticks from the drug pushers. On his initiative, P/Insp. Castillo negotiated to buy a bigger quantity of five kilos of *marijuana* the following day. The drug pushers agreed and set the price at PhP 2,500 per kilo or a total of PhP 12,500 for five kilos.

Apprised about the deal, P/Supt. Caranguian sought the help of then Municipal Mayor Ismael Tumaru of Aparri, who gave PhP 6,250 for the down payment. The bills, after they were photocopied and authenticated by Clerk of Court Rogelio M. Calanoga, were given to P/Insp. Castillo.

On March 4, 1999, P/Insp. Castillo and the two police informants went at around 10:00 a.m. to the *horno* in Agusi, Camalaniugan to consummate the sale. The drug pushers, however, told the undercover policeman that they could not make the delivery since they did not have money to source the five kilos of *marijuana*. P/Insp. Castillo used the PhP 6,250 "marked money" he had to pay the drug pushers half the contracted price, with the agreement that the balance would be paid upon delivery of the *marijuana*.

Later, at around 5:00 p.m. of the same day, Joey, Allan, and Ronald, aboard a motorbike driven by the latter, arrived and parked beside the waiting shed at the designated place of delivery in front of the Aparri District Hospital in Toran, Aparri. Joey, upon alighting from the motorbike, handed to poseur-buyer P/Insp. Castillo the black bag he was carrying, which, when opened by the latter, contained bricks of *marijuana*. Upon giving the pre-arranged signal of removing his cap, the other undercover policemen—P/Supt. Caranguian, P/Insp. Castillo, Senior Police Officer 3 (SPO3) Efren Fariñas, SPO2 Ricardo Napao, Police Officer 2 (PO2) Raymundo Carbonel, and PO2 Revelito Jove—arrested Joey, Allan, and Ronald.

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[4] It is a place made of bricks, like a low tower, beside the Cagayan river and not far off from the highway located in Agusi, Camalaniugan.

The accused were brought to the police station where they were searched. A stick of *marijuana* was taken from one of the accused, while the search of Joey produced three 100 peso bills, which corresponded to the "marked money" earlier photocopied and authenticated by Clerk of Court Calanoga. The bills were marked "ELF" by SPO2 Elpidio L. Florendo, the police investigator. The bricks of suspected *marijuana* contained in the bag opened earlier weighed around 5.2 kilos. The confiscation receipt was signed by the arresting policemen.

The bricks of suspected *marijuana* were sent to the Provincial Crime Laboratory Office in Ilagan, Isabela for examination. P/SInsp. Luis, the forensic chemist who conducted the examination, submitted Physical Science Report No. D-53-99 which attested that the dried leaves were indeed *marijuana*.

Version of the Defense

For its part, the defense presented the testimonies of Joey, Ronald, Allan, and one Carlito Diaz.

Ronald testified that Joey and Allan merely rented his motorbike for PhP 250. He drove Joey and Allan to Ballesteros, Cagayan at about 12:30 p.m. on March 4, 1999. Upon reaching the place at around 2:30 p.m., they parked at the beach. Joey and Allan then left Ronald for about half an hour. Upon their return, Joey was bringing a bag. They then proceeded to Toran, Aparri, Cagayan and he was instructed by Joey to stop in front of the Aparri District Hospital, where moments later they were arrested.

Carlito Diaz testified that Joey was his classmate while Allan is his nephew. They belonged to the same team in the inter-*barangay* summer basketball tournament. They practiced in the morning of March 4, 1999, and afterwards, as their routine, they went to the *horno* along the river to rest and take a bath. There, he noticed a man (P/Insp. Castillo) and two teenagers (police informants) talking to Joey. Eventually, the man handed Joey an envelope.

Allan narrated that he is a friend of Joey and plays basketball with him. While at the *horno* by the riverbank, a man (P/Insp. Castillo) and two teenagers (police informants) called for Joey.

They talked for a while, then the man handed an envelope to Joey. Later, Joey told Allan that they would hire the motorbike of Ronald. They first went to a house in Ballesteros town where Joey talked to a person who handed him a black bag some minutes later. Then they went to Camalaniugan and stopped at a waiting shed there. Since nobody was there, Joey instructed Ronald to proceed to Toran, Aparri. Upon reaching the Aparri District Hospital, Joey told Ronald to stop. He heard P/Insp. Castillo ask Joey, "Do you have it?" to which Joey responded, "Yes, I have." Joey then gave the bag to P/Insp. Castillo who opened it. Thereafter, they were arrested.

Accused-appellant Joey raised the primary defense of **instigation**. He testified that there was no test buy conducted beforehand. On March 4, 1999, while he was resting with some friends at the *horno* in Camalaniugan beside the Cagayan River after a basketball game practice, a man (P/Insp. Castillo) and two teenagers (police informants) approached his group and inquired where they could buy *marijuana* cigarettes. When a friend pointed to Joey, the man approached him and introduced himself as a student of the Lyceum of Aparri. He asked Joey if he could buy him five kilos of *marijuana* for a ready buyer in Manila. Joey told him that he could get it from Ballesteros, Cagayan for PhP 2,500 per kilo, but Joey said that he could not source it for he had no money. The man told Joey he could advance PhP 6,250, corresponding to half the total price, and pay the balance upon delivery of the goods. When Joey agreed, the man handed him the PhP 6,250.

Joey then asked Allan to accompany him to Ballesteros. Upon hiring Ronald and his motorbike, they immediately proceeded there after lunch to meet his supplier named Johnny Reyes. Johnny agreed with the arrangement and handed Joey the five kilos of *marijuana* in a black bag in exchange for PhP 6,250. From Ballesteros, they went first to the *horno* but, finding no one there, they proceeded to the waiting shed in front of the hospital in Toran. Upon reaching the place, their contact man asked if Joey had the *marijuana*. Joey answered it was in the bag which he handed to the man. Then they were arrested. Joey asserted that he only had PhP 110 in his pocket at the time.

The very next day, Joey further narrated, P/Supt. Caranguian told him that if he would name his supplier and the place where they bought the *marijuana*, no charges would be filed against the three of them, Joey, Ronald, and Allan. Joey drew a sketch of the house of Johnny Reyes in Ballesteros. He believed that Johnny Reyes was arrested and insisted that they (the three accused) should not be charged because of the information they gave about Johnny Reyes pursuant to the deal with P/Supt. Caranguian.

The RTC Convicted Joey

On June 26, 2002, the RTC rendered a Decision,[5] convicting Joey of selling *marijuana*, but exonerating Allan and Ronald. The *fallo* reads:

WHEREFORE, the Court finds accused Ronald Diaz and Allan Letan NOT GUILTY of the crime charged and are hereby ACQUITTED for lack of evidence. However, the Court finds accused Joey Tion "GUILTY" beyond reasonable doubt of selling marijuana weighing 5.2 kilos – a prohibited drug in violation of Section 4, Article II of Republic Act No. 6425 as amended and is hereby sentence[d] to:

1. suffer the penalty of Reclusion Perpetua; and
2. pay the fine of Five Hundred Thousand (PhP 500,000) Pesos.

SO ORDERED.

Aggrieved, Joey filed a motion for new trial dated July 15, 2002, which was opposed by the prosecution. Joey then filed a reply, omnibus motion for inhibition, cancellation, and re-raffling dated October 14, 2002, praying for the inhibition of the trial court judge who rendered the above decision. On November 18, 2002, Judge Manauis inhibited.

Eventually, on May 27, 2003, Joey's motion for a new trial was denied. Joey filed a motion for reconsideration but was denied through an Order[6] dated July 8, 2003.

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[5] CA *rollo*, pp. 28-63. Penned by Presiding Judge Conrado F. Manauis.

[6] *Id.* at 64.

On July 30, 2003, this case was appealed directly to this Court due to the imposition of *reclusion perpetua*, docketed as **G.R. No. 160462**. But in conformity with *People v. Mateo*,[7] we transferred this case to the CA on October 11, 2004[8] for intermediate review.

The CA Affirmed Joey's Conviction

As stated at the outset, the appellate court, in the assailed decision dated September 15, 2005, affirmed that of the trial court, thus:

> WHEREFORE, premises considered, the Decision dated 26 June 2002, which was promulgated on 02 July 2002, of the Regional Trial Court of Aparri, Cagayan, Branch 08 in Crim. Case No. 08-1163 finding the accused-appellant JOEY TION *y* CABADDU guilty beyond reasonable doubt for violation of Section 4, Article II of Republic Act No. 6425, as amended by Republic Act No. 7659, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the fine of PhP 500,000 is hereby AFFIRMED.
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> SO ORDERED.[9]

Joey's motion for reconsideration was rejected through the equally assailed CA resolution dated January 2, 2006.

The Issues

Undaunted, Joey is now with this Court via the present appeal raising essentially the same assignment of errors he raised in **G.R. No. 160462**, as follows:

1) Joey is instigated and induced upon, *i.e.*, there was no valid buy-bust operation;

2) The submission of the Philippine *Cannavissativa* or Marijuana is barred by prescription;

3) Joey is prematurely made to suffer the imprisonment imposed;

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[7] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[8] CA *rollo*, p. 185.

[9] *Rollo*, p. 54.

4) Joey's innocence is declared by the trial court in its decision; and,

5) Joey's constitutional presumption of innocence is uncontroverted.

The foregoing assignment of errors can be synthesized into: *first*, the core issue of whether there was a valid buy-bust operation; and *second*, whether Joey is guilty beyond reasonable doubt of selling *marijuana*.

The People of the Philippines, represented by the Office of the Solicitor General (OSG), chose not to file any supplemental brief confining its position and arguments in the earlier filed Brief for the Appellee, while accused-appellant Joey filed a supplemental[10] to his appellant's brief.

The Court's Ruling

We deny the appeal.

A close perusal of the records of the case and the clear and unanimous findings of the courts *a quo* compel this Court to affirm Joey's conviction.

First Core Issue: Valid Buy-Bust Operation

Joey strongly argues that he was instigated and induced to buy *marijuana* by P/Insp. Castillo. He maintains that he was merely an errand boy to buy five kilos of *marijuana* from Johnny Reyes with the money (PhP 6,250) provided by the mayor of Aparri through P/Insp. Castillo. Without that money, Joey contends, he could not have procured the *marijuana*. He, thus, asserts that he is neither the seller, for that would be Johnny Reyes, nor the buyer, for that would be the mayor of Aparri through P/Insp. Castillo. As a mere errand boy or a middle man at best, Joey avers that he was clearly instigated and induced to procure five kilos of *marijuana* with the money provided for by P/Insp. Castillo, and there was really no buy-bust operation.

We are not persuaded.

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[10] *Id.* at 65-73, dated October 11, 2006.

A buy-bust operation is a form of entrapment legally employed by peace officers as an effective way of apprehending drug dealers in the act of committing an offense. Such police operation has judicial sanction as long as it is carried out with due respect to constitutional and legal safeguards.[11] There is no rigid or textbook method in conducting buy-bust operations.[12]

As aptly quoted by the appellate court, *People v. Doria* provides the "objective" test in scrutinizing buy-bust operations in this wise:

> We therefore stress that the "objective" test in buy-bust operations demands that the **details of the purported transaction must be clearly and adequately shown**. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[13]

Prescinding from the above test or guidelines, we find no error in the courts *a quo*'s findings and disposition of the instant case.

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[11] *People v. Dulay*, G.R. No. 150624, February 24, 2004, 423 SCRA 652, 662; citing *People v. Chua*, G.R. No. 133789, August 23, 2001, 363 SCRA 562, 583.

[12] *People v. Ahmad*, G.R. No. 148048, January 15, 2004, 419 SCRA 677, 694; citing *People v. Hajili*, G.R. Nos. 149872-73, March 14, 2003, 399 SCRA 288.

[13] G.R. No. 125299, January 22, 1999, 301 SCRA 668, 698-699.

Prosecution Testimonies More Credible

First, the testimonies of P/Supt. Caranguian and P/Insp. Castillo are very clear and coherent. The details pertaining to the test buys on March 2 and 3, 1999 were clear: The police informant bought *marijuana* on March 2, while P/Insp. Castillo was able to buy *marijuana* on March 3 after being introduced to Joey and Allan by two police informants. The deal for the purchase of five kilos of *marijuana* was agreed upon on March 3, 1999. The "marked money" was then prepared with the help of then Mayor Tumaru and Clerk of Court Calanoga who photocopied and authenticated it. In the morning of March 4, 1999, P/Insp. Castillo, with the two police informants, confirmed the purchase of the five kilos and paid half the price with the PhP 6,250 "marked money." And upon delivery by Joey of the 5.2 kilograms bricks of *marijuana* in the agreed place at 5:00 p.m. on March 4, 1999, he was arrested along with Allan and Ronald. Confiscated from Joey were the bricks of *marijuana* and three PhP 100 bills, which were among those from the PhP 6,250 "marked money" earlier paid to him by P/Insp. Castillo.

The testimony of P/Insp. Castillo[14] was corroborated on

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[14] TSN, June 18, 2001, pp. 4-15. P/Insp. Castillo testified:

Prosecutor Cortes: You said that you conducted a test buy operation on March 2, 1999, who conducted this test buy operation?

P/Insp. Castillo: On March 2, 1999 we let our asset conduct the text buy operation, sir.

Q: Who instructed this asset to conduct a test buy operation?

x x x x x x x x x

A: The Chief of Police then directed the asset to conduct a test buy, sir.

x x x x x x x x x

Q: Having made that report to your Chief of Police what did your Chief of Police do?

A: He instructed me the following day, March 3 to conduct again a test buy, sir, and introduced me that I'll be the one to transact to them.

Q: So this time you will act as the buyer?

A: Yes, sir.

Q: And did you comply with the instruction of your Chief of Police?

A: Yes, sir.

Q: What then did you do?

A: So together with the asset, sir, we proceeded again to the area and then the asset introduced me to the suspects and I pretended as a student.

Q: In what way did you pretend yourself as a student?

A: At that time, sir, I was a fresh graduate and I had a high hair cut then as if I am really a student and I was slim.

x x x x x x x x x

Q: Where did this transaction take place?

A: In Agusi, sir, particularly at the Horno.

Q: Is this along the highway?

A: It is near, sir. It is like a tower made of bricks.

Q: And you were introduced by your asset to how many suspected pushers?

A: There were five (5), sir.

Q: And after you were introduced by your asset to these suspected pushers of marijuana what happened next?

A: I was able to buy again, sir.

Q: You were able to buy what?

A: Marijuana, sir.

x x x x x x x x x

Q: And after this deal what happened next?

A: We agreed to have a bigger deal, sir.

Q: What do you mean by bigger deal?

A: A big deal, sir.

Q: And did you agree on what date would these five (5) men were supposed to deliver to you this bigger quantity of marijuana?

A: The following day, sir, March 4.

Q: Now what did you do after concluding this test buy on March 3, 1999?

A: I made a feed back to our Chief of Police Caranguian, sir.

x x x x x x x x x

Q: So the following day, March 4, 1999, what did you do?

A: The Chief of Police then instructed me to go and confirm if the deal is already there at more or less 10:30 in the morning, sir.

Q: And what did you find out?

A: I found out that the marijuana was not there because the pushers told me that they have no money to buy, sir.

x x x x x x x x x

Q: And when they requested money from you what did you do?

A: As per agreement with our Chief of Police, he said that if there will be transaction, we shoot to the deal as I had with me the marked money, sir.

Q: Why were you in possession of the marked money?

A: That was our agreement on March 3 when I gave feed back to our Chief of Police Caranguian that if they shoot the deal I will give them the marked money, sir.

x x x x x x x x x

Q: So five (5) kilos was worth Twelve Thousand Five Hundred Pesos (₱12,500.00)?

A: Yes, sir.

Q: And you gave half of this to the three suspected pushers?

A: Yes, sir.

Q: Upon giving the amount what did these three (3) men do?

A: We have finally agreed that the complete stuff of marijuana and the remaining balance of the money will be given at the waiting shed in front of the Aparri District Hospital at Toran, Aparri, Cagayan, sir.

x x x x x x x x x

Q: And how long did you stay at the waiting shed of the Aparri District Hospital?

A: At past 12:00 o'clock noon, sir, I was already there and they only arrived at 5:00 o'clock in the afternoon.

Q: After almost five (5) hours of waiting?

A: Yes, sir.

Q: And who arrived?

A: Three (3) suspected pushers on board a motorcycle, sir.

Q: These were the same three (3) persons with whom you concluded earlier a deal regarding the selling of marijuana?

A: Two of those on board the motorcycle were the ones whom I really had a transaction, sir.

Q: Did you come to know who were these two persons?

A: One is Joey Tion *alias* Boy Hapon and the other one is Allan, sir.

Q: What is the surname of this Allan?

A: Letan, sir.

Q: Who was driving the motorcycle then that arrived at the place where you were waiting?

material points by P/Supt. Caranguian,[15] who was part of the buy-bust team that apprehended Joey, Allan, and Ronald on March 4, 1999.

There Was Neither Instigation nor Inducement

Second, there is no showing that Joey was merely prevailed upon to buy *marijuana* in behalf of P/Insp. Castillo. The fact that two test buys were made on March 2 and 3, 1999 shows that Joey

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A: That person who [drove] the motorcycle was not present during the first transaction, sir.

Q: But the two others were present?

A: Yes, sir.

x x x x x x x x x

Q: Now you mentioned the name Joey Tion *alias* Boy Hapon, is he in court?

A: Yes, sir.

Q: Kindly point at him.

Mr. Bialba: The witness is pointing to a man whom he identified as Joey Tion and when asked his name he gave his name as Joey Tion.

x x x x x x x x x

Q: How about Allan Letan, is he in court?

A: Yes, sir.

x x x x x x x x x

Q: What about the driver of the motorcycle the man whom you cannot anymore recall, is he in court?

A: Yes, sir.

x x x x x x x x x

Q: That was your first time to see Ronald Diaz?

A: Yes, sir, when we already gave half of the amount.

Q: Now, when these three (3) men on board a motorcycle arrived what happened?

A: They showed to me the bag and after confirming that it was marijuana I signaled my companions by removing my hat and after they came and frisked them, sir.

Q: The pre-arranged signal was the removing of your hat?

A: Yes, sir.

[15] TSN, December 15, 1999, pp. 7-18.

was involved in selling *marijuana*. Moreover, the testimonies of defense witnesses Allan Letan[16] and Carlito Diaz[17] tend to show that poseur-buyer P/Insp. Castillo and the two teenagers (police informants) with him had indeed met Joey before March 4, 1999. Allan testified that P/Insp. Castillo called for Joey. This belies Joey's testimony that he met poseur-buyer P/Insp. Castillo for the first time in the morning of March 4, 1999, for how could P/Insp. Castillo call him if they had not met earlier?

Carlito Diaz likewise testified to the fact that P/Insp. Castillo talked to Joey. P/Insp. Castillo was already familiar to Joey. Besides, the fact that P/Insp. Castillo called for Joey that morning of March 4, 1999 at the *horno* in Agusi, Camalaniugan shows that they had already met before. This gives credence to P/Insp. Castillo's testimony that, indeed, positive test buys were made the previous two days, with him meeting Joey and Allan face-to-face on March 3, 1999.

Joey, in his testimony, denied selling *marijuana*. Yet, when asked to provide for a large quantity of *marijuana*, he agreed to deliver five kilos of it at the price of PhP 2,500 per kilo. The fact that Joey agreed to deliver five kilos of *marijuana* shows that he believed poseur-buyer P/Insp. Castillo, whom he had met earlier during the March 3, 1999 test buy, to be truly a student of the Lyceum in Aparri and nothing more. In fact, Joey delivered 5.2 kilos of *marijuana* to him in the afternoon of March 4, 1999, after receiving PhP 6,250 or half of the agreed price in the morning of the same day. Thus, we agree with the trial court's finding that Joey would not have readily agreed and admitted to poseur-buyer P/Insp. Castillo that he can sell large quantities of *marijuana* if he (Joey) is not selling *marijuana* and did not know how to source the illegal drug. The fact is, as can be gleaned from the sale of five kilos of *marijuana*, Joey stands to profit from such a sale. It is, thus, clear to us that the *mens rea* came from Joey, who was neither instigated nor induced.

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[16] TSN, April 22, 2002 and May 23, 2002.

[17] TSN, January 29, 2002.

Where the criminal intent originates in the mind of the accused and the criminal offense is completed, the fact that a person, acting as a decoy for the state, or that public officials furnished the accused an opportunity for the commission of the offense, or that the accused is aided in the commission of the crime in order to secure the evidence necessary to prosecute him, there is permissible entrapment and the accused must be convicted. What the law forbids is the inducing of another to violate the law, the "seduction" of an otherwise innocent person into a criminal career. In instigation, the instigator practically induces the would-be accused into the commission of the offense and himself becomes a co-principal, while in entrapment, the peace officer resorts to ways and means to trap and capture the lawbreaker in the execution of the latter's criminal plan.[18]

Besides, we will not be remiss to point out that, in many cases, drug pushers sell their prohibited articles to prospective customers, be they strangers or not, in private as well as in public places, even in daytime.[19] What matters is not the existing familiarity between the buyer and the seller, or the time and venue of the sale, but the fact of agreement as well as the act constituting the sale and delivery of prohibited drugs.[20]

Joey's contention that he gave the whole amount of PhP 6,250 to one Johnny Reyes is beyond belief. He rented the motorbike of Ronald for PhP 250, and it is incredulous, to say the least, that he would spend PhP 250 out of his own pocket just to procure *marijuana* for the mayor through P/Insp. Castillo, as he maintains. And this fact is belied by the confiscation of three PhP 100 bills which formed part of the "marked money" previously photocopied and authenticated by Clerk of Court Calanoga,

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[18] *People v. Jocson*, G.R. No. 169875, December 18, 2007, 540 SCRA 585, 592-593; citing *People v. Doria*, *supra* note 13.

[19] *People v. Wu Tuan Yuan*, G.R. No. 150663, February 5, 2004, 422 SCRA 182, 191; citing *People v. Elamparo*, G.R. No. 121572, March 31, 2000, 329 SCRA 404, 412.

[20] *Id.*; citing *People v. Macuto*, G.R. No. 80112, August 25, 1989, 176 SCRA 762, 768.

and duly presented as evidence during trial. The three bills were presented in court as prosecution Exhibits "A" to "C".[21]

Therefore, we sustain the trial court's finding that Joey's pose that he was instigated by P/Insp. Castillo is without factual and legal basis. The mode of detection and arrest resorted to was entrapment that is perfectly legal.

No Ill Motive from the Buy-Bust Team

Third, there is likewise no showing that the police officers framed up Joey. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the buy-bust operation deserve full faith and credit.[22] Settled is the rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties.[23] The records do not show any allegation of improper motive on the part of the buy-bust team. Thus, the presumption of regularity in the performance of duties of the police officers must be upheld.

Second Core Issue: Act of Selling *Marijuana* Proved Beyond Reasonable Doubt

As to the pivotal issue of whether accused-appellant Joey is guilty of selling *marijuana*, we answer in the affirmative.

In a prosecution for illegal sale of dangerous drugs, the following must be proved: (1) that the transaction took place;

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[21] Records, Formal Offer of Documentary Evidence dated August 13, 2001, Vol. I, pp. 244-248.

[22] *People v. Domingcil*, G.R. No. 140679, January 14, 2004, 419 SCRA 291, 303; citing *People v. Remerata*, G.R. No. 147230, April 29, 2003, 401 SCRA 753, 757.

[23] *People v. Jocson*, *supra* note 18, at 591; citing *People v. Dulay*, *supra* note 11, at 660.

(2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[24] With respect to illegal sale of *marijuana*, its essential elements are: (1) identity of the buyer and the seller, the object of the sale, and the consideration; and (2) delivery of the thing sold and the payment.[25]

The foregoing elements were duly proved during the trial. Thus, we agree with the appellate court's affirmance of the trial court's finding that Joey is guilty beyond reasonable doubt of selling *marijuana*.

There can be no dispute that Joey delivered 5.2 kilos of *marijuana* to poseur-buyer P/Insp. Castillo on March 4, 1999 at around 5:00 p.m. There is likewise no dispute that P/Insp. Castillo paid PhP 6,250 to Joey in the morning of March 4, 1999. Thus, the identities of Joey and poseur-buyer P/Insp. Castillo are certain.

In fact, by foisting the **defense of instigation** and through his own testimony, Joey admitted[26] delivering 5.2 kilos of *marijuana* to poseur-buyer P/Insp. Castillo in the late afternoon of March 4, 1999. He likewise admitted and testified to receiving PhP 6,250 payment of half the contract price for five kilos of *marijuana* from poseur-buyer P/Insp. Castillo. This fact of receiving payment is corroborated by defense witnesses Allan Letan and Carlito Diaz who saw Joey receive an envelope from P/Insp. Castillo in the morning of March 4, 1999.

The identities of Joey, as seller, and P/Insp. Castillo, as poseur-buyer, are, thus, certain. The fact of the payment of PhP 6,250 was proved and admitted by Joey. The delivery of

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[24] *People v. Santos, Jr.*, G.R. No. 175593, October 17, 2007, 536 SCRA 489, 501; *People v. Nazareno*, G.R. No. 174771, September 11, 2007, 532 SCRA 631, 636; *People v. Bandang*, G.R. No. 151314, June 3, 2004, 430 SCRA 570, 579.

[25] *Buenaventura v. People*, G.R. No. 171578, August 8, 2007, 529 SCRA 500, 510; citing *People v. Razul*, G.R. No. 146470, November 22, 2002, 392 SCRA 553, 560.

[26] TSN, October 23, 2001.

5.2 kilos of *marijuana* by Joey to poseur-buyer P/Insp. Castillo was likewise proved and admitted by Joey. With these certainties, it is clear that Joey was caught *in flagrante delicto* of selling *marijuana* to poseur-buyer P/Insp. Castillo. The well-entrenched principle is that the accused commits the crime of illegal sale of drugs as soon as he consummates the sale transaction whether payment precedes or follows delivery of the drugs sold.[27]

Despite the admission of Joey in his testimony that he delivered the *marijuana*, the prosecution is nonetheless tasked to prove the existence, and presentation in court, of the confiscated *marijuana*, the *corpus delicti* and object of the illegal sale. One with the courts *a quo*, we hold that the prosecution has sufficiently carried the burden of proving this beyond reasonable doubt.

The confiscated bricks of *marijuana* were photographed in front of the three accused in the police station, and duly issued a confiscation receipt. The specimens were duly passed on to the Provincial Crime Laboratory Office, Regional Command 02 in Ilagan, Isabela, covered by a letter-request dated April 8, 1999 for laboratory testing and confirmation of the suspected *marijuana*. The laboratory tests on the specimens were conducted by forensic chemist P/SInsp. Luis of the Provincial Crime Laboratory Office, who issued Physical Science Report No. D-53-99 confirming the specimens to be *marijuana*. During her testimony[28] on March 20, 2001, P/SInsp. Luis also presented in court the bricks of *marijuana*, the object of the illegal sale.

Hence, the integrity of the custody of the specimens composed of bricks of *marijuana* has not been broken from the police station to the Provincial Crime Laboratory Office until their presentation in court during the trial. The bricks of *marijuana* were presented as prosecution Exhibits "G" to "L".[29] The confiscation receipt issued by the arresting officers and signed

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[27] *People v. Li Yin Chu*, G.R. No. 143793, February 17, 2004, 423 SCRA 158, 170; citing *People v. Aspiras*, G.R. Nos. 138382-84, February 12, 2002, 376 SCRA 546, 555-556.

[28] TSN, March 20, 2001.

[29] Records, Formal Offer of Documentary Evidence, *supra* note 21.

by the accused was presented as prosecution Exhibit "M",[30] and the letter-request for the laboratory tests of the specimens as prosecution Exhibit "N",[31] while Physical Science Report No. D-53-99 is prosecution Exhibit "O".[32]

Joey contends that the presentation of the bricks of *marijuana* is barred by prescription and in violation of Sec. 21(2) and (3) of RA 9165[33] that requires the submission and examination of the specimens within 24 hours from confiscation, and the examination report under oath by the one who conducted the examination, also issued within 24 hours after receipt of the specimens.

Joey's contention is specious at best. For one, the confiscation of the *marijuana* on March 4, 1999 and its examination and

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[30] *Id*.

[31] *Id*.

[32] *Id*.

[33] SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) x x x

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided*, *however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours.

presentation in open court during the testimony of P/SInsp. Luis on March 20, 2001 were made way before the passage of RA 9165 in 2002. For another, the principle that whatever is favorable to the accused must be applied retroactively does not obtain in this instance, for its applicability is primarily on the substantive aspect. The procedure followed in the custody and examination of suspected dangerous drug specimens before the passage of RA 9165 and before the creation of the Philippine Drug Enforcement Agency cannot be put aside by the mere operation of the later law. As aptly put by the appellate court:

> The appellant is actually invoking the provisions of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002). Said law was enacted only on 07 June 2002. It was on 04 March 1999 that the appellant was caught violating Section 4, Article II of R.A. No. 6425, as amended by R.A. No. 7659 and was charged accordingly. Hence, the police officers cannot be faulted for alleged non-observance of a law (R.A. No. 9165) that was not yet in existence.[34]

Moreover, the prosecution, at the end of presentation of its evidence, filed its Formal Offer of Documentary Evidence on August 13, 2001, way before the passage of RA 9165.

Anent Joey's assertion that the three PhP 100 bills were planted, suffice it to say that the presentation of "marked money" is not essential in the prosecution of the crime of selling dangerous drugs. The marked money used in the buy-bust operation is not indispensable in drug cases; it is merely corroborative evidence.[35] Neither law nor jurisprudence requires the presentation of any of the money used in a "buy-bust" operation.[36] Besides, payment of consideration is immaterial in the distribution of illicit drugs.[37]

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

[35] *People v. Domingcil*, *supra* note 22, at 305; citing *People v. Cueno*, G.R. No. 128277, November 16, 1998, 298 SCRA 621, 631-632.

[36] *People v. Yang*, G.R. No. 148077, February 16, 2004, 423 SCRA 82, 93; citing *People v. Astudillo*, G.R. No. 140088, November 13, 2002, 391 SCRA 536, 555.

[37] *Id.*; citing *People v. Rodriguez*, G.R. No. 144399, March 20, 2002, 379 SCRA 607, 620.

In a futile effort to extricate himself, Joey posits that the Philippine *Cannavissativa* or *marijuana* is not a prohibited drug under RA 6425, as amended. The appellate court aptly brushed his position aside by citing Sec. 2(e)[38] and (i)[39] of RA 6425, as amended, which clearly and categorically classified Philippine *Cannavissativa* or *marijuana* as a prohibited drug being a derivative of the plant *cannabis sativa L.*, otherwise known as "Indian hemp."

With the foregoing disquisition, it is beyond any quibble of doubt that accused-appellant Joey is, indeed, guilty of violation of Sec. 4, Art. II of RA 6425, as amended.

Finally, with respect to the penalty, Sec. 4, Art. II, in relation to Sec. 20, of RA 6425, as amended by RA 7659, provides:

> Sec. 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs*. – The **penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos** shall be imposed upon any person who, unless authorized by law shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as broker in any such transactions.
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> x x x x x x x x x

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[38] (e) "Dangerous Drugs" — refers to either:

1. "Prohibited drug" which includes opium and its active components and derivatives, such as heroin and morphine; coca leaf and its derivatives, principally cocaine; alpha and beta eucaine, hallucinogenic drugs, such as mescaline, lysergic acid diethylamide (LSD) and other substances producing similar effects; **Indian hemp and its derivatives**; all preparations made from any of the foregoing; and other drugs and chemical preparations, whether natural or synthetic, with the physiological effects of a narcotic or a hallucinogenic drug. (*As amended by B.P. Blg. 179, March 12, 1982.*)

[39] (i) "**Indian hemp**" — **otherwise known as "Marijuana"**, **embraces every kind, class, genus or specie of the plant *cannabis sativa L.***, including *cannabis Americana*, *hashish*, *bhang*, *guaza*, *churrus* and *ganjab*, **and embraces every kind, class and character thereof**, whether dried or fresh and flowering or fruiting tops or any parts or portions of the plant, seeds thereof, and all its geographic varieties, whether as a reefer, resin, extract tincture or in any form whatsoever. (*As amended by P.D. No. 1708 and B.P. Blg. 179, March 2, 1982.*)

Sec. 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime*. – The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

x x x x x x x x x

5. **750 grams or more of Indian hemp or marijuana**;

x x x x x x x x x

8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultations/hearings conducted for the purpose. (Emphasis supplied.)

On the basis of the above provisions of law, the penalty imposed by the courts *a quo* upon Joey, which is *reclusion perpetua*, is proper, considering that the *marijuana* confiscated in this case as a result of the buy-bust operation weighs more than 750 grams, *i.e.*, 5.2 kilograms. The penalty of death cannot be imposed anymore due to its abolition under RA 9346.

In the same vein, the fine of PhP 500,000 imposed by the courts *a quo* on accused-appellant Joey is also in order, as this fine is the minimum of the range of fines imposable on any person who sells prohibited drugs without any authority as clearly provided in Sec. 4, Art. II of RA 6425, as amended.

The stiff penalties that the crime of dealing with illegal drugs carry stemmed no doubt from the reality that this menace has destroyed the lives of many members of our society. It has brought so much pain and suffering not only to its victims but also to their families. Many drug users are, in fact, even induced to commit criminal acts in order to sustain their vice.

For this reason, the government is exerting all efforts to put an end to the trade on prohibited drugs, down to the street level. This will come to naught if its perpetrators will be allowed to get off the hook, so to speak, by imputing ill motives or some other consideration on the part of police officers who are simply doing their best to curtail their illegal activities.

WHEREFORE, the appeal of accused-appellant Joey Tion *y* Cabaddu is hereby *DENIED*. Accordingly, the CA's September 15, 2005 Decision and January 2, 2006 Resolution in CA-G.R. CR-H.C. No. 00212 are *AFFIRMED IN TOTO*. Costs against accused-appellant.

SO ORDERED.

*Corona (Chairperson), Peralta, Del Castillo,** and *Villarama, Jr.,*** *JJ.,* concur.

FIRST DIVISION

[G.R. No. 179554. December 16, 2009]

METROPOLITAN MANILA DEVELOPMENT AUTHORITY, *petitioner, vs.* **TRACKWORKS RAIL TRANSIT ADVERTISING, VENDING AND PROMOTIONS, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT FOR ADVERTIZING SERVICES, A VALID EXERCISE OF OWNERSHIP IN CASE AT BAR.— That Trackworks derived its right to install its billboards, signages and other advertizing media in the MRT3 from MRTC's authority under the BLT agreement to develop commercial premises in the MRT3 structure or to obtain advertising income therefrom is no longer debatable. Under the BLT agreement, indeed, MRTC owned the MRT3 for 25 years, upon the expiration of which MRTC would transfer ownership of the MRT3 to the Government. Considering that MRTC remained to be the owner of the MRT3

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* Additional member per Special Order No. 805 dated December 4, 2009.

** Additional member per Special Order No. 802 dated November 12, 2009.

during the time material to this case, and until this date, MRTC's entering into the contract for advertising services with Trackworks was a valid exercise of ownership by the former. In fact, in *Metropolitan Manila Development Authority v. Trackworks Rail Transit Advertising, Vending & Promotions, Inc.,* this Court expressly recognized Trackworks' right to install the billboards, signages and other advertising media pursuant to said contract. The latter's right should, therefore, be respected.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; METRO MANILA DEVELOPMENT AUTHORITY (MMDA); FUNCTIONS ARE ADMINISTRATIVE IN NATURE.—** It is futile for MMDA to simply invoke its legal mandate to justify the dismantling of Trackworks' billboards, signages and other advertising media. MMDA simply had no power on its own to dismantle, remove, or destroy the billboards, signages and other advertising media installed on the MRT3 structure by Trackworks. In *Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.*, *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, and *Metropolitan Manila Development Authority v. Garin*, the Court had the occasion to rule that MMDA's powers were limited to the formulation, coordination, regulation, implementation, preparation, management, monitoring, setting of policies, installing a system, and administration. Nothing in Republic Act No. 7924 granted MMDA police power, let alone legislative power. Clarifying the real nature of MMDA, the Court held: "xxx The MMDA is, as termed in the charter itself, a 'development authority'. It is an agency created for the purpose of laying down policies and coordinating with the various national government agencies, people's organizations, non-governmental organizations and the private sector for the efficient and expeditious delivery of basic services in the vast metropolitan area. *All its functions are administrative in nature* and these are actually summed up in the charter itself, *viz*: Sec.2. *Creation of the Metropolitan Manila Development Authority*.- xxx. The MMDA shall perform planning, monitoring and coordinative functions, and in the process exercise regulatory and supervisory authority over the delivery of metro-wide services within Metro Manila, without diminution of the autonomy of local government units concerning purely local matters."

3. **ID.; ID.; ID.; ID.; MMDA REGULATION AND CIRCULAR PROHIBITING THE POSTING AND INSTALLATION OF BILLBOARDS, SIGNAGES AND OTHER ADVERTIZING MEDIA; INAPPLICABLE IN CASE AT BAR.—** The Court also agrees with the CA's ruling that MMDA Regulation No. 96-009 and MMC Memorandum Circular No. 88-09 did not apply to Trackworks' billboards, signages and other advertising media. The prohibition against posting, installation and display of billboards, signages and other advertising media applied only to public areas, but MRT3, being private property pursuant to the BLT agreement between the Government and MRTC, was not one of the areas as to which the prohibition applied. Moreover, MMC Memorandum Circular No. 88-09 did not apply to Trackworks' billboards, signages and other advertising media in MRT3, because it did not specifically cover MRT3, and because it was issued a year prior to the construction of MRT3 on the center island of EDSA. Clearly, MMC Memorandum Circular No. 88-09 could not have included MRT3 in its prohibition.

4. **CIVIL LAW; PRESIDENTIAL DECREE NO. 1096 (BUILDING CODE); ENFORCEMENT OF THE PROVISIONS THEREOF IS LODGED IN THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS NOT IN THE MMDA.—** The power to enforce the provisions of the *Building Code* was lodged in the Department of Public Works and Highways (DPWH), not in MMDA, considering the law's following provision, thus: "Sec. 201. Responsibility *for Administration and Enforcement*. – The administration and enforcement of the provisions of this Code including the imposition of penalties for administrative violations thereof is hereby vested in the Secretary of Public Works, Transportation and Communications, hereinafter referred to as the 'Secretary.'" There is also no evidence showing that MMDA had been delegated by DPWH to implement the *Building Code*.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Madrid Danao & Associates for respondent.

RESOLUTION

BERSAMIN, *J.*:

This case concerns whether the Metropolitan Manila Development Authority (MMDA) could unilaterally dismantle the billboards, signages and other advertizing media in the structures of the Metro Rail Transit 3 (MRT3) installed by respondent advertising company by virtue of its existing contract with the owner of the MRT3.

The trial and appellate courts ruled that MMDA did not have the authority to dismantle. MMDA is now before the Court to assail such adverse ruling.

Antecedents

In 1997, the Government, through the Department of Transportation and Communications, entered into a build-lease-transfer agreement (BLT agreement) with Metro Rail Transit Corporation, Limited (MRTC) pursuant to Republic Act No. 6957 (*Build, Operate and Transfer Law*), under which MRTC undertook to build MRT3 subject to the condition that MRTC would own MRT3 for 25 years, upon the expiration of which the ownership would transfer to the Government.

The BLT agreement stipulated, among others, that MRTC could build and develop commercial premises in the MRT3 structures, or obtain advertising income therefrom, *viz*:

> 16.1. Details of Development Rights. DOTC hereby confirms and awards to Metro Rail the rights to (a) develop commercial premises in the Depot and the air space above the Stations, which shall be allowed to such height as is legally and technically feasible, (b) lease or sub-lease interests or assign such interests in the Depot and such air space and (c) obtain any advertising income from the Depot and such air space and LRTS Phase I….
>
> "LRTS Phase I" means the rail transport system comprising about 16.9 line kilometers extending from Taft Avenue, Pasay City, to North Avenue, Quezon City, occupying a strip in the center of EDSA approximately 10.5 meters wide (approximately 12 meters wide at

or around the Boni Avenue, Santolan and Buendia Stations), plus about 0.1 to 0.2 line kilometers extending from the North Avenue Station to the Depot, together with the Stations, 73 Light Rail Vehicles and all ancillary plant, equipment and facilities, as more particularly detailed in the Specifications.

16.2. Assignment of Rights. During the Development Rights Period, Metro Rail shall be entitled to assign all or any of its rights, titles and interests in the Development Rights to bona fide real estate developers. In this connection, Metro Rail may enter into such development, lease, sub-lease or other agreements or contracts relating to the Depot and the air space above the Stations (the space not needed for all or any portion of the operation of the LRTS) for all or any portion of the Development Rights Period….

In 1998, respondent Trackworks Rail Transit Advertising, Vending & Promotions, Inc. (Trackworks) entered into a contract for advertising services with MRTC. Trackworks thereafter installed commercial billboards, signages and other advertizing media in the different parts of the MRT3. In 2001, however, MMDA requested Trackworks to dismantle the billboards, signages and other advertizing media pursuant to MMDA Regulation No. 96-009, whereby MMDA prohibited the posting, installation and display of any kind or form of billboards, signs, posters, streamers, in any part of the road, sidewalk, center island, posts, trees, parks and open space. After Trackworks refused the request of MMDA, MMDA proceeded to dismantle the former's billboards and similar forms of advertisement.

On March 1, 2002, Trackworks filed against MMDA in the Regional Trial Court (RTC) in Pasig City an injunction suit (with prayer for the issuance of a temporary restraining order [TRO] and preliminary injunction), docketed as Civil Case No. 68864.

On March 6, 2002, the RTC (Branch 155) issued a TRO, enjoining MMDA from dismantling or destroying Trackworks' billboards, signages and other advertizing media. On March 25, 2002, the RTC issued a writ of preliminary injunction for the same purpose.

Without filing a *motion for reconsideration* to challenge the RTC's issuances, MMDA brought a petition for *certiorari* and

prohibition before the Court of Appeals (CA), docketed as C.A.-G.R. SP No. 70932, but the CA denied the petition and affirmed the RTC on August 31, 2004. The CA ultimately denied MMDA's *motion for reconsideration* through its resolution issued on March 14, 2005.

Thence, MMDA appealed to this Court (G.R. No. 167514), which denied MMDA's petition for review on October 25, 2005.[1]

Ruling of the RTC

In the meanwhile, on October 10, 2005, the RTC (Branch 155) rendered its decision permanently enjoining MMDA from dismantling, removing or destroying the billboards, signages and other advertizing media installed by Trackworks on the interior and exterior structures of the MRT3.[2]

Ruling of the CA

MMDA appealed the RTC's decision to the CA.

On April 30, 2007, the CA denied the MMDA's appeal,[3] holding that Trackworks' right to install billboards, signages and other advertizing media on the interior and exterior structures of the MRT3 must be protected by a writ of permanent injunction; and that MMDA had no power to dismantle, remove or destroy Trackworks' billboards, signages and other advertizing media.[4]

MMDA moved for reconsideration, but the CA resolution denied the *motion for reconsideration* on September 3, 2007.[5]

Hence, this appeal by petition for review.

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[1] *Metro Manila Development Authority v. Trackworks Rail Transit Advertising, Vending & Promotions, Inc.,* G.R. No. 167514, 25 October 2005, 474 SCRA 331.

[2] *Rollo*, pp. 15-16.

[3] *Id.*, pp. 10-22.

[4] *Id.*, p. 17.

[5] *Id.*, p. 24.

Issues

MMDA claims that its mandate under its charter[6] of formulating, coordinating and monitoring of policies, standards, progress and projects for the use of thoroughfares and the promotion of safe and convenient movement of persons and goods prompted its issuance of MMDA Regulation No. 96-009, which reads in part:

> h.) It is unlawful for any person/s, private or public corporations, advertising and promotions companies, movie producers, professionals and service contractors to post, install, display any kind or form of billboards, signs, posters, streamers, professional service advertisements and other visual clutters in any part of the road, sidewalk, center island, posts, trees parks and open space.

MMDA avers that the conversion of the center island of Epifanio Delos Santos Avenue (EDSA) into the carriageway of the MRT3 line did not exempt the EDSA center island from the coverage of the MMDA regulation;[7] that the Government's grant of development rights to MRTC was not an abdication of its right to regulate, and, therefore, the development of the MRT3 remained subject to all existing and applicable national and local laws, ordinances, rules and regulations;[8] that MMDA was merely implementing existing and applicable laws;[9] that Trackworks' advertising materials were placed indiscriminately and without due regard to safety, and as such might be classified as obstructions and distractions to the motorists traversing EDSA;[10] and that the interests of a few should not prevail over the good of the greater number in the community whose safety and general welfare MMDA was mandated to protect.[11]

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[6] Sec. 3 (b), Republic Act No. 7924.

[7] *Rollo*, p. 42.

[8] *Id.*, p. 44.

[9] *Id.*, p. 45.

[10] *Id.*, p. 49.

[11] *Ibid.*

Trackworks maintains, on the other hand, that MMDA's petition was defective for its failure to raise any genuine question of law; and that the CA's decision dated April 30, 2007 was valid and correct.[12]

Ruling of the Court

The petition has no merit.

That Trackworks derived its right to install its billboards, signages and other advertising media in the MRT3 from MRTC's authority under the BLT agreement to develop commercial premises in the MRT3 structure or to obtain advertising income therefrom is no longer debatable. Under the BLT agreement, indeed, MRTC owned the MRT3 for 25 years, upon the expiration of which MRTC would transfer ownership of the MRT3 to the Government.

Considering that MRTC remained to be the owner of the MRT3 during the time material to this case, and until this date, MRTC's entering into the contract for advertising services with Trackworks was a valid exercise of ownership by the former. In fact, in *Metropolitan Manila Development Authority v. Trackworks Rail Transit Advertising, Vending & Promotions*, *Inc.,*[13] this Court expressly recognized Trackworks' right to install the billboards, signages and other advertising media pursuant to said contract. The latter's right should, therefore, be respected.

It is futile for MMDA to simply invoke its legal mandate to justify the dismantling of Trackworks' billboards, signages and other advertising media. MMDA simply had no power on its own to dismantle, remove, or destroy the billboards, signages and other advertising media installed on the MRT3 structure by Trackworks. In *Metropolitan Manila Development Authority v. Bel-Air Village Association*, *Inc.*,[14] *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*,[15]

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[12] *Id.*, pp. 75-102.

[13] G.R. No. 167514, 25 October 2005, 441 SCRA 331.

[14] G.R. No. 135962, 27 March 2000, 328 SCRA 837.

[15] G.R. Nos. 170656 and 170657, 15 August 2007, 530 SCRA 341.

and *Metropolitan Manila Development Authority v. Garin*,[16] the Court had the occasion to rule that MMDA's powers were limited to the formulation, coordination, regulation, implementation, preparation, management, monitoring, setting of policies, installing a system, and administration. Nothing in Republic Act No. 7924 granted MMDA police power, let alone legislative power.[17]

Clarifying the real nature of MMDA, the Court held:

> xxx The MMDA is, as termed in the charter itself, a "development authority." It is an agency created for the purpose of laying down policies and coordinating with the various national government agencies, people's organizations, non-governmental organizations and the private sector for the efficient and expeditious delivery of basic services in the vast metropolitan area. *All its functions are administrative in nature* and these are actually summed up in the charter itself, *viz*:
>
> > Sec.2. *Creation of the Metropolitan Manila Development Authority*.– xxx. The MMDA shall perform planning, monitoring and coordinative functions, and in the process exercise regulatory and supervisory authority over the delivery of metro-wide services within Metro Manila, without diminution of the autonomy of local government units concerning purely local matters.[18]

The Court also agrees with the CA's ruling that MMDA Regulation No. 96-009 and MMC Memorandum Circular No. 88-09 did not apply to Trackworks' billboards, signages and other advertising media. The prohibition against posting, installation and display of billboards, signages and other advertising media applied only to public areas, but MRT3, being private property pursuant to the BLT agreement between the Government and MRTC, was not one of the areas as to which the prohibition applied. Moreover, MMC Memorandum Circular No. 88-09 did not apply to Trackworks' billboards, signages

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[16] G.R. No. 130230, 15 April 2005, 456 SCRA 176.

[17] *Supra,* note 14, p. 849.

[18] *Id.*, pp. 849-850.

and other advertising media in MRT3, because it did not specifically cover MRT3, and because it was issued a year prior to the construction of MRT3 on the center island of EDSA. Clearly, MMC Memorandum Circular No. 88-09 could not have included MRT3 in its prohibition.

MMDA's insistence that it was only implementing Presidential Decree No. 1096 (*Building Code*) and its implementing rules and regulations is not persuasive. The power to enforce the provisions of the *Building Code* was lodged in the Department of Public Works and Highways (DPWH), not in MMDA, considering the law's following provision, thus:

> Sec. 201. Responsibility *for Administration and Enforcement*. — The administration and enforcement of the provisions of this Code including the imposition of penalties for administrative violations thereof is hereby vested in the Secretary of Public Works, Transportation and Communications, hereinafter referred to as the "Secretary."

There is also no evidence showing that MMDA had been delegated by DPWH to implement the *Building Code*.

WHEREFORE, we deny the petition for review, and affirm the decision dated April 30, 2007 and the resolution dated September 3, 2007.

Costs against the petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Leonardo-de Castro, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 181571. December 16, 2009]

JUNO BATISTIS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE MODE OF REVIEW ON APPEAL OF A DECISION IN A CRIMINAL CASE WHEREIN THE COURT OF APPEALS IMPOSES A PENALTY OTHER THAN DEATH, *RECLUSION PERPETUA* OR LIFE IMPRISONMENT.—** Pursuant to Section 3, Rule 122, and Section 9, Rule 45, of the *Rules of Court*, the review on appeal of a decision in a criminal case, wherein the CA imposes a penalty *other than* death, *reclusion perpetua,* or life imprisonment, is by petition for review on *certiorari.* A petition for review on *certiorari* raises only questions of law.

2. **ID.; ID.; ID.; ID.; SHOULD RAISE ONLY THE ERRORS COMMITTED BY THE COURT OF APPEALS, NOT THE ERRORS OF THE REGIONAL TRIAL COURT.—** The petition for review replicates Batistis' *appellant's brief* filed in the CA, a true indication that the errors he submits for our review and reversal are those he had attributed to the RTC. He thereby rests his appeal on his rehashed arguments that the CA already discarded. His appeal is, therefore, improper, considering that his petition for review on *certiorari* should raise only the errors committed by the CA as the appellate court, not the errors of the RTC.

3. **ID.; ID.; ID.; ID.; LIMITED TO REVIEW OF LEGAL QUESTIONS; EXCEPTIONS.—** Batistis' assigned errors stated in the petition for review on *certiorari* require a re-appreciation and re-examination of the trial evidence. As such, they raise issues evidentiary and factual in nature. The appeal is dismissible on that basis, because, *one*, the petition for review thereby violates the limitation of the issues to

only legal questions, and, *two*, the Court, not being a trier of facts, will not disturb the factual findings of the CA, unless they were mistaken, absurd, speculative, conflicting, tainted with grave abuse of discretion, or contrary to the findings reached by the court of origin.

4. ID.; ID.; ID.; ID.; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— Whether a question of law or a question of fact is involved is explained in *Belgica v. Belgica*: "x x x [t]here exists a question of law when there is doubt on what the law applicable to a certain set of facts is. Questions of fact, on the other hand, arise when there is an issue regarding the truth or falsity of the statement of facts. Questions on whether certain pieces of evidence should be accorded probative value or whether the proofs presented by one party are clear, convincing and adequate to establish a proposition are issues of fact. Such questions are not subject to review by this Court. As a general rule, we review cases decided by the CA only if they involve questions of law raised and distinctly set forth in the petition."

5. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, GENERALLY NOT DISTURBED ON APPEAL.— The factual findings of the RTC, its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given high respect, if not conclusive effect, unless cogent facts and circumstances of substance, which if considered, would alter the outcome of the case, were ignored, misconstrued or misinterpreted. To accord with the established doctrine of finality and bindingness of the trial court's findings of fact, we do not disturb such findings of fact of the RTC, particularly after their affirmance by the CA, for Batistis, as appellant, did not sufficiently prove any extraordinary circumstance justifying a departure from such doctrine.

6. MERCANTILE LAW; INTELLECTUAL PROPERTY LAW; INTELLECTUAL PROPERTY CODE; INFRINGEMENT OF TRADEMARK; DULY ESTABLISHED IN CASE AT BAR.— Article 155 of the *Intellectual Property Code* identifies the acts constituting *infringement of trademark* x x x. Harvey Tan, Operations Manager of Pedro Domecq, S.A. whose task involved the detection of counterfeit products in the Philippines, testified that the seized *Fundador* brandy, when compared

with the genuine product, revealed several characteristics of counterfeiting, namely: (a) the Bureau of Internal Revenue (BIR) seal label attached to the confiscated products did not reflect the word *tunay* when he flashed a black light against the BIR label; (b) the "tamper evident ring" on the confiscated item did not contain the word *Fundador*; and (c) the word *Fundador* on the label was printed flat with sharper edges, unlike the raised, actually embossed, and finely printed genuine *Fundador* trademark. There is no question, therefore, that Batistis exerted the effort to make the counterfeit products look genuine to deceive the unwary public into regarding the products as genuine. The buying public would be easy to fall for the counterfeit products due to their having been given the appearance of the genuine products, particularly with the difficulty of detecting whether the products were fake or real if the buyers had no experience and the tools for detection, like black light. He thereby infringed the registered *Fundador* trademark by the colorable imitation of it through applying the dominant features of the trademark on the fake products, particularly the two bottles filled with *Fundador* brandy. His acts constituted *infringement of trademark* as set forth in Section 155 x x x.

7. **CRIMINAL LAW; INDETERMINATE SENTENCE LAW; IMPOSITION OF AN INDETERMINATE SENTENCE IS MANDATORY; RATIONALE.—** The straight penalty the CA imposed was contrary to the *Indeterminate Sentence Law,* whose Section 1 requires that the penalty of imprisonment *should be* an indeterminate sentence. According to *Spouses Bacar v. Judge de Guzman,Jr.*, the imposition of an indeterminate sentence with maximum and minimum periods in criminal cases not excepted from the coverage of the *Indeterminate Sentence Law* pursuant to its Section 2 is mandatory, *viz*: "The need for specifying the minimum and maximum periods of the indeterminate sentence is to prevent the unnecessary and excessive deprivation of liberty and to enhance the economic usefulness of the accused, since he may be exempted from serving the entire sentence, depending upon his behavior and his physical, mental, and moral record. **The requirement of imposing an indeterminate sentence in all criminal offenses whether punishable by the *Revised Penal Code* or by special laws, with definite minimum and maximum terms, as the Court deems proper within the**

legal range of the penalty specified by the law must, therefore, be deemed mandatory." Indeed, the imposition of an indeterminate sentence is mandatory.

8. ID.; ID.; ID.; EXCEPTION; INAPPLICABLE IN CASE AT BAR.— We are aware that an exception was enunciated in *People v. Nang Kay,* a prosecution for illegal possession of firearms punished by a special law (*that is*, Section 2692, Revised Administrative Code, as amended by Commonwealth Act 56 and Republic Act No. 4) with imprisonment of not less than five years nor more than ten years. There, the Court *sustained* the straight penalty of five years and one day imposed by the trial court (Court of First Instance of Rizal) because the application of the *Indeterminate Sentence Law* would be unfavorable to the accused by lengthening his prison sentence. Yet, we cannot apply the *Nang Kay* exception herein, even if this case was a prosecution under a special law like that in *Nang Kay*. Firstly, the trial court in *Nang Kay* could well and lawfully have given the accused the lowest prison sentence of five years because of the mitigating circumstance of his voluntary plea of guilty, but, herein, both the trial court and the CA did not have a similar circumstance to justify the lenity towards the accused. Secondly, the large number of *Fundador* articles confiscated from his house (namely, 241 empty bottles of *Fundador*, 163 *Fundador* boxes, a half sack full of *Fundador* plastic caps, and two filled bottles of *Fundador* Brandy) clearly demonstrated that Batistis had been committing a grave economic offense over a period of time, thereby deserving for him the indeterminate, rather than the straight and lower, penalty.

APPEARANCES OF COUNSEL

Edgardo Puertollano Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

On January 23, 2006, the Regional Trial Court (RTC), Branch 24, in Manila convicted Juno Batistis for violations of

Section 155 (*infringement of trademark*) and Section 168 (*unfair competition*) of the *Intellectual Property Code* (Republic Act No. 8293).[1]

On September 13, 2007, the Court of Appeals (CA) affirmed the conviction for *infringement of trademark*, but reversed the conviction for *unfair competition* for failure of the State to prove guilt beyond reasonable doubt.[2]

Batistis now appeals *via* petition for review on *certiorari* to challenge the CA's affirmance of his conviction for *infringement of trademark*.

We affirm the conviction, but we modify the penalty by imposing an indeterminate sentence, conformably with the *Indeterminate Sentence Law* and pertinent jurisprudence.

Antecedents

The *Fundador* trademark characterized the brandy products manufactured by Pedro Domecq, S.A. of Cadiz, Spain.[3] It was duly registered in the Principal Register of the Philippines Patent Office on July 12, 1968 under Certificate of Registration No. 15987,[4] for a term of 20 years from November 5, 1970. The registration was renewed for another 20 years effective November 5, 1990.[5]

Allied Domecq Philippines, Inc., a Philippine corporation exclusively authorized[6] to distribute *Fundador* brandy products imported from Spain wholly in finished form,[7] initiated this case

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[1] *Rollo,* pp. 35-44.

[2] *Id.*, pp. 11-29.

[3] Records, p. 35.

[4] *Id.,* p. 71.

[5] *Id.,* p. 31 (*certification* of the Chief, Patent/Trademark Registry Division, Intellectual Property Office).

[6] *Id.*, pp. 180-184 (*Agreement for the Distribution in Philippines of Jerez Wines and Brandies Domecq*).

[7] *Id.,* p. 186.

against Batistis. Upon its request, agents of the National Bureau of Investigation (NBI) conducted a test-buy in the premises of Batistis, and thereby confirmed that he was actively engaged in the manufacture, sale and distribution of counterfeit *Fundador* brandy products.[8] Upon application of the NBI agents based on the positive results of the test-buy,[9] Judge Antonio M. Eugenio, Jr. of the Manila RTC issued on December 20, 2001 Search Warrant No. 01-2576,[10] authorizing the search of the premises of Batistis located at No.1664 Onyx St., San Andres Bukid, Sta. Ana, Manila. The search yielded 20 empty *Carlos I* bottles, 10 empty bottles of *Black Label* whiskey, two empty bottles of *Johnny Walker Swing*, an empty bottle of *Remy Martin XO*, an empty bottle of *Chabot*, 241 empty *Fundador* bottles, 163 boxes of *Fundador*, a half sack of *Fundador* plastic caps, two filled bottles of *Fundador* brandy, and eight cartons of empty *Jose Cuervo* bottles.[11]

The Office of the City Prosecutor of Manila formally charged Batistis in the RTC in Manila with two separate offenses, namely, *infringement of trademark* and *unfair competition*, through the following information, to wit:

That on or about December 20, 2001, in the City of Manila, Philippines, the said accused, being then in possession of two hundred forty one (241) empty Fundador bottles, one hundred sixty three Fundador boxes, one half (½) sack of Fundador plastic caps, and two (2) Fundador bottles with intention of deceiving and defrauding the public in general and Allied Domecq Spirits and Wines and Allied Domecq Philippines, Inc. represented by Atty. Leonardo P. Salvador, a corporation duly organized and existing under the laws of the Republic of the Philippines and engaged in manufacturing of Fundador Brandy under license of Pedro Domecq, S.A. Cadiz, Spain, and/or copyright owner of the said product, did then and there wilfully, unlawfully and feloniously reproduce, sell and offer for sale, without prior authority and consent of said manufacturing company, the accused

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[8] *Id.,* pp. 16, 18-19, 20.

[9] *Id.,* pp. 51-52.

[10] *Id.*, pp. 49-50.

[11] *Id.,* pp. 39-40 (*return of the search warrant*); p. 37 (*receipt/inventory of property/item seized*).

giving their own low quality product the general appearance and other features of the original Fundador Brandy of the said manufacturing company which would be likely induce the public to believe that the said fake Fundador Brandy reproduced and/or sold are the real Fundador Brandy produced or distributed by the Allied Domecq Spirits and Wines Limited, U.K. and Allied Domecq Philippines, Inc. to the damage and prejudice of the latter and the public.

Contrary to law.[12]

With Batistis pleading *not guilty* on June 3, 2003,[13] the RTC proceeded to trial. On January 23, 2006, the RTC found Batistis guilty beyond reasonable doubt of *infringement of trademark* and *unfair competition*, *viz*:

ACCORDINGLY, this Court finds the accused JUNO BATISTIS Guilty Beyond Reasonable Doubt of the crime of Violation of Section 155 of the Intellectual Property Code and hereby sentences him to suffer the penalty of imprisonment of TWO (2) YEARS and to pay a fine of FIFTY THOUSAND (₱50,000.00) PESOS.

This Court likewise finds accused JUNO BATISTIS Guilty Beyond Reasonable Doubt of the crime of Violation of Section 168 (sic) penalty of imprisonment of TWO (2) YEARS and to pay a fine of FIFTY THOUSAND (Php50,000.00) PESOS.

Accused is further ordered to indemnify the private complainant the sum of TWENTY-FIVE (Php25,000.00) PESOS as actual damages.

The following items recovered from the premises of the accused and subject of the case are hereby ordered destroyed, pursuant to existing rules and regulations:

Twenty (20) empty Carlos 1 bottles
Ten (10) Black Label empty bottles
Two (2) empty bottles of Jhonny (sic) Walker Swing
One(1) empty bottle of Remy Martin XO
One (1) empty bottle of Chabot
Two hundred forty-one (241) empty Fundador bottles
One hundred sixty-three (163) Fundador boxes
One half (½) sack of Fundador plastic caps, and

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[12] *Id.,* p. 1.

[13] *Id.*, p. 225.

Two (2) filled Fundador bottles
Eight (8) boxes of empty Jose Cuervo bottles

WITH COSTS AGAINST ACCUSED

SO ORDERED.[14]

Batistis appealed to the CA, which, on September 13, 2007, affirmed his conviction for *infringement of trademark*, but acquitted him of *unfair competition*,[15] disposing:

WHEREFORE, premises considered, the Appeal of Appellant JUNO BATISTIS is hereby PARTIALLY GRANTED. The challenged Decision is AFFIRMED in so far as the charge against him for Violation of Section 155 of the Intellectual Property Code is concerned.

However, for failure of the prosecution to prove to a moral certainty the guilt of the said Appellant, for violation of Section 168 of the same code a judgment of ACQUITTAL is hereby rendered in his favor.

SO ORDERED.[16]

After the CA denied his *motion for reconsideration*, Batistis brought this appeal.

Issue

Batistis contends that:

THE REGIONAL TRIAL COURT ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF THE SELF-SERVING AFFIDAVITS AND TESTIMONIES OF THE POLICE OFFICERS WHO CONDUCTED THE RAID ON THE HOUSE OF THE ACCUSED.

He submits that the only direct proofs of his guilt were the self-serving testimonies of the NBI raiding team; that he was not present during the search; that one of the NBI raiding agents failed to immediately identify him in court; and that aside from the two bottles of *Fundador* brandy, the rest of the confiscated items were not found in his house.

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[14] *Id.*, pp. 419-420.

[15] *Id.*, p. 28.

[16] *Id.,* p. 28.

Ruling

The petition for review has no merit.

1.
Appeal confined only to Questions of Law

Pursuant to Section 3,[17] Rule 122, and Section 9,[18] Rule 45, of the *Rules of Court*, the review on appeal of a decision in a criminal case, wherein the CA imposes a penalty *other than* death, *reclusion perpetua,* or life imprisonment, is by petition for review on *certiorari.*

A petition for review on *certiorari* raises only questions of law. Sec. 1, Rule 45, *Rules of Court*, explicitly so provides, *viz*:

> Section 1. *Filing of petition with Supreme Court*.— A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law, which must be distinctly set forth**. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

Accordingly, we reject the appeal for the following reasons:

Firstly: The petition for review replicates Batistis' *appellant's brief* filed in the CA,[19] a true indication that the errors he submits

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[17] Section 3. *How appeal taken.* –

x x x.

(e) Except as provided in the last paragraph of Section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45. (3a)

[18] Sec. 9. *Rule applicable to both civil and criminal cases.* — The mode of appeal prescribed in this Rule shall be applicable to both civil and criminal cases, except in criminal cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment. (n)

[19] CA *Rollo,* pp. 28-37.

for our review and reversal are those he had attributed to the RTC. He thereby rests his appeal on his rehashed arguments that the CA already discarded. His appeal is, therefore, improper, considering that his petition for review on *certiorari* should raise only the errors committed by the CA as the appellate court, not the errors of the RTC.

<u>Secondly</u>: Batistis' assigned errors stated in the petition for review on *certiorari* require a re-appreciation and re-examination of the trial evidence. As such, they raise issues evidentiary and factual in nature. The appeal is dismissible on that basis, because, *one*, the petition for review thereby violates the limitation of the issues to only legal questions, and, *two*, the Court, not being a trier of facts, will not disturb the factual findings of the CA, unless they were mistaken, absurd, speculative, conflicting, tainted with grave abuse of discretion, or contrary to the findings reached by the court of origin.[20]

Whether a question of law or a question of fact is involved is explained in *Belgica v. Belgica*:[21]

> xxx [t]here exists a question of law when there is doubt on what the law applicable to a certain set of facts is. Questions of fact, on the other hand, arise when there is an issue regarding the truth or falsity of the statement of facts. Questions on whether certain pieces of evidence should be accorded probative value or whether the proofs presented by one party are clear, convincing and adequate to establish a proposition are issues of fact. Such questions are not subject to review by this Court. As a general rule, we review cases decided by the CA only if they involve questions of law raised and distinctly set forth in the petition.[22]

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[20] *Philip Morris, Inc. v. Fortune Tobacco Corporation,* G.R. No. 158589, June 27, 2006, 493 SCRA 333, 345; *Sampayan v. Court of Appeals*, G.R. No. 156360, January 14, 2005, 448 SCRA 220; *The Insular Life Assurance Company, Ltd. v. Court of Appeals,* G.R. No. 126850, April 28, 2004, 428 SCRA 79; *Langkaan Realty Development, Inc. v. United Coconut Planters Bank,* G.R. No. 139437, December 8, 2000, 347 SCRA 542, 549.

[21] G.R. No. 149738, August 28, 2007, 531 SCRA 331.

[22] *Id.*, p. 336.

Thirdly: The factual findings of the RTC, its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given high respect, if not conclusive effect, unless cogent facts and circumstances of substance, which if considered, would alter the outcome of the case, were ignored, misconstrued or misinterpreted.[23]

To accord with the established doctrine of finality and bindingness of the trial court's findings of fact, we do not disturb such findings of fact of the RTC, particularly after their affirmance by the CA, for Batistis, as appellant, did not sufficiently prove any extraordinary circumstance justifying a departure from such doctrine.

2.
Findings of fact were even correct

A review of the decision of the CA, assuming that the appeal is permissible, even indicates that both the RTC and the CA correctly appreciated the evidence against the accused, and correctly applied the pertinent law to their findings of fact.

Article 155 of the *Intellectual Property Code* identifies the acts constituting *infringement of trademark*, *viz*:

Section 155. *Remedies; Infringement.* — Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in

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[23] *Pelonia v. People,* G.R. No. 168997, April 13, 2007, 521 SCRA 207.

connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.

Harvey Tan, Operations Manager of Pedro Domecq, S.A. whose task involved the detection of counterfeit products in the Philippines, testified that the seized *Fundador* brandy, when compared with the genuine product, revealed several characteristics of counterfeiting, namely: (a) the Bureau of Internal Revenue (BIR) seal label attached to the confiscated products did not reflect the word *tunay* when he flashed a black light against the BIR label; (b) the "tamper evident ring" on the confiscated item did not contain the word *Fundador*; and (c) the word *Fundador* on the label was printed flat with sharper edges, unlike the raised, actually embossed, and finely printed genuine *Fundador* trademark.[24]

There is no question, therefore, that Batistis exerted the effort to make the counterfeit products look genuine to deceive the unwary public into regarding the products as genuine. The buying public would be easy to fall for the counterfeit products due to their having been given the appearance of the genuine products, particularly with the difficulty of detecting whether the products were fake or real if the buyers had no experience and the tools for detection, like black light. He thereby infringed the registered *Fundador* trademark by the colorable imitation of it through applying the dominant features of the trademark on the fake products, particularly the two bottles filled with *Fundador* brandy.[25] His acts constituted *infringement of trademark* as set forth in Section 155, *supra*.

3.
Penalty Imposed should be an Indeterminate Penalty and Fine

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[24] TSN, April 13, 2004, pp. 23-33.

[25] Exhibits H-8 and H-9.

Section 170 of the *Intellectual Property Code* provides the penalty for *infringement of trademark*, to wit:

> Section 170. *Penalties.* - Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (₱50,000) to Two hundred thousand pesos(₱200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1. (Arts. 188 and 189, Revised Penal Code).

The CA affirmed the decision of the RTC imposing the "the penalty of imprisonment of TWO (2) YEARS and to pay a fine of FIFTY THOUSAND (₱50,000.00) PESOS."

We rule that the penalty thus fixed was contrary to the *Indeterminate Sentence Law,*[26] as amended by Act No. 4225. We modify the penalty.

Section 1 of the *Indeterminate Sentence Law,* as amended, provides:

> Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and **if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same**.

The straight penalty the CA imposed was contrary to the *Indeterminate Sentence Law,* whose Section 1 requires that the penalty of imprisonment *should be* an indeterminate sentence. According to *Spouses Bacar v. Judge de Guzman,Jr.*,[27] the imposition of an indeterminate sentence with maximum and

[26] Act No. 4103.

[27] A.M. No. RTJ-96-1349, April 18, 1997, 271 SCRA 328.

minimum periods in criminal cases not excepted from the coverage of the *Indeterminate Sentence Law* pursuant to its Section 2[28] is mandatory, *viz*:

> The need for specifying the minimum and maximum periods of the indeterminate sentence is to prevent the unnecessary and excessive deprivation of liberty and to enhance the economic usefulness of the accused, since he may be exempted from serving the entire sentence, depending upon his behavior and his physical, mental, and moral record. **The requirement of imposing an indeterminate sentence in all criminal offenses whether punishable by the *Revised Penal Code* or by special laws, with definite minimum and maximum terms, as the Court deems proper within the legal range of the penalty specified by the law must, therefore, be deemed mandatory.**

Indeed, the imposition of an indeterminate sentence is mandatory. For instance, in *Argoncillo v. Court of Appeals,*[29] three persons were prosecuted for and found guilty of illegal fishing (with the use of explosives) as defined in Section 33, Presidential Decree No. 704, as amended by Presidential Decree No. 1058, for which the prescribed penalty was imprisonment from 20 years to life imprisonment. The trial court imposed on each of the accused a straight penalty of 20 years imprisonment, and the CA affirmed the trial court. On appeal, however, this Court declared the straight penalty to be erroneous, and modified it by imposing imprisonment ranging from 20 years, as minimum, to 25 years, as maximum.

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[28] Section 2. This Act shall not apply to persons convicted of offenses punished with death penalty or life imprisonment; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who shall have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year; nor to those already sentenced by final judgment at the time of approval of this Act, except as provided in Section 5 hereof. (as amended by Act No. 4225, Aug. 8, 1935)

[29] G.R. No. 118806, July 10, 1998, 292 SCRA 313, 330-331.

We are aware that an exception was enunciated in *People v. Nang Kay,*[30] a prosecution for illegal possession of firearms punished by a special law (*that is*, Section 2692, Revised Administrative Code, as amended by Commonwealth Act 56 and Republic Act No. 4) with imprisonment of not less than five years nor more than ten years. There, the Court *sustained* the straight penalty of five years and one day imposed by the trial court (Court of First Instance of Rizal) because the application of the *Indeterminate Sentence Law* would be unfavorable to the accused by lengthening his prison sentence. Yet, we cannot apply the *Nang Kay* exception herein, even if this case was a prosecution under a special law like that in *Nang Kay*. Firstly, the trial court in *Nang Kay* could well and lawfully have given the accused the lowest prison sentence of five years because of the mitigating circumstance of his voluntary plea of guilty, but, herein, both the trial court and the CA did not have a similar circumstance to justify the lenity towards the accused. Secondly, the large number of *Fundador* articles confiscated from his house (namely, 241 empty bottles of *Fundador*, 163 *Fundador* boxes, a half sack full of *Fundador* plastic caps, and two filled bottles of *Fundador* Brandy) clearly demonstrated that Batistis had been committing a grave economic offense over a period of time, thereby deserving for him the indeterminate, rather than the straight and lower, penalty.

ACCORDINGLY, we affirm the decision dated September 13, 2007 rendered in C.A.-G.R. CR No. 30392 entitled *People of the Philippines v. Juno Batistis*, but modify the penalty to imprisonment ranging from two years, as minimum, to three years, as maximum, and a fine of ₱50,000.00.

The accused shall pay the costs of suit.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Leonardo-de Castro, and *Villarama, Jr., JJ.,* concur.

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[30] 88 Phil. 515, 520 (1951).

THIRD DIVISION

[G.R. No. 185381. December 16, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANILO CRUZ *y* CULALA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; BUY-BUST OPERATION; A FORM OF ENTRAPMENT.—** A buy-bust operation is a form of entrapment that is resorted to for capturing persons who are predisposed to commit crimes. The operation is legal and has been proved to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.
2. **ID.; ID.; PRIOR SURVEILLANCE OF SUSPECTED OFFENDER, NOT A PREREQUISITE FOR THE VALIDITY OF A BUY-BUST OPERATION.—** Settled is the rule that a prior surveillance of the suspected offender is not a prerequisite for the validity of a buy-bust operation, especially so if the buy-bust team is accompanied by the informant, as in this case. We have held that when time is of the essence, the police may dispense with the need for prior surveillance.
3. **ID.; ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS.—** [F]or the successful prosecution of the illegal sale of *shabu*, only the following elements are essential: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment. What is material is proof that the sale actually took place, coupled with the presentation in evidence of the seized item, as part of the *corpus delicti*. **The delivery of the *illicit* drug to the *poseur-buyer* and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.**
4. **ID.; ILLEGAL POSSESSION OF PROHIBITED DRUGS; REQUISITES.—** [A]ppellant was also found in possession of illegal drugs aside from what he sold to the poseur-buyer. In the prosecution of this crime, the following elements must be

proved with moral certainty: (1) that the accused is in possession of the object identified as a prohibited or regulatory drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.

5. **ID.; ID.; ACCUSED'S ACTUAL POSSESSION OF A PROHIBITED DRUG WHICH HE COULD NOT SHOW AS DULY AUTHORIZED BY LAW IS *PRIMA FACIE* EVIDENCE OF KNOWLEDGE OR *ANIMUS POSSIDENDI*.—** In the case at bar, appellant was caught in actual possession of a prohibited drug which he could not show was duly authorized by law. Having been caught *in flagrante delicto*, there is a *prima facie* evidence of *animus possidendi* on appellant's part. As held by this Court in *U.S. v. Bandoc*, the finding of a dangerous drug in the house or within the premises of the house of the accused is *prima facie* evidence of knowledge or *animus possidendi* and is enough to convict in the absence of a satisfactory explanation.

6. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY MINOR INCONSISTENCIES IN THE TESTIMONIES OF PROSECUTION WITNESSES.—** [T]he minor inconsistencies in the testimonies of the prosecution witnesses are too insufficient or insubstantial to overturn the judgment of conviction against appellant, since those testimonies are consistent on material points. It has been settled that the witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime. Questions as to the lighting condition of the place where the buy-bust operation was conducted do not in any way impair the credibility of the witnesses.

7. **ID.; ID.; ID.; FACTUAL FINDINGS THEREON BY TRIAL COURT ARE GENERALLY NOT DISTURBED ON APPEAL.—** The Court will not disturb the findings of the trial court in assessing the credibility of the witnesses, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted by the trial court. This is because the trial judge has the unique opportunity to observe the witnesses and to note their demeanor, conduct, and attitude during direct and cross examinations. After a careful review of the entire records of this case, we do not find any such oversight by the trial court.

8. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS ACT OF 2002); SECTION 21 OF THE IMPLEMENTING RULES AND REGULATIONS; NON-COMPLIANCE THEREWITH DOES NOT RENDER AN ACCUSED'S ARREST ILLEGAL OR THE ITEMS SEIZED/CONFISCATED FROM THE ACCUSED INADMISSIBLE.—** The Implementing Rules and Regulations of RA 9165 provide: "SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.***— x x x *Provided*, **that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further,* that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.** x x x" It is very clear from the language of the law that there are exceptions to the requirements. Therefore, contrary to appellant's assertions, Sec. 21 need not be followed with pedantic rigor. It has been settled that non-compliance with Sec. 21 does not render an accused's arrest illegal or the items seized/confiscated from the accused inadmissible. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."

9. **REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION OF EVIDENCE; CHAIN OF CUSTODY RULE; COMPLIED WITH IN CASE AT BAR.—** In the case at bar, there was substantial compliance with the law and the integrity of the drugs seized was preserved. The chain of custody of the drugs subject matter of the case was established by the testimonies of the witnesses as not to have been broken. The factual milieu of the case reveals that after PO3 Arago seized and confiscated the dangerous drugs, as well as the marked money, appellant was immediately

arrested; and in that spot where he was arrested, PO3 Arago marked the sachets of *shabu* with the initials of appellant. PO2 Aguinaldo also marked the two (2) sachets he found in appellant's person with appellant's initials. Appellant was then brought to the police station for investigation. Immediately thereafter, the plastic sachets were forwarded to the PNP Crime Laboratory with a request for examination to determine the presence of any prohibited drug. As per Physical Science Report No. D-747-03, the specimens submitted contained methamphetamine hydrochloride or *shabu*. As held by the Court in *Malillin v. People*, the testimonies of all persons who handled the specimen are important to establish the chain of custody. Thus, the prosecution offered the testimony of PO3 Arago, the police officer who first handled the dangerous drug. The testimony of P/SInsp. Fermindoza, who conducted the examination on the dangerous drug, was, however, dispensed with after the public prosecutor and the defense counsel stipulated that the specimens submitted tested positive for methamphetamine hydrochloride and that the said specimens were regularly examined by the said witness. Therefore, it is evidently clear that the chain of custody of the illicit drug purchased and found in appellant's presence was unbroken. The integrity of the object evidence has not, in fine, been compromised.

10. **ID.; ID.; DENIAL AND FRAME-UP; MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE TO BE APPRECIATED AS DEFENSES.—** Denial and frame-up as defenses are inherently weak and have always been viewed by the Court with disfavor, for they can easily be invented and these are common defenses in most prosecutions for violations of RA 9165. Thus, in order for the Court to appreciate these defenses, there must be such clear and convincing evidence to prove such defenses; otherwise, in the absence of any ill motive on the part of the police authorities to falsely impute such crime against appellant, the presumption of regularity in the performance of duty stands.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

DECISION

VELASCO, JR., *J*.:

The Case

This is an appeal from the June 20, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01621 entitled *People of the Philippines v. Danilo Cruz y Culala*, which affirmed the July 28, 2005 Joint Decision[2] in Criminal Case Nos. 12563-D and 12564-D of the Regional Trial Court (RTC), Branch 267 in Pasig City. The RTC found accused-appellant Danilo Cruz guilty of violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

The charges—sale and possession of illegal drugs—against appellant stemmed from the following Informations:

Criminal Case No. 12563-D
(Violation of Sec. 5 [Sale], Art. II of RA 9165)

That on or about the 24th day of June, 2003, in the Municipality of Taguig, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to poseur buyer PO3 Danilo B. Arago, a total of 0.05 gram of white crystalline substance, contained in one (1) heat-sealed transparent plastic sachet, for and in consideration of the amount of ₱200.00, which substance was found positive to the tests for Methamphetamine Hydrochloride, also known as "*shabu*," a dangerous drug, in violation of the above-cited law.

Contrary to law.[3]

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[1] *Rollo*, pp. 2-18. Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Mario L. Guariña III and Celia C. Librea-Leagogo.

[2] CA *rollo*, pp. 18-38. Penned by Judge Florito S. Macalino.

[3] *Id.* at 6.

Criminal Case No. 12564-D
(Violation of Sec. 11 [Possession], Art. II of RA 9165)

That on or about the 24th day of June, 2003, in the Municipality of Taguig, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, to possess or otherwise use any dangerous drug, did, then and there willfully, unlawfully and knowingly have in his possession, custody and control, a total of 0.04 gram of white crystalline substances, contained in two (2) heat-sealed transparent plastic sachets, which substances were found positive to the tests for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

Contrary to law.[4]

When arraigned on July 30, 2003, appellant pleaded "not guilty" to the charges against him.

At the pre-trial conference, the prosecution and the defense stipulated on: (1) the identity of appellant; (2) the jurisdiction of the trial court over the person of appellant and the subject matter of the cases; (3) the date, place, and fact of the arrest; (4) the existence of the subject specimens; (5) the fact that a request was made by the arresting officers for the examination of the confiscated items; (6) the fact that the forensic chemist, Police Senior Inspector (P/SInsp.) Hermosila S. Fermindoza, examined the specimens and issued a laboratory report thereon; (7) the fact that the examining forensic chemist did not know from whom the alleged specimens were taken; and (8) the fact that the subject specimens tested positive for *shabu*. After the stipulations were made, the testimony of the forensic chemist was dispensed with.

During the trial, the prosecution presented, as its witnesses, Police Officer 3 (PO3) Danilo B. Arago, PO3 Arnulfo J. Vicuña, and PO2 Remegio R. Aguinaldo, all members of the Anti-Illegal Drugs Special Operations Task Force of the Taguig City Police. On the other hand, the defense presented, as its witnesses, appellant Cruz, Ma. Luz Encarnacion, and Ronaldo de la Paz.

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[4] *Id.* at 8.

The Prosecution's Version of Facts

On June 24, 2003, at about 11 o'clock in the evening, a police informant came to the Drug Enforcement Unit of the Taguig City Police and reported that a certain Danilo Cruz *alias* "Boy" was dealing in illegal drugs at his residence at 75 MLQ Street, Tambak, Wawa, Taguig, Metro Manila. The office chief, P/SInsp. Romeo Delfin Paat, immediately formed a buy-bust team composed of PO3 Arago, acting as poseur-buyer, PO3 Vicuña, PO2 Aguinaldo, and two other police officers. P/SInsp. Paat gave PO3 Arago two (2) one hundred peso bills which were then marked with the poseur-buyer's initials, "DBA," on the upper corner.

At around 11:45 in the evening, the buy-bust team and the informant set out for their operation. The informant and PO3 Arago went to the house of *alias* "Boy," while their companions stayed nearby. When *alias* "Boy" came out after being called, the informant introduced PO3 Arago to him as "Mike," a friend and "*eskorer*." PO3 Arago then asked *alias* "Boy," "*Pare, meron ka ba dyan?*" to which *alias* "Boy" replied, "*Magkano ba?*" PO3 Arago answered, "*Kasang dos lang*." *Alias* "Boy" gave PO3 Arago a plastic sachet containing a white crystalline substance in exchange for the PhP 200 marked money. Thereupon, PO3 Arago wiped his face with a white towel as the pre-arranged signal for PO2 Aguinaldo and PO3 Vicuña to come out of hiding and arrest "Boy."

Appellant attempted to flee but PO3 Arago held him by the arm, while PO2 Aguinaldo recovered the marked money from him. When PO3 Arago ordered appellant to empty his pockets for any concealed weapons, PO2 Aguinaldo retrieved two (2) more plastic sachets containing white crystalline substance. PO3 Arago inscribed his signature and the appellant's initials "DCC" on the sachet given him by appellant, while PO2 Aguinaldo inscribed those found in appellant's pockets as "DCC-1" and "DCC-2".

The police officers then brought appellant to the police station for investigation.

The transparent plastic sachets seized during the buy-bust operation were forwarded to the Philippine National Police (PNP) Crime Laboratory, Southern Police District Crime Laboratory Office, Fort Andres Bonifacio, Taguig, for examination. P/SInsp. Fermindoza conducted a qualitative examination on the specimens, which tested positive for Methamphetamine Hydrochloride or *shabu*, a dangerous drug. Physical Science Report No. D-747-03 dated June 25, 2003 she issued showed the following results:

SPECIMEN SUBMITTED:

Seven (7) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weights:

A1 ("DCC") = 0.05 gram
A2 ("DCC-1") = 0.02 gram
A3 ("DCC-2") = 0.02 gram

x x x x x x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drugs. x x x

FINDINGS:

Qualitative examination conducted on the above-stated [specimens] gave POSITIVE result to the tests for the presence of Methamphetamine Hydrochloride, a dangerous drug. x x x

CONCLUSION:

[Specimens] A1 through A7 contain Methamphetamine Hydrochloride, a dangerous drug.[5] x x x

Version of the Defense

Appellant recounted that, on June 24, 2003, at around 11:00 in the evening, while inside his house playing *cara y cruz* with his friends Alberto Cruz, Cesar dela Cruz, Ronaldo dela Paz, and Antonio Dionisio, police officers barged in looking for a certain Liza, his former live-in partner. He told the intruders

[5] Records, p. 74.

that he did not know Liza's whereabouts and that only his children were in the adjacent room.

PO3 Arago and PO2 Aguinaldo boxed the appellant in anger. PO3 Arago then searched his house but found nothing. Afterwards, they were all brought to the police headquarters, but his friends were released after 30 minutes. He was the only one charged with violation of Secs. 5 and 11 of RA 9165.

The two other defense witnesses corroborated the testimony of appellant: Ma. Luz Encarnacion testified about the incident that transpired inside appellant's house on June 24, 2003, while Ronaldo dela Paz attested to appellant's being brought to the police station.

Ruling of the Trial Court

After trial, the RTC convicted appellant. The dispositive portion of the Joint Decision reads:

> WHEREFORE, in view of the foregoing considerations, this Court acting as a Special Drug court in the above-captioned cases hereby decide in this wise:
>
> 1.) DANILO CRUZ *y* Culala *alias* Boy, accused in Criminal Case No. 12563-D for Violation of Section 5, 1st paragraph, Article II of Republic Act No. 9165, is hereby sentenced to suffer LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (PhP 500,000);
>
> 2.) The same DANILO CRUZ *y* Culala *alias* Boy, accused in Criminal Case No. 12564-D for Violation of Section 11, 2nd paragraph, No. 3, Article II of Republic Act No. 9165, is further sentenced to suffer Twelve (12) years and One (1) day, and to pay a fine of Three Hundred Thousand Pesos (PhP 300,000), without subsidiary imprisonment in case of insolvency;
>
> x x x x x x x x x
>
> On the other hand, the Jail Warden of Taguig City Jail where accused Danilo Cruz *y* Culala *alias* Boy is presently detained is hereby ordered to forthwith commit the person of convicted Danilo C. Cruz to the New Bilibid Prisons, Bureau of Corrections in Muntinlupa City, Metro Manila.

x x x x x x x x x

Costs *de oficio.*

SO ORDERED.[6]

On appeal to the CA, appellant disputed the trial court's finding of his guilt beyond reasonable doubt of the crimes charged. He contended that the testimonies of the prosecution witnesses were full of inconsistencies and, hence, should not have been relied upon by the court in its decision. Further, he argued that the police officers failed to conduct prior surveillance and to observe the proper procedure in the custody of the seized prohibited items pursuant to RA 9165.

Ruling of the Appellate Court

On June 20, 2008, the CA affirmed the judgment of the RTC. It ruled that all the elements of the crimes charged were duly established by the prosecution.

The dispositive portion of the CA decision reads:

WHEREFORE, the Appeal is hereby DISMISSED. The assailed Joint Decision of the Regional Trial Court, Branch 267 of Pasig City dated 28 July 2005 in Criminal Case Nos. 12563-D and 12564-D, finding accused-appellant Danilo Cruz, guilty of violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002, is AFFIRMED.

SO ORDERED.[7]

Appellant filed a timely notice of appeal of the CA decision.

The Issues

Accused-appellant assigns the following errors:

I.

The court *a quo* gravely erred in giving credence to the prosecution witnesses' materially inconsistent testimonies.

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[6] CA *rollo*, pp. 37-38.

[7] *Rollo*, p. 18.

II.

The court *a quo* gravely erred in convicting the accused-appellant for violation of Sections 5 and 11 of Republic Act No. 9165 despite the failure of the prosecution to overthrow the constitutional presumption of innocence in his favor.

Our Ruling

The appeal has no merit.

Buy-Bust Operation Was Valid

A buy-bust operation is a form of entrapment that is resorted to for capturing persons who are predisposed to commit crimes. The operation is legal and has been proved to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.[8]

Appellant contends that it is unusual and improbable for a buy-bust operation to be conducted without any prior surveillance, despite the fact that an informant had gone first to the police station to report on his illegal activity.

We disagree.

Settled is the rule that a prior surveillance of the suspected offender is not a prerequisite for the validity of a buy-bust operation, especially so if the buy-bust team is accompanied by the informant,[9] as in this case. We have held that when time is of the essence, the police may dispense with the need for prior surveillance.[10]

Moreover, for the successful prosecution of the illegal sale of *shabu*, only the following elements are essential: (1) the identity of the buyer and the seller, the object of the sale, and the

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[8] *People v. Herrera*, G.R. No. 93728, August 21, 1995, 247 SCRA 433; *People v. Tadepa*, G.R. No. 100354, May 26, 1995, 244 SCRA 339.

[9] *Cruz v. People*, G.R. No. 164580, February 6, 2009; *People v. Eugenio*, G.R. No. 146805, January 16, 2003, 395 SCRA 317.

[10] *People v. Beriarmente*, G.R. No. 137612, September 25, 2001, 365 SCRA 747.

consideration; and (2) the delivery of the thing sold and its payment.[11] What is material is proof that the sale actually took place, coupled with the presentation in evidence of the seized item, as part of the *corpus delicti*. **The delivery of the *illicit* drug to the *poseur-buyer* and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.**

In the case at bar, the prosecution was able to establish these elements beyond moral certainty. It was the confidential informant who made initial contact with appellant and introduced PO3 Arago as a buyer of *shabu*. PO3 Arago then asked to buy PhP 200 worth of *shabu* with the previously marked money he brought with him. Appellant then gave him a plastic sachet containing a white crystalline substance, which was later identified as *shabu* and subsequently presented in evidence. There was an actual exchange of the marked money and contraband. Then, upon giving the pre-arranged signal, appellant, who knew he was selling a prohibited drug, was arrested. In his testimony, PO3 Arago narrated the events that established these elements, to wit:

PROSEC. BAUTISTA: What time did you reach the target area?

A: More or less 11:30 pm, sir.

PROSEC. BAUTISTA: What particular place did you stop upon reaching the target area?

A: Along [MLQ] Street, sir.

x x x x x x x x x

PROSEC. BAUTISTA: Upon reaching this No. 75 [MLQ] Street, what did you do?

A: The informant called one *alias* Boy.

x x x x x x x x x

PROSEC. BAUTISTA: The informant called the name of the Danilo Cruz or did he knock in the door?

A: He called him.

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[11] *People v. Tan*, G.R. No. 133001, December 14, 2000, 348 SCRA 116; *People v. Zheng Bai Hui*, G.R. No. 127580, August 22, 2000, 338 SCRA 420.

PROSEC. BAUTISTA:	When your informant called the name of the accused, was it answered?
A:	He went inside.
PROSEC. BAUTISTA:	Upon seeing this Boy, the accused in this case, what happened next?
A:	When the accused went out, he told the informant, "*hoy, pre*".
PROSEC. BAUTISTA:	And what was the answer of the informant?
A:	The informant answer[ed] back, "*pare, si Mike, barkada ko, eskorer*".
PROSEC. BAUTISTA:	After introducing you by the informant, what did this accused do?
A:	I uttered, "*pare, meron ka ba dyan?*".
PROSEC. BAUTISTA:	What was the answer of the accused?
A:	The accused replied, "*magkano ba?*" and then I answered, "*kasang dos lang*".
PROSEC. BAUTISTA:	What is this "*kasang dos*" means?
A:	Two hundred pesos worth of *shabu*.
PROSEC. BAUTISTA:	And how many grams is that?
A:	Per gram is one thousand pesos.
PROSEC. BAUTISTA:	So, its less than one (1) gram?
A:	Yes, sir, its [0.1], sir.
PROSEC. BAUTISTA:	Okay, upon hearing your "*kasang dos*", what did the accused do?
A:	He told me, "*akina*" and he got the money.
PROSEC. BAUTISTA:	When he said "*akina*", he is referring to the money?
A:	Yes, sir.
PROSEC. BAUTISTA:	You gave the money?
A:	Yes, sir.

PROSEC. BAUTISTA: Where did you get the money?

A: At my front pocket, sir.

PROSEC. BAUTISTA: Okay, upon giving this money, what did this accused do?

A: He received, sir the marked money and then he got the items from his right pocket and handed to me.

PROSEC. BAUTISTA: So, the money was [given] first, by left or right hand?

A: Left hand, sir.

PROSEC. BAUTISTA: And then he got the *shabu* from his right pocket and gave it to you?

A: Yes, sir.

x x x x x x x x x

PROSEC. BAUTISTA: So, received the money, received the *shabu*, what happened next?

A: I look[ed] at the stuff and gave the pre-arrange[d] signal.

PROSEC. BAUTISTA: And what is your pre-arrange[d] signal?

A: By rubbing the face towel on my face.

x x x x x x x x x

PROSEC. BAUTISTA: Okay, upon doing this pre-arrange[d] signal, what did your other companion do?

A: PO2 Aguinaldo and PO3 Vicuña came.

PROSEC. BAUTISTA: And what did you do with the accused?

A: The accused tried to run and I was able to grab him on his left arm.

PROSEC. BAUTISTA: When you [grabbed] him on the left arm, what else happened?

A: PO2 Aguinaldo confiscated the marked money.

PROSEC. BAUTISTA:	Where was this marked money taken?
A:	From his hand.
PROSEC. BAUTISTA:	And how about you, what did you do?
A:	I was holding the hand and ordered him to empty his pocket.
PROSEC. BAUTISTA:	And then what happened?
A:	PO2 Aguinaldo recovered two (2) more pieces of sachet.[12]

The facts categorically show a typical buy-bust operation as a form of entrapment. The police officers' conduct was within the acceptable standards for the fair and honorable administration of justice. What is more, the prosecution presented the specimens examined—the core of the *corpus delicti*—in court, as well as Physical Science Report No. D-747-03, which clearly states that the specimens were found positive for *shabu*.

Similarly, the testimony of PO3 Arago established that appellant was also found in possession of illegal drugs aside from what he sold to the poseur-buyer. In the prosecution of this crime, the following elements must be proved with moral certainty: (1) that the accused is in possession of the object identified as a prohibited or regulatory drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.[13]

In the case at bar, appellant was caught in actual possession of a prohibited drug which he could not show was duly authorized by law. Having been caught *in flagrante delicto*, there is a *prima facie* evidence of *animus possidendi* on appellant's part. As held by this Court in *U.S. v. Bandoc*,[14] the finding of a dangerous drug in the house or within the premises of the house of the accused is *prima facie* evidence of knowledge

[12] TSN, November 5, 2003, pp. 6-13.

[13] *People v. Del Norte*, G.R. No. 149462, March 29, 2004, 426 SCRA 383.

[14] 23 Phil. 14 (1912).

or *animus possidendi* and is enough to convict in the absence of a satisfactory explanation.[15]

Furthermore, contrary to appellant's contentions, the minor inconsistencies in the testimonies of the prosecution witnesses are too insufficient or insubstantial to overturn the judgment of conviction against appellant, since those testimonies are consistent on material points. It has been settled that the witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime.[16] Questions as to the lighting condition of the place where the buy-bust operation was conducted do not in any way impair the credibility of the witnesses.

The Court will not disturb the findings of the trial court in assessing the credibility of the witnesses, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted by the trial court.[17] This is because the trial judge has the unique opportunity to observe the witnesses and to note their demeanor, conduct, and attitude during direct and cross examinations.[18] After a careful review of the entire records of this case, we do not find any such oversight by the trial court.

Chain of Custody Was Properly Established

Additionally, appellant asserts in his Brief[19] that the police officers failed to properly make an inventory of the *shabu* allegedly recovered from him. Further, he argues that they also failed to photograph or mark the *shabu* immediately after the alleged buy-bust operation in his presence, or his counsel, a representative from the media, a representative from the Department of Justice, or any elected public official.

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[15] *Id.* at 15.

[16] *People v. Gonzales*, G.R. No. 143805, April 11, 2002, 380 SCRA 689; *People v. Uy*, G.R. No. 129019, August 16, 2000, 338 SCRA 232.

[17] *Cruz v. People*, *supra* note 9.

[18] *People v. Astudillo*, 440 Phil. 203 (2002).

[19] CA *rollo*, pp. 26-37.

The contentions cannot stand.

The Implementing Rules and Regulations of RA 9165 provide:

SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.***—The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; ***Provided*****, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; ***Provided, further,*** **that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**. x x x (Emphasis supplied.)

It is very clear from the language of the law that there are exceptions to the requirements. Therefore, contrary to appellant's assertions, Sec. 21 need not be followed with pedantic rigor. It has been settled that non-compliance with Sec. 21 does not render an accused's arrest illegal or the items seized/confiscated from the accused inadmissible.[20] What is essential is "the preservation of the integrity and the evidentiary value of the

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[20] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 448; citing *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627.

seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."[21]

In the case at bar, there was substantial compliance with the law and the integrity of the drugs seized was preserved. The chain of custody of the drugs subject matter of the case was established by the testimonies of the witnesses as not to have been broken. The factual milieu of the case reveals that after PO3 Arago seized and confiscated the dangerous drugs, as well as the marked money, appellant was immediately arrested; and in that spot where he was arrested, PO3 Arago marked the sachets of *shabu* with the initials of appellant. PO2 Aguinaldo also marked the two (2) sachets he found in appellant's person with appellant's initials. Appellant was then brought to the police station for investigation. Immediately thereafter, the plastic sachets were forwarded to the PNP Crime Laboratory with a request for examination to determine the presence of any prohibited drug. As per Physical Science Report No. D-747-03, the specimens submitted contained methamphetamine hydrochloride or *shabu*.

As held by the Court in *Malillin v. People*,[22] the testimonies of all persons who handled the specimen are important to establish the chain of custody. Thus, the prosecution offered the testimony of PO3 Arago, the police officer who first handled the dangerous drug. The testimony of P/SInsp. Fermindoza, who conducted

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[21] *Id.*; citing *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421.

[22] As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claim it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

the examination on the dangerous drug, was, however, dispensed with after the public prosecutor and the defense counsel stipulated that the specimens submitted tested positive for methamphetamine hydrochloride and that the said specimens were regularly examined by the said witness.

Therefore, it is evidently clear that the chain of custody of the illicit drug purchased and found in appellant's presence was unbroken. The integrity of the object evidence has not, in fine, been compromised.

Defenses of Denial and Frame-up Are Weak

Denial and frame-up as defenses are inherently weak and have always been viewed by the Court with disfavor, for they can easily be invented and these are common defenses in most prosecutions for violations of RA 9165.[23]

Thus, in order for the Court to appreciate these defenses, there must be such clear and convincing evidence to prove such defenses; otherwise, in the absence of any ill motive on the part of the police authorities to falsely impute such crime against appellant, the presumption of regularity in the performance of duty stands.

There is no denying the fact that dealing in illegal drugs has brought untold miseries to many members of our society. It has caused tremendous sufferings and difficulties not only to drug users but to their families as well. It has ruined the future of the youths who have succumbed to its promise of momentary bliss only to lose opportunities to lead meaningful and productive lives later.

In fighting the drug menace in our midst, we should not be hindered by technicalities that those engaged in the trade claim were committed by authorities in curtailing their activities. The ill effects of their trade far outweigh any consideration police officers may have in trying to put a stop to its spread.

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[23] *People v. Dulay*, G.R. No. 150624, February 24, 2004, 423 SCRA 652, 662.

In the instant case, the defense miserably failed to adduce any evidence of ill motive on the part of the police officers. Therefore, we uphold the presumption of regularity in the performance of their official duties and find that the prosecution has discharged its burden of proving the guilt of appellant beyond reasonable doubt.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 01621 finding accused-appellant Danilo Cruz guilty of the crimes charged is *AFFIRMED*.

SO ORDERED.

Corona (Chairperson), Peralta, Del Castillo,[*] and *Villarama, Jr.,*[**] *JJ.,* concur.

EN BANC

[G.R. No. 185749. December 16, 2009]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **HERMINIGILDO L. ANDAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT; VESTED WITH THE POWER OF ADMINISTRATIVE SUPERVISION OVER ALL COURTS AND THE PERSONNEL THEREOF. — In the *Julaton* and *Sta. Ana* cases, the CSC recognized the disciplinary jurisdiction of the Supreme Court over court personnel. This is consonant with Section 6, Article VIII of the 1987 Constitution vesting in the Supreme Court administrative supervision over all courts and the personnel

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[*] Additional member per Special Order No. 805 dated December 4, 2009.

[**] Additional member per Special Order No. 802 dated November 12, 2009.

thereof, thus: "Sec. 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof." By virtue of this power, it is only the Supreme Court that can oversee the judges' and court personnel's administrative compliance with all laws, rules and regulations. No other branch of government may intrude into this power, without running afoul of the doctrine of separation of powers. This we have ruled in *Maceda v. Vasquez* and have reiterated in the case of *Ampong v. Civil Service Commission.* In *Ampong*, we also emphasized that in case of violation of the Civil Service Law by a court personnel, the standard procedure is for the CSC to bring its complaint against a judicial employee before the Office of the Court Administrator of the Supreme Court.

2. **REMEDIAL LAW; ACTIONS; ESTOPPEL; RESPONDENT IN CASE AT BAR IS NOT ESTOPPED FROM ASSAILING THE JURISDICTION OF THE CIVIL SERVICE COMMISSION.—** In the present case, while respondent may have filed his Answer to the formal charge of dishonesty after having been directed to do so, he denied having taken the civil service examination and did not even appear at the formal investigation conducted by the CSC-NCR. He appealed to the CSC after the adverse decision of the CSC-NCR was rendered but raised the issue of lack of jurisdiction over his person. He argued that as an employee in the Judiciary, "the jurisdiction to hear disciplinary action against him vests with the Sandiganbayan or the Supreme Court." It cannot therefore be said that he was estopped from assailing the jurisdiction of the CSC.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHOULD ACT AND BEHAVE WITH A HEAVY BURDEN OF RESPONSIBILITY.—** [W]e will not and cannot tolerate dishonesty for the judiciary expects the highest standard of integrity from all its employees. The conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with a heavy burden of responsibility. The Court will not hesitate to rid its ranks of undesirables.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Herrera Batacan & Associates for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before this Court is a petition for review on *certiorari* filed by the Civil Service Commission (CSC) seeking to set aside the Decision dated 22 September 2008[1] and the Resolution dated 2 December 2008[2] of the Court of Appeals[3] in CA-G.R. SP No. 100452. The Court of Appeals set aside the CSC Decision dated 25 May 2005, Resolution No. 062255 dated 20 December 2006 and Resolution No. 071493 dated 1 August 2007 in Administrative Case No. 00-12-027. The motion for reconsideration filed thereafter was denied.

The Facts

Herminigildo L. Andal (respondent) holds the position of Security Guard II in the Sandiganbayan. On 24 January 2000, he filed an application to take the Career Service Professional Examination-Computer Assisted Test (CSPE-CAT) and was admitted to take the examination. The examination results showed that respondent passed the examination with a rating of 81.03%.

On 25 January 2000, Arlene S. Vito (Vito), claiming to have been authorized by respondent to secure the results of the examination, presented a handwritten authorization allegedly signed by respondent. Upon verification and comparison of the pictures attached to the Picture Seat Plan and the identification card of respondent which Vito presented, there appeared a dissimilarity in the facial features. Bella A. Mitra, then Officer-in-Charge of the Examination, Placement and Services Division (EPSD) of the Civil Service Commission-National Capital Region (CSC-NCR), issued a Memorandum on the alleged

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[1] *Rollo*, pp. 29-43.

[2] *Id.* at 24-27.

[3] Penned by Justice Celia C. Librea-Leagogo, with Justices Mario L. Guariña III and Sesinando E. Villon, concurring.

"impersonation" of respondent and the matter was referred to the Legal Affairs Division to conduct a fact-finding investigation. On 29 November 2000, the CSC-NCR formally charged respondent with dishonesty.

A formal investigation of the case was scheduled on 4 June 2001, 21 November 2001, 5 February 2002, and 10 July 2002. Notices were sent to respondent's last known address as indicated in his Application Form but respondent failed to appear on the scheduled hearings. Respondent was deemed to have waived his right to appear at the formal investigation and the case proceeded *ex parte*.

On 5 August 2005, the CSC-NCR rendered judgment finding respondent guilty of dishonesty and imposing upon him the penalty of dismissal from the service.

Aggrieved, respondent appealed to the CSC which issued Resolution No. 062255 dated 20 December 2006, the dispositive portion of which reads:

> WHEREFORE, the appeal of Herminigildo L. Andal is hereby DISMISSED. Accordingly, the Decision dated May 25, 2005 of the Civil Service Commission National Capital Region (CSC-NCR), Quezon City, finding him guilty of Dishonesty and imposing upon him the penalty of dismissal from the service with accessory penalties of disqualification from re-entering government service, forfeiture of retirement benefits, and bar from taking any civil service examination, pursuant to Section 57 of the Uniformed Rules, is AFFIRMED.[4]

Respondent moved for a reconsideration of the CSC judgment but the motion was denied in the CSC Resolution No. 071493 dated 1 August 2007.

Respondent elevated the case to the Court of Appeals on a petition for review under Rule 43. On 22 September 2008, the Court of Appeals rendered judgment in favor of respondent, the dispositive portion of which reads:

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[4] *Rollo*, pp. 12, 30.

WHEREFORE, premises considered, the assailed Decision dated 25 May 2005, Resolution No. 062255 dated 20 December 2006, and Resolution No. 071493 dated 01 August 2007 in *Admin. Case No. 00-12-027* are SET ASIDE and respondent Civil Service Commission is enjoined from implementing the same. Respondent Civil Service Commission is hereby ORDERED to immediately refer said administrative case for Dishonesty against petitioner Herminigildo L. Andal to the Office of the Court Administrator, Supreme Court, for appropriate action.[5]

The CSC filed a motion for reconsideration which the Court of Appeals denied in its Resolution dated 2 December 2008.

Hence, the present petition.

The Issue

The issue in this case is whether or not the Civil Service Commission has disciplinary jurisdiction to try and decide administrative cases against court personnel.

Ruling of the Court of Appeals

The Court of Appeals ruled that the CSC encroached upon the Supreme Court's power of administrative supervision over court personnel. In reversing the CSC resolutions, the Court of Appeals cited Section 6, Article VIII[6] of the 1987 Constitution which provides that the Supreme Court shall have administrative supervision over all courts and the personnel thereof. The Court of Appeals further stated that what the CSC should have done was to refer the administrative case for dishonesty against respondent to the Office of the Court Administrator for appropriate action instead of resolving the case.

The Court's Ruling

In taking cognizance of the administrative case for dishonesty against respondent, the CSC invoked Section 28, Rule XIV of the Omnibus Civil Service Rules and Regulations which provides

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[5] *Id.* at 41.

[6] Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

that the CSC "shall have original disciplinary jurisdiction over all its officials and employees and over all cases involving civil service examination anomalies or irregularities." The CSC further contends that administrative cases of dishonesty in connection with duties and responsibilities under Section 47, Chapter 7, Subtitle A, Title I, Book V of the Revised Administrative Code are different from cases of dishonesty in connection with cheating incidents in Civil Service examinations administered by the CSC. In the latter case, the CSC assumes jurisdiction as an integral part of its duty, authority and power to administer the civil service system and protect its integrity, citing the case of *Civil Service Commission v. Albao.*[7]

The CSC argues that one of the powers of the CSC is the administration of the civil service examinations. The CSC made a careful study and comparison of the facial features of the person appearing on the photographs attached to the Application Form and the Personal Data Sheet (PDS), and the photograph attached to the Picture Seat Plan. Resemblance of the pictures purporting to be respondent's was clearly wanting. The signatures appearing on the face of the documents also revealed discrepancies in the structure, strokes, form and general appearance.

We agree with the Court of Appeals and accordingly, deny the present petition.

The Court recognizes the CSC's administrative jurisdiction over the civil service. Section 3, Article IX-B of the Constitution declares the CSC as the central personnel agency of the Government, thus:

> Section 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.

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[7] G.R. No. 155784, 13 October 2005, 472 SCRA 548.

Section 12, Title 1 (A), Book V of Executive Order No. 292 (EO 292) likewise enumerates the powers and functions of the CSC, one of which is its quasi-judicial function under paragraph 11, which states:

> Section 12. *Powers and Functions* — The Commission shall have the following powers and functions:
>
> x x x x x x x x x
>
> (11) Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it x x x.

And, Section 47, Title 1 (A), Book V of EO 292 provides for the CSC's disciplinary jurisdiction, as follows:

> SEC. 47. *Disciplinary Jurisdiction*. — (1) The Commission shall decide **upon appeal** all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken. x x x (Emphasis supplied)

The CSC's authority and power to hear and decide administrative disciplinary cases are not in dispute. The question is whether the CSC's disciplinary jurisdiction extends to court personnel in view of Section 6, Article VIII of the 1987 Constitution.

The *Albao* case cited by the CSC is not in point as Albao was not a court employee but a contractual employee of the Office of the Vice President. The *Albao* case merely affirmed the authority of the CSC to take cognizance of any irregularity or anomaly connected with the civil service examinations.

One case in point is *Bartolata v. Julaton*[8] wherein a letter-complaint was sent to the CSC Regional Office in Davao City denouncing the acts of Felicia Julaton (Julaton), Clerk of Court, and Juanita Tapic (Tapic), Court Interpreter II, both of the Municipal Trial Court in Cities, Davao City, Branch 3. The CSC Regional Office in Davao City discovered that a certain Julaton submitted her application to take the Civil Service Professional Examination in 1989 but the picture on the application form and on the Picture Seat Plan did not resemble the picture appearing on the appointment of Julaton. The signature of Julaton affixed to the examination documents did not match the signature on her PDS. The case was referred to the Office of the Court Administrator which recommended that Julaton and Tapic be held liable as charged. This Court dismissed Julaton from the service, with forfeiture of all retirement benefits while Tapic, who had resigned, was fined ₱25,000 and his retirement benefits were ordered forfeited.

Likewise, in *Civil Service Commission v. Sta. Ana,*[9] the CSC formally charged Zenaida Sta. Ana (Sta. Ana), Court Stenographer I of the Municipal Circuit Trial Court of Quezon-Licab, Nueva Ecija with dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service for misrepresenting that she took and passed the CSPE-CAT when in truth and in fact, someone else took the examinations for her. The CSC found that the picture and signature in Sta. Ana's PDS were different from those appearing in her application form and in the Picture Seat Plan. Upon the recommendation of the Office of the Court Administrator, this Court found Sta. Ana guilty of dishonesty and dismissed her from the service with forfeiture of retirement benefits.

In the *Julaton* and *Sta. Ana* cases, the CSC recognized the disciplinary jurisdiction of the Supreme Court over court personnel. This is consonant with Section 6, Article VIII of the 1987 Constitution vesting in the Supreme Court administrative supervision over all courts and the personnel thereof, thus:

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[8] A.M. No. P-02-1638, 6 July 2006, 494 SCRA 433.

[9] 450 Phil. 59 (2003).

Sec. 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

By virtue of this power, it is only the Supreme Court that can oversee the judges' and court personnel's administrative compliance with all laws, rules and regulations. No other branch of government may intrude into this power, without running afoul of the doctrine of separation of powers. This we have ruled in *Maceda v. Vasquez*[10] and have reiterated in the case of *Ampong v. Civil Service Commission.*[11] In *Ampong*, we also emphasized that in case of violation of the Civil Service Law by a court personnel, the standard procedure is for the CSC to bring its complaint against a judicial employee before the Office of the Court Administrator of the Supreme Court.

The CSC contends that respondent is now estopped from assailing the jurisdiction of the CSC when he voluntarily submitted himself to the CSC-NCR and was accorded due process, citing the *Ampong* case.

We disagree.

In *Ampong*, petitioner in that case admitted her guilt. She voluntarily went to the CSC regional office, admitted to the charges leveled against her and waived her right to the assistance of counsel. She was given ample opportunity to present her side and adduce evidence in her defense before the CSC. She filed her answer to the charges against her and even moved for a reconsideration of the adverse ruling of the CSC. In short, Ampong did not question the authority of the CSC and, in fact, actively participated in the proceedings before it.

In the present case, while respondent may have filed his Answer to the formal charge of dishonesty after having been directed to do so, he denied having taken the civil service examination and did not even appear at the formal investigation conducted by the CSC-NCR.[12] He appealed to the CSC after

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[10] G.R. No. 102781, 22 April 1993, 221 SCRA 464.

[11] G.R. No. 167916, 26 August 2008, 563 SCRA 293.

[12] *Rollo*, p. 31.

the adverse decision of the CSC-NCR was rendered but raised the issue of lack of jurisdiction over his person. He argued that as an employee in the Judiciary, "the jurisdiction to hear disciplinary action against him vests with the Sandiganbayan or the Supreme Court."[13] It cannot therefore be said that he was estopped from assailing the jurisdiction of the CSC.

This notwithstanding, we reiterate that we will not and cannot tolerate dishonesty for the judiciary expects the highest standard of integrity from all its employees. The conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with a heavy burden of responsibility. The Court will not hesitate to rid its ranks of undesirables.

WHEREFORE, we *AFFIRM* the Decision dated 22 September 2008 and the Resolution dated 2 December 2008 of the Court of Appeals in CA-G.R. SP No. 100452. Accordingly, we *DENY* the instant petition. Nonetheless, we *ORDER* the Civil Service Commission to refer the case of respondent Herminigildo L. Andal to the Office of the Court Administrator, for the filing of the appropriate administrative case against him.

SO ORDERED.

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

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[13] *Id.* at 64.

EN BANC

[A.M. No. RTJ-07-2055. December 17, 2009]

HEIRS OF THE LATE REV. FR. JOSE O. ASPIRAS, *complainants, vs.* **JUDGE CLIFTON U. GANAY, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 31, AGOO, LA UNION,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; JUDGES; MUST AVOID NOT ONLY IMPROPRIETY BUT ALSO THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES; CASE AT BAR.—** Propriety and the appearance of propriety are essential to the performance of all the activities of a judge. Lower court judges, such as respondent Judge Ganay, play an important role in the promotion of the people's faith in the judiciary. They are front-liners who give human face to the judicial branch at the grassroots level in their interaction with litigants and those who do business with the courts. Thus, the admonition that judges must avoid not only impropriety but also the appearance of impropriety is more sternly applied to them. x x x This Court has always stressed that a judge should avoid impropriety and even the appearance of impropriety in all activities, and that he should perform his duties honestly and with impartiality and diligence. Also, a judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary. Since respondent Judge Ganay occupied an exalted position in the administration of justice, he should pay a high price for the honor bestowed upon him; and his official, as well as his private, conduct must at all times be free from the appearance of impropriety.
2. **ID.; ID.; ACTS OF IMPROPRIETY; COMMITTED IN CASE AT BAR.—** Respondent Judge Ganay clearly fell short of the exacting standards set by the New Code of Judicial Conduct for the Philippine Judiciary. His acts of receiving lawbooks worth fifty thousand pesos, cellular phones and monthly cellular phone prepaid cards from the property guardians of the late Rev. Fr. Aspiras, who was then the ward of the court, constitute

impropriety which the Court cannot allow. Respondent Judge Ganay's act of issuing Orders directing the manager of the PNB, La Union Branch to draw checks amounting to thousands of pesos from the account of the late Rev. Fr. Aspiras creates the impression of impropriety and subjects the court to suspicion of irregularities in the conduct of the proceedings.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The instant administrative case stemmed from an unsigned letter-complaint[1] dated June 6, 2005, filed by the heirs of the late Reverend Father Jose O. Aspiras addressed to the Court Administrator, requesting that an investigation be conducted by the Office of the Court Administrator (OCA) on the alleged abuse of authority of respondent Judge Clifton U. Ganay, Presiding Judge, Regional Trial Court, Branch 31, Agoo, La Union in connection with *Special Proceeding Case No. A-1026*, entitled "In the Matter of the Guardianship of Rev. Fr. Jose O. Aspiras."

In the letter, the heirs of the late Rev. Fr. Aspiras state the following:

That the judge in the above mentioned case has been abusing his authority as observed by the Heirs of the late Rev. Fr. Jose O. Aspiras as he previously ordered to withdraw the amount of ₱50,000.00 in his favor from the bank account of the late Rev. Fr. Jose O. Aspiras on December 17, 2004 for him to purchase law books. As per his order, he alleged that, 'In the spirit of this Yuletide season and considering the efforts of the Judge of this Court, the guardians in the above entitled case deemed it best to give him fifty thousand pesos (₱50,000.00) worth of law books to aid him in his work as a judge.' The truth of the matter is that this has been the idea of Judge Ganay, himself, and was never consented by the guardians. For your reference, attached is a photocopy of this order.

There are still other orders issued by Judge Ganay ordering the bank to release certain amounts from the bank account of the late Rev. Fr. Jose O. Aspiras in his favor without the written consent of

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[1] *Rollo*, p. 7.

the guardians. Unfortunately, photocopies of these orders cannot be attached for your reference as no copies of these orders were sent to the guardians. The copies can be found in the records of the case being kept by the said court.

The OCA conducted a surprise investigation and examination of the records of SP Case No. A-1026 from August 30 to September 2, 2005. The investigating team selected pertinent documents relative to the anonymous complaint in order to verify the irregularities allegedly committed by respondent Judge Ganay.

From the documents gathered, the investigating team found that the Order[2] dated December 17, 2004 was indeed issued by respondent Judge Ganay. For the money received from the said order, respondent Judge Ganay even issued an Acknowledgement Receipt[3] dated December 22, 2004. The team also discovered that on several occasions, respondent Judge Ganay issued numerous orders[4] directing the manager of the Philippine National Bank (PNB), Agoo, La Union Branch, to draw checks from the account of the late Rev. Fr. Aspiras amounting to several thousands of pesos in the name of the Officer-in-Charge/Branch Clerk of Court Precilla Olympia P. Eslao (OIC-Clerk of Court Eslao) for the purpose of purchasing cellular phone prepaid cards. The said cards were received by respondent Judge Ganay and OIC-Clerk of Court Eslao as evidenced by acknowledgement receipts[5] signed by them on several dates.

The investigating team also discovered two other orders[6] issued by respondent Judge Ganay directing the manager of PNB, Agoo, La Union Branch to draw from the account of the late Rev. Fr.

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[2] *Id.* at 9.

[3] *Id.* at 10.

[4] Orders dated June 20, 2003, March 4, 2005, March 7, 2005, and April 21, 2005, *id.* at 11-14.

[5] Acknowledgment Receipts dated March 8, 2005 and April 26, 2005, signed by respondent Judge Ganay; and Acknowledgment Receipts dated June 24, 2003, July 16, 2004, September 27, 2004, November 16, 2004, March 8, 2005, and April 26, 2005, signed by OIC-Clerk of Court Eslao, *id.* at 15-20.

[6] Orders dated November 25, 2004 and November 30, 2004, *id.* at 21.

Aspiras checks in the amount of forty thousand pesos (₱40,000.00) each for the purpose of purchasing three (3) cellular phones. Thereafter, OIC-Clerk of Court Eslao submitted a Report on Expenses[7] dated March 1, 2005 enumerating in detail how the money was spent for buying three (3) cellular phones.

In a Resolution[8] dated January 17, 2006, this Court resolved to:

(a) **DIRECT** Judge Clifton S. Ganay and Officer-in-Charge/Branch Clerk of Court Precilla Olympia P. Eslao, both of RTC, Branch 31, Agoo, La Union, to submit their respective comments on the letter-complaint dated June 6, 2005 of the Heirs of the Late Rev. Fr. Jose O. Aspiras and the report dated September 22, 2005 of Attys. Reynan M. Dollison and Kenneth P. Fulton, Legal Office, OCA, and to show cause why no disciplinary action should be taken against them, both within ten (10) days from notice hereof;

(b) **AUTHORIZE** the Office of the Court Administrator to secure the complete records of Special Proceeding Case No. A-1026, entitled *In the Matter of the Guardianship of Rev. Fr. Jose O. Aspiras*; and

(c) **DIRECT** Executive Judge Samuel R. Martires, RTC, Branch 32, Agoo, La Union, to safekeep immediately the case records of Special Proceeding Case No. A-1026, consisting of three (3) volumes, and thereafter, surrender the same to a duly authorized representative of the Office of the Court Administrator.

Respondent Judge Ganay sent a letter[9] dated March 3, 2006 to the Clerk of Court stating that he had yet to receive a copy of the letter-complaint dated June 6, 2005 of the heirs of the late Rev. Fr. Aspiras against him and the report dated September 22, 2005 made by the OCA lawyers who conducted a surprise inspection and examination of the records of *Special Proceeding Case No. A-1026*. He further stated that he should be given a medal for effecting a speedy settlement of the estate of the late

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[7] *Id.* at 22-23.

[8] *Id.* at 26-27.

[9] *Id.* at 29-39.

Rev. Fr. Aspiras among his heirs. Respondent Judge Ganay maintained that all his actions merely implemented the orders of the two (2) property guardians of the late Rev. Fr. Aspiras.

Respondent Judge Ganay, together with OIC-Clerk of Court Eslao, subsequently filed a Motion to Furnish Copies dated March 13, 2006 reiterating his earlier manifestation that he had not yet received copies of the documents that he was directed to comment on through the Resolution dated January 17, 2006. Respondent Judge Ganay again moved that they be furnished copies of the said documents so that they could properly and intelligently comment thereon.

And again on March 22, 2006, respondent Judge Ganay filed a Manifestation[10] dated March 21, 2006, submitting an Advance Comment[11] dated March 21, 2006, despite the fact that he had not yet received copies of the documents that he was directed to comment on. According to respondent Judge Ganay, he was submitting his Advance Comment "to show to the Supreme Court that its foot soldier of Branch 31, RTC, AGOO, La Union deserves a MEDAL, not a disciplinary action."

In his Advance Comment dated March 21, 2006, respondent Judge Ganay explained that the cellular phones were purchased upon the orders of the two (2) property guardians of the late Rev. Fr. Aspiras. He further explained that the communication devices were for the fast networking of information for the late Rev. Fr. Aspiras who was then the ward of the court. Respondent Judge Ganay also narrated that the property guardians persistently asked him to take a vacation in the United States, which he declined. According to him, they kept on asking him what they could do to help the court. He, in reply, mentioned that lawbooks would enhance the appearance of his office and make it look scholarly and presentable. They then appropriated fifty thousand (₱50,000.00) pesos for the purchase of books.

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[10] *Id.* at 56-59.

[11] *Id.* at 60-113.

Respondent Judge Ganay expounded on the system of checks and balances that he devised for the handling of the late Rev. Fr. Aspiras' funds, thus:

> I am just the implementor of the orders of the guardians. In the case of the property guardians, I only implement if the order is unanimous, *i.e.*, if both property guardians assent.
>
> Why? Because in order to safeguard Reverend Aspiras['] wealth, one property guardian not taking advantage of the other, it was arranged that I would be the implementor of their orders. And so if the guardian over the ward's person says that the ward should have a wheelchair and the property guardians say okay, I issue an order directed to the bank manager where the ward's moneys are to release the stated amount (after a choice of wheel-chair was made by the guardian over the ward's person). The bank issues a check and have it delivered to the OIC-Branch Clerk of Court, from which the guardian over the person retrieves. That way there will be no *lamangan*, no *gulangan* between the two (2) property guardians belonging to opposite camps.

In a Resolution[12] dated April 18, 2006, this Court granted respondent Judge Ganay's motion that he be furnished with copies of the letter-complaint dated June 6, 2005 and the report dated September 22, 2005.

In another Manifestation[13] dated May 16, 2006, respondent Judge Ganay again stated that he and OIC-Clerk of Court Eslao had not yet received copies of the documents they were required to comment on. This prompted the Court to issue another Resolution[14] dated July 11, 2006, directing the Office of the Clerk of Court to furnish respondent Judge Ganay and OIC-Clerk of Court Eslao copies of the said documents.

OIC Clerk of Court Eslao submitted her Comment[15] dated August 22, 2006 and explained, thus:

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

[13] *Id.* at 116.

[14] *Id.* at 118.

[15] *Id.* at 120-121.

The prepaid cell cards were purchased upon the knowledge and approval of the property guardians.

There were 7 cellphones which were regularly fed with prepaid cell cards. These were automatic expenses on a regular basis. The regularity was every 2 months because the lifetime of a prepaid card is 60 days. Hence, the amount of regular expenses for prepaid cards was something like ₱21,000.00 annually. For 2 years, the regular amount was something like ₱42,000.00.

The 3 cellphones mentioned in the Memorandum (November 2004) were the replacement cellphones of the 3 guardians.

My position as OIC-Branch Clerk of Court functioned as the clearinghouse so that there could be monitoring of the activities regarding the ward in this special proceeding.

There was nothing irregular in all these purchases because they were upon the written orders of Judge Ganay, who, in turn, was himself requested-ordered by the property guardians.

BESIDES, the parties had long ago buried the hatchet as of August 22, 2005 even before the 2 OCA lawyers came to this Court (August 31, 2005).

This is a case of a false alarm.

Respondent Judge Ganay again submitted an Extended Comment[16] dated August 22, 2006 and narrated the peculiar circumstances in connection with *Special Proceeding Case No. A-1026*, entitled "In the Matter of the Guardianship of Rev. Fr. Jose O. Aspiras," to wit:

When Father Aspiras suffered a stroke sometime in September of 2001, paralyzing a portion of his body, his sister Gloria Aspiras Mamaril filed a petition for guardianship asking the Court that she be appointed guardian primarily because she is a sister. This was opposed by Helen Grace Canlas, a daughter of Alejandro Aspiras (brother of Father Aspiras). After several hearings that established the legal incompetency of Father Aspiras, the heirs including those with stakes to protect (numbering more than 25 in all) agreed that the personal guardian should be, as she was appointed by the Court eventually, HELEN GRACE CANLAS. The property guardians who

[16] *Id.* at 122-151.

were appointed were the living brother and sister of Father Aspiras, namely Gloria Aspiras Mamaril and Alejandro Aspiras. Both Gloria Aspiras Mamaril and Alejandro Aspiras are retired public servants, Gloria, being a retired DEPed elementary school teacher while Alejandro, a retired Navy man. After 2 years or so as one of the property guardians, because he could no longer come up to the third floor where Branch 31 RTC holds office, Alejandro Aspiras begged off, to be substituted by one of his learned daughters, Professor Mercedita A. Mabutas. She was appointed later in lieu of her father. She is a Professor of Don Mariano Marcos Memorial State University (DMMMSU) based in AGOO, La Union.

Normally, a ward of a Court has only one guardian. But the ward of this Court, Father Jose Aspiras, had three (3) guardians. This is because I had to accommodate both warring camps to avert a continuing war that would not redound to the benefit of the ward of the Court.

x x x x x x x x x

It was agreed that no withdrawals from the bank account of Father Aspiras shall be allowed without a written order from me.

In order that not one of the 3 guardians could act independently of the other, a system was developed whereby the judge (and that's me) only could order the manager of the bank to issue a check in such amount that will cover and answer for a certain need (see, also pages 8-9, ADVANCE COMMENT, March 21, 2006).

In other words, I and I alone, by agreement with the guardians, held the key to the bank vault.

While I held the key to the bank, the property guardians were the ones who could request-order me to instruct the manager of the bank to draw or issue a check.

x x x x x x x x x

Contrary to what the writer of that Letter-Complaint dated June 6, 2005, every order for the withdrawal of moneys have been all highly REGULAR. There was nothing that was irregular.

That's why after the heirs have chosen to peacefully settle among themselves in the last week of July 2005, I was prevailed upon by the heirs to stay a little longer so that I can make orders to the bank manager for the eventual, which was a certainty, distribution of the moneys for the heirs. On August 22, 2005, after the filing of the

inventory of properties by the property guardians, on the same date (August 22, 2005), the heirs executed an EXTRAJUDICIAL SETTLEMENT AND ARRANGEMENT OF ESTATE, which wrote *finis* to the squabble among the heirs and the sub-heirs. Eventually their shares in money were distributed. I was hailed as a hero, savior, Santa Claus, godfather. Some of the heirs adopted me a member of their family. All of them gave balatos one way or another all due to the fast distribution of their shares. Those who came from Australia, Tarlac and outlying areas beyond the Province of La Union were most grateful.

Respondent Judge Ganay also addressed the allegation that he and his cohorts were attempting to "withdraw at least the amount of about FOUR MILLION FOUR HUNDRED PESOS (₱4,400.00.00)" *(sic)* from the bank account of the late Rev. Fr. Aspiras. According to him, he could do it since he held the key to the bank, but he could not and would not do it for the following reasons:

xxx First, I fear God and the Supreme Court. Second, I was not raised that way by my poor but dignified parents (mother: retired DEPed public school principal; father: deceased, municipal employee). Third, I am satisfied with my present earning. Fourth, I have no need for that kind of sum. Fifth, I have a name to protect, being the recipient of many awards. And sixth, I am an automatic applicant to the Court of Appeals by virtue of R.A. 6713.

In a Resolution[17] dated August 29, 2006, this Court referred the instant case to the OCA for evaluation, report and recommendation.

In its Report[18] dated March 12, 2007, the OCA rejected the explanations of respondent Judge Ganay and found him guilty of violating Sections 13 and 14 of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary. The OCA recommended the following actions:

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court are our recommendations that:

a) the instant administrative case be **REDOCKETED**;

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[17] *Id.* at 184.

[18] *Id.* at 186-197.

b) **Judge Clifton U. Ganay**, Presiding Judge, Regional Trial Court, Branch 31, Agoo, La Union, be **FINED** the amount of **FIVE THOUSAND PESOS (₱5,000.00)**;

c) Likewise, OIC-Clerk of Court **Precilla Olympia P[.] Eslao**, be **FINED** the amount of **Five Thousand Pesos (₱5,000.00)**; [and]

d) The records of Special Proceeding Case No. A-1026, consisting of three (3) volumes, under the custody of the Office of the Court Administrator, (per resolution dated January 17, 2006) shall be returned back to the Regional Trial Court of Branch 31, Agoo, La Union.

After a judicious review of the record of this administrative matter, we find that respondent Judge Ganay has indeed violated Sections 13 and 14, as well as Section 15, of Canon 4 of the New Code of Conduct for the Philippine Judiciary.[19] The aforesaid provisions on Propriety state:

SEC. 13. Judges and members of their families shall neither ask for, nor accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by him or her in connection with the performance of judicial duties.

SEC. 14. Judges shall not knowingly permit court staff or others subject to their influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done in connection with their duties or functions.

SEC. 15. Subject to law and to any legal requirements of public disclosure, judges may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge. Lower court judges, such as respondent Judge Ganay, play an important role in the promotion of the people's faith in the judiciary. They are front-liners who give human face to the judicial branch

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[19] A.M. No. 03-05-01-SC, promulgated on April 27, 2004 and made effective on June 1, 2004.

at the grassroots level in their interaction with litigants and those who do business with the courts. Thus, the admonition that judges must avoid not only impropriety but also the appearance of impropriety is more sternly applied to them.[20]

In *Dulay v. Lelina, Jr.,*[21] the Court held:

> Although every office in the government is a public trust, no position exacts greater demand on moral righteousness and uprightness of an individual than a seat in the judiciary. A magistrate of law must comport himself at all times in such manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public. The New Code of Judicial Conduct for the Philippine Judiciary prescribes that judges shall ensure that not only is their conduct above reproach, *but that it is perceived to be so in the view of a reasonable observer*. Thus, judges are to avoid impropriety and the appearance of impropriety in all their activities. Likewise, they are mandated not to allow family, social or other relationships to influence judicial conduct or judgment, *nor convey or permit others to convey the impression that they are in a special position to influence the judge*. The Code clearly prohibits judges or members of their families from asking for *or accepting*, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by him or her in connection with the performance of judicial duties.

Respondent Judge Ganay clearly fell short of the exacting standards set by the New Code of Judicial Conduct for the Philippine Judiciary. His acts of receiving lawbooks worth fifty thousand pesos, cellular phones and monthly cellular phone prepaid cards from the property guardians of the late Rev. Fr. Aspiras, who was then the ward of the court, constitute impropriety which the Court cannot allow. Respondent Judge Ganay's act of issuing Orders directing the manager of the PNB, La Union Branch to draw checks amounting to thousands of pesos from the account of the late Rev. Fr. Aspiras creates the impression of impropriety and subjects the court to suspicion of irregularities in the conduct of the proceedings.

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[20] *Chan v. Majaducon*, A.M. No. RTJ-02-1697, October 15, 2003, 413 SCRA 354, 361.

[21] A.M. No. RTJ-99-1516, July 14, 2005, 463 SCRA 269, 275-276.

This Court finds unsatisfactory the explanations propounded by respondent Judge Ganay for his actuations in connection with *Special Proceeding Case No. A-1026*. He tried justifying his act of receiving cellular phones and monthly cellular phone prepaid cards from the property guardians of the late Rev. Fr. Aspiras as necessary for the networking of information about the ward of the court. He likewise rationalized his acceptance of the lawbooks worth fifty thousand pesos from the property guardians as his way of showing them that he "appreciate[d] their show of appreciation of [his] judicial work for the ward and to all other cases." Respondent Judge Ganay explained that he did not want the property guardians "to feel resentful ('tampo'), frustrated or shamed ('mapahiya') if [he] would refuse their generosity."

This Court has always stressed that a judge should avoid impropriety and even the appearance of impropriety in all activities, and that he should perform his duties honestly and with impartiality and diligence. Also, a judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.[22] Since respondent Judge Ganay occupied an exalted position in the administration of justice, he should pay a high price for the honor bestowed upon him; and his official, as well as his private, conduct must at all times be free from the appearance of impropriety.[23]

As held in *Edaño v. Asdala:*[24]

> As the visible representation of the law and justice, judges, such as the respondent, are expected to conduct themselves in a manner that would enhance the respect and confidence of the people in the judicial system. The New Code of Judicial Conduct for the Philippine Judiciary mandates that judges must not only maintain their independence, integrity and impartiality; but they must also avoid any appearance of impropriety or partiality, which may erode the people's faith in the judiciary. Integrity and impartiality, as well as the appearance thereof, are deemed essential not just in the proper

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[22] Rule 2.01, Canon 2, Code of Judicial Conduct.

[23] *Co v. Plata*, A.M. No. MTJ-03-1501, March 14, 2005, 453 SCRA 326, 340.

[24] A.M. No. RTJ-06-1974, July 26, 2007, 528 SCRA 212, 220-221.

discharge of judicial office, but also to the personal demeanor of judges. This standard applies not only to the decision itself, but also to the process by which the decision is made. Section 1, Canon 2, specifically mandates judges to 'ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of reasonable observers.' Clearly, it is of vital importance not only that independence, integrity and impartiality have been observed by judges and reflected in their decisions, but that these must also appear to have been so observed in the eyes of the people, so as to avoid any erosion of faith in the justice system. Thus, judges must be circumspect in their actions in order to avoid doubt and suspicion in the dispensation of justice. xxx

With regard to the recommendation of the OCA to impose a fine of Five Thousand (₱5,000.00) Pesos on OIC-Clerk of Court Eslao, this Court finds the same to be without basis. In her Comment dated August 22, 2006, OIC-Clerk of Court Eslao sufficiently explained that she merely followed the official orders of respondent Judge Ganay in issuing the Acknowledgment Receipts for the prepaid cards for the cellular phones. Moreover, nowhere in the OCA Report dated March 12, 2007 is a discussion regarding OIC-Clerk of Court Eslao's participation in the alleged irregularities in *Special Proceeding Case No. A-1026*.

WHEREFORE, for violating Sections 13, 14 and 15 of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary, respondent Judge Clifton U. Ganay is *FINED* in the amount of Twenty Thousand Pesos (₱20,000.00) with a stern warning that a repetition of similar infractions shall be dealt with more severely.

Let the records of *Special Proceeding Case No. A-1026*, consisting of three (3) volumes, under the custody of the Office of the Court Administrator (per resolution dated January 17, 2006), be returned to Branch 31 of the Regional Trial Court of Agoo, La Union.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Peralta, Bersamin, Del Castillo, Abad, and *Villarama, Jr., JJ.,* concur.

Brion, J., on leave.

FIRST DIVISION

[G.R. No. 146548. December 18, 2009]

HEIRS OF DOMINGO HERNANDEZ, SR., namely: SERGIA V. HERNANDEZ (Surviving Spouse), DOMINGO V. HERNANDEZ, JR., and MARIA LEONORA WILMA HERNANDEZ, *petitioners, vs.* **PLARIDEL MINGOA, SR., DOLORES CAMISURA, MELANIE MINGOA and QUEZON CITY REGISTER OF DEEDS,**[1] *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTIONS.—** We held in *Vera-Cruz v. Calderon* that: "As a general rule, only questions of law may be raised in a petition for review on *certiorari* to the Supreme Court. Although it has long been settled that findings of fact are conclusive upon this Court, there are exceptional circumstances which would require us to review findings of fact of the Court of Appeals, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) **the findings of fact of the Court of Appeals are contrary to those of the trial court;** (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the decision as well as in the petitioner's main and reply briefs are not disputed by the respondents; (10) the finding of fact of the Court of Appeals is premised on the supposed

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[1] The present petition impleaded the Court of Appeals as respondent. Under Rule 45, Section 4 of the 1997 Rules of Civil Procedure, the petition may be filed without impleading the lower courts or judges thereof as petitioners or respondents. Hence, the CA was deleted as party herein.

absence of evidence and is contradicted by evidence on record." The petition before us raises factual issues which are not proper in a petition for review under Rule 45 of the Rules of Court. However, we find that one of the exceptional circumstances qualifying a factual review by the Court exists, that is, the factual findings of the CA are at variance with those of the trial court. We shall then give due course to the instant petition and review the factual findings of the CA.

2. **ID.; ID.; PARTS OF A PLEADING; RULE ON CERTIFICATION AGAINST FORUM SHOPPING; SUBSTANTIALLY COMPLIED WITH WHEN THE CERTIFICATION IS SIGNED BY ONLY ONE OF THE PETITIONERS WHERE ALL THE PETITIONERS SHARE A COMMON INTEREST AND INVOKE A COMMON CAUSE OF ACTION OR DEFENSE.—** Even if only petitioner Domingo Hernandez, Jr. executed the Verification/Certification against forum-shopping, this will not deter us from proceeding with the judicial determination of the issues in this petition. As we ratiocinated in *Heirs of Olarte v. Office of the President*: "The general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs in a case and the signature of only one of them is insufficient. However, the Court has also stressed that the rules on forum shopping were designed to promote and facilitate the orderly administration of justice and thus should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. The rule of substantial compliance may be availed of with respect to the contents of the certification. This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. Thus, under justifiable circumstances, the Court has relaxed the rule requiring the submission of such certification considering that although it is obligatory, it is not jurisdictional. In *HLC Construction and Development Corporation v. Emily Homes Subdivision Homeowners Association*, it was held that the signature of only one of the petitioners in the certification against forum shopping substantially complied with rules because all the petitioners share a common interest and invoke a common cause of action or defense." x x x Here, all the petitioners are immediate

relatives who share a common interest in the land sought to be reconveyed and a common cause of action raising the same arguments in support thereof. There was sufficient basis, therefore, for Domingo Hernandez, Jr. to speak for and in behalf of his co-petitioners when he certified that they had not filed any action or claim in another court or tribunal involving the same issues. Thus, the Verification/Certification that Hernandez, Jr. executed constitutes substantial compliance under the Rules.

3. **ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* PETITION'S DEFECT OF ERRONEOUSLY IMPLEADING THE LOWER COURT AS RESPONDENT DOES NOT AUTOMATICALLY MEAN THE DISMISSAL OF THE APPEAL.—** Anent the contention that the petition erroneously impleaded the CA as respondent in contravention of Section 4(a) of Rule 45 of the 1997 Rules of Civil Procedure, we shall apply our ruling in *Simon v. Canlas*, wherein we held that: "x x x [The] Court agrees that the correct procedure, as mandated by Section 4, Rule 45 of the 1997 Rules of Civil Procedure, is not to implead the lower court which rendered the assailed decision. However, impleading the lower court as respondent in the petition for review on *certiorari* does not automatically mean the dismissal of the appeal but merely authorizes the dismissal of the petition. Besides, formal defects in petitions are not uncommon. The Court has encountered previous petitions for review on *certiorari* that erroneously impleaded the CA. In those cases, the Court merely called the petitioners' attention to the defects and proceeded to resolve the case on their merits. The Court finds no reason why it should not afford the same liberal treatment in this case. While unquestionably, the Court has the discretion to dismiss the appeal for being defective, sound policy dictates that it is far better to dispose of cases on the merits, rather than on technicality as the latter approach may result in injustice. This is in accordance with Section 6, Rule 1 of the 1997 Rules of Civil Procedure which encourages a reading of the procedural requirements in a manner that will help secure and not defeat justice."

4. **CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT OF SALE; ESTABLISHED IN CASE AT BAR.—** The SPA in favor of Dolores Camisura pertinently states that the latter is the lawful attorney-in-fact of Domingo B. Hernandez, Sr.,

married to Sergia Hernandez, to do and perform, among others, the following acts and deeds: "1. To sign, execute and acknowledge all such contracts, deeds or other instruments which may be required by the People's Homesite and Housing Corporation with respect to the purchase of that certain parcel of land known and designated as Lot No. 15 Block E-89 of the Malaya Avenue Subdivision, situated in Quezon City and containing an area of 520 square meters, more or less, which I have acquired thru the CENTRAL BANK STAFF HOUSING CORPORATION; 2. To sign, execute and acknowledge all such contracts or other instruments which may deem necessary or be required to sign, execute and acknowledge for the purpose of selling, transferring, conveying, disposing of or alienating whatever rights I may have over that parcel of land mentioned above; x x x." The Deed of Transfer of Rights, also executed by Hernandez, Sr. in Camisura's favor, expressly states that the former, in consideration of the amount of ₱6,500.00, transfers his rights over the subject property to the latter. Notably, such deed was simultaneously executed with the SPA on February 14, 1963. From the foregoing, the Court cannot but conclude that the SPA executed by Hernandez, Sr. in respondent Camisura's favor was, in reality, an alienation involving the subject property. We particularly note that Hernandez, Sr., aside from executing said SPA, likewise sold his rights and interests over the property awarded by the PHHC to Camisura. The CA committed no error when it ruled: "x x x Appreciating the case in its entirety, the purported SPA appear to be merely a grant of authority to Camisura (and then to Plaridel Mingoa) to sell and dispose of the subject property as well as a grant of right to purchase the said property; but in essence, such SPA are disguised deeds of sale of the property executed in circumventing the retention period restriction over the said property. Verily, the parties knew that the land in question could not be alienated in favor of any third person within one (1) year without the approval of the PHHC."

5. ID.; ID.; VALID CONTRACT; ELEMENTS.— To constitute a valid contract, the Civil Code requires the concurrence of the following elements: (1) cause, (2) object, and (3) consent.

6. ID.; PERSONS AND FAMILY RELATIONS; MARRIAGE; CONJUGAL PARTNERSHIP; ALIENATION OF CONJUGAL PROPERTY BY THE HUSBAND WITHOUT

THE WIFE'S CONSENT IS NOT NULL AND VOID BUT MERELY VOIDABLE WHEN THE SALE IS MADE BEFORE THE EFFECTIVITY OF THE FAMILY CODE.— It bears stressing that the subject matter herein involves conjugal property. Said property was awarded to Domingo Hernandez, Sr. in 1958. The assailed SPAs were executed in 1963 and 1964. Title in the name of Domingo Hernandez, Sr. covering the subject property was issued on May 23, 1966. The sale of the property to Melanie Mingoa and the issuance of a new title in her name happened in 1978. Since all these events occurred before the Family Code took effect in 1988, the provisions of the New Civil Code govern these transactions. We quote the applicable provisions, to wit: "Art. 165. The husband is the administrator of the conjugal partnership. Art. 166. Unless the wife has been declared a *non compos mentis* or a spendthrift, or is under civil interdiction or is confined in a leprosarium, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. If she refuses unreasonably to give her consent, the court may compel her to grant the same. x x x. Art. 173. The wife may, **during the marriage, and within ten years from the transaction questioned,** ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband." x x x In succeeding cases, we held that alienation and/or encumbrance of conjugal property by the husband without the wife's consent is not null and void but merely voidable. In *Sps. Alfredo v. Sps. Borras,* we held that: "The Family Code, which took effect on 3 August 1988, provides that any alienation or encumbrance made by the husband of the conjugal partnership property without the consent of the wife is void. However, when the sale is made before the effectivity of the Family Code, the applicable law is the Civil Code. Article 173 of the Civil Code provides that the disposition of conjugal property without the wife's consent is not void but merely voidable."

7. ID.; ID.; ID.; ID.; ID.; ANNULMENT OF ANY CONTRACT ENTERED INTO BY THE HUSBAND WITHOUT THE

WIFE'S CONSENT MUST BE FILED DURING THE MARRIAGE AND WITHIN TEN YEARS FROM THE TRANSACTION QUESTIONED.— Here, the husband's first act of disposition of the subject property occurred in 1963 when he executed the SPA and the Deed of Transfer of Rights in favor of Dolores Camisura. Thus, the right of action of the petitioners accrued in 1963, as Article 173 of the Civil Code provides that the wife may file for annulment of a contract entered into by the husband without her consent within ten (10) years from the transaction questioned. Petitioners filed the action for reconveyance in 1995. Even if we were to consider that their right of action arose when they learned of the cancellation of TCT No. 107534 and the issuance of TCT No. 290121 in Melanie Mingoa's name in 1993, still, twelve (12) years have lapsed since such discovery, and they filed the petition beyond the period allowed by law. Moreover, when Sergia Hernandez, together with her children, filed the action for reconveyance, the conjugal partnership of property with Hernandez, Sr. had already been terminated by virtue of the latter's death on April 16, 1983. Clearly, therefore, petitioners' action has prescribed. And this is as it should be, for in the same *Vera-Cruz* case, we further held that: "xxx [Under] Article 173 of the New Civil Code, an action for the annulment of any contract entered into by the husband without the wife's consent must be filed (1) during the marriage; and (2) within ten years from the transaction questioned. **Where any one of these two conditions is lacking, the action will be considered as having been filed out of time."** x x x Thus, the failure of Sergia Hernandez to file with the courts an action for annulment of the contract during the marriage and within ten (10) years from the transaction necessarily barred her from questioning the sale of the subject property to third persons.

8. **REMEDIAL LAW; ACTIONS; LACHES; ELUCIDATED.—** More than having merely prescribed, petitioners' action has likewise become stale, as it is barred by *laches*. In *Isabela Colleges v. Heirs of Nieves-Tolentino*, this Court held: "Laches means the failure or neglect for an unreasonable and unexplained length of time to do that which, by observance of due diligence, could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert his right either has abandoned or declined to assert it. Laches thus operates as

a bar in equity. x x x The time-honored rule anchored on public policy is that relief will be denied to a litigant whose claim or demand has become "stale," or who has acquiesced for an unreasonable length of time, or who has not been vigilant or who has slept on his rights either by negligence, folly or inattention. In other words, public policy requires, for peace of society, the discouragement of claims grown stale for non-assertion; thus laches is an impediment to the assertion or enforcement of a right which has become, under the circumstances, inequitable or unfair to permit." Pertinently, in *De la Calzada-Cierras v. CA*, we ruled that a complaint to recover the title and possession of the lot filed 12 years after the registration of the sale is considered neglect for an unreasonably long time to assert a right to the property. Here, petitioners' unreasonably long period of inaction in asserting their purported rights over the subject property weighs heavily against them.

APPEARANCES OF COUNSEL

Atty. Napoleon Uy Galit and Associates Law Offices for petitioners.

Noel M. Mingoa for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* of the **Decision**[2] **dated September 7, 2000** and **Resolution**[3] **dated December 29, 2000,** both of the Court of Appeals (CA), in *CA-G.R. CV No. 54896.* The CA Decision reversed and set aside the decision of the Regional Trial Court (RTC) of Quezon City (Branch 92), which ruled in favor of herein petitioners in the action for reconveyance filed by the latter in said court against the respondents. The CA Resolution denied the petitioners' motion for reconsideration.

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[2] Penned by (ret.) Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Eugenio S. Labitoria and Alicia L. Santos (both ret.); *rollo*, pp. 58-78.

[3] *Id.* at 84.

The subject matter of the action is a parcel of land with an area of 520.50 square meters situated in Diliman, Quezon City, described as Lot 15, Block 89 of the subdivision plan Psd-68807, covered by Transfer Certificate of Title (TCT) No. 107534[4] issued on May 23, 1966 and registered in the name of Domingo B. Hernandez, Sr. married to Sergia V. Hernandez. Later on, said TCT No. 107534 was cancelled and in lieu thereof, TCT No. 290121[5] was issued in favor of Melanie Mingoa.

These are the factual antecedents of this case:

On February 11, 1994, a complaint[6] was filed with the RTC of Quezon City by herein petitioners, heirs of Domingo Hernandez, Sr., namely, spouse Sergia Hernandez and their surviving children Domingo, Jr. and Maria Leonora Wilma, against the respondents herein, Dolores Camisura, Melanie Mingoa, Atty. Plaridel Mingoa, Sr. and all persons claiming rights under the latter, and the Quezon City Register of Deeds. The case was docketed as Civil Case No. 094-19276.

In their complaint, the petitioners asked for (a) the annulment and/or declaration of nullity of TCT No. 290121 including all its derivative titles, the Irrevocable Special Power of Attorney (SPA) dated February 14, 1963 in favor of Dolores Camisura,[7] the SPA dated May 9, 1964 in favor of Plaridel Mingoa, Sr.,[8] and the Deed of Absolute Sale of Real Estate[9] dated July 9, 1978 executed by Plaridel Mingoa, Sr. in favor of Melanie Mingoa for being products of forgery and falsification; and (b) the reconveyance and/or issuance to them (petitioners) by the Quezon City Register of Deeds of the certificate of title covering the subject property.

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[4] Records, pp. 10-11.

[5] *Id.* at 13.

[6] *Id.* at 1-9.

[7] *Id.* at 430.

[8] *Id.* at 432.

[9] *Id.* at 435.

Respondents filed a Motion to Dismiss[10] the complaint interposing the following grounds: the claim or demand has been paid, waived, abandoned or otherwise extinguished; lack of cause of action; lack of jurisdiction over the person of the defendants or over the subject or nature of the suit; and prescription. The following were attached to said motion: a Deed of Transfer of Rights[11] dated February 14, 1963 from Domingo Hernandez, Sr. to Camisura, the Irrevocable SPA[12] executed by the former in the latter's favor, and a Deed of Sale of Right in a Residential Land and Improvements Therein[13] dated May 9, 1964 executed by Camisura in favor of Plaridel Mingoa, Sr.

In its Order[14] dated September 1, 1994, the trial court denied respondents' motion to dismiss.

Respondents filed a petition for *certiorari* and prohibition with the CA assailing the aforementioned Order of denial by the RTC. Their initial petition was dismissed for being insufficient in form. Respondents then re-filed their petition, which was docketed as *CA-G.R. SP No. 36868*. In a decision[15] dated May 26, 1995, respondents' re-filed petition was denied due course by the CA. Having been filed beyond the reglementary period, respondents' subsequent motion for reconsideration was simply noted by the CA in its Resolution of July 7, 1995. On the basis of a technicality, this Court, in a Resolution dated September 27, 1995, dismissed respondents' appeal which was docketed as *G.R. No. 121020*. Per Entry of Judgment,[16] said Resolution became final and executory on January 2, 1996.

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[10] *Id.* at 22-28.

[11] *Id.* at 29.

[12] *Supra* note 7; also Records, p. 31.

[13] *Id.* at 30.

[14] *Id.* at 54-57.

[15] *Id.* at 378-383.

[16] *Id.* at 545.

Meanwhile, respondents filed their Answer[17] in the main case therein denying the allegations of the complaint and averring as defenses the same grounds upon which they anchored their earlier motion to dismiss.

The parties having failed to amicably settle during the scheduled pre-trial conference, the case proceeded to trial.

The evidence respectively presented by the parties is summarized as follows:[18]

> x x x [It] appears that in the early part of 1958, Domingo Hernandez, Sr. (who was then a Central Bank employee) and his spouse Sergia V. Hernandez were awarded a piece of real property by the Philippine Homesite and Housing Corporation (PHHC) by way of salary deduction. On October 18, 1963, the [petitioners] then having paid in full the entire amount of ₱6,888.96, a Deed of Absolute Sale of the property was executed by the PHHC in their favor. TCT No. 107534, covering the property was issued to the [petitioners] on May 23, 1966. It bears an annotation of the retention period of the property by the awardee (*i.e.*, restriction of any unauthorized sale to third persons within a certain period). Tax payments due on the property were religiously paid (until 1955) by the [petitioners] as evidenced by receipts under the [petitioners'] name.
>
> Hernandez, Sr. died intestate in April 1983 and it was only after his burial that his heirs found out that TCT No. 107534 was already cancelled a year before (in 1982), and in lieu thereof, TCT No. 290121 was issued to the [respondents]. Upon diligent inquiry, [petitioners] came to know that the cancellation of TCT (No. 107534) in favor of the [respondents'] xxx TCT (No. 290121) was based upon three sets of documents, namely, (1) Irrevocable Power of Attorney; (2) Irrevocable Special Power of Attorney; and (3) Deed of Absolute Sale.
>
> [Petitioners] also allege that because of financial difficulties, they were only able to file a complaint on February 11, 1995 after consulting with several lawyers.
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> x x x x x x x x x

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[17] *Id.* at 58-61.

[18] *Rollo,* pp. 61-63.

[Respondents] xxx on the other hand do not deny that Hernandez, Sr. was indeed awarded a piece of real property by the PHHC. According to the [respondents] xxx, Hernandez, Sr. was awarded by the PHHC the Right to Purchase the property in question; however, the late Hernandez, Sr. failed to pay all the installments due on the said property. Thus, afraid that he would forfeit his right to purchase the property awarded to him, Hernandez, Sr. sold to Dolores Camisura his rights for the sum of ₱6,500.00 on February 14, 1963, through a deed of transfer of rights, seemingly a printed form from the PHHC. Simultaneous to this, Hernandez, Sr. and his spouse executed an irrevocable special power of attorney, appointing Dolores Camisura as their attorney-in-fact with express power to sign, execute and acknowledge any contract of disposition, alienation and conveyance of her right over the aforesaid parcel of land.

Apparently, this special power of attorney was executed for the purpose of securing her right to transfer the property to a third person considering that there was a prohibition to dispose of the property by the original purchaser within one (1) year from full payment. Else wise (sic) stated, the irrevocable power of attorney was necessary in order to enable the buyer, Dolores Camisura, to sell the lot to another, Plaridel Mingoa, without the need of requiring Hernandez, to sign a deed of conveyance.

On May 9, 1964, Dolores Camisura sold her right over the said property to Plaridel Mingoa for ₱7,000.00. Camisura then executed a similar irrevocable power of attorney and a deed of sale of right in a residential land and improvements therein in favor of Plaridel Mingoa. Upon such payment and on the strength of the said irrevocable power of attorney, Plaridel Mingoa took possession of the said property and began paying all the installments due on the property to PHHC. Plaridel Mingoa further secured TCT No. 107534 (issued in the name of Domingo Hernandez, Sr.) on May, 1966. On July 9, 1978, Plaridel Mingoa sold to his eldest child, Melanie Mingoa, the property in question for ₱18,000.00. TCT No. 107534 was thus cancelled and TCT No. 290121 was issued in the name of Melanie Mingoa. It is further claimed that since 1966 until 1982, Plaridel Mingoa religiously paid all the taxes due on the said property; and that from 1983 up to the present, Melanie Mingoa paid all the property taxes due thereon aside from having actual possession of the said property. (words in brackets ours)

On May 9, 1996, the RTC rendered a decision[19] in favor of the petitioners, with the following dispositive portion:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs as follows:

1) TCT No. 290121 and all its derivative titles are hereby declared null and void;

2) Ordering the Register of Deeds of Quezon City to cancel TCT No. 290121 issued in the name of defendant Melanie Mingoa and corresponding owner's duplicate certificate and all its derivative title[s];

3) Ordering defendant Melanie Mingoa and all derivative owners to surrender owner's duplicate copies of transfer certificate of title to the Register of Deeds of Quezon City for cancellation upon finality of this decision;

4) Ordering the defendants except the Register of Deeds of Quezon City to turn over to the plaintiffs the peaceful possession of the subject property; and

5) Ordering the defendants except the Register of Deeds of Quezon City to jointly and severally (sic) pay the plaintiffs the sum of ₱10,000.00 as attorney's [fees] and to pay the costs of suit.

SO ORDERED.

In ruling in favor of petitioners, the trial court reasoned as follows:[20]

The two (2) parties in the case at bar gave out conflicting versions as to who paid for the subject property. The plaintiffs claim that they were the ones who paid the entire amount out of the conjugal funds while it is the contention of the defendant Mingoa that the former were not able to pay. The defendant alleged that the right to purchase was sold to him and he was able to pay the whole amount. The Court is of the opinion that petitioners' version is more credible taken together with the presence of the irrevocable power of attorney which both parties admitted. In light of the version of the defendants, it is highly improbable that a Power of Attorney would be constituted by the plaintiffs authorizing the former to sell the subject property.

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[19] *Id.* at 96-103.

[20] *Id.* at 100-102.

This is because for all intents and purposes, the land is already the defendants' for if we are to follow their claim, they paid for the full amount of the same. It can be safely concluded then that the Power of Attorney was unnecessary because the defendants, as buyers, can compel the plaintiff-sellers to execute the transfer of the said property after the period of prohibition has lapsed. The defendants, as owners, will have the right to do whatever they want with the land even without an Irrevocable Power of Attorney. Since the presence of the Irrevocable Power of Attorney is established, it is now the task of this Court to determine the validity of the sale made by virtue of the said Power of Attorney. As what was said earlier, the Court subscribes to the points raised by the plaintiffs. It was proved during trial that the signature of the wife was falsified. Therefore, it is as if the wife never authorized the agent to sell her share of the subject land, it being conjugal property. It follows that the sale of half of the land is invalid. However, it must be pointed out that the signature of the deceased husband was never contested and is therefore deemed admitted. We now come to the half which belongs to the deceased husband. The Law on Sales expressly prohibits the agent from purchasing the property of the principal without the latter's consent (Article 1491 of the Civil Code). It was established from the records that defendant Plaridel Mingoa sold the subject land to his daughter Melanie. It is now for the Court to decide whether this transaction is valid. x x x Considering that the sale took place in July 1978, it follows from simple mathematical computation that Melanie was then a minor (20 years of age) when she allegedly bought the property from her father. Since Melanie's father is the sub-agent of the deceased principal, he is prohibited by law from purchasing the land without the latter's consent. This being the case, the sale is invalid for it appears that Plaridel Mingoa sold the land to himself. It should be noted that the defendants could have easily presented Melanie's birth certificate, it being at their disposal, but they chose not to. Because of this, this Court is of the belief that the presumption that evidence willfully suppressed would be adverse if produced arises.

The trial court denied respondents' motion for reconsideration of the aforementioned decision in its Order[21] of August 22, 1996.

Aggrieved, the respondents appealed to the CA, where their case was docketed as *CA-G.R. CV No. 54896*. Holding that the

[21] Records, p. 594.

petitioners were barred by prescription and *laches* to take any action against the respondents, the CA, in its herein assailed **Decision**[22] **dated September 7, 2000**, reversed and set aside the appealed decision, thereby dismissing the complaint filed by the petitioners before the trial court. In full, the disposition reads:

> WHEREFORE, in view of the foregoing, the Decision of the RTC Branch 92, Quezon City, in Civil Case No. Q-94-19276, entitled, "*Heirs of Domingo Hernandez, Sr. vs. Dolores Camisura, et. al.,*" is hereby REVERSED AND SET ASIDE. A new one is hereby entered, DISMISSING the complaint in Civil Case No. Q-94-19276 entitled, "*Heirs of Domingo Hernandez, Sr. vs. Dolores Camisura, et. al.,*" filed by the plaintiffs-appellees before the RTC Branch 92, Quezon City for lack of merit.
>
> SO ORDERED.

Petitioners' subsequent motion for reconsideration was denied by the CA in its impugned **Resolution**[23] **dated December 29, 2000.**

Hence, petitioners are now before this Court *via* the present recourse. The ten (10) assigned errors set forth in the petition all boil down to the essential issue of whether the title of the subject property in the name of respondent Melanie Mingoa may still be reconveyed to the petitioners. As we see it, the resolution thereof hinges on these two pivotal questions: (1) whether there was a valid alienation involving the subject property; and (2) whether the action impugning the validity of such alienation has prescribed and/or was barred by *laches*.

The Court shall deal first with the procedural issues raised by the respondents in their Comment.[24]

We held in *Vera-Cruz v. Calderon*[25] that:

> As a general rule, only questions of law may be raised in a petition for review on *certiorari* to the Supreme Court. Although it has

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[22] *Supra* note 2.

[23] *Supra* note 3.

[24] *Rollo*, pp. 216-222.

[25] G.R. No. 160748, July 14, 2004, 434 SCRA 534, 539.

long been settled that findings of fact are conclusive upon this Court, there are exceptional circumstances which would require us to review findings of fact of the Court of Appeals, to wit:

> (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) **the findings of fact of the Court of Appeals are contrary to those of the trial court**; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the decision as well as in the petitioner's main and reply briefs are not disputed by the respondents; (10) the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by evidence on record. (emphasis ours)

The petition before us raises factual issues which are not proper in a petition for review under Rule 45 of the Rules of Court. However, we find that one of the exceptional circumstances qualifying a factual review by the Court exists, that is, the factual findings of the CA are at variance with those of the trial court. We shall then give due course to the instant petition and review the factual findings of the CA.

Even if only petitioner Domingo Hernandez, Jr. executed the Verification/Certification[26] against forum-shopping, this will not deter us from proceeding with the judicial determination of the issues in this petition. As we ratiocinated in *Heirs of Olarte v. Office of the President*:[27]

> The general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs in a case and the signature of only one of them is insufficient. However, the Court has also stressed that the rules on forum shopping were designed to promote and facilitate the orderly administration of justice and thus should not

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[26] *Rollo*, p. 54.

[27] G.R. No. 165821, June 21, 2005, 460 SCRA 561, 566-567.

be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. The rule of substantial compliance may be availed of with respect to the contents of the certification. This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. Thus, under justifiable circumstances, the Court has relaxed the rule requiring the submission of such certification considering that although it is obligatory, it is not jurisdictional.

In *HLC Construction and Development Corporation v. Emily Homes Subdivision Homeowners Association*, it was held that the signature of only one of the petitioners in the certification against forum shopping substantially complied with rules because all the petitioners share a common interest and invoke a common cause of action or defense.

The same leniency was applied by the Court in *Cavile v. Heirs of Cavile*, because the lone petitioner who executed the certification of non-forum shopping was a relative and co-owner of the other petitioners with whom he shares a common interest. x x x

x x x x x x x x x

In the instant case, petitioners share a common interest and defense inasmuch as they collectively claim a right not to be dispossessed of the subject lot by virtue of their and their deceased parents' construction of a family home and occupation thereof for more than 10 years. The commonality of their stance to defend their alleged right over the controverted lot thus gave petitioners xxx authority to inform the Court of Appeals in behalf of the other petitioners that they have not commenced any action or claim involving the same issues in another court or tribunal, and that there is no other pending action or claim in another court or tribunal involving the same issues. x x x

Here, all the petitioners are immediate relatives who share a common interest in the land sought to be reconveyed and a common cause of action raising the same arguments in support thereof. There was sufficient basis, therefore, for Domingo Hernandez, Jr. to speak for and in behalf of his co-petitioners when he certified that they had not filed any action or claim in

another court or tribunal involving the same issues. Thus, the Verification/Certification that Hernandez, Jr. executed constitutes substantial compliance under the Rules.

Anent the contention that the petition erroneously impleaded the CA as respondent in contravention of Section 4(a)[28] of Rule 45 of the 1997 Rules of Civil Procedure, we shall apply our ruling in *Simon v. Canlas*,[29] wherein we held that:

> x x x [The] Court agrees that the correct procedure, as mandated by Section 4, Rule 45 of the 1997 Rules of Civil Procedure, is not to implead the lower court which rendered the assailed decision. However, impleading the lower court as respondent in the petition for review on *certiorari* does not automatically mean the dismissal of the appeal but merely authorizes the dismissal of the petition. Besides, formal defects in petitions are not uncommon. The Court has encountered previous petitions for review on *certiorari* that erroneously impleaded the CA. In those cases, the Court merely called the petitioners' attention to the defects and proceeded to resolve the case on their merits.
>
> The Court finds no reason why it should not afford the same liberal treatment in this case. While unquestionably, the Court has the discretion to dismiss the appeal for being defective, sound policy dictates that it is far better to dispose of cases on the merits, rather than on technicality as the latter approach may result in injustice. This is in accordance with Section 6, Rule 1 of the 1997 Rules of Civil Procedure which encourages a reading of the procedural requirements in a manner that will help secure and not defeat justice.

We now come to the substantive issues.

As correctly found by the appellate court, the following facts are undisputed:[30]

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[28] SEC. 4. *Contents of petition*. – The petition shall xxx (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, **without impleading the lower courts or judges thereof either as petitioners or respondents**; xxx (emphasis ours.).

[29] G.R. No. 148273, April 19, 2006, 487 SCRA 433, 444-445.

[30] *Rollo*, pp. 65-66.

1. Domingo Hernandez, Sr. was awarded a piece of real property in 1958 by the PHHC as part of the government's housing program at the time. Title over the said property was issued in 1966 in the name of Hernandez, Sr., after full payment for the property was received by the PHHC.

2. Neither [petitioners] nor Hernandez, Sr., took possession of the said property. On the other hand, the [respondents] took possession of the said property in 1966 and are in actual and physical possession thereof up to the present, and have made considerable improvements thereon, including a residential house where they presently reside.

3. The Owner's Duplicate Copy of the title over the property given by the PHHC to Hernandez, Sr. was in the possession of Plaridel Mingoa, the latter being able to facilitate the cancellation of the said title and [the issuance of] a new TCT xxx in the name of Melanie Mingoa.

4. The realty taxes have been paid by [respondents], albeit in the name of Hernandez, Sr., but all official receipts of tax payments are kept by the [respondents].

5. From 1966 (the time when the [respondents] were able to possess the property) to 1983 (the time when the [petitioners] had knowledge that the TCT in the name of Hernandez, Sr. had already been cancelled by the Registry of Deeds of Quezon City) covers almost a span of 17 years; and from 1983 to 1995 (the time when the Heirs filed the original action) is a period of another 12 years.

The SPA[31] in favor of Dolores Camisura pertinently states that the latter is the lawful attorney-in-fact of Domingo B. Hernandez, Sr., married to Sergia Hernandez, to do and perform, among others, the following acts and deeds:

1. To sign, execute and acknowledge all such contracts, deeds or other instruments which may be required by the People's Homesite and Housing Corporation with respect to the purchase of that certain parcel of land known and designated as Lot No. 15 Block E-89 of the Malaya Avenue Subdivision, situated in Quezon City and containing an area of 520 square meters, more or less, which I have acquired thru the CENTRAL BANK STAFF HOUSING CORPORATION;

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[31] *Supra* note 7.

2. To sign, execute and acknowledge all such contracts or other instruments which may deem necessary or be required to sign, execute and acknowledge for the purpose of selling, transferring, conveying, disposing of or alienating whatever rights I may have over that parcel of land mentioned above;
x x x.

The Deed of Transfer of Rights,[32] also executed by Hernandez, Sr. in Camisura's favor, expressly states that the former, in consideration of the amount of ₱6,500.00, transfers his rights over the subject property to the latter. Notably, such deed was simultaneously executed with the SPA on February 14, 1963.

From the foregoing, the Court cannot but conclude that the SPA executed by Hernandez, Sr. in respondent Camisura's favor was, in reality, an alienation involving the subject property. We particularly note that Hernandez, Sr., aside from executing said SPA, likewise sold his rights and interests over the property awarded by the PHHC to Camisura. The CA committed no error when it ruled:[33]

x x x Appreciating the case in its entirety, the purported SPA appear to be merely a grant of authority to Camisura (and then to Plaridel Mingoa) to sell and dispose of the subject property as well as a grant of right to purchase the said property; but in essence, such SPA are disguised deeds of sale of the property executed in circumventing the retention period restriction over the said property. Verily, the parties knew that the land in question could not be alienated in favor of any third person within one (1) year without the approval of the PHHC.

Having ruled that the SPA in favor of Camisura was a contract of sale, the next question is whether or not such sale was valid.

To constitute a valid contract, the Civil Code requires the concurrence of the following elements: (1) cause, (2) object, and (3) consent.

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[32] *Supra* note 11.

[33] *Rollo*, p. 69.

The consent of Domingo Hernandez, Sr. to the contract is undisputed, thus, the sale of his ½ share in the conjugal property was valid. With regard to the consent of his wife, Sergia Hernandez, to the sale involving their conjugal property, the trial court found that it was lacking because said wife's signature on the SPA was falsified. Notably, even the CA observed that the forgery was so blatant as to be remarkably noticeable to the naked eye of an ordinary person. Having compared the questioned signature on the SPA[34] with those of the documents[35] bearing the sample standard signature of Sergia Hernandez, we affirm both lower courts' findings regarding the forgery.

However, Sergia's lack of consent to the sale did not render the transfer of her share invalid.

Petitioners contend that such lack of consent on the part of Sergia Hernandez rendered the SPAs and the deed of sale fictitious, hence null and void in accordance with Article 1409[36] of the Civil Code. Petitioners likewise contend that an action for the declaration of the non-existence of a contract under Article 1410[37] does not prescribe.

We find, after meticulous review of the facts, that Articles 1409 and 1410 are not applicable to the matter now before us.

It bears stressing that the subject matter herein involves conjugal property. Said property was awarded to Domingo Hernandez, Sr. in 1958. The assailed SPAs were executed in

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[34] *Supra* note 7.

[35] Records, pp. 406-407.

[36] ARTICLE 1409. 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.

[37] ARTICLE 1410. The action or defense for the declaration of the inexistence of a contract does not prescribe.

1963 and 1964. Title in the name of Domingo Hernandez, Sr. covering the subject property was issued on May 23, 1966. The sale of the property to Melanie Mingoa and the issuance of a new title in her name happened in 1978. Since all these events occurred before the Family Code took effect in 1988, the provisions of the New Civil Code govern these transactions. We quote the applicable provisions, to wit:

Art. 165. The husband is the administrator of the conjugal partnership.

Art. 166. Unless the wife has been declared a *non compos mentis* or a spendthrift, or is under civil interdiction or is confined in a leprosarium, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. If she refuses unreasonably to give her consent, the court may compel her to grant the same. x x x.

Art. 173. The wife may, **during the marriage, and within ten years from the transaction questioned,** ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband. (Emphasis ours.)

Notwithstanding the foregoing, petitioners argue that the disposition of conjugal property made by a husband without the wife's consent is null and void and the right to file an action thereon is imprescriptible, in accordance with *Garcia v. CA*[38] and *Bucoy v. Paulino.*[39]

Concededly, in the aforementioned cases of *Garcia* and *Bucoy*, the contracts involving the sale of conjugal property by the husband without the wife's consent were declared null and void by this Court. But even in *Bucoy*, we significantly ruled, in reference to Article 173, that:

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[38] Nos. L-49644-45, July 16, 1984,130 SCRA 433.

[39] No. L-25775, April 26, 1968, 23 SCRA 248.

The plain meaning attached to the plain language of the law is that the contract, in its entirety, executed by the husband without the wife's consent, **may be annulled by the wife**.[40] (emphasis ours)

In succeeding cases, we held that alienation and/or encumbrance of conjugal property by the husband without the wife's consent is not null and void but merely voidable.

In *Sps. Alfredo v. Sps. Borras,*[41] we held that:

The Family Code, which took effect on 3 August 1988, provides that any alienation or encumbrance made by the husband of the conjugal partnership property without the consent of the wife is void. However, when the sale is made before the effectivity of the Family Code, the applicable law is the Civil Code.

Article 173 of the Civil Code provides that the disposition of conjugal property without the wife's consent is not void but merely voidable.

We likewise made the same holding in *Pelayo v. Perez*:[42]

xxx [Under] Article 173, in relation to Article 166, both of the New Civil Code, which was still in effect on January 11, 1988 when the deed in question was executed, the lack of marital consent to the disposition of conjugal property does not make the contract *void ab initio* but merely voidable.

In *Vera-Cruz v. Calderon*,[43] the Court noted the state of jurisprudence and elucidated on the matter, thus:

In the recent case of *Heirs of Ignacia Aguilar-Reyes v. Spouses Mijares,* we reiterated the rule that the husband cannot alienate or encumber any conjugal real property without the consent, express or implied, of the wife, otherwise, the contract is voidable. To wit:

> Indeed, in several cases the Court has ruled that such alienation or encumbrance by the husband is void. The better view, however, is to consider the transaction as merely voidable and not void.

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[40] *Id.* at 262.

[41] G.R. No. 144225, June 17, 2003, 404 SCRA 145, 159.

[42] G.R. No. 141323, June 8, 2005, 459 SCRA 475, 485-486.

[43] *Supra* note 25 at 540-541.

> **This is consistent with Article 173 of the Civil Code pursuant to which the wife could, during the marriage and within 10 years from the questioned transaction, seek its annulment.**
>
> x x x x x x x x x

Likewise, in the case of *Heirs of Christina Ayuste v. Court of Appeals,* we declared that:

> There is no ambiguity in the wording of the law. A sale of real property of the conjugal partnership made by the husband without the consent of his wife is voidable. The action for annulment must be brought during the marriage and within ten years from the questioned transaction by the wife. Where the law speaks in clear and categorical language, there is no room for interpretation – there is room only for application.
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> x x x (Emphasis ours.)

Here, the husband's first act of disposition of the subject property occurred in 1963 when he executed the SPA and the Deed of Transfer of Rights in favor of Dolores Camisura. Thus, the right of action of the petitioners accrued in 1963, as Article 173 of the Civil Code provides that the wife may file for annulment of a contract entered into by the husband without her consent within ten (10) years from the transaction questioned. Petitioners filed the action for reconveyance in 1995. Even if we were to consider that their right of action arose when they learned of the cancellation of TCT No. 107534 and the issuance of TCT No. 290121 in Melanie Mingoa's name in 1993, still, twelve (12) years have lapsed since such discovery, and they filed the petition beyond the period allowed by law. Moreover, when Sergia Hernandez, together with her children, filed the action for reconveyance, the conjugal partnership of property with Hernandez, Sr. had already been terminated by virtue of the latter's death on April 16, 1983. Clearly, therefore, petitioners' action has prescribed.

And this is as it should be, for in the same *Vera-Cruz* case, we further held that:[44]

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[44] *Id.* at 541-542.

xxx [Under] Article 173 of the New Civil Code, an action for the annulment of any contract entered into by the husband without the wife's consent must be filed (1) during the marriage; and (2) within ten years from the transaction questioned. **Where any one of these two conditions is lacking, the action will be considered as having been filed out of time.**

In the case at bar, while respondent filed her complaint for annulment of the deed of sale on July 8, 1994, *i.e.*, within the ten-year period counted from the execution of the deed of sale of the property on June 3, 1986, the marriage between her and Avelino had already been dissolved by the death of the latter on November 20, 1993. In other words, her marriage to Avelino was no longer subsisting at the time she filed her complaint. Therefore, the civil case had already been barred by prescription. (Emphasis ours.)

Thus, the failure of Sergia Hernandez to file with the courts an action for annulment of the contract during the marriage and within ten (10) years from the transaction necessarily barred her from questioning the sale of the subject property to third persons.

As we held in *Vda. De Ramones v. Agbayani*:[45]

In *Villaranda v. Villaranda, et al*., this Court, through Mr. Justice Artemio V. Panganiban, ruled that without the wife's consent, the husband's alienation or encumbrance of conjugal property prior to the effectivity of the Family Code is not void, but merely voidable. However, **the wife's failure to file with the courts an action for annulment of the contract during the marriage and within ten (10) years from the transaction shall render the sale valid.** x x x (emphasis ours)

More than having merely prescribed, petitioners' action has likewise become stale, as it is barred by *laches*.

In *Isabela Colleges v. Heirs of Nieves-Tolentino*,[46] this Court held:

Laches means the failure or neglect for an unreasonable and unexplained length of time to do that which, by observance of due

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[45] G.R. No. 137808, September 30, 2005, 471 SCRA 307, 309-311.

[46] G.R. No. 132677, October 20, 2000, 344 SCRA 95, 107-108.

diligence, could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert his right either has abandoned or declined to assert it. Laches thus operates as a bar in equity.

x x x x x x x x x

The time-honored rule anchored on public policy is that relief will be denied to a litigant whose claim or demand has become "stale," or who has acquiesced for an unreasonable length of time, or who has not been vigilant or who has slept on his rights either by negligence, folly or inattention. In other words, public policy requires, for peace of society, the discouragement of claims grown stale for non-assertion; thus laches is an impediment to the assertion or enforcement of a right which has become, under the circumstances, inequitable or unfair to permit.

Pertinently, in *De la Calzada-Cierras v. CA*,[47] we ruled that a complaint to recover the title and possession of the lot filed 12 years after the registration of the sale is considered neglect for an unreasonably long time to assert a right to the property.

Here, petitioners' unreasonably long period of inaction in asserting their purported rights over the subject property weighs heavily against them. We quote with approval the findings of the CA that:[48]

It was earlier shown that there existed a period of 17 years during which time Hernandez, Sr. xxx never even questioned the defendants-appellants possession of the property; also there was another interval of 12 years after discovering that the TCT of the property in the name of Hernandez, Sr. before the Heirs of Hernandez instituted an action for the reconveyance of the title of the property.

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The fact that the Mingoa's were able to take actual possession of the subject property for such a long period without any form of cognizable protest from Hernandez, Sr. and the plaintiffs-appellees

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[47] G.R. No. 95431, August 7, 1992, 212 SCRA 390, 396.

[48] *Rollo,* pp. 75-77.

strongly calls for the application of the doctrine of laches. It is common practice in the real estate industry, an ocular inspection of the premises involved is a safeguard to the cautious and prudent purchaser usually takes, and should he find out that the land he intends to buy is occupied by anybody else other than the seller who is not in actual possession, it could then be incumbent upon the purchaser to verify the extent of the occupant's possessory rights. The plaintiffs-appellees asseverate that the award was made in favor of Hernandez, Sr. in 1958; full payment made in 1963; and title issued in 1966. It would thus be contrary to ordinary human conduct (and prudence dictates otherwise) for any awardee of real property not to visit and inspect even once, the property awarded to him and find out if there are any transgressors in his property.

Furthermore, Hernandez, Sr.'s inaction during his lifetime lends more credence to the defendants-appellants assertion that the said property was indeed sold by Hernandez, Sr. by way of the SPAs, albeit without the consent of his wife. xxx

In addition, the reasons of poverty and poor health submitted by the plaintiffs-appellees could not justify the 12 years of delay in filing a complaint against the defendants-appellants. The records are bereft of any evidence to support the idea that the plaintiffs-appellees diligently asserted their rights over the said property after having knowledge of the cancellation of the TCT issued in Hernandez name. Moreover the Court seriously doubts the plausibility of this contention since what the plaintiffs-appellees are trying to impress on this Court's mind is that they did not know anything at all except only shortly before the death of Hernandez. To accept that not even the wife knew of the transactions made by Hernandez, Sr. nor anything about the actual possession of the defendants-appellants for such a long period is to Us absurd if not fantastic.

In sum, the rights and interests of the spouses Hernandez over the subject property were validly transferred to respondent Dolores Camisura. Since the sale of the conjugal property by Hernandez, Sr. was without the consent of his wife, Sergia, the same is voidable; thus, binding unless annulled. Considering that Sergia failed to exercise her right to ask for the annulment of the sale within the prescribed period, she is now barred from questioning the validity thereof. And more so, she is precluded from assailing the validity of the subsequent transfers from Camisura

to Plaridel Mingoa and from the latter to Melanie Mingoa. Therefore, title to the subject property cannot anymore be reconveyed to the petitioners by reason of prescription and *laches*. The issues of prescription and *laches* having been resolved, it is no longer necessary to discuss the other issues raised in this petition.

WHEREFORE, the instant petition is *DENIED* and the assailed Decision dated September 7, 2000 and Resolution dated December 29, 2000 of the Court of Appeals are hereby *AFFIRMED*.

Costs against the petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Bersamin, and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 160367. December 18, 2009]

EVELYN S. CABUNGCAL, ELVIRA J. CANLAS, MARIANITA A. BULANAN, REMEDIOS S. DE JESUS, and NUNILON J. MABINI, *petitioners, vs.* **SONIA R. LORENZO, in her capacity as Municipal Mayor of San Isidro, Nueva Ecija, CECILIO DE GUZMAN, Vice Mayor, CESARIO LOPEZ, JR., EMILIO PACSON, BONIFACIO CACERES, JR., NAPOLEON OCAMPO, MARIO CRUZ, PRISCILA REYES, ROLANDO ESQUIVEL, and CRISENCIANO CABLAO in their capacity as members of the** ***Sangguniang Bayan*** **of San Isidro, Nueva Ecija, and EDUARDO N. JOSON IV, Vice Governor, BELLA AURORA A. DULAY, BENJAMIN V. MORALES, CHRISTOPHER L.**

VILLAREAL, JOSE T. DEL MUNDO, SOLITA C. SANTOS, RENATO C. TOMAS, JOSE BERNARDO V. YANGO, IRENEO S. DE LEON, NATHANIEL B. BOTE, RUDY J. DE LEON, RODOLFO M. LOPEZ, MA. LOURDES C. LAHOM, and JOSE FRANCIS STEVEN M. DIZON, in their capacity as members of the *Sangguniang Panlalawigan* of the Province of Nueva Ecija, *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION; HAS JURISDICTION OVER CONTROVERSIES RELATING TO THE CIVIL SERVICE; CASE AT BAR.—** [T]he CSC, as the central personnel agency of the Government, has jurisdiction over disputes involving the removal and separation of all employees of government branches, subdivisions, instrumentalities and agencies, including government-owned or controlled corporations with original charters. Simply put, it is the sole arbiter of controversies relating to the civil service. In this case, petitioners are former local government employees whose services were terminated due to the reorganization of the municipal government under Resolution Nos. 27 and 80 of the *Sangguniang Bayan* of San Isidro, Nueva Ecija. Considering that they belong to the civil service, the CSC has jurisdiction over their separation from office. Even the laws upon which petitioners anchor their claim vest jurisdiction upon the CSC. Under RA 6656 and RA 7305, which were cited by the petitioners in their petition, it is the CSC which determines whether an employee's dismissal or separation from office was carried out in violation of the law or without due process. Accordingly, it is also the CSC which has the power to reinstate or reappoint an unlawfully dismissed or terminated employee. x x x All told, we hold that it is the CSC which has jurisdiction over appeals from personnel actions taken by respondents against petitioners as a result of reorganization. Consequently, petitioners' resort to the CA was premature. The jurisdiction lies with the CSC and not with the appellate court.

2. **ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXCEPTIONS.—** The rule on exhaustion of administrative remedies provides that a party must exhaust all administrative remedies to give the administrative agency an opportunity to decide the matter and to prevent unnecessary and premature resort to the courts. This, however, is not an ironclad rule as it admits of exceptions, *viz:* 1. when there is a violation of due process; 2. when the issue involved is purely a legal question; 3. when the administrative action is patently illegal amounting to lack or excess of jurisdiction; 4. when there is estoppel on the part of the administrative agency concerned; 5. when there is irreparable injury; 6. when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter; 7. when to require exhaustion of administrative remedies would be unreasonable; 8. when it would amount to a nullification of a claim; 9. when the subject matter is a private land in land case proceedings; 10. when the rule does not provide a plain, speedy and adequate remedy; and 11. when there are circumstances indicating the urgency of judicial intervention.

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS* AND PROHIBITION; MAY BE AVAILED OF ONLY WHEN THERE IS NO APPEAL OR ANY OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.—** It bears stressing that the remedies of *mandamus* and prohibition may be availed of only when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Moreover, being extraordinary remedies, resort may be had only in cases of extreme necessity where the ordinary forms of procedure are powerless to afford relief.

APPEARANCES OF COUNSEL

Dysangco & Neri-Dysangco Law Office for petitioners.
Floro F. Florendo for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

As a rule, judicial intervention is allowed only after exhaustion of administrative remedies. This principle goes hand-in-hand with the doctrine of primary jurisdiction, which precludes courts from resolving, in the first instance, controversies falling under the jurisdiction of administrative agencies. Courts recognize that administrative agencies are better equipped to settle factual issues within their specific field of expertise because of their special skills and technical knowledge. For this reason, a premature invocation of the court's judicial power is often struck down, unless it can be shown that the case falls under any of the applicable exceptions.

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the March 20, 2003 Decision[2] of the Court of Appeals (CA) dismissing petitioners' petition for lack of merit and its October 6, 2003 Resolution[3] denying the motion for reconsideration.

Factual Antecedents

On July 9, 2001, the *Sangguniang Bayan* of San Isidro, Nueva Ecija, issued Resolution No. 27 s. 2001[4] declaring the reorganization of all offices of the municipal government. On July 23, 2001, the Resolution was approved by the *Sangguniang Panlalawigan via* Resolution No. 154 s. 2001.[5]

Thereafter, on November 12, 2001, the *Sangguniang Bayan* passed Resolution No. 80 s. 2001,[6] approving and adopting the

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[1] *Rollo*, pp. 3–20.

[2] *Id.* at 21–36; penned by Associate Justice Sergio L. Pestaño and concurred in by Acting Presiding Justice Cancio C. Garcia and Associate Justice Eloy R. Bello, Jr.

[3] *Id.* at 42–43.

[4] CA *rollo*, p. 44.

[5] *Id.* at 28–29.

[6] *Rollo*, pp. 45–48.

proposed new staffing pattern of the municipal government. On November 26, 2001, the *Sangguniang Panlalawigan* approved the same through Resolution No. 299 s. 2001.[7]

On December 21, 2001, the Municipal Mayor of San Isidro, Nueva Ecija, herein respondent Sonia R. Lorenzo, issued a memorandum[8] informing all employees of the municipal government that, pursuant to the reorganization, all positions were deemed vacant and that all employees must file their respective applications for the newly created positions listed in the approved staffing pattern on or before January 10, 2002. Otherwise, they would not be considered for any of the newly created positions.

Proceedings before the Court of Appeals

Instead of submitting their respective applications, petitioners, on January 17, 2002, filed with the CA a Petition for Prohibition and *Mandamus* with application for issuance of Writ of Preliminary Injunction and Restraining Order.[9] They alleged that they were permanent employees of the Rural Health Unit of the Municipality of San Isidro, Nueva Ecija, with the corresponding salary grade and date of employment:[10]

Name	**Position**	**Salary Grade**	**Date of employment**
Evelyn S. Cabungcal	Dentist II	16	April 4, 1983
Elvira J. Canlas	Nurse III	16	December 19, 1978
Marianita A. Bulanan	Midwife III	11	May 21, 1981
Remedios S. De Jesus	Dental Aide	4	June 6, 1989
Nunilon J. Mabini	Sanitation Inspector I	6	January 2, 1990

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[7] CA *rollo*, pp. 34–35.

[8] *Id.* at 36–37.

[9] *Id.* at 2–26.

[10] *Rollo*, p. 6.

Respondents Sonia R. Lorenzo, Cecilio De Guzman, Cesario Lopez, Jr., Emilio Pacson, Bonifacio Caceres, Jr., Napoleon Ocampo, Mario Cruz, Priscila Reyes, Rolando Esquivel, and Crisenciano Cablao were sued in their capacity as Mayor, as Vice Mayor, and as members of the *Sangguniang Bayan* respectively, of San Isidro, Nueva Ecija. On the other hand, respondents Eduardo N. Joson IV, Bella Aurora A. Dulay, Benjamin V. Morales, Christopher L. Villareal, Jose T. Del Mundo, Solita C. Santos, Renato C. Tomas, Jose Bernardo V. Yango, Ireneo S. De Leon, Nathaniel B. Bote, Rudy J. De Leon, Rodolfo M. Lopez, Ma. Lourdes C. Lahom, and Jose Francis Steven M. Dizon were sued in their capacity as Vice Governor and as members of the *Sangguniang Panlalawigan,* respectively.

Petitioners sought to prohibit respondents from implementing the reorganization of the municipal government of San Isidro, Nueva Ecija, under Resolution Nos. 27 and 80 s. 2001 of the *Sangguniang Bayan*. They likewise prayed for the nullification of said Resolutions.

While the case was pending, respondent Mayor Sonia R. Lorenzo issued a letter terminating the services of those who did not re-apply as well as those who were not selected for the new positions effective April 21, 2002.[11]

On March 20, 2003, the CA rendered a Decision dismissing the petition for lack of merit. It ruled:

> Going through the arguments of the parties, we find respondents' contentions to be more in line with existing laws and jurisprudence. It cannot be denied that indeed, petitioners' severance from employment is a sad tale to tell; however, petitioners' allegation of grave abuse of discretion on the part of public respondents particularly Mayor Lorenzo, can hardly be justified. The assailed acts of respondents are clearly authorized under Section 76 of the Local Government Code of 1991 as quoted above.
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> x x x x x x x x x

[11] *Id.* at 79.

Culled from the records of the case, the reorganization of the municipal government of San Isidro yielded an organization structure suitable for a 4th class municipality, which created savings in an estimated amount of more or less Four Million pesos (₱4,000,000.00), which can be used for implementation of other local projects for delivery of basic services and additional benefits for its employees. As shown by the respondents, the original plantilla x x x of one hundred and thirty one (131) [positions] has been trimmed down to eighty-eight (88) [positions] under the new staffing pattern. Thus, We find plausible the [claim] of respondents about budgetary [savings], comparing the old with new staffing pattern, in that:

> Prior to the reorganization, this LGU had a budget appropriation of ₱18,322,933.00 for personal services [including enterprise workers] leaving a measly sum of [sic] ₱4,127,703.00 as revolving fund for the whole year. With the advent of the new staffing pattern, more tha[n] ₱7,000,000.00 can be channeled by this LGU for its plans and programs. Under Section 325 of the Local Government Code, LGU's are limited by law to appropriate only forty five percent [45%] in case of first to third class LGU's or fifty five percent [55%] in case of fourth to fifth class municipalities of their annual income for personal services. The LGU of San Isidro being a fourth class municipality has certainly exceeded the 55% appropriation limit under the Local Government Code because for the year 2000 alone, [₱16,787,961.00, or roughly 78% of its annual income of ₱22,450,636.00, have already been allocated to personal services. That certainly is] way above the ceiling allowed by Section 325 of the Local Government Code.

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Verily, there was no bad faith on the part of respondents when they chose to follow the recommendations of the management committee, [to create] a new staffing pattern [thereby generating savings] to provide more basic services [and] livelihood projects x x x.

x x x x x x x x x

Valid reasons had been shown by respondents which support the reorganization of the municipal government of San Isidro. No personal or political motives having been shown to be involved in this strongly assailed reorganization of the Municipality of San Isidro, petitioners,

therefore, had miserably failed to show and prove to this Court that respondents violated R.A. No. 7305 (Magna Carta of Health Workers).

We must point out that good faith is presumed. It is incumbent upon the petitioners to prove that the reorganization being implemented in the Municipality of San Isidro is tainted with bad faith. Absent any showing that respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction in the passage and implementation of Resolution Nos. 27 and 80, this petition must fail.

Finally, respondents were correct when they stated that the extraordinary writ of *mandamus* is not applicable in this case because the act being sought by petitioners to be done is discretionary and not a ministerial duty. In other words, *mandamus* lies only to compel the performance, x x x of a ministerial duty, but not to compel the performance of a discretionary duty. Since grave abuse of discretion is not evident in this case, the exceptional remedy of *mandamus* is unavailable. x x x

WHEREFORE, in view of all the foregoing and finding that the assailed Resolution No. 27 dated July 9, 2001 and Resolution No. 80 dated November 12, 2001 were not issued by respondents with grave abuse of discretion amounting to lack or excess of jurisdiction, the instant appeal [sic] is DENIED DUE COURSE and, accordingly, DISMISSED for lack of merit. The validity of the assailed resolutions, being in accordance with law and jurisprudence, is UPHELD.

SO ORDERED.[12]

Petitioners moved for a reconsideration[13] which was denied by the CA in its October 6, 2003 Resolution.

Hence, petitioners availed of this recourse.

Petitioners' Arguments

Petitioners contend that the March 20, 2003 Decision and October 6, 2003 Resolution of the CA were not in accordance with Republic Act (RA) No. 6656, otherwise known as "An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government

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[12] *Id.* at 29–36.

[13] *Id.* at 37–41.

Reorganization," specifically Section 2[14] thereof and RA 7305, otherwise known as the "Magna Carta of Health Workers".

Respondents' Argument

Respondents, for their part, argue that petitioners' separation from service was a result of a valid reorganization done in accordance with law and in good faith.

Both parties filed their memoranda.[15] Thereafter, in a Resolution[16] dated August 6, 2008, we required the parties to submit supplemental memoranda discussing therein their respective positions on the issue of jurisdiction.

Issues

1) Whether petitioners' automatic resort to the Court of Appeals is proper.

2) Whether the case falls under the exceptions to the rule on exhaustion of administrative remedies.

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[14] SECTION 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exists when, pursuant to a *bona fide* reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party:

(a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;

(b) Where an office is abolished and another performing substantially the same functions is created;

(c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;

(d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same function as the original offices;

(e) Where the removal violates the order of separation provided in Section 3 hereof.

[15] *Rollo,* pp. 92–110 and 116–139.

[16] *Id.* at 214–216.

Our Ruling

Petitioners' recourse should have been with the Civil Service Commission and not with the Court of Appeals

Section 2 (1) and Section 3, Article IX-B of the Constitution provide that:

Section 2. (1) The civil service embraces all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters.

Section 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.

Corollary thereto, Section 4 of CSC Memorandum Circular No. 19-99, states that:

Section 4. Jurisdiction of the Civil Service Commission. — The Civil Service Commission shall hear and decide administrative cases instituted by, or brought before it, directly or on appeal, including contested appointments, and shall review decisions and actions of its offices and of the agencies attached to it.

Except as otherwise provided by the Constitution or by law, **the Civil Service Commission shall have the final authority to pass upon the removal, separation and suspension of all officers and employees in the civil service** and upon all matters relating to the conduct, discipline and efficiency of such officers and employees. (Emphasis supplied)

Pursuant to the foregoing provisions, the CSC, as the central personnel agency of the Government, has jurisdiction over disputes involving the removal and separation of all employees of government branches, subdivisions, instrumentalities and

agencies, including government-owned or controlled corporations with original charters. Simply put, it is the sole arbiter of controversies relating to the civil service.[17]

In this case, petitioners are former local government employees whose services were terminated due to the reorganization of the municipal government under Resolution Nos. 27 and 80 of the *Sangguniang Bayan* of San Isidro, Nueva Ecija. Considering that they belong to the civil service, the CSC has jurisdiction over their separation from office.

Even the laws upon which petitioners anchor their claim vest jurisdiction upon the CSC. Under RA 6656 and RA 7305, which were cited by the petitioners in their petition, it is the CSC which determines whether an employee's dismissal or separation from office was carried out in violation of the law or without due process. Accordingly, it is also the CSC which has the power to reinstate or reappoint an unlawfully dismissed or terminated employee. Quoted hereunder are Section 9 of RA 6656 and Section 8 of RA 7305:

SECTION 9. **All officers and employees who are found by the Civil Service Commission to have been separated in violation of the provisions of this Act, shall be ordered reinstated or reappointed as the case may be without loss of seniority and shall be entitled to full pay for the period of separation.** Unless also separated for cause, all officers and employees, who have been separated pursuant to reorganization shall, if entitled thereto, be paid the appropriate separation pay and retirement and other benefits under existing laws within ninety (90) days from the date of the effectivity of their separation or from the date of the receipt of the resolution of their appeals as the case may be: Provided, That application for clearance has been filed and no action thereon has been made by the corresponding department or agency. Those who are not entitled to said benefits shall be paid a separation gratuity in the amount equivalent to one (1) month salary for every year of service. Such separation pay and retirement benefits shall have priority of payment out of the savings of the department or agency concerned. (Emphasis supplied)

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[17] *Pangasinan State University v. Court of Appeals*, G.R. No. 162321, June 29, 2007, 526 SCRA 92, 98.

x x x x x x x x x

SECTION 8. Security of Tenure. — In case of regular employment of public health workers, their services shall not be terminated except for cause provided by law and after due process: Provided, That **if a public health worker is found by the Civil Service Commission to be unjustly dismissed from work**, he/she shall be entitled to reinstatement without loss of seniority rights and to his/her back wages with twelve percent (12%) interest computed from the time his/her compensation was withheld from him/her up to the time of reinstatement. (Emphasis supplied)

All told, we hold that it is the CSC which has jurisdiction over appeals from personnel actions taken by respondents against petitioners as a result of reorganization. Consequently, petitioners' resort to the CA was premature. The jurisdiction lies with the CSC and not with the appellate court.

The case does not fall under any of the exceptions to the rule on exhaustion of administrative remedies

The rule on exhaustion of administrative remedies provides that a party must exhaust all administrative remedies to give the administrative agency an opportunity to decide the matter and to prevent unnecessary and premature resort to the courts.[18] This, however, is not an ironclad rule as it admits of exceptions,[19] *viz:*

1. when there is a violation of due process;

2. when the issue involved is purely a legal question;

3. when the administrative action is patently illegal amounting to lack or excess of jurisdiction;

4. when there is estoppel on the part of the administrative agency concerned;

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[18] *Republic of the Phils. v. Express Telecommunication Co., Inc.,* 424 Phil. 372, 399 (2002).

[19] *Buston-Arendain v. Gil,* G.R. No. 172585, June 26, 2008, 555 SCRA 561, 573.

5. when there is irreparable injury;

6. when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter;

7. when to require exhaustion of administrative remedies would be unreasonable;

8. when it would amount to a nullification of a claim;

9. when the subject matter is a private land in land case proceedings;

10. when the rule does not provide a plain, speedy and adequate remedy; and

11. when there are circumstances indicating the urgency of judicial intervention.

The instant case does not fall under any of the exceptions. Petitioners' filing of a petition for *mandamus* and prohibition with the CA was premature. It bears stressing that the remedies of *mandamus* and prohibition may be availed of only when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.[20] Moreover, being extraordinary remedies, resort may be had only in cases of extreme necessity where the ordinary forms of procedure are powerless to afford relief.[21]

Thus, instead of immediately filing a petition with the CA, petitioners should have first brought the matter to the CSC which has primary jurisdiction over the case.[22] Thus, we find that the CA correctly dismissed the petition but not the grounds cited in support thereof. The CA should have dismissed the petition for non-exhaustion of administrative remedies.[23]

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[20] Sections 2 & 3 of Rule 65 of the Rules of Court.

[21] *ACWS, Ltd. v. Dumlao,* 440 Phil. 787, 803 (2002).

[22] See *Pan v. Peña*, G.R. No. 174244, February 13, 2009, 579 SCRA 314.

[23] See *Casimina v. Legaspi*, G.R. No. 147530, June 29, 2005, 462 SCRA 171, 182.

Considering our above findings, we find no cogent reason to resolve the other issues raised by the petitioners in their petition.

WHEREFORE, the instant petition is *DENIED*. The March 20, 2003 Decision of the Court of Appeals dismissing the petition and its October 6, 2003 Resolution denying the motion for reconsideration are *AFFIRMED* but on the ground that petitioners failed to exhaust the administrative remedies available to them.

SO ORDERED.

Carpio (Chairperson),[*] *Leonardo-de Castro,*[**] *Brion,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 163117. December 18, 2009]

EQUITABLE PCI BANK, INC., *petitioner, vs.* **MARIA LETICIA FERNANDEZ and ALICE SISON *Vda. DE* FERNANDEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS OR ORDERS; INTERLOCUTORY ORDERS; CANNOT BE THE SUBJECT OF AN APPEAL OR A PETITION FOR *CERTIORARI*; REMEDY.— [I]nterlocutory orders, because they do not dispose of the case on the merits, are not appealable. Likewise, the extraordinary writ of *certiorari* is generally not available to challenge an interlocutory order of the trial court. In such a case, the proper remedy of the aggrieved party is an ordinary appeal from an adverse judgment, incorporating in

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[*] Per Special Order No. 775 dated November 3, 2009.

[**] Additional member per Special Order No. 776 dated November 3, 2009.

the appeal the grounds for assailing the interlocutory order. However, where the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, the Court may allow *certiorari* as a mode of redress.

2. **ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; WRIT OF PRELIMINARY INJUNCTION, WHEN ISSUED.—** For the issuance of a writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion.

3. **CIVIL LAW; SPECIAL CONTRACTS; MORTGAGES; FORECLOSURE OF MORTGAGE; VALID WHERE THE DEBTOR IS IN DEFAULT IN THE PAYMENT OF AN OBLIGATION.—** Foreclosure is valid where the debtor is in default in the payment of an obligation. The essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness, in case of default in payment. Foreclosure is but a necessary consequence of non-payment of the mortgage indebtedness. In a real estate mortgage when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation.

APPEARANCES OF COUNSEL

Divina Matibag Magturo Banzon Buenaventura and Yusi for petitioner.
Marino E. Eslao for respondents.

DECISION

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 29 October 2003[2] and 1 April 2004[3] Resolutions of the Court of Appeals in CA-G.R. SP No. 79804. In its 29 October 2003 Resolution, the Court of Appeals dismissed petitioner Equitable PCI Bank, Inc.'s (EPCIB)[4] petition for *certiorari* and affirmed the 28 January 2003[5] Order of the Regional Trial Court of Urdaneta City, Branch 45 (trial court), granting respondents Maria Leticia Fernandez and Alice Sison *Vda. de* Fernandez's (respondents) application for a writ of preliminary injunction. In its 1 April 2004 Resolution, the Court of Appeals denied EPCIB's motion for reconsideration.

The Facts

From 1998 to 2000, EPCIB extended several loans to respondents totaling ₱26,200,000. The loans were evidenced by several promissory notes executed by respondents in favor of EPCIB.[6] The loans were also secured by real estate mortgages

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 31-32. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Eloy R. Bello, Jr. and Arturo D. Brion (now Associate Justice of this Court), concurring.

[3] *Id.* at 40.

[4] Formerly Equitable Banking Corporation.

[5] *Rollo*, pp. 33-38.

[6] Annexes "D" to "D-4", records, pp. 101-108. The following are the promissory notes executed by respondents:

1. Promissory Note No. 000471 granted on 19 June 2000 for ₱1,260,000 and due on 11 November 2000;

2. Promissory Note No. 990294 granted on 21 June 1999 for ₱2,000,000 and due on 31 December 2001;

3. Promissory Note No. 1072595 granted on 18 August 2000 for ₱740,000 and due on 31 January 2001;

over five parcels of land covered by Transfer Certificate of Title Nos. 182321, 182866 and 182867, registered in the name of respondents, and Transfer Certificate of Title Nos. 224062 and 224063, registered in the name of Alice Sison *Vda. de* Fernandez.[7]

The promissory notes matured and, despite demands by EPCIB, respondents failed to pay the loans. On 22 October 2002, pursuant to the provisions of the Deeds of Real Estate Mortgage, EPCIB filed a petition for the extra-judicial foreclosure of the mortgaged properties before the Office of the Clerk of Court, Urdaneta City.[8] After due notice and publication, the foreclosure sale was scheduled on 16 December 2002.[9]

On 11 December 2002, respondents filed with the trial court a complaint for annulment of real estate mortgages, notice of extra-judicial sale and foreclosure proceedings with application for a temporary restraining order or writ of injunction against EPCIB and Sheriff IV Crisanto M. Parajas.[10]

On 16 December 2002, the trial court issued a 20-day temporary restraining order to enjoin the foreclosure sale.[11] The trial court also set the hearing of respondents' application for a writ of preliminary injunction on 6 January 2003.

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4. Promissory Note No. 990439 granted on 18 April 2000 for ₱18,000,000 and due on 9 June 2000; and

5. Promissory Note No. 990440 granted on 18 April 2000 for ₱4,200,000 and due on 12 October 2000.

[7] Annexes "A" to "A-2", *id.* at 10-24. The following are the Deeds of Real Estate Mortgage executed by respondents:

1. Real Estate Mortgage dated 26 January 1998 for a loan of ₱2,000,000 with TCT Nos. 224062 and 224063 as collateral;

2. Real Estate Mortgage dated 13 February 1998 for a loan of ₱20,000,000, supplemented by Real Estate Mortgage dated 18 May 2000 for a loan of ₱6,000,000, with TCT Nos. 182321, 182866 and 182867 as collateral.

[8] *Id.* at 59-61.

[9] *Rollo*, pp. 140-142.

[10] *Id.* at 58-65.

[11] *Id.* at 93-94.

On 28 January 2003, the trial court issued the writ of preliminary injunction enjoining the foreclosure of respondents' properties pending the final disposition of the case. The trial court's 28 January 2003 Order provides:

> WHEREFORE, let a Writ of Preliminary Injunction be issued ordering the defendants bank and Sheriff and all persons acting under them to cease and desist from conducting the extrajudicial foreclosure with sale of the properties of the plaintiffs covered by TCT Nos. 224062, 224063, 182321, 182866 and 182867 and from undertaking disposition of said properties until further orders from the Court.
>
> Pursuant to Section 4, Rule 58 of the New Rules of Court, the plaintiffs are hereby directed to file an injunction bond in the amount of ₱200,000.00 for said plaintiffs to pay such amount to the defendant bank, which they may sustain by reason of the injunction of the Court should it finally decide that the plaintiffs are not entitled thereto.
>
> Said injunction bond shall be filed by the plaintiffs within fifteen (15) days receipt of a copy of this Order.
>
> In the meantime, set the pre-trial of this case to March 3, 2003 at 8:30 o'clock in the morning.
>
> SO ORDERED.[12]

EPCIB filed a motion for reconsideration. In its 16 July 2003 Resolution,[13] the trial court denied the motion.

On 10 October 2003, EPCIB filed a petition for *certiorari* before the Court of Appeals. EPCIB argued that the trial court issued the 28 January 2003 Order and 16 July 2003 Resolution without any factual or legal basis.

In its 29 October 2003 Resolution, the Court of Appeals dismissed EPCIB's petition for lack of merit.

EPCIB filed a motion for reconsideration. In its 1 April 2004 Resolution, the Court of Appeals denied the motion.

Hence, this petition.

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[12] *Id.* at 38.

[13] *Id.* at 113-115.

The 28 January 2003 Order of the Trial Court

According to the trial court, the issuance of a writ of preliminary injunction rests upon the sound discretion of the court.[14] The trial court declared that the foreclosure of respondents' properties would affect respondents' rights over the properties which, according to respondents, were already worth ₱100,000,000 as opposed to the loan of only ₱26,200,000.[15] The trial court ruled that, pending the determination of the merits of the principal case, the foreclosure of the real estate mortgage should be held in abeyance.

The 29 October 2003 Resolution of the Court of Appeals

According to the Court of Appeals, EPCIB failed to show that the trial court acted with grave abuse of discretion when it issued the order granting the writ of preliminary injunction. The Court of Appeals said an order granting a writ of preliminary injunction is an interlocutory order and as such, it cannot by itself be subject of an appeal or a petition for *certiorari*. The Court of Appeals added that the proper remedy of a party aggrieved by such an order is to bring an ordinary appeal from an adverse judgment in the main case, citing therein the grounds for assailing the interlocutory order. While the Court of Appeals admitted that there were some cases where the Supreme Court allowed a party to file a petition for *certiorari* where the assailed orders were patently erroneous and an appeal would not afford adequate and expeditious relief, the Court of Appeals declared that said circumstances were not present in this case.

The Issue

EPCIB raises the sole issue that:

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN SUMMARILY DISMISSING PETITIONER BANK'S PETITION FOR *CERTIORARI* BECAUSE THE TRIAL COURT BLATANTLY ACTED WITH GRAVE ABUSE

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[14] Citing *Urbanes, Jr. v. Court of Appeals*, 407 Phil. 856 (2001).

[15] *Rollo*, p. 37.

OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT ISSUED THE ASSAILED ORDERS.[16]

The Ruling of the Court

The petition has merit.

While EPCIB admits that an interlocutory order cannot be the subject of an appeal or a petition for *certiorari*, EPCIB argues that where the interlocutory order was issued with grave abuse of discretion amounting to lack or excess of jurisdiction, such order may be questioned before the court on a petition for *certiorari*.

We agree with the Court of Appeals that interlocutory orders, because they do not dispose of the case on the merits, are not appealable.[17] Likewise, the extraordinary writ of *certiorari* is generally not available to challenge an interlocutory order of the trial court. In such a case, the proper remedy of the aggrieved party is an ordinary appeal from an adverse judgment, incorporating in the appeal the grounds for assailing the interlocutory order.[18] However, where the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, the Court may allow *certiorari* as a mode of redress.[19]

EPCIB maintains that the trial court issued the writ of preliminary injunction without any factual or legal basis. EPCIB adds that respondents failed to show that they have a right which will be violated should the mortgaged properties be foreclosed. EPCIB also points out that respondents failed to establish that the foreclosure will cause grave and irreparable injury to them which cannot be compensated in the ordinary course of law.

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[16] *Id.* at 252.

[17] *Arabesque Industrial Philippines, Inc. v. Court of Appeals*, G.R. No. 101431, 14 December 1992, 216 SCRA 602.

[18] *Salcedo-Ortañez v. Court of Appeals*, G.R. No. 110662, 4 August 1994, 235 SCRA 111.

[19] *Id.*

For the issuance of a writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage.[20] In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion.[21]

In this case, respondents failed to show that they have a right to be protected and that the acts against which the writ is to be directed are violative of the said right. The records of the case, the Orders of the trial court and the Resolutions of the Court of Appeals make no mention of respondents' said right. In fact, respondents do not deny their indebtedness to EPCIB.[22]

Foreclosure is valid where the debtor is in default in the payment of an obligation.[23] The essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness, in case of default in payment.[24] Foreclosure is but a necessary consequence of

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[20] *Tecnogas Philippines Manufacturing Corporation v. Philippine National Bank*, G.R. No. 161004, 14 April 2008, 551 SCRA 183; *Suico Industrial Corporation v. Court of Appeals*, 361 Phil. 160 (1999).

[21] *Suico Industrial Corporation v. Court of Appeals*, *supra*; *Spouses Arcega v. Court of Appeals*, 341 Phil. 166 (1997).

[22] *Rollo*, p. 60. In their complaint, respondents admitted that they were still indebted to EPCIB. Respondents stated that:

7. It appears that plaintiffs (herein respondents) paid more than ₱7,470,853.22 in interest covered by the above promissory notes mentioned in par. 4a and paragraph 6 above and there is a need for accounting to determine the total amounts paid in interest imperatively necessitating a conference table by the parties to that effect.

[23] *State Investment House, Inc. v. Court of Appeals*, G.R. No. 99308, 13 November 1992, 215 SCRA 734.

[24] *China Banking Corporation v. Court of Appeals*, G.R. No. 121158, 5 December 1996, 265 SCRA 327.

non-payment of the mortgage indebtedness.[25] In a real estate mortgage when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation.[26]

On the face of respondents' clear admission that they were unable to settle their obligations which were secured by the mortgages, EPCIB has a clear right to foreclose the mortgages.[27] We fail to see any reason why the foreclosure of the mortgages should be enjoined, and the issuance of the preliminary injunction constitutes grave abuse of discretion.

WHEREFORE, we *GRANT* the petition. We *REVERSE* and *SET ASIDE* the 29 October 2003 and 1 April 2004 Resolutions of the Court of Appeals in CA-G.R. SP No. 79804. We *NULLIFY* the writ of preliminary injunction issued by the Regional Trial Court of Urdaneta City, Branch 45.

SO ORDERED.

Leonardo-de Castro,[*] *Bersamin,*[**] *Del Castillo,* and *Abad, JJ.,* concur.

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[25] *Producers Bank of the Philippines v. Court of Appeals*, 417 Phil. 646 (2001).

[26] *Union Bank of the Philippines v. Court of Appeals*, 370 Phil. 837 (1999).

[27] *China Banking Corporation v. Court of Appeals*, *supra* note 24.

[*] Designated additional member per Special Order No. 776.

[**] Designated additional member per Raffle dated 14 December 2009.

SECOND DIVISION

[G.R. No. 165299. December 18, 2009]

PACIFIC STEAM LAUNDRY, INC., *petitioner, vs.* **LAGUNA LAKE DEVELOPMENT AUTHORITY,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; LAGUNA LAKE DEVELOPMENT AUTHORITY; MANDATED TO CARRY OUT THE DEVELOPMENT OF THE LAGUNA LAKE REGION.— LLDA is a special agency created under Republic Act No. 4850 (RA 4850) to manage and develop the Laguna Lake region, comprising of the provinces of Rizal and Laguna and the cities of San Pablo, Manila, Pasay, Quezon and Caloocan. RA 4850, as amended by Presidential Decree No. 813 (PD 813), mandates LLDA to carry out the development of the Laguna Lake region, with due regard and adequate provisions for environmental management and control, preservation of the quality of human life and ecological systems, and the prevention of undue ecological disturbances, deterioration and pollution. Under Executive Order No. 927 (EO 927), LLDA is granted additional powers and functions to effectively perform its role and to enlarge its prerogatives of monitoring, licensing and enforcement, thus: "SECTION 4. *Additional Powers and Functions*. The Authority [LLDA] shall have the following powers and functions: x x x c) **Issue orders or decisions to compel compliance with the provisions of this Executive Order and its implementing rules and regulations only after proper notice and hearing. d) Make, alter or modify orders requiring the discontinuance of pollution specifying the conditions and the time within which such discontinuance must be accomplished**. x x x (i) Exercise such powers and perform such other functions as may be necessary to carry out its duties and responsibilities under this Executive Order."

2. ID.; ID.; ID.; POLLUTION ADJUDICATION BOARD AND LAGUNA LAKE DEVELOPMENT AUTHORITY; POWERS.— A comparison of the powers and functions of

the Pollution Adjudication Board and the LLDA reveals substantial similarity. Both the Pollution Adjudication Board and the LLDA are empowered, among others, to: (1) make, alter or modify orders requiring the discontinuance of pollution; (2) issue, renew, or deny permits for the prevention and abatement of pollution, for the discharge of sewage, industrial waste, or for the installation or operation of sewage works and industrial disposal system; and (3) exercise such powers and perform such other functions necessary to carry out their duties and responsibilities. The difference is that while Section 19 of EO 192 vested the Pollution Adjudication Board with the specific power to adjudicate pollution cases in general, the scope of authority of LLDA to adjudicate pollution cases is limited to the Laguna Lake region as defined by RA 4850, as amended.

3. **ID.; ID.; ID.; LAGUNA LAKE DEVELOPMENT AUTHORITY; HAS JURISDICTION OVER POLLUTION CASES WITHIN ITS AREA OF RESPONSIBILITY; CASE AT BAR.—** [I]n *Laguna Lake Development Authority v. Court of Appeals*, the Court held that the adjudication of pollution cases generally pertains to the Pollution Adjudication Board, except where a special law, such as the LLDA Charter, provides for another forum. Indeed, even PD 984 authorizes the LLDA to undertake pollution control activities within LLDA's development area. x x x In this case, the DENR's Environmental Management Bureau endorsed to LLDA the pollution complaint against petitioner. Under Section 16 of EO 192, the Environmental Management Bureau assumed the powers and functions of the NPCC except with respect to adjudication of pollution cases x x x. The Environmental Management Bureau also serves as the Secretariat of the Pollution Adjudication Board, and its Director is one of the members of the Pollution Adjudication Board. Clearly, by endorsing to LLDA the pollution complaint against petitioner, the Environmental Management Bureau deferred to LLDA's jurisdiction over the pollution complaint against petitioner. Although the Pollution Adjudication Board assumed the powers and functions of the NPCC with respect to adjudication of pollution cases, this does not preclude LLDA from assuming jurisdiction of pollution cases within its area of responsibility and to impose fines as penalty. Thus, in the recent case of *The Alexandra Condominium Corporation v.*

Laguna Lake Development Authority, the Court affirmed the ruling of the Court of Appeals which sustained LLDA's Order, requiring petitioner therein to pay a fine of ₱1,062,000 representing penalty for pollutive wastewater discharge. Although petitioner in that case did not challenge LLDA's authority to impose fine, the Court acknowledged the power of LLDA to impose fines, holding that under Section 4-A of RA 4850, as amended, LLDA is entitled to compensation for damages resulting from failure to meet established water and effluent standards.

4. ID.; ID.; ID.; ID.; HAS THE IMPLIED AUTHORITY TO ISSUE "CEASE AND DESIST ORDER" AND THE POWER TO IMPOSE FINES WITH RESPECT TO POLLUTION CASES IN THE LAGUNA LAKE REGION.— Under Section 4(h) of EO 927, LLDA may "exercise such powers and perform such other functions as may be necessary to carry out its duties and responsibilities." In *Laguna Lake Development Authority v. Court of Appeals*, the Court upheld the power of LLDA to issue an *ex-parte* cease and desist order even if such power is not expressly conferred by law, holding that an administrative agency has also such powers as are necessarily implied in the exercise of its express powers. The Court ruled that LLDA, in the exercise of its express powers under its charter, as a regulatory and quasi-judicial body with respect to pollution cases in the Laguna Lake region, has the implied authority to issue a "cease and desist order." In the same manner, we hold that the LLDA has the power to impose fines in the exercise of its function as a regulatory and quasi-judicial body with respect to pollution cases in the Laguna Lake region.

5. ID.; ID.; ID.; ID.; POWER TO IMPOSE FINES, RESTRICTED BY STATUTORY LIMITATIONS.— LLDA's power to impose fines is not unrestricted. In this case, LLDA investigated the pollution complaint against petitioner and conducted wastewater sampling of petitioner's effluent. It was only after the investigation result showing petitioner's failure to meet the established water and effluent quality standards that LLDA imposed a fine against petitioner. LLDA then imposed upon petitioner a penalty of ₱1,000 per day of discharging pollutive wastewater. The ₱1,000 penalty per day is in accordance with the amount of penalty prescribed under PD 984 x x x. Clearly,

there are adequate statutory limitations on LLDA's power to impose fines which obviates unbridled discretion in the exercise of such power.

APPEARANCES OF COUNSEL

Salonga Hernandez and Mendoza for petitioner.

Eduardo L. Torres, Zenaida R. Lapuz & Marilou R. Remular for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Decision[2] dated 30 June 2004 and the Resolution dated 8 September 2004 of the Court of Appeals in CA-G.R. SP No. 75238.

The Facts

Petitioner Pacific Steam Laundry, Inc. (petitioner) is a company engaged in the business of laundry services. On 6 June 2001, the Environmental Management Bureau of the Department of Environment and Natural Resources (DENR) endorsed to respondent Laguna Lake Development Authority (LLDA) the inspection report on the complaint of black smoke emission from petitioner's plant located at 114 Roosevelt Avenue, Quezon City.[3] On 22 June 2001, LLDA conducted an investigation and found that untreated wastewater generated from petitioner's laundry washing activities was discharged directly to the San Francisco Del Monte River. Furthermore, the Investigation Report[4] stated that petitioner's plant was operating without LLDA

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Japar B. Dimaampao with Associate Justices Josefina Guevara-Salonga and Eduardo F. Sundiam, concurring.

[3] *Rollo*, p. 74; Indorsement dated 6 June 2001.

[4] *Id.* at 77-78.

clearance, AC/PO-ESI, and Discharge Permit from LLDA. On 5 September 2001, the Environmental Quality Management Division of LLDA conducted wastewater sampling of petitioner's effluent.[5] The result of the laboratory analysis showed non-compliance with effluent standards particularly Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD), Oil/Grease Concentration and Color Units.[6] Consequently, LLDA issued to petitioner a Notice of Violation[7] dated 30 October 2001 which states:

THE GENERAL MANAGER
PACIFIC STEAM LAUNDRY, INC.
114 Roosevelt Avenue, Brgy. Paraiso
Quezon City

Subject: Notice of Violation
PH-01-10-303

Gentlemen:

This refers to the findings of the inspection and result of laboratory analysis of the wastewater collected from your firm last 5 September 2001. Evaluation of the results of laboratory analysis showed that your plant's effluent failed to conform with the 1990 Revised Effluent Standard for Inland Water Class "C" specifically in terms of TSS, BOD, Oil/Grease and Color. (Please see attached laboratory analysis)

In view thereof, you are hereby directed to submit corrective measures to abate/control the water pollution caused by your firm, within fifteen (15) days from receipt of this letter.

Furthermore, pursuant to Section 9 of Presidential Decree No. 984, PACIFIC STEAM LAUNDRY, INC. is hereby ordered to pay a penalty of One Thousand Pesos (₱1,000.00) per day of discharging pollutive wastewater to be computed from 5 September 2001, the date of inspection until full cessation of discharging pollutive wastewater

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[5] Under Section 3(d) of the Effluent Regulations, DENR Administrative Order No. 35, Series of 1990, "effluent" is defined as any wastewater, partially or completely treated, or in its natural state, flowing out a manufacturing plant, industrial plant or treatment plant.

[6] *Rollo,* p. 79; Result of Analysis dated 18 September 2001.

[7] *Id.* at 33.

and a fine of Five Thousand Pesos (₱5,000.00) per year for operating without the necessary clearance/permits from the Authority.

Very truly yours,

(signed)
CALIXTO R. CATAQUIZ
General Manager

Petitioner submitted its application for LLDA Clearance and Discharge Permit and informed LLDA that it would undertake the necessary measures to abate the water pollution.[8] On 1 March 2002, a compliance monitoring was conducted and the result of the laboratory analysis[9] still showed non-compliance with effluent standards in terms of TSS, BOD, Chemical Oxygen Demand (COD), and Oil/Grease Concentration. It was reported that petitioner's wastewater treatment facility was under construction. Subsequently, another wastewater sampling was conducted on 25 April 2002 but the results[10] still failed to conform with the effluent standards in terms of Oil/Grease Concentration.

Meanwhile, on 15 April 2002, a Pollution Control and Abatement case was filed against petitioner before the LLDA. During the public hearing on 30 April 2002, LLDA informed petitioner of its continuous non-compliance with the effluent standards. Petitioner requested for another wastewater sampling which was conducted on 5 June 2002. The laboratory results[11] of the wastewater sampling finally showed compliance with the effluent standard in all parameters. On 9 August 2002, another public hearing was held to discuss the dismissal of the water pollution case and the payment of the accumulated daily penalty. According to LLDA, the penalty should be reckoned from 5 September 2001, the date of initial sampling, to 17 May 2002, the date LLDA received the request for re-sampling. Petitioner

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[8] *Id.* at 81. See petitioner's letter dated 15 November 2001 addressed to General Manager Cataquiz of LLDA.

[9] *Id.* at 82-83.

[10] *Id.* at 84-85.

[11] CA *rollo*, p. 23.

manifested that its wastewater discharge was not on a daily basis. In its position paper[12] dated 25 August 2002, petitioner prayed that the Notice of Violation dated 30 October 2001 be set aside and the penalty and fine imposed be reckoned from the date of actual hearing on 15 April 2002.

On 16 September 2002, LLDA issued an Order to Pay,[13] the pertinent portion of which reads:

> Respondent prayed that the Notice of Violation issued on 30 October 2001 and its corresponding daily penalty be set aside and that the imposable penalty be reckoned from the date of actual hearing and not on 5 September 2001. It is respondent's position that the Notice of Violation and the imposition of the penalty had no legal and factual basis because it had already installed the necessary wastewater treatment to abate the water pollution.
>
> This Public Hearing Committee finds respondent's arguments devoid of merit. Presidential Decree No. 984 prohibits the discharge of pollutive wastewater and any person found in violation thereof shall pay a fine not exceeding five thousand pesos (PhP5,000.00) [sic] for every day during which such violation continues. The mere discharge of wastewater not conforming with the effluent standard is the violation referred to in PD No. 984. Sample of respondent's effluent was collected on 5 September 2001 and the results of laboratory analysis confirmed the quality thereof. Thus, a notice of violation was issued against the respondent after it was established that its discharge was pollutive. The fact that the subsequent re-sampling reported compliance with the effluent standard does not negate the 5 September 2001 initial sampling. Respondent passed the standard because it already implemented remedial measures to abate the water pollution. It is therefore but just and proper that the penalty should be imposed from the date of initial sampling, 5 September 2001, to 17 May 2002, the date the request for re-sampling was received by the Authority. The 5 June 2002 sampling confirmed that respondent's effluent already complied with the standard showing that its water pollution has ceased. Respondent did not submit any proof of its actual operation hence, the penalty shall be computed for five (5) working days per week, excluding Saturdays and Sundays as well as

[12] *Id.* at 24-33.

[13] *Rollo,* pp. 45-46.

legal holidays from 5 September 2001 to 17 May 2002, for a total of one hundred seventy-two (172) days.

WHEREFORE, premises considered, respondent Pacific steam Laundry, Inc. is hereby ordered to pay the accumulated daily penalty amounting to ONE HUNDRED SEVENTY-TWO THOUSAND (PhP172,000.00) PESOS within fifteen(15) days from receipt hereof as a condition *sine qua non* for the dismissal of the above-captioned case.

SO ORDERED.[14]

Petitioner filed a motion for reconsideration, which the LLDA denied in its Order[15] dated 27 November 2002.

Petitioner then filed with the Court of Appeals a petition for review under Rule 43 of the Rules of Court. The Court of Appeals denied the petition, as well as the motion for reconsideration filed by petitioner. Hence, this petition.

The Court of Appeals' Ruling

The Court of Appeals held that LLDA has the power to impose fines, thus:

Concededly, the power to impose administrative fines in pollution abatement cases was expressly granted under Section 9 of P.D. 984 to the now defunct National Pollution Control Commission (NPCC), thus:

> "Section 9. Penalties. – (a) Any person found violating or failing to comply with any order, decision or regulation of the Commission for the control or abatement of pollution shall pay a fine not exceeding five thousand pesos per day for every day during which such violation or default continues; **and the *Commission is hereby authorized and empowered to impose the fine* after due notice and hearing."**

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[14] *Id.* at 46. Although the LLDA mistakenly stated in its Order that the imposable fine is ₱5,000 per day instead of ₱1,000 per day, the dispositive portion of the Order imposing a total penalty of ₱172,000 is based on the correct daily penalty of ₱1,000 multiplied by 172 days during which the pollutive wastewater discharge occurred.

[15] *Id.* at 50-51.

Nonetheless, it may be well to recall that the LLDA was created under R.A. 4850 with the end view of promoting and accelerating the development and balanced growth of the Laguna Lake area and the surrounding provinces, and carrying out the development of the Laguna Lake Region with due regard and adequate provisions for environmental management and control, preservation of the quality of human life and ecological systems, and the **preservation of undue ecological disturbances, deterioration and pollution**. To correct deficiencies and clarify ambiguities that "impede the accomplishment of the Authorities' goal," Former President Ferdinand E. Marcos promulgated P.D. 813. Finally, to enable the LLDA to effectively perform its role, Former President Marcos further issued E.O. 927, which granted the LLDA additional powers and functions, *viz*:

> "Section 4. Additional Powers and Functions. – The authority shall have the following powers and functions:
>
> x x x
>
> (d) Make, alter or modify orders requiring the discontinuance of pollution specifying the conditions and time within which such continuance must be accomplished.
>
> x x x
>
> (i) Exercise such powers and perform such other functions as may be necessary to carry out its duties and responsibilities under this Executive order."

Indeed, the express grant of power to impose administrative fines as couched in the language of P.D. 984 was not reproduced in E.O. 927, however, it can be logically implied from LLDA's authority to exercise the power to "*make, alter or modify orders requiring the discontinuance of pollution*." In addition, the clear intendment of E.O. 927 to clothe LLDA not only with the express powers granted to it, but also those implied, incidental and necessary for the exercise of its express powers can be easily discerned from the grant of the general power to "*exercise (such) powers and perform such other functions as may be necessary to carry out its duties and responsibilities*."

This finds support in the wealth of authorities in American Jurisprudence, citing adherence of other courts to the principle that the authority given to an agency should be liberally construed in order to permit the agency to carry out its statutory responsibilities.

This is especially true **where the agency is concerned with protecting the public health and welfare, the delegation of authority to the agency is liberally construed**.

The LLDA, as an agency implementing pollution laws, rules and regulations, should be given some measures of flexibility in its operations in order not to hamper it unduly in the fulfillment of its objectives. How could it effectively perform its role if in every act of violation, it must resort to other venue for the appropriate remedy, because it is impotent by itself to punish or deal with it?[16] (Emphasis in the original)

The Issues

Petitioner raises two issues:

1. Does the respondent LLDA have the implied power to impose fines as set forth in PD 984?
2. Does the grant of implied power to LLDA to impose penalties violate the rule on non-delegation of legislative powers?[17]

The Ruling of the Court

We find the petition without merit.

Power of LLDA to Impose Fines

Petitioner asserts that LLDA has no power to impose fines since such power to impose penal sanctions, which was once lodged with the National Pollution Control Commission (NPCC), is now assumed by the Pollution Adjudication Board pursuant to Executive Order No. 192 (EO 192).[18]

We disagree with petitioner.

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

[17] *Id.* at 103.

[18] PROVIDING FOR THE REORGANIZATION OF THE DEPARTMENT OF ENVIRONMENT, ENERGY AND NATURAL RESOURCES; RENAMING IT AS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND FOR OTHER PURPOSES.

Presidential Decree No. 984 (PD 984)[19] created and established the NPCC under the Office of the President. EO 192, which reorganized the DENR, created the Pollution Adjudication Board under the Office of the DENR Secretary which assumed the powers and functions of the NPCC with respect to adjudication of pollution cases.

Section 19 of EO 192 provides:

SEC. 19. *Pollution Adjudication Board*. – **There is hereby created a Pollution Adjudication Board under the Office of the Secretary**. The Board shall be composed of the Secretary as Chairman, two (2) Undersecretaries as may be designated by the Secretary, the Director of Environmental Management, and three (3) others to be designated by the Secretary as members. **The Board shall assume the powers and functions of the Commission/ Commissioners of the National Pollution Control Commission with respect to the adjudication of pollution cases under Republic Act 3931 and Presidential Decree 984, particularly with respect to Section 6 letters e, f, g, j, k, and p of P.D. 984**. The Environmental Management Bureau shall serve as the Secretariat of the Board. These powers and functions may be delegated to the regional officers of the Department in accordance with rules and regulations to be promulgated by the Board. (Emphasis supplied)

Section 6, paragraphs (e), (f), (g), (j), (k), and (p) of PD 984 referred to above states:

SEC. 6. *Powers and Functions*. – The Commission shall have the following powers and functions:

x x x x x x x x x

(e) Issue orders or decisions to compel compliance with the provisions of this Decree and its implementing rules and regulations only after proper notice and hearing.

(f) Make, alter or modify orders requiring the discontinuance of pollution specifying the conditions and the time within which such discontinuance must be accomplished.

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[19] Otherwise known as the "National Pollution Control Decree of 1976."

(g) Issue, renew, or deny permits, under such conditions as it may determine to be reasonable, for the prevention and abatement of pollution, for the discharge of sewage, industrial waste, or for the installation or operation of sewage works and industrial disposal system or parts thereof: *Provided, however,* the Commission, by rules and regulations, may require subdivisions, condominium, hospitals, public buildings and other similar human settlements to put up appropriate central sewerage system and sewage treatment works, except that no permits shall be required of any new sewage works or changes to or extensions of existing works that discharge only domestic or sanitary wastes from a single residential building provided with septic tanks or their equivalent. The Commission may impose reasonable fees and charges for the issuance or renewal of all permits herein required.

x x x x x x x x x

(j) Serve as arbitrator for the determination of reparations, or restitution of the damages and losses resulting from pollution.

(k) Deputize in writing or request assistance of appropriate government agencies or instrumentalities for the purpose of enforcing this Decree and its implementing rules and regulations and the orders and decisions of the Commission.

x x x x x x x x x

(p) Exercise such powers and perform such other functions as may be necessary to carry out its duties and responsibilities under this Decree.

On the other hand, LLDA is a special agency created under Republic Act No. 4850 (RA 4850)[20] to manage and develop the Laguna Lake region, comprising of the provinces of Rizal and Laguna and the cities of San Pablo, Manila, Pasay, Quezon and Caloocan. RA 4850, as amended by Presidential Decree No. 813 (PD 813),[21] mandates LLDA to carry out the development

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[20] AN ACT CREATING THE LAGUNA LAKE DEVELOPMENT AUTHORITY, PRESCRIBING ITS POWERS, FUNCTIONS AND DUTIES, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[21] AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED FORTY EIGHT HUNDRED FIFTY, OTHERWISE KNOWN AS THE "LAGUNA LAKE DEVELOPMENT AUTHORITY ACT OF 1966."

of the Laguna Lake region, with due regard and adequate provisions for environmental management and control, preservation of the quality of human life and ecological systems, and the prevention of undue ecological disturbances, deterioration and pollution.[22]

Under Executive Order No. 927 (EO 927),[23] LLDA is granted additional powers and functions to effectively perform its role and to enlarge its prerogatives of monitoring, licensing and enforcement, thus:

SECTION 4. *Additional Powers and Functions*. The Authority [LLDA] shall have the following powers and functions:

(a) Issue standards, rules and regulations to govern the approval of plans and specifications for sewage works and industrial waste disposal systems and the issuance of permits in accordance with the provisions of this Executive Order; inspect the construction and maintenance of sewage works and industrial waste disposal systems for compliance to plans.

(b) Adopt, prescribe, and promulgate rules and regulations governing the Procedures of the Authority with respect to hearings, plans, specifications, designs, and other data for sewage works and industrial waste disposal system, the filing of reports, the issuance of permits, and other rules and regulations for the proper implementation and enforcement of this Executive Order.

(c) **Issue orders or decisions to compel compliance with the provisions of this Executive Order and its implementing rules and regulations only after proper notice and hearing.**

(d) **Make, alter or modify orders requiring the discontinuance of pollution specifying the conditions and the time within which such discontinuance must be accomplished.**

(e) Issue, renew or deny permits, under such conditions as it may determine to be reasonable, for the prevention and abatement of pollution, for the discharge of sewage, industrial waste, or for

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[22] Section 1 of RA 4850, as amended by PD 813.

[23] FURTHER DEFINING CERTAIN FUNCTIONS AND POWERS OF THE LAGUNA LAKE DEVELOPMENT AUTHORITY.

the installation or operation of sewage works and industrial disposal system or parts thereof: *Provided, however,* that the Authority, by rules and regulations, may require subdivisions, condominiums, hospitals, public buildings and other similar human settlements to put up appropriate central sewerage system and sewage treatment works, except that no permits shall be required of any new sewage works or changes to or extensions of existing works that discharge only domestic or sanitary wastes from a single residential building provided with septic tanks or their equivalent. The Authority may impose reasonable fees and charges for the issuance or renewal of all permits herein required.

(f) After due notice and hearing, the Authority may also revoke, suspend or modify any permit issued under this Order whenever the same is necessary to prevent or abate pollution.

(g) Deputize in writing or request assistance of appropriate government agencies or instrumentalities for the purpose of enforcing this executive Order and its implementing rules and regulations and the orders and decision of the Authority.

(h) Authorize its representative to enter at all reasonable times any property of the public dominion and private property devoted to industrial, manufacturing processing or commercial use without doing damage, for the purpose of inspecting and investigating conditions relating to pollution or possible or imminent pollution.

(i) **Exercise such powers and perform such other functions as may be necessary to carry out its duties and responsibilities under this Executive Order**. (Emphasis supplied)

A comparison of the powers and functions of the Pollution Adjudication Board and the LLDA reveals substantial similarity. Both the Pollution Adjudication Board and the LLDA are empowered, among others, to: (1) make, alter or modify orders requiring the discontinuance of pollution; (2) issue, renew, or deny permits for the prevention and abatement of pollution, for the discharge of sewage, industrial waste, or for the installation or operation of sewage works and industrial disposal system; and (3) exercise such powers and perform such other functions necessary to carry out their duties and responsibilities. The difference is that while Section 19 of EO 192 vested the Pollution Adjudication Board with the specific power to adjudicate pollution

cases in general,[24] the scope of authority of LLDA to adjudicate pollution cases is limited to the Laguna Lake region as defined by RA 4850, as amended.

Thus, in *Laguna Lake Development Authority v. Court of Appeals*,[25] the Court held that the adjudication of pollution cases generally pertains to the Pollution Adjudication Board, except where a special law, such as the LLDA Charter, provides for another forum. Indeed, even PD 984 authorizes the LLDA to undertake pollution control activities within LLDA's development area. Section 10 of PD 984 provides:

> SEC. 10. ***Jurisdiction***. – The Commission [NPCC] shall have no jurisdiction over waterworks or sewage system operated by the Metropolitan Waterworks Sewerage System, but the rules and regulations issued by the Commission for the protection and prevention of pollution under the authority herein granted shall supersede and prevail over any rules or regulations as may heretofore have been issued by other government agencies or instrumentalities on the same subject.
>
> **In case of development projects involving specific human settlement sites or integrated regional or subregional projects, such as the Tondo Foreshore Development Authority and the Laguna Lake Development Authority, the Commission shall consult with the authorities charged with the planning and execution of such projects to ensure that their pollution control standards comply with those of the Commission. Once minimum pollution standards are established and agreed upon, the development authorities concerned may, by mutual agreement and prior consultation with the Commission, undertake the pollution control activities themselves**. (Boldfacing and underscoring supplied)

In this case, the DENR's Environmental Management Bureau endorsed to LLDA the pollution complaint against petitioner. Under Section 16 of EO 192, the Environmental Management Bureau assumed the powers and functions of the NPCC except with respect to adjudication of pollution cases, thus:

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[24] *Republic of the Phils. v. Marcopper Mining Corp.,* 390 Phil. 708 (2000).

[25] G.R. No. 110120, 16 March 1994, 231 SCRA 292.

SEC. 16. *Environmental Management Bureau.* – There is hereby created an Environmental Management Bureau. The National Environmental Protection Council (NEPC), **the National Pollution Control Commission (NPCC)** and the Environmental Center of the Philippines (ECP), are hereby **abolished and their powers and functions are hereby integrated into the Environmental Management Bureau** in accordance with Section 24(c) hereof, **subject to Section 19** hereof. x x x (Emphasis supplied)

The Environmental Management Bureau also serves as the Secretariat of the Pollution Adjudication Board, and its Director is one of the members of the Pollution Adjudication Board. Clearly, by endorsing to LLDA the pollution complaint against petitioner, the Environmental Management Bureau deferred to LLDA's jurisdiction over the pollution complaint against petitioner.

Although the Pollution Adjudication Board assumed the powers and functions of the NPCC with respect to adjudication of pollution cases, this does not preclude LLDA from assuming jurisdiction of pollution cases within its area of responsibility and to impose fines as penalty.

Thus, in the recent case of *The Alexandra Condominium Corporation v. Laguna Lake Development Authority*,[26] the Court affirmed the ruling of the Court of Appeals which sustained LLDA's Order, requiring petitioner therein to pay a fine of ₱1,062,000 representing penalty for pollutive wastewater discharge. Although petitioner in that case did not challenge LLDA's authority to impose fine, the Court acknowledged the power of LLDA to impose fines, holding that under Section 4-A of RA 4850, as amended, LLDA is entitled to compensation for damages resulting from failure to meet established water and effluent standards. Section 4-A of RA 4850, as amended, reads:

SEC. 4-A. Compensation for damages to the water and aquatic resources of Laguna de Bay and its tributaries resulting from failure to meet established water and effluent quality standards or from such other wrongful act or omission of a person, private or public, juridical

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[26] G.R. No. 169228, 11 September 2009.

or otherwise, punishable under the law shall be awarded to the Authority to be earmarked for water quality control and management.

Under Section 4(h) of EO 927, LLDA may "exercise such powers and perform such other functions as may be necessary to carry out its duties and responsibilities." In *Laguna Lake Development Authority v. Court of Appeals*,[27] the Court upheld the power of LLDA to issue an *ex-parte* cease and desist order even if such power is not expressly conferred by law, holding that an administrative agency has also such powers as are necessarily implied in the exercise of its express powers. The Court ruled that LLDA, in the exercise of its express powers under its charter, as a regulatory and quasi-judicial body with respect to pollution cases in the Laguna Lake region, has the implied authority to issue a "cease and desist order." In the same manner, we hold that the LLDA has the power to impose fines in the exercise of its function as a regulatory and quasi-judicial body with respect to pollution cases in the Laguna Lake region.

No Undue Delegation of Legislative Power

Petitioner contends that if LLDA is deemed to have implied power to impose penalties, then LLDA will have unfettered discretion to determine for itself the penalties it may impose, which will amount to undue delegation of legislative power.

We do not agree. Contrary to petitioner's contention, LLDA's power to impose fines is not unrestricted. In this case, LLDA investigated the pollution complaint against petitioner and conducted wastewater sampling of petitioner's effluent. It was only after the investigation result showing petitioner's failure to meet the established water and effluent quality standards that LLDA imposed a fine against petitioner. LLDA then imposed upon petitioner a penalty of ₱1,000 per day of discharging pollutive wastewater. The ₱1,000 penalty per day is in accordance with the amount of penalty prescribed under PD 984:

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[27] *Supra* note 25.

SEC. 8. ***Prohibitions*. – No person shall throw, run, drain, or otherwise dispose into any of the water, air and/or land resources of the Philippines, or cause, permit, suffer to be thrown, run, drain, allow to seep or otherwise dispose thereto any organic or inorganic matter or any substance in gaseous or liquid form that shall cause pollution thereof**.

x x x x x x x x x

SEC 9. ***Penalties***. – x x x

(b) **Any person who shall violate any of the previous provisions of Section Eight of this Decree** or its implementing rules and regulations, or any Order or Decision of the Commission, **shall be liable to a penalty of not to exceed one thousand pesos each day during which the violation continues**, or by imprisonment of from two years to six years, or by both fine and imprisonment, and in addition such person may be required or enjoined from continuing such violation as hereinafter provided.

x x x (Emphasis supplied)

Clearly, there are adequate statutory limitations on LLDA's power to impose fines which obviates unbridled discretion in the exercise of such power.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 30 June 2004 and the Resolution dated 8 September 2004 of the Court of Appeals in CA-G.R. SP No. 75238.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

[*] Designated additional member per Special Order No. 776.

SECOND DIVISION

[G.R. No. 165387. December 18, 2009]

MAYON ESTATE CORPORATION and EARTHLAND DEVELOPERS CORPORATION, *petitioners, vs.* **LUALHATI BELTRAN,** *respondent.*

SYLLABUS

REMEDIAL LAW; HLURB 1996 RULES OF PROCEDURE; EFFECT OF FAILURE TO COMPLY WITH THE REQUIREMENT OF VERIFIED CERTIFICATION AGAINST FORUM SHOPPING.— Petitioners admittedly failed to comply with Section 3(b), Rule XII of the HLURB Rules, which specifically requires the attachment to the petition for review of **a verified certification against forum shopping jointly executed by the petitioner and his counsel. The absence of such joint verified certification shall result in the dismissal of the petition for review, pursuant to Section 1, Rule XIV of the HLURB Rules.** Considering that the petition for review filed by petitioners lacks the required verified certification against forum shopping, the petition for review was correctly dismissed for failure to comply with the requirements of the HLURB Rules. Hence, the 25 January 2002 Decision of Arbiter Balasolla became final for non-perfection of the appeal.

APPEARANCES OF COUNSEL

R.G. Roxas and Associates for petitioners.
Beltran Beltran Rubrico Koa and Mendoza for respondent.

RESOLUTION

CARPIO, *J.*:

The Case

This petition for review[1] assails the 22 July 2004 Decision[2] and 22 September 2004 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 80036. The Court of Appeals annulled the 28 February 2003 Order[4] and 24 September 2003 Decision[5] of the Housing and Land Use Regulatory Board (HLURB) Board of Commissioners, and denied the motion for reconsideration filed by petitioners Mayon Estate Corporation (Mayon) and Earthland Developers Corporation (Earthland).

The Antecedents

The present controversy originated from two complaints filed by respondent Lualhati Beltran (Beltran) before the HLURB. Beltran filed the *first* case, docketed as HLURB Case No. REM-071597-9831, against Mayon and Earthland.

On 25 January 2002, Arbiter Balasolla rendered a Decision[6] in HLURB Case No. REM-071597-9831 (25 January 2002 Decision), the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered as follows:

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 30-42. Penned by Associate Justice Lucas P. Bersamin (now a member of this Court) with Associate Justices Josefina Guevara-Salonga and Celia C. Librea-Leagogo.

[3] *Id.* at 44-45.

[4] *Id.* at 138-141. Signed by Commissioner and Chief Executive Officer Romulo Q. Fabul, Commissioners Teresita A. Desierto and Francisco L. Dagnalan.

[5] *Id.* at 199-207.

[6] *Id.* at 47-51.

1. Ordering respondents to immediately complete development of Peñafrancia Hills in accordance with the approved subdivision plan.

2. Ordering respondents/or any person acting for and in its behalf to surrender the possession of Lot 1, Block 43 and Lot 27, Block 49 Annex II Peñafrancia Hills Subdivision in favor of the complainant by removing whatever structure illegally constructed thereon;

3. Ordering respondents to permanently desist from any act of harassment and/or dispossession against the complainant or any person acting for and in her behalf in the aforementioned properties.

4. Ordering complainant to pay respondents ₱13,379.34 as full payment for Lot 1, Block 43 and ₱10,663.68 as full payment for Lot 27, Block 47 and thereafter for respondents to execute the Deeds of Sale thereto and deliver the corresponding titles free from all liens and encumbrances.

5. Ordering respondents to pay jointly and severally, the complainant the following sums:

   a) The amount of ₱200,000.00 with legal interest computed from the time of the demolition of the houses until fully paid;

   b) Moral damages of ₱100,000.00;

   c) Exemplary damages of ₱100,000.00;

   d) Attorneys fees of ₱100,000.00;

6. Ordering respondents to pay this Office an administrative fine of ₱10,000.00 for violation of Section 20 in relation to Section 38 of PD 957.

IT IS SO ORDERED.[7]

On 21 March 2002, the last day for the filing of the appeal, the petitioners filed a petition for review. Since the petition was neither verified nor certified for non-forum shopping by the authorized corporate officer, Beltran moved for the execution

[7] *Id.* at 50-51.

of the 25 January 2002 Decision on 23 May 2002, claiming that the 25 January 2002 Decision became final on 22 March 2002 for failure of the petitioners to perfect an appeal.

On 21 August 2002, Arbiter Balasolla issued an Order denying the petition for review and granting Beltran's motion for execution, thus:

ORDER

Respondents' Petition For Review is hereby denied for failure to comply with Section 3 Rule XII of The 1996 Revised Rules of Procedure of HLURB as amended by Resolution No. R-655 S. 1999, to wit:

> "Section 3. Contents of the Petition for Review. — The petition for review shall contain the grounds relied upon and the arguments in support thereof, the relief prayed for and a statement of the date when the petitioner received a copy of the Decision.
>
> In addition the petitioner shall attach to the petition, the following:
>
> x x x x x x x x x
>
> b. A verified certification jointly executed by the petitioner and his counsel in accord with Supreme Court Circular No. 28-91 as amended, attesting that they have not commenced a similar, related or any other proceeding involving the same subject matter or causes of action before any other court or administrative tribunal in the Philippines.
>
> x x x."[8]

On 19 September 2002, petitioners filed an Omnibus Motion (1) For Reconsideration of Order Dated August 21, 2002; (2) To Inhibit HUL Arbiter Rowena C. Balasolla; and (3) To Order HUL Arbiter Rowena C. Balasolla to Cease and Desist From Further Hearing Illegal Execution Proceedings.[9]

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[8] *Id.* at 78.

[9] *Id.* at 79-98.

On 14 October 2002, petitioners filed an *amended* petition for review,[10] which on 18 November 2002 Arbiter Balasolla denied with finality, to wit:

ORDER

For resolution is respondent's Omnibus Motion (1) For Reconsideration on the Order dated August 21, 2002 denying their Petition For Review on the Decision in the instant case (2) To Inhibit the undersigned (3) To Order the undersigned to Cease and Desist from further hearing Illegal Execution Proceedings. On October 16, 2002, respondents filed a Manifestation and Motion withdrawing their Omnibus Motion. However, respondents filed at the same time, an Amended Petition for Review on the Decision dated January 25, 2002.

Records reveal that this Office has already acted on and denied the previous Petition for Review of the Decision dated January 25, 2002. Hence, this Office has no other recourse but to deny with finality the Amended Petition for Review. This Office having previously granted complainant's Motion for Execution, let a writ of execution be issued accordingly.

IT IS SO ORDERED.[11]

On 26 November 2002, petitioners filed a petition for injunction with the HLURB Board of Commissioners, docketed as HLURB Case No. REM-A-021122-0268, assailing the 21 August 2002 and 18 November 2002 Orders issued by Arbiter Balasolla.

On 28 February 2003, the HLURB Board of Commissioners[12] issued an Order disposing of the petition for injunction, thus:

Wherefore, the petition is granted. The orders dated August 21, 2002 and November 18, 2002, as well as the writ of execution dated (*sic*) are set aside. Complainant is directed to file her comment to

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[10] *Id.* at 99-124.

[11] *Id.* at 125.

[12] Composed of Commissioner and Chief Executive Officer Romulo Q. Fabul, Commissioners Teresita A. Desierto and Francisco L. Dagnalan.

the amended petition for review within 30 days after which the said petition shall be deemed submitted for resolution.

So ordered.[13]

On 31 March 2003, Beltran filed a motion for reconsideration.

On 8 May 2003, Beltran also filed her comment on the petition for injunction of the petitioners "without waiving her Motion for Reconsideration."

Meanwhile, Beltran filed a *second* case, docketed as HLURB Case No. REM-051702-11905, this time against NBC-Agro and its president, Atty. Romeo G. Roxas, after her lot was sold by the latter to Carmelita Cruz (Cruz) on 12 September 2001. Also impleaded as respondents were the Register of Deeds of Antipolo City, Earthland, and Insular Savings Bank, to whom Cruz mortgaged the lot as security for a loan of ₱6,000,000.

On 21 February 2002, Arbiter Balasolla rendered a Decision in HLURB Case No. REM-051702-11905 (21 February 2002 Decision), the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring the sale of Lot 1, Block 43, Annex II of Penafrancia Hills to Carmelita Cruz null and void;

2. Ordering respondent Register of Deeds of Antipolo City to cancel TCT No. R-2591 in the name of Carmelita Cruz, and reinstate TCT No. 35528, free from all liens and encumbrances and to annotate thereon the Contract to Sell of Patricia Caceres and the Transfer of Rights in favor of the complainant;

3. Ordering respondent Carmelita Cruz, Romeo Roxas, NBC Agro Industrial and Development Corporation and Earthland Developers Corporation to immediately restore complainant to the peaceful and undisturbed possession of the subject lot;

4. Ordering respondent Carmelita Cruz, Romeo Roxas and NBC Agro Industrial and Development Corporation to jointly and severally pay complainant the following:

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[13] *Id.* at 141.

a) Moral Damages of ₱100,000.00;
b) Exemplary Damages of ₱100,000.00; and
c) Attorney's Fees of ₱50,000.00.

All other claims and counterclaims are hereby dismissed for lack of merit.

IT IS SO ORDERED.[14]

NBC-Agro, Insular, and Cruz filed separate petitions for review of the 21 February 2002 Decision of Arbiter Balasolla. These petitions were docketed as HLURB Case No. REM-A-030428-0104.

The HLURB Board of Commissioners consolidated HLURB Case No. REM-A-021122-0268 with HLURB Case No. REM-A-030428-0104.

On 24 September 2003, the HLURB Board of Commissioners rendered a Decision[15] in the consolidated cases (HLURB Case No. REM-A-021122-0268 and HLURB Case No. REM-A-030428-0104), the dispositive portion of which reads:

Wherefore, the motion for reconsideration of the complainant (Beltran) is denied while the respective petitions for review of respondents NBC/Roxas, Cruz and Insular are dismissed.

However, the decision of the Office below in REM-A-021122-0268 dated January 25, 2003 is modified; hence, its dispositive portion shall read as follows:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Ordering respondents to immediately complete the development of Peñafrancia Hills in accordance with the approved subdivision plan;

2. Ordering respondents and/or any person acting for and in its behalf to surrender the possession of Lot 1, Block 43 and Lot 27, Block 49, Annex II, Peñafrancia Hills

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[14] *Id.* at 177-178.

[15] *Id.* at 199-207.

Subdivision in favor of the complainant by removing whatever structure illegality constructed thereon;

3. Ordering respondents to permanently desist from any act of harassment and/or dispossession against the complainant or any person acting for and in her behalf in the aforementioned properties;

4. Ordering complainant to pay respondents ₱13,379.34 as full payment for Lot 1, Block 43 and ₱10,663.68 as full payment for Lot 27, Block 47, both with legal interest reckoned from the date the complainant effected unilateral suspension.

   The Office below is directed to determine the date when the above-mentioned suspension was effected;

5. Ordering respondent Earthland to pay the complainant the following sums:

   a. The amount of ₱100,000.00 with legal interest computed from the time of the demolition of the houses until fully paid;
   b. Moral damages of ₱20,000.00;
   c. Exemplary damages of ₱20,000.00; and
   d. Attorney's fees of ₱20,000.00;

6. Ordering respondents to pay this Office and Administrative Fine of ₱10,000.00 for violation of Section 20 in relation to Section 38 of P.D. 957."

Moreover, the decision of the Office below in REM-A-030428-0104 is likewise modified, and its dispositive portion shall read as follows:

"WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring the sale of Lot 1, Block 43, Annex II of Peñafrancia Hills to Carmelita Cruz null and void;

2. Ordering respondent Register of Deeds of Antipolo City to cancel TCT No. R-2591 in the name of Carmelita Cruz, and reinstate TCT No. 35528, free from all liens and encumbrances and to annotate thereon the Contract to Sell of Patricia Caceres and the Transfer of Rights in favor of the complainant;

3. Ordering respondent Carmelita Cruz, Romeo Roxas, NBC Agro Industrial and Development Corporation and Earthland Developers Corporation to immediately restore complainant to the peaceful and undisturbed possession of the subject lot;

4. Ordering respondent Carmelita Cruz, Romeo Roxas and NBC Agro Industrial and Development Corporation to jointly and severally pay complainant the following:

   a. Moral damages of ₱20,000.00;
   b. Exemplary Damages of ₱20,000.00; and
   c. Attorney's Fees of ₱20,000.00.

All other claims and counterclaims are hereby dismissed for lack of merit.

SO ORDERED.[16]

On 3 November 2003, Beltran filed a petition for *certiorari*[17] with the Court of Appeals, docketed as CA-G.R. SP No. 80036 (the subject of the present petition), assailing the 24 September 2003 Decision of the HLURB Board of Commissioners for having been issued with grave abuse of discretion.

Meanwhile, Cruz, Mayon, Earthland, and NBC-Agro moved for reconsideration of the 24 September 2003 Decision of the HLURB Board of Commissioners.[18]

On 24 June 2004, the HLURB Board of Commissioners issued a Resolution dismissing the joint motion for reconsideration of Mayon, Earthland, and NBC-Agro while partially granting the motion for reconsideration of Cruz.[19]

Thereafter, Cruz, on one hand, and Mayon, Earthland, NBC-Agro, and Atty. Romeo G. Roxas, on the other, filed separate appeals to the Office of the President, which consolidated the

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[16] *Id.* at 206-207.

[17] CA *rollo*, pp. 5-34.

[18] *Rollo*, p. 424.

[19] *Id.*

appeals and docketed them as O.P. Case No. 04-G-326. The appeals essentially challenged the 24 September 2003 Decision and 24 June 2004 Resolution of the HLURB Board of Commissioners.

While the appeals of Cruz, Mayon, Earthland, NBC-Agro, and Atty. Romeo G. Roxas were pending before the Office of the President, the Court of Appeals rendered a Decision in CA-G.R. SP No. 80036, which is the subject of the instant petition for review.

In CA-G.R. SP No. 80036, the Court of Appeals held that petitioners violated the rule on the execution of the certificate against forum shopping, resulting in the non-perfection of the appeal. Consequently, the duty to elevate the records to the HLURB Board of Commissioners on the part of Arbiter Balasolla did not arise. The Court of Appeals ruled that since the appeal with the HLURB Board of Commissioners was not perfected in the manner and within the period prescribed by law, the 25 January 2002 and 21 February 2002 Decisions of Arbiter Balasolla became final.

The dispositive portion of the Court of Appeals' decision reads:

> WHEREFORE, judgment is rendered ANNULLING the order dated February 28, 2003 and the decision dated September 24, 2003 issued by the respondent HLURB Board of Commissioners; and DECLARING that there is now no legal obstacle to the execution of the final and executory decision dated January 25, 2002 in HLURB Case No. REM-071597-9831 (REM-A-021122-0268) and the decision dated February 21, 2002 in HLURB Case No. REM-051702-11905 (REM-A-030428-0104).
>
> SO ORDERED.[20]

Relying on the Court of Appeals' Decision in CA-G.R. SP No. 80036, the Office of the President set aside the 24 September 2003 Decision and 24 June 2004 Resolution of the HLURB Board of Commissioners. The Office of the President reasoned that the Court of Appeals in CA-G.R. SP No. 80036 had already

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[20] *Id.* at 42.

declared final and executory the 25 January 2002 and 21 February 2002 Decisions of Arbiter Balasolla. Hence, the Office of the President was left with no other recourse but to reiterate the finality of the assailed decisions of Arbiter Balasolla.

In its Resolution of 28 January 2005, the Office of the President disposed of the appeals, as follows:

> WHEREFORE, premises considered, the appeals are hereby DISMISSED. **The Decision and Resolution of the HLURB Board of Commissioners dated September 24, 2003 and June 24, 2004, respectively, are SET ASIDE and the Decisions of the Housing Arbiter dated January 25, 2002 and February 21, 2002 are REINSTATED and declared final and executory**.
>
> SO ORDERED.[21] (Emphasis supplied)

The Office of the President denied with finality the motion for reconsideration jointly filed by Mayon, Earthland, Atty. Romeo G. Roxas, and NBC-Agro.[22]

Cruz then filed an appeal with the Court of Appeals, docketed as CA-G.R. SP No. 88815. In its Decision of 20 April 2007, the Court of Appeals affirmed the 28 January 2005 Resolution of the Office of the President.

Undaunted, Cruz filed a petition for review with this Court, docketed as G.R. No. 177543. In a Resolution dated 9 July 2007, the Court's Third Division denied the petition for failure to sufficiently show that the Court of Appeals committed any reversible error warranting the exercise by this Court of its discretionary appellate jurisdiction.

The Issue

The issue in this case is whether the 25 January 2002 Decision of the HLURB Arbiter in HLURB Case No. REM-071597-9831 and the 21 February 2002 Decision in HLURB Case No. REM-051702 are already final and executory.

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[21] *Id.* at 428.

[22] *Id.* at 429-430.

The Ruling of this Court

We deny the petition.

In HLURB Case No. REM-071597-9831, petitioners failed to perfect the appeal from the 25 January 2002 Decision of Arbiter Balasolla in the manner prescribed by the HLURB 1996 Rules of Procedure (HLURB Rules). Petitioners admittedly failed to comply with Section 3(b), Rule XII[23] of the HLURB Rules, which specifically requires the attachment to the petition for review of **a verified certification against forum shopping jointly executed by the petitioner and his counsel. The absence of such joint verified certification shall result in the dismissal of the petition for review, pursuant to Section 1, Rule XIV of the HLURB Rules.**[24] Considering that the petition for review filed by petitioners lacks the required verified certification against forum shopping, the petition for review was correctly dismissed for failure to comply with the requirements of the HLURB Rules. Hence, the 25 January 2002 Decision of Arbiter Balasolla became final for non-perfection of the appeal.

At any rate, the Court notes that while the present petition for review was pending, Cruz filed with this Court a petition for review,[25] docketed as G.R. No. 177543. In the minute

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[23] Section 3(b), Rule XII states:

b. A verified certification jointly executed by the petitioner and his counsel in accord with Supreme Court Circular No. 28-91 as amended, attesting that they have not commenced a similar, related or any other proceeding involving the same subject matter or causes of action before any other court or administrative tribunal in the Philippines.

[24] Section 1, Rule XIV states:

The petition for review shall be dismissed on any of the following grounds:
a. Joint motion of the parties to dismiss the petition;
b. Withdrawal of the petition;
c. Failure to pay review fees;
d. Failure to comply with the orders of the Board and/or the requirements of these Rules; and
e. Failure to post an appeal bond, as required in Section 3 of Rule XII.

x x x x x x x x x

[25] *Rollo* (G.R. No. 177543), pp. 10-44.

Resolution of 9 July 2007, the Court's Third Division denied the petition for lack of any reversible error in the challenged decision.[26] The Resolution in G.R. No. 177543 became final and executory on 3 January 2008.

Essentially, the Court's Third Division agreed with the Court of Appeals' finding that the 25 January 2002 and 21 February 2002 Decisions of Arbiter Balasolla are already final and executory. This Court, in effect, upheld the following conclusions of the Court of Appeals:

> It must be remembered that the thrust of the Decision of September 24, 2003 which was rendered in HLURB Case No. REM-071597-9831 entitled *"Lualhati Beltran vs. Mayon Estate and Earthland Developers Corp."* is for Mayon Estate and Earthland Developers to complete the development of Peñafrancia Hills Subdivision and to surrender the possession of Lot 1, Block 43 and Lot 27 Block 49 to LUALHATI. This decision had been declared final and executory by the Court of Appeals because the petition for review filed by the respondents in that case, Mayon Estate and Earthland Developers, failed to comply with the requirement of Section 1, Rule XII of the HLURB Revised Rules of Procedure. Hence, the filing of the petition for review did not perfect their appeal. This means that the decision of the Housing Arbiter in favor of LUALHATI had thereby become final and executory.
>
> Undoubtedly, CARMELITA was not a party to this case. However, this does not mean that she can now ask the Court to set aside the said decision via the present petition, moreso that the said decision had long become final and executory and declared to be so by the Court of Appeals. The records disclose that in fact on November 19, 2002 the HLURB had already issued a writ of execution to implement its decisions of January 25, 2002. For this reason, the Office of the President has no authority to modify, annul, or set aside such final order, and had correctly relied on the decision rendered by the Court of Appeals. To ask this Court to set aside the September 24, 2003 of the HLURB Board will in effect, task the Court not only to set aside the decision dated July 22, 2004 rendered by this same Court, but to set aside the already final order dated January 25, 2002. This cannot be done. Judgments of the courts must become final at

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[26] *Rollo*, p. 541.

some definite time. To allow CARMELITA to be exempted from the legal effects of a final judgment just because she was not a party to the case in which it was rendered will result in endless litigation. Neither appeal nor this petition for review may relieve CARMELITA of the effects of the January 25, 2002 judgment.

x x x [27]

Clearly, the Court of Appeals passed upon the issue of whether the 25 January 2002 and 21 February 2002 Decisions of Arbiter Balasolla were already final and executory, which is the sole issue in this case. Indisputably, G.R. No. 177543 is intimately related to the present case. Hence, when the Court's Third Division affirmed the decision of the Court of Appeals in CA-G.R. SP No. 88815, this Court in effect ruled on the issue of the finality of the 25 January 2002 and 21 February 2002 Decisions of Arbiter Balasolla. Since the Resolution in G.R. No. 177543, affirming the finality of the 25 January 2002 and 21 February 2002 Decisions of Arbiter Balasolla, has long become final and executory, the present petition is already moot.

WHEREFORE, we *DENY* the petition.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

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[27] *Id.* at 537-538.

[*] Designated additional member per Special Order No. 776.

SECOND DIVISION

[G.R. No. 166570. December 18, 2009]

EFREN M. HERRERA and ESTHER C. GALVEZ, for and on their behalf and on behalf of OTHER SEPARATED, UNREHIRED and RETIRED EMPLOYEES OF THE NATIONAL POWER CORPORATION, *petitioners, vs.* **NATIONAL POWER CORPORATION, THE DEPARTMENT OF BUDGET AND MANAGEMENT and THE OFFICE OF THE SOLICITOR GENERAL,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; PROSCRIPTION ON DOUBLE COMPENSATION, APPLIED.—** Section 8 of Article IX(B) of the Constitution provides that "[n]o elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law." In prior decisions, we have ruled that there must be a clear and unequivocal statutory provision to justify the grant of both separation pay and retirement benefits to an employee. Here, absent an express provision of law, the grant of both separation and retirement benefits would amount to double compensation from one single act of separation from employment.

2. **ID.; ADMINISTRATIVE LAW; ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA) OF 2001 (RA 9136); DID NOT AUTHORIZE THE GRANT OF BOTH SEPARATION PAY AND RETIREMENT BENEFITS.—** A careful reading of Section 63 of the EPIRA affirms that said law did not authorize the grant of both separation pay and retirement benefits. Indeed, the option granted was either to "a separation pay and other benefits in accordance with existing laws, rules and regulations" or to "a separation plan which shall be one and one-half months' salary for every year of service in the government." The options were alternative, not cumulative. Having chosen the separation plan, they cannot now claim additional retirement benefits under CA No. 186. x x x This position finds further support in x x x

Rule 33, Section 3(f) of the Implementing Rules and Regulations of RA No. 9136 [which] precludes the receipt of both separation and retirement benefits. A separated or displaced employee, as defined by the implementing rules, does not include one who is qualified or has opted to retire under existing laws. Consequently, a separated employee must choose between retirement under applicable laws or separation pay under the EPIRA.

3. ID.; ID.; ID.; EMPLOYEES WHO WERE SEPARATED DUE TO REORGANIZATION CANNOT CLAIM VESTED RIGHTS OVER THEIR RETIREMENT BENEFITS.— Petitioners claim that having religiously paid their premiums, they have vested rights to their retirement gratuities which may not be revoked or impaired. However, petitioners fail to consider that under the retirement laws that they themselves invoke, separation from the service, whether voluntary or involuntary, is a distinct compensable event from retirement. Nothing in said laws permits an employee to claim both separation pay and retirement benefits in the event of separation from the service due to reorganization. Thus, absent an express provision of law to the contrary, separation due to reorganization gives rise to two possible scenarios: first, when the separated employee is not yet entitled to retirement benefits, second, when the employee is qualified to retire. In the first case, the employee's separation pay shall be computed based on the period of service rendered in the government prior to the reorganization. In the second case, where an employee is qualified to retire, he or she may opt to claim separation or retirement benefits.

4. ID.; ID.; ID.; *LARAÑO* CASE DISTINGUISHED FROM CASE AT BAR.— We are, of course, aware that in *Laraño v. Commission on Audit* we held that employees, who were separated from the service because of the reorganization of the Metropolitan Waterworks and Sewerage System (MWSS) and Local Waterworks and Utilities Administration (LWUA) pursuant to RA No. 8041, were entitled to both a separation package and retirement benefits. In *Laraño*, however, the Early Retirement Incentive Plan submitted to and approved by then President Fidel V. Ramos explicitly provided for a separation package that would be given **over and above the existing retirement benefits.** Therein lies the fundamental difference.

Hence, unlike in this case, there was specific authority for the grant of both separation pay and retirement benefits.

***BRION, J.*: Separate Concurring Opinion**

1. POLITICAL LAW; ADMINISTRATIVE LAW; ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA) OF 2001 (R.A. 9136) *VIS-À-VIS* COMMONWEALTH ACT NO. 186 (CA 186); EMPLOYEES WHO RECEIVED SEPARATION PAY UNDER R.A. 9136 CANNOT CLAIM RETIREMENT BENEFITS UNDER CA 186; REASON, DISCUSSED.— [T]here is only one act of exit from the service and only one service to exit from; unless otherwise provided by law, only one separation benefit can be paid for this exit. This means, in concrete terms, that the petitioners who opted to be separated from the service under the NPC restructuring plan and who have received separation pay under RA 9136, cannot also be considered to have separately exited from the same service through optional retirement under CA 186, entitling them to separate retirement benefits under this law. RA 9136 provides for separation benefits in the alternative and does not offer both. As applied to the present case, the petitioners were employees who were qualified and could claim optional retirement had they chosen to do so. They were asked how they wanted to exit the service. Instead of choosing the exit *via* optional retirement under CA 186, they chose to receive separation pay under the NPC restructuring plan. Under these facts, they never availed of the CA 186 optional retirement and thus never optionally retired from the service. Had they opted to retire optionally, they obviously would not need to be separated under the NPC restructuring plan and be paid separation pay under this plan. That the petitioners in the present case were given an option is manifestly clear under Section 63 of RA 9136 which states that displaced or separated employees shall be entitled **either** to: a) receive separation pay and other benefits in accordance with existing laws, rules and regulations; **or** b) avail of the privileges provided under the separation plan, which shall be one and one-half month salary for every year of service in the government. The law's use of the words "either. . . or" connotes that the law offers an "**option**" between the separation benefits, rather than an accumulation of these benefits as the petitioners would want to impress upon this

Court. This interpretation is supported by the well-settled rule in statutory construction that the word *"or"* is a *disjunctive term* signifying dissociation and independence of one thing from other things enumerated. x x x That an option was given to the petitioners is further strengthened by the terms of the Implementing Rules and Regulations (*IRR*) of the EPIRA, x x x [which] expressly excludes from its coverage those employees who have opted to retire under existing laws. Thus, the options open to employees are clearly *alternative in character*, *i.e.*, a choice of either means of exit so that *the choice of one precludes the other.*

2. **ID.; ID.; ID.; TWO CONDITIONS FOR THE RIGHT TO RETIREMENT BENEFITS TO ACCRUE; APPLICATION.—** I would also wish to emphasize the settled rule that the right to retirement benefits only accrues when two conditions are met, *first,* when the conditions imposed by the applicable law — in this case, CA 186 as amended — are met; and *second,* when an actual retirement takes place. The Court clearly recognized these conditions in *Development Bank of the Philippines v. Commission on Audit* when it disallowed DPB's partial payment of retirement benefits to its employees ahead of actual retirement x x x. [O]ptional retirement clearly is a mere *expectancy* until availed of by those who are qualified to exercise the option to retire. If not taken because the employee chose the separation package under RA 9136, then optional retirement under CA 186 simply remained an expectancy that never materialized and is now forever lost.

3. **ID.; ID.; ID.; *LARAÑO* IS NOT A CONTROLLING DOCTRINE IN THE PRESENT CASE; FACTUAL DISTINCTIONS, CITED.—** *Laraño* is factually different from the present case so that its ruling does not offer a solution to the present controversy. *First*, in *Laraño*, Section 6 of RA 8041 merely provided that separated employees shall be entitled to such benefits as may be determined by existing laws. In the present case, Section 63 of RA 9136 clearly provides that separated employees shall be entitled to <u>*either*</u> a separation pay and other benefits in accordance with existing laws, rules and regulations, <u>*or*</u> to one and one-half-month salary for every year of service. *Thus, Laraño's RA 8041 did not provide that displaced employees were entitled to choose one of two given alternative*

benefits. Second, the Revised ERIP, particularly Item C as the Court emphasized in *Laraño,* authorized payment of premium of 0.5 month per year of service to affected regular officials and employees, with *emphasis* on allowing the adoption by other GOCCs and GFIs of their own separation packages *with incentives and premium over and above the existing retirement benefits*. In the present case, both Section 63 of RA 9136 and the Implementing Rules (as approved by the Joint Congressional Power Commission) provide that the separation benefit shall consist of *either* separation pay and other benefits in accordance with existing laws, rules and regulations, *or* a separation plan equivalent to one and one half month's salary for every year of service in the government, *whichever is higher*, with the *express caveat,* derived from the law and stated in detail in the implementing rules, that employees who have opted to retire under existing laws are excluded from the plan's coverage. *Third*, in *Laraño*, Section 7 of RA 8041, Section 6 of EO 286 and the Revised ERIP as approved by the President clearly mandated the payment of retirement benefits to employees qualified to retire under existing laws (such as RA 1616), in addition to the separation pay to officials and employees affected by MWSS' reorganization. In the present case, RA 9136 and its implementing rules do not authorize the payment of retirement benefits in addition to the separation pay that the petitioner received under the NPC separation plan.

4. **ID.; CONSTITUTIONAL LAW; PROSCRIPTION ON ADDITIONAL COMPENSATION, APPLIED.—** The prohibition against additional or double compensation except when specifically authorized by law is considered a "constitutional curb" on the spending power of the government. x x x There is an additional compensation when, for one and the same office for which a compensation has been fixed, there is added to the fixed compensation an extra reward in the form, for instance, of a bonus. In the present case, I submit that the payment of separation pay and retirement pay for a single exit from same government service effectively constitutes payment for additional compensation; the government would be paying twice for the same creditable service – a feature absent from the original terms of employment that fixed the compensation.

5. ID.; ID.; ID.; RA 9136 SPEAKS AGAINST THE GRANT OF ADDITIONAL COMPENSATION; RULING IN *CAJIUAT,* APPLIED.— The ruling in *Cajiuat* squarely applies to the present case since the language of Section 63 of RA 9136 similarly fails to meet the test that that there must be in the law **a clear and unequivocal provision** allowing the grant of additional compensation. RA 9136, in fact, speaks against the grant of such additional compensation as it provides for the grant of only one separation benefit when it stated: *"[n]ational government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of the NPC assets pursuant to this Act, shall be entitled to* ***either*** *a separation pay and other benefits in accordance with existing laws, rules or regulations* ***or*** *be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government."* To my mind, these terms cannot be any clearer in expressing the law's intent to provide only one separation benefit. Thus, the specific legislative authorization contemplated by Section 8, Article IX-B of the Constitution for the payment of additional retirement benefits to the petitioners is totally absent.

APPEARANCES OF COUNSEL

Herrera Batacan & Associates Law Firm and *The Firm of Sarmiento Delson Candazo & Dakanay* for petitioners.

Office of the General Counsel for NAPOCOR.

Mary Grace R. Chua & Rowena Candice M. Ruiz for Department of Budget & Management.

D E C I S I O N

DEL CASTILLO, *J.*:

The question at the heart of this case is whether petitioners, former employees of the National Power Corporation (NPC) who were separated from service due to the government's initiative of restructuring the electric power industry, are entitled to their retirement benefits in addition to the separation pay granted by law.

Absent explicit statutory authority, we cannot provide our *imprimatur* to the grant of separation pay and retirement benefits from one single act of involuntary separation from the service, lest there be duplication of purpose and depletion of government resources. Within the context of government reorganization, separation pay and retirement benefits arising from the same cause, are in consideration of the same services and granted for the same purpose. Whether denominated as separation pay or retirement benefits, these financial benefits reward government service and provide monetary assistance to employees involuntarily separated due to *bona fide* reorganization.

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court on a pure question of law against the Decision[1] dated December 23, 2004 rendered by the Regional Trial Court (RTC), Branch 101, Quezon City in SCA No. Q-03-50681 (for Declaratory Relief) entitled *National Power Corporation v. Napocor Employees and Workers Union (NEWU), NAPOCOR Employees Consolidated Union (NECU), NPC Executive Officers Association, Inc. (NPC-EXA), Esther Galvez and Efren Herrera, for and on their behalf and in behalf of other separated, unrehired, and retired employees of the National Power Corporation, the Department of Budget and Management (DBM), the Office of the Solicitor General (OSG), the Civil Service Commission (CSC) and the Commission on Audit (COA).* Said Decision ruled that the petitioners are not entitled to receive retirement benefits under Commonwealth Act No. 186 (CA No. 186),[2] as amended, over and above the separation benefits they received under Republic Act (RA) No. 9136,[3] otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA).

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[1] Records, pp. 249-253; penned by Judge Normandie B. Pizarro, now Associate Justice of the Court of Appeals.

[2] An Act to Create and Establish a "Government Service Insurance System", To Provide for its Administration and To Appropriate the Necessary Funds Therefor.

[3] An Act Ordaining Reforms In The Electric Power Industry, Amending For The Purpose Certain Laws And For Other Purposes (2001).

Legal and factual background

RA No. 9136 was enacted on June 8, 2001 to provide a framework for the restructuring of the electric power industry, including the privatization of NPC's assets and liabilities.[4] One necessary consequence of the reorganization was the displacement of employees from the Department of Energy, the Energy Regulatory Board, the National Electrification Administration and the NPC. To soften the blow from the severance of employment, Congress provided in Section 63 of the EPIRA, for a separation package superior than those provided under existing laws, as follows:

> SEC. 63. *Separation Benefits of Officials and Employees of Affected Agencies*. – National government employees displaced or separated from the service as a result of the restructuring of the [electric power] industry and privatization of NPC assets pursuant to this Act, **shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government**: Provided, however, That those who avail of such privilege shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization. x x x (Emphasis supplied)

The implementing rules of the EPIRA, approved by the Joint Congressional Power Commission on February 27, 2002,[5] further expounded on the separation benefits, *viz*:

RULE 33. Separation Benefits

Section 1. General Statement on Coverage.

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[4] EPIRA, Secs. 2(i) & 3.

[5] Under Sec. 62 of the EPIRA, the Joint Congressional Power Commission was authorized to "set the guidelines and overall framework to monitor and ensure the proper implementation" of the EPIRA.

This Rule shall apply to all employees in the National Government service as of June 26, 2001 regardless of position, designation or status, who are displaced or separated from the service as a result of the restructuring of the electric [power] industry and privatization of NPC assets: Provided, however, That the coverage for casual or contractual employees shall be limited to those whose appointments were approved or attested [to] by the Civil Service Commission (CSC).

Section 2. Scope of Application.

This Rule shall apply to affected personnel of DOE, ERB, NEA and NPC.

Section 3. Separation and Other Benefits.

(a) **The separation benefit shall consist of either a separation pay and other benefits granted in accordance with existing laws, rules and regulations or a separation plan equivalent to one and one half (1-½) months' salary for every year of service in the government, whichever is higher;** Provided, That the separated or displaced employee has rendered at least one (1) year of service at the time of effectivity of the Act.

x x x x x x x x x

(e) For this purpose, "Salary", as a rule, refers to the basic pay including the thirteenth (13th) month pay received by an employee pursuant to his appointment, excluding per diems, bonuses, overtime pay, honoraria, allowances and any other emoluments received in addition to the basic pay under existing laws.

(f) Likewise, **"Separation" or "Displacement" refers to the severance of employment of any official or employee, who is neither qualified under existing laws, rules and regulations nor has opted to retire under existing laws,** as a result of the Restructuring of the electric power industry or Privatization of NPC assets pursuant to the Act. (Emphasis supplied)

On February 28, 2003, all NPC employees, including the petitioners, were separated from the service. As a result, all the employees who held permanent positions at the NPC as of June 26, 2001 opted for and were paid the corresponding separation pay equivalent to one and a half months' salary per year of service. Nonetheless, in addition to the separation package mandated by the EPIRA, a number of NPC employees also

claimed retirement benefits under CA No. 186,[6] as amended by RA No. 660[7] and RA No. 1616.[8] Under these laws, government employees who have rendered at least 20 years of service are entitled to a gratuity equivalent to one month's salary for every year of service for the first 20 years, one and a half months' salary for every year of service over 20 but below 30 years, and two months' salary for every year of service in excess of 30 years.[9]

The NPC, on the other hand, took the position that the grant of retirement benefits to displaced employees in addition to separation pay was inconsistent with the constitutional proscription on the grant of a double gratuity. Unable to amicably

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[6] *Supra* note 2.

[7] An Act To Amend Commonwealth Act Numbered One Hundred And Eighty-Six Entitled "An Act To Create And Establish A Government Service Insurance System, To Provide For Its Administration, And To Appropriate The Necessary Funds Therefor", And To Provide Retirement Insurance And For Other Purposes (1951).

[8] An Act Further Amending Section Twelve Of Commonwealth Act Numbered One Hundred Eighty-Six, As Amended, By Prescribing Two Other Modes Of Retirement And For Other Purposes (1957).

[9] Sec. 12(c) of CA No. 186, as amended by RA No. 1616, provides:

(c) Retirement is likewise allowed to any official or employee, appointive or elective, regardless of age and employment status, who has rendered a total of at least twenty years of service, the last three years of which are continuous. The benefit shall, in addition to the return of his personal contributions with interest compounded monthly and the payment of the corresponding employer's premiums described in subsection (a) of Section five hereof, without interest, be only **a gratuity equivalent to one month's salary for every year of the first twenty years of service, plus one and one-half months' salary for every year of service over twenty but below thirty years and two months' salary for every year of service over thirty years in case of employees based on the highest rate received and in case of elected officials on the rates of pay as provided by law**. This gratuity is payable on the rates of pay as provided by law. **This gratuity is payable by the employer or officer concerned which is hereby authorized to provide the necessary appropriation or pay the same from any unexpended items of appropriations or savings in its appropriations**. Officials and employees retired under this Act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of retirement. x x x (Emphasis supplied)

resolve this matter with its former employees, the NPC filed on September 18, 2003, a Petition for Declaratory Relief[10] against several parties,[11] including the petitioners, before the RTC of Quezon City, to obtain confirmation that RA No. 9136 did not specifically authorize NPC to grant retirement benefits in addition to separation pay.[12] The case was docketed as SCA No. Q-03-50681 and raffled to Branch 101 of said court.

After submission of the respondents' respective Answers and Comments,[13] the parties agreed that the court *a quo* would resolve the case based on the arguments raised in their memoranda[14] since only a question of law was involved.[15] In due course, the court *a quo* rendered the assailed Decision, finding that employees who received the separation benefit under RA No. 9136 are no longer entitled to retirement benefits:

> The aforementioned law speaks of two (2) options for the employee to choose from, that is: (1) to receive separation pay and other benefits in accordance with existing laws, rules, and

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[10] Records, pp. 1-17.

[11] Namely, the Napocor Employees and Workers Union (NEWU), NAPOCOR Employees Consolidated Union (NECU), NPC Executive Officers Association, Inc. (NPC-EXA), Esther Galvez and Efren Herrera, for and on their behalf and on behalf of other separated, unrehired, and retired employees of the National Power Corporation, the Department of Budget and Management (DBM), The Office of the Solicitor General (OSG), the Civil Service Commission (CSC), and the Commission on Audit (COA).

[12] Records, pp. 1-33.

[13] Esther Galvez and Efren Herrera (petitioners herein) filed their Answer on January 22, 2004, *id.* at 60-71. This Answer was adopted by Abner P. Eleria, for and on his own behalf and on behalf of other separated and [un]rehired NPC employees in a Manifestation dated February 2, 2004, *id.* at 74-76. The Department of Budget and Management filed its Comment on March 17, 2004, *id.* at 80-99.

[14] The NPC submitted its Memorandum dated July 12, 2004, *id.* at 155-159. Abner Eleria and all other separated and [un]rehired employees filed their Memorandum dated July 23, 2004, *id.* at 170-184. Herrera and Galvez submitted their Memorandum dated July 31, 2004, *id.* at 187-205. DBM submitted its Position paper dated September 24, 2004, *id.* at. 222-248.

[15] Order dated June 16, 2004; *id.* at 196-197.

regulations or (2) to avail of the privileges provided under a separation plan (under R.A. 9136), which shall be one and one half months' salary for every year of service in the government.

Under Section 3(f) of Rule 33 of the Implementing Rules and Regulations of R.A. 9136, "separation or displacement refers to the severance of employment of any official or employee, who is neither qualified under existing laws, rules, and regulations nor has opted to retire under existing laws as a result of the Restructuring of the electric power industry or Privatization of NPC assets pursuant to the act." Thus, it is clear that the receipt of benefits under the EPIRA law, by employees who opted to retire under such law bars the receipt of retirement benefits under R.A. 1616.

Moreover, Section 8 of Article IX-B of the 1987 Constitution prohibits the grant of both separation pay and retirement benefits. x x x

x x x x x x x x x

In said constitutional provision, it is x x x clear that additional or indirect compensation is barred by law and only [allowed] when so specifically authorized by law. Furthermore, on the Private Respondents' contention that the second paragraph should be applied in their [case], the same will not hold water. This is so because "retirement benefits" [are] not synonymous to pension or gratuities as contemplated by law.

R.A. 9136 did not clearly and unequivocally authorize the payment of additional benefits to Private Respondents as the benefits referred to in such law should not be interpreted to include retirement benefits in addition to their separation pay. Separation from service due to [the] restructuring of the [electric] power industry should not be interpreted to mean "retirement" as both are different in every respect. The law specifically defines the meaning of "separation" by virtue of the restructuring. x x x

x x x x x x x x x

Thus, the Respondent-Employees are not entitled to receive retirement benefits under Republic Act No. 1616 over and above the separation benefits they received under Republic Act No. 9136.[16]

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[16] Records, pp. 252-253.

Petitioners sought recourse from the assailed Decision directly before this court on a pure question of law. The Department of Budget and Management (DBM) submitted its Comment on June 30, 2005,[17] while the NPC, through the Office of the Solicitor General, filed its Comment on August 23, 2005.[18] Petitioners then filed their Consolidated Reply by registered mail on November 18, 2005.[19] After the parties filed their respective memoranda,[20] the case was submitted for decision.

Petitioners' arguments

Before us, petitioners argue that:

1) The EPIRA does not bar the application of CA No. 186, as amended. Petitioners are therefore entitled to their retirement pay in addition to separation pay.

2) Petitioners have vested rights over their retirement benefits.

3) The payment of both retirement pay and separation pay does not constitute double compensation, as the Constitution provides that "pensions or gratuities shall not be considered as additional, double or indirect compensation."

Respondents' arguments

Respondents NPC and the DBM, on the other hand, maintain that:

1) Section 63 of RA No. 9136 and Section 3, Rule 33 of its Implementing Rules and Regulations do not authorize the grant of retirement benefits in addition to the

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[17] *Rollo*, pp. 61-95.

[18] *Id.* at 113-136.

[19] *Id.* at 145-154.

[20] The Memorandum for Petitioners was filed on July 10, 2006, see *rollo*, pp. 177-200. The Memorandum for the DBM was filed on September 12, 2006, *id.* at 218-260; finally, the Memorandum for NPC was filed on November 20, 2006, *id.* at 277-306.

separation pay already received. Rather, Section 63 requires separated employees to choose between a separation plan under existing laws or the separation package under the EPIRA.

2) The grant of both separation pay and retirement benefit amounts to double gratuity in direct contravention of the Constitution.

3) No law authorizes the payment of both separation pay and retirement benefits to petitioners.

Issue

The sole issue in this case is whether or not NPC employees who were separated from the service because of the reorganization of the electric power industry and who received their separation pay under RA No. 9136 are still entitled to receive retirement benefits under CA No. 186, as amended.

Our Ruling

We deny the petition and affirm the court *a quo's* Decision dated December 23, 2004 in SCA No. Q-03-50681.

Absent clear and unequivocal statutory authority, the grant of both separation pay and retirement benefits violates the constitutional proscription on additional compensation.

Section 8 of Article IX(B) of the Constitution provides that "[n]o elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law." In prior decisions, we have ruled that there must be a clear and unequivocal statutory provision to justify the grant of both separation pay and retirement benefits to an employee.[21] Here, absent an express provision of law, the grant of both separation and retirement benefits

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[21] *Nunal v. Commission on Audit,* G.R. No. 78648, January 24, 1989, 169 SCRA 356, 361-362; *Cajiuat v. Mathay, Sr.*, 209 Phil. 579, 583 (1983).

would amount to double compensation from one single act of separation from employment.

Petitioners claim that Section 9 of RA No. 6656[22] amounts to sufficient statutory basis for the grant of both retirement benefits and separation pay. Section 9 provides:

> x x x Unless also separated for cause, all officers and employees, who have been separated pursuant to reorganization shall, if entitled thereto, be paid the **appropriate separation pay and retirement and other benefits** under existing laws within ninety (90) days from the date of the effectivity of their separation or from the date of the receipt of the resolution of their appeals as the case may be. Provided, That application for clearance has been filed and no action thereon has been made by the corresponding department or agency. Those who are not entitled to said benefits shall be paid a separation gratuity in the amount equivalent to one (1) month salary for every year of service. Such separation pay and retirement benefits shall have priority of payment out of the savings of the department or agency concerned. (Emphasis supplied)

Unfortunately for the petitioners, their interpretation has little legal precedent. The CSC has previously ruled that employees similarly situated to petitioners herein were not entitled to both separation pay and retirement benefits; instead, the concerned employee must either avail of the separation benefit or opt to retire if qualified under existing laws. In CSC Resolution No. 021112,[23] the CSC interpreted the phrase "separation pay and retirement" in RA No. 6656 as follows:

> x x x While the aforequoted provision of law used the conjunctive "and" between the words "separation pay" and "retirement", this does not mean that both benefits shall be given to an affected employee. This interpretation is supported by the phrase "if entitled thereto" found before the phrase "be paid the appropriate separation pay and retirement and other benefits under existing laws". Thus, payment of both separation and retirement benefits is not absolute.

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[22] An Act To Protect The Security Of Tenure Of Civil Service Officers And Employees In The Implementation Of Government Reorganization.

[23] Re Aurora Enerio Cerilles, Query on Retirement Benefits dated August 22, 2002.

Also, in CSC Resolution No. 00-1957,[24] the CSC declared:

> The aforequoted provision of law says: 'separation pay and retirement and other benefits under existing laws'. Be it noted that the conjunctive 'and' is used between 'separation pay and retirement', which in its elementary sense would mean that they are to be taken jointly. (Ruperto G. Martin, *Statutory Construction*, sixth edition, p. 88) Obviously, therefore, 'separation pay and retirement' refer to only one benefit, of which an employee affected by the reorganization, if entitled thereto, must be paid plus other benefits under existing laws, *i.e.* terminal leave pay, etc.

Further, in *Cajiuat v. Mathay,*[25] we found that in the absence of express provisions to the contrary, gratuity laws should be construed against the grant of double compensation. *Cajiuat* involved employees of the Rice and Corn Administration who exercised their option to retire under CA No. 186 and received the appropriate retirement benefits. Subsequently, the Rice and Corn Administration was abolished by Presidential Decree No. 4.[26] Said Decree also provided for the payment of a gratuity in Section 26, paragraph 3:

> Permanent officials and employees of the Rice and Corn Administration who cannot be absorbed by the Administration, or who cannot transfer or to be transferred to other agencies, or who prefer to retire, if qualified for retirement, or to be laid off, shall be given gratuity equivalent to one month salary for every year of service but in no case more than twenty-four months salary, in addition to all other benefits to which they are entitled under existing laws and regulations. x x x

On the basis of this provision, the retired employees of the Rice and Corn Administration claimed that they were entitled

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[24] Re Teofilo Naungayan dated August 30, 2000. *See also* CSC Resolution No. 021204 dated September 23, 2002 (Re Carlito H. Millan, Motion for Reconsideration of CSC Resolution No. 01-1534 dated September 14, 2001).

[25] *Supra* note 21.

[26] As amended by Presidential Decree Nos. 699 and 1485, Proclaiming The Creation Of The National Grains Authority and Providing Funds Therefor (1972).

to the separation gratuity, over and above the retirement benefits already received. We disagreed and held that:

x x x [t]here must be a provision, clear and unequivocal, to justify a double pension. The general language employed in paragraph 3, Section 26 of Presidential Decree No. 4 fails to meet that test. All that it states is that permanent employees of the Rice and Corn Administration who are retirable are entitled to gratuity equivalent to one month salary for every year of service but in no case more than twenty four months salary in addition to other benefits to which they are entitled under existing laws and regulations. To grant double gratuity is unwarranted. No reliance can be placed [on] the use of the term "other benefits" found in the paragraph relied upon. As clearly stated in the memorandum of the Solicitor General, they refer to "those receivable by a retiree under the general retirement laws, like the refund of contributions to the retirement fund and the money value of the accumulated vacation and sick leaves of said official employee. The clause "in addition to all other benefits to which they are entitled under existing laws and regulations" was inserted to insure the payment to the retiree of the refund of the contributions to the retirement fund and the money value of the accumulated vacation and sick leaves of said official or employee.[27]

Nothing in the EPIRA justifies the grant of both the separation package and retirement benefits.

The EPIRA, a legislative enactment dealing specifically with the privatization of the electric power industry, provides:

SEC. 63. *Separation Benefits of Officials and Employees of Affected Agencies*. – National government employees displaced or separated from the service as a result of the restructuring of the [electric power] industry and privatization of NPC assets pursuant to this Act, **shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month[s'] salary for every year of service in the government**: Provided, however, That those who avail of such privilege shall start their government

[27] *Supra* note 21 at 583-584.

service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization. x x x (Emphasis supplied)

A careful reading of Section 63 of the EPIRA affirms that said law did not authorize the grant of both separation pay and retirement benefits. Indeed, the option granted was either to "a separation pay and other benefits in accordance with existing laws, rules and regulations" or to "a separation plan which shall be one and one-half months' salary for every year of service in the government". The options were alternative, not cumulative. Having chosen the separation plan, they cannot now claim additional retirement benefits under CA No. 186.

This position finds further support in Section 3(f), Rule 33 of RA No. 9136's Implementing Rules and Regulations, which provides:

(f) likewise, "separation" or "displacement" refers to the severance of employment of any official or employee, who is neither qualified under existing laws, rules and regulations nor has opted to retire under existing laws, as a result of the restructuring of the electric power industry or privatization of NPC assets pursuant to the act.

As worded, Rule 33, Section 3(f) of the Implementing Rules and Regulations of RA No. 9136 precludes the receipt of both separation and retirement benefits. A separated or displaced employee, as defined by the implementing rules, does not include one who is qualified or has opted to retire under existing laws. Consequently, a separated employee must choose between retirement under applicable laws or separation pay under the EPIRA.

Within the context of reorganization, petitioners cannot claim a vested right over their retirement benefits.

Petitioners claim that having religiously paid their premiums, they have vested rights to their retirement gratuities which may not be revoked or impaired. However, petitioners fail to consider

that under the retirement laws that they themselves invoke, separation from the service, whether voluntary or involuntary, is a distinct compensable event from retirement.[28] Nothing in said laws permits an employee to claim both separation pay and retirement benefits in the event of separation from the service due to reorganization.

Thus, absent an express provision of law to the contrary, separation due to reorganization gives rise to two possible scenarios: first, when the separated employee is not yet entitled to retirement benefits, second, when the employee is qualified to retire. In the first case, the employee's separation pay shall be computed based on the period of service rendered in the government prior to the reorganization. In the second case, where an employee is qualified to retire, he or she may opt to claim separation or retirement benefits.

Contradistinction with Laraño v. Commission on Audit

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[28] Section 9 of CA No. 186 provides for the following benefits in case of involuntary separation from the service, which are distinct from retirement benefits:

In other cases of separation before maturity of a policy, the Government contributions shall cease, and the insured member shall have the following options: (a) to collect the cash surrender value of the policy; or (b) to continue the policy by paying the full premiums thereof; or (c) to obtain a paid up or extended term insurance in such amount or period, respectively, as the paid premiums may warrant, in accordance with the conditions contained in said policy; or (d) to avail himself of such other options as may be provided in the policy.

On the other hand, under RA No. 8291, the involuntary separation benefits are as follows:

SEC. 12. *Unemployment or Involuntary Separation Benefits.* - Unemployment benefits in the form of monthly cash payments equivalent to fifty percent (50%) of the average monthly compensation shall be paid to a permanent employee who is involuntarily separated from the service due to the abolition of his office or position usually resulting from reorganization: *Provided,* That he has been paying integrated contributions for at least one (1) year prior to separation. Unemployment benefits shall be paid in accordance with the following schedules:

We are, of course, aware that in *Laraño v. Commission on Audit*[29] we held that employees, who were separated from the service because of the reorganization of the Metropolitan Waterworks and Sewerage System (MWSS) and Local Waterworks and Utilities Administration (LWUA) pursuant to RA No. 8041, were entitled to both a separation package and retirement benefits.[30]

In *Laraño*, however, the Early Retirement Incentive Plan submitted to and approved by then President Fidel V. Ramos explicitly provided for a separation package that would be given **over and above the existing retirement benefits.** Therein lies the fundamental difference. Hence, unlike in this case, there was specific authority for the grant of both separation pay and retirement benefits.

WHEREFORE, the petition is *DENIED*. The Decision dated December 23, 2004 of the Regional Trial Court of Quezon City, Branch 101 in SCA No. Q-03-50681 holding that petitioners are not entitled to receive retirement benefits under Commonwealth Act No. 186, as amended is *AFFIRMED* with *MODIFICATION* that petitioners are entitled to a refund of their contributions to the retirement fund, and the monetary value of any accumulated vacation and sick leaves.

SO ORDERED.

Carpio,[*] *Leonardo-de Castro,*[**] and *Abad, JJ.,* concur.

Brion, J., see separate concurring opinion.

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[29] G.R. No. 164542, December 18, 2007, 540 SCRA 553.

[30] In said case, to cushion adverse financial effects on the said employees, an Early Retirement Incentive Package (ERIP) was offered to those who had rendered at least one year of service. Thus, employees affected by the reorganization were paid the corresponding benefits under the ERIP. In *Laraño*, as here, those employees who had rendered more than 20 years of service filed their claims for payment of retirement benefits under RA No. 1616. When brought before this Court, we ruled that affected officials and employees of the MWSS who were qualified to retire could claim retirement benefits, notwithstanding their receipt of benefits under the ERIP. *Id.* at 570-572.

[*] Per Special Order No. 775 dated November 3, 2009.

[**] Additional member per Special Order No. 776 dated November 3, 2009.

SEPARATE CONCURRING OPINION

BRION, *J*.:

I concur fully with the *ponencia* that the petitioners are not entitled to receive retirement benefits under Commonwealth Act No. 186 as amended by Republic Act No. 660 and Republic Act No. 1616 (*CA 186 as amended*) over and above the superior separation package (*separation pay*) they have received under Section 63 of Republic Act No. 9136 (*RA 9136*).[1] I submit this Separate Concurring Opinion to state my own views and observations on the issues at hand.

I base my concurrence with the *ponencia's* conclusions on the following grounds:

a) **There is only one act of exit from the service and only one service to exit from.** The petitioners who chose separation from the service under the NPC's restructuring plan never really exercised the right to ***optionally*** retire; the earlier termination of their employment denied them the opportunity to optionally retire. Consequently, no retirement pay ever accrued in their favor.

b) The grant of retirement benefits to the petitioners in addition to the separation pay they have already received effectively amounts to additional compensation for the same services. Unless specifically authorized by law, such additional compensation is not allowed under Section 8, Article IX-B of the Constitution.

Background

Dubbed as one of the landmark legislations Congress has enacted in recent years,[2] RA No. 9136 [otherwise known as

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[1] An Act Ordaining In the Electric Power Industry, Amending For The Purpose Certain Laws and For Other Purpose, Approved June 8, 2001.

[2] See *Freedom from Debt Coalition v. Energy Regulatory Commission*, 476 Phil. 134 (2004).

the Electric Power Industry Reform Act Regulatory Act of 2001(*EPIRA*)] called for the restructuring of the electric power industry, including the privatization of the National Power Corporation's (*NPC*) assets and liabilities. One consequence of the restructuring and of NPC's privatization was the displacement and separation from the service of all its employees. To cushion the impact of the employees' abrupt separation from the service, Section 63 of RA 9136 provided for the payment of separation pay to affected employees, as follows:

> Sec. 63. Separation Benefits of Officials and Employees of Affected Agencies. – National government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of the NPC assets pursuant to this Act, **shall be entitled to EITHER a separation pay and other benefits in accordance with existing laws, rules or regulations OR be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government**…[Emphasis supplied]

On February 27, 2002, the implementing rules of the EPIRA[3] were approved by the Joint Congressional Power Commission. The pertinent portion of this rule states:

> Section 3. Separation and Other Benefits
>
> (a) **The separation benefit shall consist of EITHER a separation pay and other benefits granted in accordance with existing laws, rules and regulations OR a separation plan equivalent to one and one half (1-½) month's salary for every year of service in the government, whichever is higher:** Provided, That the separated or displaced employee has rendered at least one (1) year of service at the time of effectivity of the Act. [Emphasis supplied]
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> x x x x x x x x x

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[3] The Department of Energy, in consultation with the NPC, Department of Budget and Management, Department of Trade and Industry, Energy Regulatory Commission, National Electrification Administration, Power Sector Assets and Liabilities Corporation and other Electric Power Industry Participants drafted the IRR.

(f) Likewise, "Separation" or "Displacement" **refers to the severance of employment of any official or employee, who is neither qualified under existing laws, rules and regulations nor has opted to retire under existing laws**, as a result of the Restructuring of the electric power industry or Privatization of NPC assets pursuant to the Act. [Emphasis supplied]

Thus, on February 28, 2003, all NPC employees were separated from service; they uniformly *opted for the superior separation pay* under the NPC restructuring plan equivalent to one and one-half month salary for every year of service. Subsequently, about four hundred twenty nine (429) of these separated employees, including the petitioners, filed their claim for optional retirement benefits under CA 186, as amended.[4] The present case arose when NPC refused to pay the demanded optional retirement benefits.

The petitioners are not entitled to a retirement benefit that never accrued.

In my view, **there is only one act of exit from the service and only one service to exit from; unless otherwise provided by law, only one separation benefit can be paid for this exit.**

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[4] Section 12 of CA 186, as amended by RA 1616 states:

(c) Retirement is likewise allowed to any official or employee, appointive or elective, regardless of age and employment status, who has rendered a total of twenty years of service, the last three years of which are continuous. The benefit shall, in addition to the return of his personal contributions with interest compounded monthly and the payment of the corresponding employer's premiums described in subsection (a) of Section five hereof, without interest, be only a gratuity to one month's salary for every year of the first twenty years of service, plus one and one-half month's salary for every year of service over twenty but below thirty years and two month's salary for every year of service over thirty years in case of employees based on the highest rate received and in case of elected officials on the rates of pay as provided by law. This gratuity is payable by the employer or officer concerned which is hereby authorized to provide the necessary appropriation or pay the same from any unexpended items of appropriations or savings in its appropriations. Officials and employees retired under this Act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of retirement.

This means, in concrete terms, that the petitioners who opted to be separated from the service under the NPC restructuring plan and who have received separation pay under RA 9136, cannot also be considered to have separately exited from the same service through optional retirement under CA 186, entitling them to separate retirement benefits under this law. RA 9136 provides for separation benefits in the alternative and does not offer both.

As applied to the present case, the petitioners were employees who were qualified and could claim optional retirement had they chosen to do so. They were asked how they wanted to exit the service. Instead of choosing the exit *via* optional retirement under CA 186, they chose to receive separation pay under the NPC restructuring plan. Under these facts, they never availed of the CA 186 optional retirement and thus never optionally retired from the service. Had they opted to retire optionally, they obviously would not need to be separated under the NPC restructuring plan and be paid separation pay under this plan.

That the petitioners in the present case were given an option is manifestly clear under Section 63 of RA 9136 which states that displaced or separated employees shall be entitled **either** to:

a) receive separation pay and other benefits in accordance with existing laws, rules and regulations; **or**

b) avail of the privileges provided under the separation plan, which shall be one and one-half month salary for every year of service in the government.

The law's use of the words "either. . . or" connotes that the law offers an "**option**" between the separation benefits, rather than an accumulation of these benefits as the petitioners would want to impress upon this Court. This interpretation is supported by the well-settled rule in statutory construction that the word *"or"* is a *disjunctive term* signifying dissociation and independence of one thing from other things enumerated.[5] In *Centeno v. Villalon-Pornillos*,[6] the Court emphasized that:

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[5] *Pimentel v. COMELEC*, 352 Phil. 424 (1998).

[6] G.R. No. 113092, September 1, 1994, 236 SCRA 197, 206.

In its elementary sense, "or", as used in a statute, is **a disjunctive article indicating an <u>alternative</u>**. **It often connects a series of words or propositions indicating a <u>choice of either</u>**. When "or" is used, the various members of the enumeration are to be taken separately. [Emphasis supplied]

That an option was given to the petitioners is further strengthened by the terms of the Implementing Rules and Regulations (*IRR*) of the EPIRA, heretofore quoted, which defines *separation or displacement* as the severance of employment of any official or employee, *who is neither qualified under existing laws, rules and regulations* nor *has opted to retire under existing laws*. Significantly, under this IRR, the concept of a separated or displaced employee as a result of NPC's restructuring includes those who have *not opted to retire* under existing laws. In other words, the IRR expressly excludes from its coverage those employees who have opted to retire under existing laws. Thus, the options open to employees are clearly *alternative in character*, *i.e.*, a choice of either means of exit so that *the choice of one precludes the other*.

I would also wish to emphasize the settled rule that the right to retirement benefits only accrues when two conditions are met, *first*, when the conditions imposed by the applicable law — in this case, CA 186 as amended — are met; and *second*, when an actual retirement takes place. The Court clearly recognized these conditions in *Development Bank of the Philippines v. Commission on Audit*[7] when it disallowed DBP's partial payment of retirement benefits to its employees ahead of actual retirement. We then held that:

The right to retirement benefits accrues only upon certain prerequisites. First, **the conditions imposed by the applicable law** — in this case, RA 1616 — **must be fulfilled**. Second, **there must be actual retirement**. Retirement means there is "a bilateral act of the parties, **a voluntary agreement between the employer and the employees** whereby the latter after reaching a certain age **agrees and/or consents to severe his employment** with the former. [Emphasis supplied]

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[7] 467 Phil. 62 (2004).

From this ruling, optional retirement clearly is a mere *expectanc*y until availed of by those who are qualified to exercise the option to retire. If not taken because the employee chose the separation package under RA 9136, then optional retirement under CA 186 simply remained an expectancy that never materialized and is now forever lost. To put it differently, given **one and the same exit** from the **one and the same service** for which **only one separation benefit is provided**, there can be no actual retirement under CA 186 after exit *via* the RA 9136 route has been taken; **optional retirement under CA 186 has then become the road not taken.**

Larano is not a controlling doctrine in the present case

I also fully agree with the *ponencia's* conclusion that this Court's ruling in *Laraño v. Commission on Audit*[8] does not apply to the present case. *Laraño* is factually different from the present case so that its ruling does not offer a solution to the present controversy.

First, in *Laraño*, Section 6 of RA 8041 merely provided that separated employees shall be entitled to such benefits as may be determined by existing laws. In the present case, Section 63 of RA 9136 clearly provides that separated employees shall be entitled to *either* a separation pay and other benefits in accordance with existing laws, rules and regulations, *or* to one and one-half-month salary for every year of service. *Thus, Laraño's RA 8041 did not provide that displaced employees were entitled to choose one of two given alternative benefits.*

Second, the Revised ERIP, particularly Item C as the Court emphasized in *Laraño,* authorized payment of premium of 0.5 month per year of service to affected regular officials and employees, with *emphasis* on allowing the adoption by other GOCCs and GFIs of their own separation packages *with incentives and premium over and above the existing retirement benefits*. In the present case, both Section 63 of RA 9136 and the Implementing Rules (as approved by the Joint Congressional

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[8] G.R. No. 164542, December 18, 2007, 546 SCRA 553.

Power Commission) provide that the separation benefit shall consist of *either* separation pay and other benefits in accordance with existing laws, rules and regulations, *or* a separation plan equivalent to one and one half month's salary for every year of service in the government, *whichever is higher*, with the *express caveat,* derived from the law and stated in detail in the implementing rules, that employees who have opted to retire under existing laws are excluded from the plan's coverage.

Third, in *Laraño*, Section 7 of RA 8041, Section 6 of EO 286 and the Revised ERIP as approved by the President clearly mandated the payment of retirement benefits to employees qualified to retire under existing laws (such as RA 1616), in addition to the separation pay to officials and employees affected by MWSS' reorganization. In the present case, RA 9136 and its implementing rules do not authorize the payment of retirement benefits in addition to the separation pay that the petitioner received under the NPC separation plan.

The additional grant of retirement benefits to the petitioners effectively amounts to additional compensation proscribed by the Constitution

Section 8 of Article IX(B) of the Constitution states:

> SEC. 8. **No** elective or **appointive** public officer or **employee shall receive additional**, double or indirect **compensation**, **unless specifically authorized by law**, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government. [Emphasis supplied]
>
> Pensions and gratuities shall not be considered as additional, double, or indirect compensation.

The prohibition against additional or double compensation except when specifically authorized by law is considered a "constitutional curb" on the spending power of the government.[9]

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[9] Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, 1996 ed., p. 925.

Peralta v. Mathay[10] best expressed the purpose of the prohibition when it held:

> This is to manifest a commitment to the fundamental principle that a public office is a public trust. It is expected of a government official or employee that he keeps uppermost in mind the demands of public welfare. He is there to render public service. He is of course entitled to be rewarded for the performance of the functions entrusted to him, but that should not be the overriding consideration. The intrusion of the thought of private gain should be unwelcome. The temptation to further personal ends, public employment as a means for the acquisition of wealth, is to be resisted. That at least is the ideal. There is then to be an awareness on the part of an officer or employee of the government that he is to receive only such compensation as may be fixed by law. With such a realization, he is expected not to avail himself of devious or circuitous means to increase the remuneration attached to his position.

There is an additional compensation when, for one and the same office for which a compensation has been fixed, there is added to the fixed compensation an extra reward in the form, for instance, of a bonus.[11] In the present case, I submit that the payment of separation pay and retirement pay for a single exit from same government service effectively constitutes payment for additional compensation; the government would be paying twice for the same creditable service – a feature absent from the original terms of employment that fixed the compensation.

The illustrative example cited by the respondent Department of Budget and Management is instructive:

Given:

Highest monthly salary received	- ₱8,506.30/month
Length of service	- 22 years
Separation pay under R.A. 9136	- 1.5 month's salary for every year of service

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[10] 148 Phil. 261 (1971).

[11] Bernas, *supra* note 9 at 926.

Computation:

a. Separation pay under RA 9136 = (highest monthly salary received x length of service) x 1.5 month's salary per service year)
= (₱8,506.30 x 22 years) x 1.5
= ₱187,138.60 x 1.5
= **₱280,707.90**

b. Retirement benefits under C.A. 186, as amended

= highest monthly salary received x total gratuity months[12]
= ₱8,506.30 x 23 total gratuity months
= **₱195,644.90**

Total gratuity months:

20 years x 1 month	=	20
2 years x 1.5 months	=	3
22 years		23 Total gratuity months

This illustrative example shows that similarly situated petitioners separated under RA 9136 shall receive not only the amount of ₱280,707.90 as separation pay, but also the amount of ₱195,644.90 as retirement pay under CA 186 based on the same years of service in the government. This is a grant of both separation and retirement benefits for one and the same act of exit from government service, using exactly the same years of service in the government as basis in the computation. **To validly receive this kind of double compensation, a law must exist as authority for the additional grant.** Thus, the resolution of this case can be reduced to a search for this law.

Incidentally, the present fact situation and the conclusion I draw are not without precedent. While the facts are not exactly

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[12] Conversion of creditable service into gratuity months:

a. One month for every creditable year of service not exceeding twenty years;

b. One and half months for every year creditable year of service over twenty years but not exceeding thirty years; and

c. Two months for every creditable year of service in excess of thirty years.

the same, the facts of the present case run very close to those of *Santos v. Court of Appeals*.[13] In this case, upon optional retirement from the Judiciary on April 1, 1992, the petitioner received full payment of his retirement gratuity under R. A. No. 910, as amended. For five years thereafter, he continued receiving a monthly pension. Subsequently, he was appointed Director III of the defunct Metro Manila Authority (*MMA*). On March 1, 1995, Congress enacted R.A. No. 7924 which reorganized the MMA and renamed it as the Metropolitan Manila Development Authority. The petitioner was separated from the MMA as a result of the reorganization, giving rise to the issue of whether his separation as Director III (under RA No. 7294) should include his years of service with the Judiciary. The Court categorically answered this question in the *negative*, holding that:

> **However, to credit his years of service in the Judiciary in the computation of his separation pay under R.A. No. 7924** notwithstanding the fact that he had received or has been receiving the retirement benefits under R.A. No. 910, as amended, **would be to countenance double compensation for exactly the same services, *i.e.*, his services as MeTC Judge**. **Such would run counter to the policy of this Court against double compensation for exactly the same services**. More important, it would be in violation of the first paragraph of Section 8 of Article IX-B of the Constitution, which proscribes additional, double, or indirect compensation. Said provision reads:
>
> > No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law…
>
> Section 11 of R.A. No. 7924 does not specifically authorize payment of additional compensation for years of government service outside of the MMA.

thus highlighting that the legislative authority for the payment of double compensation must possess a certain level of specificity to comply with the constitutional requirement.

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[13] 399 Phil. 282 (2000).

The case of *Sadueste v. Municipality of Surigao*[14] provided an early opportunity for the Court to elaborate on the meaning of the phrase "**specifically authorized by law**." *Sadueste* involved a claim for compensation by a district engineer for his designation as a sanitary and waterworks engineer under the last paragraph of Section 1916 of the Revised Administrative Code[15] which, prior to the present constitutional prohibition of additional or double compensation, merely provided a general grant of authority to pay additional compensation. In denying Sadueste's petition, the Court explained the need, under the current prohibition against double compensation, **for a specific authority** given to a particular employee or officer because of exceptional reasons meriting the payment of additional compensation:

> The authority granted in the last paragraph of section 1016 of the Revised Administrative Code is a **general authority** given to all district engineers. **The authority required by the Constitution** to receive double or additional compensation **is a specific authority given to a particular employee or officer of the Government because of peculiar or exceptional reasons warranting the payment of extra or additional compensation**. The purpose of the Constitution is to prohibit generally payment of additional or double compensation except in individual instances where **the payment of such additional compensation appears to be not only just but necessary**. [Emphasis supplied]

The subsequent case of *Cajiuat v. Mathay, Sr.*[16] provided a stricter standard as it required that there must be a **clear and unequivocal provision of law** allowing the grant of additional compensation. In *Cajiuat*, permanent officials and employees of the then Rice and Corn Administration (*RCA*) retired and received their retirement benefits under C.A. No. 186, as

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[14] 72 Phil. 485 (1941).

[15] The provision states: "Upon designation of the Director of Public Works, a district engineer may be allowed additional compensation with the approval of the provincial board not to exceed sixty pesos per month to be paid from the income of the waterworks systems supervised by him for services rendered in his capacity as sanitary and waterworks engineer."

[16] 209 Phil. 579 (1983).

amended (Optional Retirement Law). Subsequently, Presidential Decree No. 4 abolished the RCA. The affected officials and employees then claimed separation pay based on Section 26 of PD No. 4, which provides that "permanent officials and employees of the [RCA]…who prefer to retire, if qualified for retirement, shall be given gratuity equivalent to one month salary for every year of service but in no case more than twenty-four month's salary, in addition to all other benefits under existing laws and regulations." In denying the RCA retirees' claim of double gratuity, the Court significantly held:

> This Court, after a careful consideration, arrives at the same conclusion. **There must be a provision, clear and unequivocal, to justify a double pension**. **The general language employed in paragraph 3, Section 26 of Presidential Decree No. 4 fails to meet that test. All that it states is that permanent employees of the Rice and Corn Administration who are retirable are entitled to gratuity equivalent to one month salary for every year of service but in no case more than twenty-four month's salary in addition to other benefits to which they are entitled under existing laws and regulations. To grant double gratuity then is unwarranted.** No reliance can he placed to the use of the term "other benefits" found in the paragraph relied upon. As clearly stated in the memorandum of the Solicitor General, they refer to "those receivable by a retiree under the general retirement laws, like the refund of contributions to the retirement fund and the money value of the accumulated vacation and sick leaves of said official employee. The clause 'in addition to all other benefits to which they are entitled under existing laws and regulations,' was inserted to insure the payment to the retiree of the refund of the contributions to the retirement fund and the money value of the accumulated vacation and sick leaves of said official or employee."
>
> That is all it can plausibly signify. To go further would make it a fruitful parent of injustice. It would set at naught a state policy dictated by reason and fairness alike. Petitioners seek to claim the status of an exempt class. The burden of proof is on them. That they failed to meet, relying as they do on words hardly indicative of their being accorded a favored status. To justify such a result, it is imperative that the language employed be of the clearest and most satisfactory character. The paragraph relied upon in Section 26 of Presidential Decree No. 4, to repeat, cannot be so characterized.

One last word. It is to be added that the rule against double compensation is nothing new. It was so held in *Peralta v. Auditor General*. While the question involved is not identical, its *ratio decidendi* applies to the instant situation, namely, to allow what petitioners seek "would be a clear disregard of the prohibition to receive both the compensation and the pension, annuity, or gratuity." Peralta was cited with approval in a later case, *San Diego v. Auditor General*. A recent decision, *Chavez v. Auditor General*, puts the matter tersely but emphatically. Thus: "Appeal from a decision of the Auditor General, in which we reaffirm the Court's doctrine against the payment to retirees from the government service of double pension for exactly the same services." We do so again. [Emphasis supplied]

The ruling in *Cajiuat* squarely applies to the present case since the language of Section 63 of RA 9136 similarly fails to meet the test that there must be in the law **a clear and unequivocal provision** allowing the grant of additional compensation. RA 9136, in fact, speaks against the grant of such additional compensation as it provides for the grant of only one separation benefit when it stated:

"[n]ational government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of the NPC assets pursuant to this Act, shall be entitled to ***either*** *a separation pay and other benefits in accordance with existing laws, rules or regulations* ***or*** *be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government."*[17]

To my mind, these terms cannot be any clearer in expressing the law's intent to provide only one separation benefit. Thus, the specific legislative authorization contemplated by Section 8, Article IX-B of the Constitution for the payment of additional retirement benefits to the petitioners is totally absent.

In light of all these, I vote to *DENY* the petition.

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[17] Sec. 63, RA 9136 (otherwise known as the Electric Power Industry Reform Act Regulatory Act of 2001).

SECOND DIVISION

[G.R. No. 171023. December 18, 2009]

ARSENIO S. QUIAMBAO, *petitioner, vs.* **MANILA ELECTRIC COMPANY,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; WHEN GROSS NEGLECT OF DUTY BECOMES SERIOUS MISCONDUCT.—** We have examined the records which indeed show that petitioner's unauthorized absences as well as tardiness are habitual despite having been penalized for past infractions. In *Gustilo v. Wyeth Philippines, Inc.,* we held that a series of irregularities when put together may constitute serious misconduct. We also held that gross neglect of duty becomes serious in character due to frequency of instances. Serious misconduct is said to be a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and indicative of wrongful intent and not mere error of judgment. Oddly, petitioner never advanced any valid reason to justify his absences. Petitioner's intentional and willful violation of company rules shows his utter disregard of his work and his employer's interest. Indeed, there can be no good faith in intentionally and habitually incurring unexcusable absences. Thus, the CA did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in equating petitioner's gross neglect of duty to serious misconduct.

2. **ID.; ID.; ID.; A DISMISSED EMPLOYEE DUE TO GROSS AND HABITUAL NEGLECT OF DUTY IS NOT ENTITLED TO SEPARATION PAY; RELEVANT RULING, CITED.—** [E]ven assuming that the ground for petitioner's dismissal is gross and habitual neglect of duty, still, he is not entitled to severance pay. In *Central Philippines Bandag Retreaders, Inc. v. Diasnes,* we discussed the parameters of awarding separation pay to dismissed employees as a measure of financial assistance, *viz*: To reiterate our ruling in *Toyota,* labor adjudicatory officials and the CA must demur the award

of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; **gross and habitual neglect of duty**; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family – grounds under Art. 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.

APPEARANCES OF COUNSEL

Leaño Leaño and Leaño Law Office for petitioner.
Angelito F. Aguila for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The liberality of the law can never be extended to the unworthy and undeserving. In several instances, the policy of social justice has compelled this Court to accord financial assistance in the form of separation pay to a legally terminated employee. This liberality, however, is not without limitations. Thus, when the manner and circumstances by which the employee committed the act constituting the ground for his dismissal show his perversity or depravity, no sympathy or mercy of the law can be invoked.

This petition for review on *certiorari*[1] assails the Decision[2] dated October 28, 2005 and Resolution[3] dated January 12, 2006

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[1] *Rollo*, pp. 9-18.

[2] *Id.* at 35-42; penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Renato C. Dacudao and Celia C. Librea-Leagogo.

[3] *Id.* at 44-45.

of the Court of Appeals (CA) in CA-G.R. SP No. 85332, which reversed the February 4, 2004 Decision[4] of the National Labor Relations Commission (NLRC) awarding petitioner Arsenio S. Quiambao separation pay in the amount of ₱126,875.00.

Factual Antecedents

On July 16, 1986, petitioner was employed as branch teller by respondent Manila Electric Company. He was assigned at respondent's Mandaluyong office and was responsible for the handling and processing of payments made by respondent's customers.

It appears from his employment records, however, that petitioner has repeatedly violated the Company Code of Employee Discipline and has exhibited poor performance in the latter part of his employment. Thus:

EMPLOYEE'S PROFILE

A. INFRACTIONS -

Nature	DATE		ACTION TAKEN
	FROM	TO	
1. Excessive absences	11/11/99	11/24/99	10-day suspension
2. Excessive absences	10/19/99	10/25/99	5-day suspension
3. Excessive absences	07/27/99	07/29/99	3-day suspension
4. Assaulting others with bodily harm over work matters	02/17/99	02/17/99	Reprimand
5. Excessive tardiness	02/08/99	02/08/99	Reprimand
6. Excessive tardiness	10/06/97	10/06/97	Reprimand
7. Simple Absence	03/11/97	03/11/97	Reprimand
8. Excessive tardiness	06/14/96	06/14/96	Reprimand
9. Excessive tardiness	09/03/92	09/03/92	Reprimand

[4] *Id.* at 27-31; penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

B. PERFORMANCE RATING

His merit ratings from 1995 to 1999 are as follows:

YEAR	RATING
1999	Poor
1998	Needs Improvement
1997	Needs Improvement
1996	Satisfactory
1995	Satisfactory[5]

On March 10, 2000, a Notice of Investigation[6] was served upon petitioner for his unauthorized and unexcused absences on November 10, 25, 26, 29, 1999; December 1, 2, 14, 15, 16, 17, 20, 21, 22, 2000; and from February 17, 2000 up to the date of such notification letter. Petitioner was likewise required to appear at the investigation and to present his evidence in support of his defense. However, despite receipt of such notice, petitioner did not participate in the investigation. Consequently, in a Memorandum[7] dated March 21, 2000, the legal department recommended petitioner's dismissal from employment due to excessive, unauthorized, and unexcused absences, which constitute (i) abandonment of work under the provisions of the Company Code of Employee Discipline (ii) and gross and habitual neglect of duty under Article 282 of the Labor Code of the Philippines. Through a Notice of Dismissal[8] dated March 28, 2000, petitioner's employment was terminated effective March 29, 2000.

Proceedings before the Labor Arbiter

On July 3, 2001, petitioner filed a complaint before the Arbitration Branch of the NLRC against respondent assailing the legality of his dismissal. While petitioner did not dispute his absences, he nonetheless averred that the same were

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[5] CA *rollo,* pp. 37-38.

[6] *Id.* at 36.

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

[8] *Id.* at 39.

incurred with the corresponding approved application for leave of absence. He also claimed that he was denied due process.

On November 29, 2002, the Labor Arbiter rendered a Decision[9] dismissing petitioner's complaint for lack of merit. The Labor Arbiter ruled that no evidence was presented to prove that the absences of petitioner were authorized; that petitioner was deprived of due process; and that petitioner's habitual absenteeism without leave did not violate the company's rules and regulations which justified his termination on the ground of gross and habitual neglect of duties under Article 282(b) of the Labor Code.

Proceedings before the NLRC

Petitioner appealed to the NLRC which affirmed the legality of his dismissal due to habitual absenteeism. Nonetheless, the NLRC awarded separation pay in favor of petitioner citing the case of *Philippine Geothermal, Inc. v. National Labor Relations Commission.*[10] The dispositive portion of the NLRC Decision reads:

> WHEREFORE, the decision appealed from is hereby MODIFIED to the extent that the respondent is hereby ordered to pay the complainant separation pay amounting to ₱126,875.00 (₱18,125.00 x 14 yrs./2 = ₱126,875.00).
>
> SO ORDERED.[11]

Respondent filed a Motion for Reconsideration[12] impugning the grant of separation pay, which motion was denied by the NLRC in a Resolution[13] dated May 20, 2004.

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[9] *Rollo*, pp. 21-26.

[10] G.R. No. 106370, September 8, 1994, 236 SCRA 371. We pronounced in this case that an employee whose dismissal was found to have been justified by unauthorized absences may recover separation pay equivalent to one-half month pay for every year of service.

[11] *Rollo*, p. 31.

[12] CA *rollo*, pp. 80-87.

[13] *Id.* at 24-25.

Proceedings before the Court of Appeals

Aggrieved, respondent filed with the CA a petition for *certiorari*. On October 28, 2005, the CA nullified the NLRC's Decision and reinstated the Labor Arbiter's Decision dismissing the complaint. It ruled that the award of separation pay is neither justified nor warranted under the circumstances. Thus:

We find, then, that the award of separation pay was capricious, whimsical, and unwarranted, both for the award being without factual and legal basis and for ignoring that the valid cause of dismissal was serious misconduct on the part of the employee.

Respondent Quiambao was dismissed for excessive unauthorized absences. His dismissal was, in fact, upheld by both the Labor Arbiter and the NLRC. We should agree with their determination.

But we should hold here further that Quiambao committed a serious misconduct that merited no consideration or compassion. He was guilty not of mere absenteeism only, for such absences, unexcused and habitual, reflected worse than inefficiency, but a gross and habitual neglect of duty bordering on dishonesty. He had no compelling reason to be absent from work, substantially prejudicing his employer, which was a public utility whose distribution of electricity to its customers within its franchise area was a service that was very vital and of utmost necessity to the lives of all its customers. The responsibility required of the petitioner's employees was, in fact, publicly imposed by the petitioner in its *Company Code On Employee Discipline,* aforequoted, whereby it gave primacy to the maintenance of discipline 'as a matter of fundamental importance.'[14]

Petitioner moved for a reconsideration, but to no avail.

Issue

Hence, this petition for review on *certiorari* raising the sole issue of whether or not a validly dismissed employee may be entitled to separation pay.

Petitioner's Arguments

Petitioner contends that the CA grievously erred in concluding that he is guilty of serious misconduct and in deleting the award

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[14] *Rollo*, pp. 40-41.

of separation pay. He argues that the NLRC, whose findings are entitled to great respect and finality, regarded his unauthorized absences as gross and habitual neglect of duty only. Citing *Philippine Geothermal, Inc. v. National Labor Relations Commission*,[15] where an employee who was terminated on similar ground of gross and habitual neglect of duties because of continued and unexplained absences, and who was nonetheless granted separation pay, petitioner claims that the same accommodation should likewise be extended to him. He insists that his absences do not amount to serious misconduct considering that his infractions did not reflect on his moral character. It did not create imminent or substantial injury to the company's operation and the consuming public, and were not committed for self-interest or unlawful purpose but on account of domestic and marital problems. Taking into account all these and his 14 years of service in the company, petitioner invokes the principles of social justice and equity in justifying his entitlement to separation pay.

Our Ruling

The petition lacks merit.

The Labor Arbiter, the NLRC and the Court of Appeals found petitioner guilty of gross and habitual neglect of duty.

The Labor Arbiter and the NLRC are one in holding that petitioner's unauthorized absences and repeated infractions of company rules on employee discipline manifest gross and habitual neglect of duty that merited the imposition of the supreme penalty of dismissal from work. The only difference in their ruling is that the NLRC awarded separation pay. The CA, after reviewing the records of the case, affirmed the findings of the labor tribunals. And, on the basis of these findings, further concluded that petitioner's infractions are worse than inefficiency; they border on dishonesty constituting serious misconduct.

We have examined the records which indeed show that petitioner's unauthorized absences as well as tardiness are

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[15] *Supra* note 10.

habitual despite having been penalized for past infractions. In *Gustilo v. Wyeth Philippines, Inc.,*[16] we held that a series of irregularities when put together may constitute serious misconduct. We also held that gross neglect of duty becomes serious in character due to frequency of instances.[17] Serious misconduct is said to be a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and indicative of wrongful intent and not mere error of judgment.[18] Oddly, petitioner never advanced any valid reason to justify his absences. Petitioner's intentional and willful violation of company rules shows his utter disregard of his work and his employer's interest. Indeed, there can be no good faith in intentionally and habitually incurring unexcusable absences. Thus, the CA did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in equating petitioner's gross neglect of duty to serious misconduct.

Petitioner is not entitled to separation pay.

Besides, even assuming that the ground for petitioner's dismissal is gross and habitual neglect of duty, still, he is not entitled to severance pay. In *Central Philippines Bandag Retreaders, Inc. v. Diasnes,*[19] we discussed the parameters of awarding separation pay to dismissed employees as a measure of financial assistance, *viz*:

> To reiterate our ruling in *Toyota,* labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; **gross and habitual neglect of duty**; fraud or willful breach of trust; or commission of a crime against the person

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[16] 483 Phil. 69, 78 (2004), citing *Piedad v. Lanao del Norte Electric Cooperative, Inc.,* 237 Phil. 481, 488 (1987).

[17] *Divina Luz P. Aquino-Simbulan v. Nicasio Bartolome,* AM No. MTJ-05-1588, June 5, 2009.

[18] *Philippine Long Distance Company v. The Late Romeo F. Bolso,* G.R. No. 159701, August 17, 2007, 530 SCRA 550, 560.

[19] G.R. No. 163607, July 14, 2008, 558 SCRA 194.

of the employer or his immediate family — grounds under Art. 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.[20] (Emphasis supplied.)

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed October 28, 2005 Decision and January 12, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 85332 are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson),[*] *Leonardo-de Castro,*[**] *Brion,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 172822. December 18, 2009]

MOF COMPANY, INC., *petitioner, vs.* **SHIN YANG BROKERAGE CORPORATION,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; COMMON CARRIERS; BILL OF LADING; INSTANCES WHEN A CONSIGNEE MAY BE BOUND BY THE STIPULATIONS OF THE BILL OF LADING.— The bill of lading is oftentimes drawn up by the

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[20] *Id.* at 207.

[*] Per Special Order No. 775 dated November 3, 2009.

[**] Additional member per Special Order No. 776 dated November 3, 2009.

shipper/consignor and the carrier without the intervention of the consignee. However, the latter can be bound by the stipulations of the bill of lading when a) there is a relation of agency between the shipper or consignor and the consignee or b) when the consignee demands fulfillment of the stipulation of the bill of lading which was drawn up in its favor. x x x [A] consignee, although not a signatory to the contract of carriage between the shipper and the carrier, becomes a party to the contract by reason of either a) the relationship of agency between the consignee and the shipper/ consignor; b) the unequivocal acceptance of the bill of lading delivered to the consignee, with full knowledge of its contents or c) availment of the stipulation *pour autrui*, *i.e.*, when the consignee, a third person, demands before the carrier the fulfillment of the stipulation made by the consignor/shipper in the consignee's favor, specifically the delivery of the goods/cargoes shipped.

2. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF LIES UPON HIM WHO ASSERTS A FACT; APPLICATION.— In the instant case, Shin Yang consistently denied in all of its pleadings that it authorized Halla Trading, Co. to ship the goods on its behalf; or that it got hold of the bill of lading covering the shipment or that it demanded the release of the cargo. Basic is the rule in evidence that the burden of proof lies upon him who asserts it, not upon him who denies, since, by the nature of things, he who denies a fact cannot produce any proof of it. Thus, MOF has the burden to controvert all these denials, it being insistent that Shin Yang asserted itself as the consignee and the one that caused the shipment of the goods to the Philippines. In civil cases, the party having the burden of proof must establish his case by preponderance of evidence, which means evidence which is of greater weight, or more convincing than that which is offered in opposition to it. Here, MOF failed to meet the required quantum of proof. Other than presenting the bill of lading, which, at most, proves that the carrier acknowledged receipt of the subject cargo from the shipper and that the consignee named is to shoulder the freightage, MOF has not adduced any other credible evidence to strengthen its cause of action. It did not even present any witness in support of its allegation that it was Shin Yang which furnished all the details indicated in the bill of lading and that Shin Yang consented to shoulder the shipment costs. There is also nothing in the records which would indicate that Shin Yang was an agent of Halla

Trading Co. or that it exercised any act that would bind it as a named consignee. Thus, the CA correctly dismissed the suit for failure of petitioner to establish its cause against respondent.

APPEARANCES OF COUNSEL

Armando I. Tercero & Aileen S. Galang for petitioner.
Hector L. Hofileña Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The necessity of proving lies with the person who sues.

The refusal of the consignee named in the bill of lading to pay the freightage on the claim that it is not privy to the contract of affreightment propelled the shipper to sue for collection of money, stressing that its sole evidence, the bill of lading, suffices to prove that the consignee is bound to pay. Petitioner now comes to us by way of Petition for Review on *Certiorari*[1] under Rule 45 praying for the reversal of the Court of Appeals' (CA) judgment that dismissed its action for sum of money for insufficiency of evidence.

Factual Antecedents

On October 25, 2001, Halla Trading Co., a company based in Korea, shipped to Manila secondhand cars and other articles on board the vessel Hanjin Busan 0238W. The bill of lading covering the shipment, *i.e.,* Bill of Lading No. HJSCPUSI14168303,[2] which was prepared by the carrier Hanjin Shipping Co., Ltd. (Hanjin), named respondent Shin Yang Brokerage Corp. (Shin Yang) as the consignee and indicated that payment was on a "Freight Collect" basis, *i.e.*, that the consignee/receiver of the goods would be the one to pay for the freight and other charges in the total amount of ₱57,646.00.[3]

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[1] *Rollo,* pp. 9-38.

[2] *Id.* at 79.

[3] *Id.* at 80.

The shipment arrived in Manila on October 29, 2001. Thereafter, petitioner MOF Company, Inc. (MOF), Hanjin's exclusive general agent in the Philippines, repeatedly demanded the payment of ocean freight, documentation fee and terminal handling charges from Shin Yang. The latter, however, failed and refused to pay contending that it did not cause the importation of the goods, that it is only the Consolidator of the said shipment, that the ultimate consignee did not endorse in its favor the original bill of lading and that the bill of lading was prepared without its consent.

Thus, on March 19, 2003, MOF filed a case for sum of money before the Metropolitan Trial Court of Pasay City (MeTC Pasay) which was docketed as Civil Case No. 206-03 and raffled to Branch 48. MOF alleged that Shin Yang, a regular client, caused the importation and shipment of the goods and assured it that ocean freight and other charges would be paid upon arrival of the goods in Manila. Yet, after Hanjin's compliance, Shin Yang unjustly breached its obligation to pay. MOF argued that Shin Yang, as the named consignee in the bill of lading, entered itself as a party to the contract and bound itself to the "Freight Collect" arrangement. MOF thus prayed for the payment of ₱57,646.00 representing ocean freight, documentation fee and terminal handling charges as well as damages and attorney's fees.

Claiming that it is merely a consolidator/forwarder and that Bill of Lading No. HJSCPUSI14168303 was not endorsed to it by the ultimate consignee, Shin Yang denied any involvement in shipping the goods or in promising to shoulder the freightage. It asserted that it never authorized Halla Trading Co. to ship the articles or to have its name included in the bill of lading. Shin Yang also alleged that MOF failed to present supporting documents to prove that it was Shin Yang that caused the importation or the one that assured payment of the shipping charges upon arrival of the goods in Manila.

Ruling of the Metropolitan Trial Court

On June 16, 2004, the MeTC of Pasay City, Branch 48 rendered its Decision[4] in favor of MOF. It ruled that Shin Yang cannot disclaim being a party to the contract of affreightment because:

x x x it would appear that defendant has business transactions with plaintiff. This is evident from defendant's letters dated 09 May 2002 and 13 May 2002 (Exhibits "1" and "2", defendant's Position Paper) where it requested for the release of refund of container deposits x x x. [In] the mind of the Court, by analogy, a written contract need not be necessary; a mutual understanding [would suffice]. Further, plaintiff would have not included the name of the defendant in the bill of lading, had there been no prior agreement to that effect.

In sum, plaintiff has sufficiently proved its cause of action against the defendant and the latter is obliged to honor its agreement with plaintiff despite the absence of a written contract.[5]

The dispositive portion of the MeTC Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against the defendant, ordering the latter to pay plaintiff as follows:

1. ₱57,646.00 plus legal interest from the date of demand until fully paid,

2. ₱10,000.00 as and for attorney's fees and

3. the cost of suit.

SO ORDERED.[6]

Ruling of the Regional Trial Court

The Regional Trial Court (RTC) of Pasay City, Branch 108 affirmed *in toto* the Decision of the MeTC. It held that:

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[4] *Id.* at 90-94; penned by Judge Estrellita M. Paas.

[5] *Id.* at 93.

[6] *Id.* at 94.

MOF and Shin Yang entered into a contract of affreightment which Black's Law Dictionary defined as a contract with the ship owner to hire his ship or part of it, for the carriage of goods and generally take the form either of a charter party or a bill of lading.

The bill of lading contain[s] the information embodied in the contract.

Article 652 of the Code of Commerce provides that the charter party must be in writing; however, Article 653 says: "If the cargo should be received without charter party having been signed, the contract shall be understood as executed in accordance with what appears in the bill of lading, the sole evidence of title with regard to the cargo for determining the rights and obligations of the ship agent, of the captain and of the charterer". Thus, the Supreme Court opined in the *Market Developers, Inc. (MADE) vs. Honorable Intermediate Appellate Court and Gaudioso Uy*, G.R. No. 74978, September 8, 1989, this kind of contract may be oral. In another case, *Compania Maritima vs. Insurance Company of North America*, 12 SCRA 213 the contract of affreightment by telephone was recognized where the oral agreement was later confirmed by a formal booking.

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Defendant is liable to pay the sum of ₱57,646.00, with interest until fully paid, attorney's fees of ₱10,000.00 [and] cost of suit.

Considering all the foregoing, this Court affirms *in toto* the decision of the Court *a quo*.

SO ORDERED.[7]

Ruling of the Court of Appeals

Seeing the matter in a different light, the CA dismissed MOF's complaint and refused to award any form of damages or attorney's fees. It opined that MOF failed to substantiate its claim that Shin Yang had a hand in the importation of the articles to the Philippines or that it gave its consent to be a consignee of the subject goods. In its March 22, 2006 Decision,[8] the CA said:

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[7] *Id.* at 103-104; penned by Judge Priscilla C. Mijares.

[8] *Id.* at 40-45; penned by Associate Justice Eliezer R. De Los Santos and concurred in by Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag.

This Court is persuaded [that except] for the Bill of Lading, respondent has not presented any other evidence to bolster its claim that petitioner has entered [into] an agreement of affreightment with respondent, be it verbal or written. It is noted that the Bill of Lading was prepared by Hanjin Shipping, not the petitioner. Hanjin is the principal while respondent is the former's agent. (p. 43, *rollo*)

The conclusion of the court *a quo*, which was upheld by the RTC Pasay City, Branch 108 xxx is purely speculative and conjectural. A court cannot rely on speculations, conjectures or guesswork, but must depend upon competent proof and on the basis of the best evidence obtainable under the circumstances. Litigation cannot be properly resolved by suppositions, deductions or even presumptions, with no basis in evidence, for the truth must have to be determined by the hard rules of admissibility and proof (*Lagon vs. Hooven Comalco Industries, Inc.* 349 SCRA 363).

While it is true that a bill of lading serves two (2) functions: first, it is a receipt for the goods shipped; second, it is a contract by which three parties, namely, the shipper, the carrier and the consignee who undertake specific responsibilities and assume stipulated obligations (*Belgian Overseas Chartering and Shipping N.V. vs. Phil. First Insurance Co., Inc*., 383 SCRA 23), x x x if the same is not accepted, it is as if one party does not accept the contract. Said the Supreme Court:

> "A bill of lading delivered and accepted constitutes the contract of carriage[,] even though not signed, because the acceptance of a paper containing the terms of a proposed contract generally constitutes an acceptance of the contract and of all its terms and conditions of which the acceptor has actual or constructive notice" (*Keng Hua Paper Products Co., Inc. vs. CA*, 286 SCRA 257).

In the present case, petitioner did not only [refuse to] accept the bill of lading, but it likewise disown[ed] the shipment x x x. [Neither did it] authorize Halla Trading Company or anyone to ship or export the same on its behalf.

It is settled that a contract is upheld as long as there is proof of consent, subject matter and cause (*Sta. Clara Homeowner's Association vs. Gaston*, 374 SCRA 396). In the case at bar, there is not even any iota of evidence to show that petitioner had given its consent.

"He who alleges a fact has the burden of proving it and a mere allegation is not evidence" (*Luxuria Homes, Inc. vs. CA*, 302 SCRA 315).

The 40-footer van contains goods of substantial value. It is highly improbable for petitioner not to pay the charges, which is very minimal compared with the value of the goods, in order that it could work on the release thereof.

For failure to substantiate its claim by preponderance of evidence, respondent has not established its case against petitioner.[9]

Petitioners filed a motion for reconsideration but it was denied in a Resolution[10] dated May 25, 2006. Hence, this petition for review on *certiorari*.

Petitioner's Arguments

In assailing the CA's Decision, MOF argues that the factual findings of both the MeTC and RTC are entitled to great weight and respect and should have bound the CA. It stresses that the appellate court has no justifiable reason to disturb the lower courts' judgments because their conclusions are well-supported by the evidence on record.

MOF further argues that the CA erred in labeling the findings of the lower courts as purely 'speculative and conjectural'. According to MOF, the bill of lading, which expressly stated Shin Yang as the consignee, is the best evidence of the latter's actual participation in the transportation of the goods. Such document, validly entered, stands as the law among the shipper, carrier and the consignee, who are all bound by the terms stated therein. Besides, a carrier's valid claim after it fulfilled its obligation cannot just be rejected by the named consignee upon a simple denial that it ever consented to be a party in a contract of affreightment, or that it ever participated in the preparation of the bill of lading. As against Shin Yang's bare denials, the bill of lading is the sufficient preponderance of evidence required to prove MOF's claim. MOF maintains that Shin Yang was the

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[9] *Id.* at 43-44.

[10] *Id.* at 48.

one that supplied all the details in the bill of lading and acquiesced to be named consignee of the shipment on a 'Freight Collect' basis.

Lastly, MOF claims that even if Shin Yang never gave its consent, it cannot avoid its obligation to pay, because it never objected to being named as the consignee in the bill of lading and that it only protested when the shipment arrived in the Philippines, presumably due to a botched transaction between it and Halla Trading Co. Furthermore, Shin Yang's letters asking for the refund of container deposits highlight the fact that it was aware of the shipment and that it undertook preparations for the intended release of the shipment.

Respondent's Arguments

Echoing the CA decision, Shin Yang insists that MOF has no evidence to prove that it consented to take part in the contract of affreightment. Shin Yang argues that MOF miserably failed to present any evidence to prove that it was the one that made preparations for the subject shipment, or that it is an 'actual shipping practice' that forwarders/consolidators as consignees are the ones that provide carriers details and information on the bills of lading.

Shin Yang contends that a bill of lading is essentially a contract between the shipper and the carrier and ordinarily, the shipper is the one liable for the freight charges. A consignee, on the other hand, is initially a stranger to the bill of lading and can be liable only when the bill of lading specifies that the charges are to be paid by the consignee. This liability arises from either a) the contract of agency between the shipper/consignor and the consignee; or b) the consignee's availment of the stipulation *pour autrui* drawn up by and between the shipper/consignor and carrier upon the consignee's demand that the goods be delivered to it. Shin Yang contends that the fact that its name was mentioned as the consignee of the cargoes did not make it automatically liable for the freightage because it never benefited from the shipment. It never claimed or accepted the goods, it was not the shipper's agent, it was not aware of its designation as consignee and the original bill of lading was never endorsed to it.

Issue

The issue for resolution is whether a consignee, who is not a signatory to the bill of lading, is bound by the stipulations thereof. Corollarily, whether respondent who was not an agent of the shipper and who did not make any demand for the fulfillment of the stipulations of the bill of lading drawn in its favor is liable to pay the corresponding freight and handling charges.

Our Ruling

Since the CA and the trial courts arrived at different conclusions, we are constrained to depart from the general rule that only errors of law may be raised in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court and will review the evidence presented.[11]

The bill of lading is oftentimes drawn up by the shipper/ consignor and the carrier without the intervention of the consignee. However, the latter can be bound by the stipulations of the bill of lading when a) there is a relation of agency between the shipper or consignor and the consignee or b) when the consignee demands fulfillment of the stipulation of the bill of lading which was drawn up in its favor.[12]

In *Keng Hua Paper Products Co., Inc. v. Court of Appeals,*[13] we held that once the bill of lading is received by the consignee who does not object to any terms or stipulations contained therein, it constitutes as an acceptance of the contract and of all of its terms and conditions, of which the acceptor has actual or constructive notice.

In *Mendoza v. Philippine Air Lines, Inc.,*[14] the consignee sued the carrier for damages but nevertheless claimed that he

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[11] *Wallem Phils. Shipping, Inc. v. Prudential Guarantee & Assurance Inc*., 445 Phil. 136, 149 (2003).

[12] See *Sea-Land Service v. Intermediate Appellate Court*, 237 Phil. 531, 535-536 (1987).

[13] 349 Phil. 925, 933 (1998).

[14] 90 Phil. 836, 846 (1952).

was never a party to the contract of transportation and was a complete stranger thereto. In debunking Mendoza's contention, we held that:

x x x First, he insists that the articles of the Code of Commerce should be applied; that he invokes the provisions of said Code governing the obligations of a common carrier to make prompt delivery of goods given to it under a contract of transportation. Later, as already said, he says that he was never a party to the contract of transportation and was a complete stranger to it, and that he is now suing on a tort or a violation of his rights as a stranger (*culpa aquiliana*). If he does not invoke the contract of carriage entered into with the defendant company, then he would hardly have any leg to stand on. His right to prompt delivery of the can of film at the Pili Air Port stems and is derived from the contract of carriage under which contract, the PAL undertook to carry the can of film safely and to deliver it to him promptly. Take away or ignore that contract and the obligation to carry and to deliver and right to prompt delivery disappear. Common carriers are not obligated by law to carry and to deliver merchandise, and persons are not vested with the right to prompt delivery, unless such common carriers previously assume the obligation. Said rights and obligations are created by a specific contract entered into by the parties. **In the present case, the findings of the trial court which as already stated, are accepted by the parties and which we must accept are to the effect that the LVN Pictures Inc. and Jose Mendoza on one side, and the defendant company on the other, entered into a contract of transportation (p. 29, Rec. on Appeal). One interpretation of said finding is that the LVN Pictures Inc. through previous agreement with Mendoza acted as the latter's agent. When he negotiated with the LVN Pictures Inc. to rent the film '*Himala ng Birhen*' and show it during the Naga town fiesta, he most probably authorized and enjoined the Picture Company to ship the film for him on the PAL on September 17th. Another interpretation is that even if the LVN Pictures Inc. as consignor of its own initiative, and acting independently of Mendoza for the time being, made Mendoza a consignee.** [**Mendoza made himself a party to the contract of transportaion (sic) when he appeared at the Pili Air Port armed with the copy of the Air Way Bill (Exh. 1) demanding the delivery of the shipment to him.**] The very citation made by appellant in his

memorandum supports this view. Speaking of the possibility of a conflict between the order of the shipper on the one hand and the order of the consignee on the other, as when the shipper orders the shipping company to return or retain the goods shipped while the consignee demands their delivery, Malagarriga in his book *Codigo de Comercio Comentado*, Vol. 1, p. 400, citing a decision of the Argentina Court of Appeals on commercial matters, cited by Tolentino in Vol. II of his book entitled 'Commentaries and Jurisprudence on the Commercial Laws of the Philippines' p. 209, says that **the right of the shipper to countermand the shipment terminates when the consignee or legitimate holder of the bill of lading appears with such bill of lading before the carrier and makes himself a party to the contract. Prior to that time he is a stranger to the contract.**

Still another view of this phase of the case is that contemplated in Art. 1257, paragraph 2, of the old Civil Code (now Art. 1311, second paragraph) which reads thus:

> **'Should the contract contain any stipulation in favor of a third person, he may demand its fulfillment provided he has given notice of his acceptance to the person bound before the stipulation has been revoked.'**

Here, the contract of carriage between the LVN Pictures Inc. and the defendant carrier contains the stipulations of delivery to Mendoza as consignee. His demand for the delivery of the can of film to him at the Pili Air Port may be regarded as a notice of his acceptance of the stipulation of the delivery in his favor contained in the contract of carriage and delivery. In this case he also made himself a party to the contract, or at least has come to court to enforce it. His cause of action must necessarily be founded on its breach.[15] (Emphasis Ours)

In sum, a consignee, although not a signatory to the contract of carriage between the shipper and the carrier, becomes a party to the contract by reason of either a) the relationship of agency between the consignee and the shipper/consignor; b) the unequivocal acceptance of the bill of lading delivered to the consignee, with full knowledge of its contents or c) availment

[15] *Id.* at 845-847.

of the stipulation *pour autrui*, *i.e.*, when the consignee, a third person, demands before the carrier the fulfillment of the stipulation made by the consignor/shipper in the consignee's favor, specifically the delivery of the goods/cargoes shipped.[16]

In the instant case, Shin Yang consistently denied in all of its pleadings that it authorized Halla Trading, Co. to ship the goods on its behalf; or that it got hold of the bill of lading covering the shipment or that it demanded the release of the cargo. Basic is the rule in evidence that the burden of proof lies upon him who asserts it, not upon him who denies, since, by the nature of things, he who denies a fact cannot produce any proof of it.[17] Thus, MOF has the burden to controvert all these denials, it being insistent that Shin Yang asserted itself as the consignee and the one that caused the shipment of the goods to the Philippines.

In civil cases, the party having the burden of proof must establish his case by preponderance of evidence,[18] which means evidence which is of greater weight, or more convincing than that which is offered in opposition to it.[19] Here, MOF failed to meet the required quantum of proof. Other than presenting the bill of lading, which, at most, proves that the carrier acknowledged receipt of the subject cargo from the shipper and that the consignee named is to shoulder the freightage, MOF has not adduced any other credible evidence to strengthen its

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[16] CIVIL CODE OF THE PHILIPPINES, Article 1311, 2nd paragraph: If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

[17] *Acabal v. Acabal*, 494 Phil. 528, 541 (2005).

[18] *New Testament Church of God v. Court of Appeals*, 316 Phil. 330, 333 (1995).

[19] *Condes v. Court of Appeals*, G.R. No. 161304, July 27, 2007, 528 SCRA 339, 352.

cause of action. It did not even present any witness in support of its allegation that it was Shin Yang which furnished all the details indicated in the bill of lading and that Shin Yang consented to shoulder the shipment costs. There is also nothing in the records which would indicate that Shin Yang was an agent of Halla Trading Co. or that it exercised any act that would bind it as a named consignee. Thus, the CA correctly dismissed the suit for failure of petitioner to establish its cause against respondent.

WHEREFORE, the petition is *DENIED*. The assailed Decision of the Court of Appeals dated March 22, 2006 dismissing petitioner's complaint and the Resolution dated May 25, 2006 denying the motion for reconsideration are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson),[*] *Leonardo-de Castro,*[**] *Brion,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 174480. December 18, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNALDO ALBALATE, JR.,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON.— The trial court found the testimony of "Maria" to be clear, straightforward and credible. x x x On appeal, said finding was affirmed by the Court of Appeals. We

[*] Per Special Order No. 775 dated November 3, 2009.

[**] Additional member per Special Order No. 776 dated November 3, 2009.

find no reason to deviate from the said findings. "In rape cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect, because the judge has the direct opportunity to observe them on the stand and ascertain whether they are telling the truth or not." We have "long adhered to the rule that findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless it overlooked substantial facts and circumstances, which if considered, would materially affect the result of the case". Jurisprudence is replete with rulings that an appellant could justifiably be convicted based solely on the credible testimony of the victim. Besides, there is nothing in the records which would indicate that the trial court and the Court of Appeals overlooked or failed to appreciate some facts which if considered would change the outcome of the case.

2. ID.; ID.; TESTIMONY OF WITNESSES; BARE TESTIMONY IS INSUFFICIENT TO ESTABLISH VICTIM'S AGE.— The Informations alleged that "Maria" was a 12-year old minor when she was ravished by her uncle, a relative by consanguinity within the 3rd civil degree. The prosecution's evidence as to the age of the victim constituted merely of the victim's testimony. We find this bare testimony insufficient proof of her age. As we held in *People v. Manalili,* "the minority of the victim and her relationship to the offender must be alleged in the criminal complaint or information and proved conclusively and indubitably as the crime itself." We also ruled in *People v. Tabanggay* that – x x x there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. x x x As such, both the trial court and the Court of Appeals correctly held that the minority of the victim was not satisfactorily established.

3. ID.; ID.; DEFENSE OF DENIAL CRUMBLES IN VIEW OF THE POSITIVE IDENTIFICATION OF THE ACCUSED.— When appellant took the witness stand, he denied that he raped the victim. However, other than his self-serving testimony, he offered no evidence to support his denial. We have held that, "denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence, which deserves no

weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters". In this case, appellant's denial crumbles under the weight of "Maria's" positive identification of appellant as her lecherous attacker.

4. ID.; ID.; DEFENSE OF ALIBI, REJECTED.— The alibi proffered by the appellant must be rejected. Both the trial court and the Court of Appeals correctly noted that appellant failed to make any mention about this alleged alibi when he was placed on the witness stand. It was only when defense witness Florentina Escleto (Escleto) testified that this alibi cropped up. At any rate, the same deserves no consideration at all. Escleto claimed to be a friend of the appellant. It is settled jurisprudence that an alibi "becomes less plausible when it is corroborated by relatives and friends who may not be impartial witnesses". Much less in the instant case considering that appellant himself did not proffer any alibi; it was only Escleto who thought of offering this defense of alibi. Besides, the defense failed to establish that it was physically impossible for the appellant to be at the crime scene at the time the rape incidents were committed.

5. ID.; ID.; ILL-MOTIVE; FAILURE TO PROVE ILL-MOTIVE.— [W]e afford no evidentiary value to appellant's claim that the filing of the rape charges was orchestrated by the victim's parents, particularly her father who allegedly harbored ill-feelings towards appellant. Other than the fact that this claim was unsubstantiated, we find appellant's claim too general to be believed. He merely claimed that he fought with the victim's father when they were both still young. But he failed to provide any detail as to when this alleged incident happened.

6. CRIMINAL LAW; RAPE; DAMAGES AWARDED TO THE VICTIM.— [T]he trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua* and to pay the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages for each count of rape. In addition, the award of exemplary damages in the amount of ₱30,000.00 is proper considering the presence of the aggravating circumstance of relationship.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

Factual Antecedents

Appellant Reynaldo Albalate, Jr. was charged with two counts of rape committed against his niece "Maria".[1] The accusatory portions of the two Informations read as follows:

Crim. Case No. 3169-C:

That on or about the evening of the 21st day of November 1998, at *Barangay* _____________, Municipality of Lopez, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an uncle and a relative by consanguinity within the third civil degree of one "Maria", with lewd design, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of said "Maria", a minor, 12 years of age against her will.

Contrary to law.[2]

Crim. Case No. 3170-C:

That on or about the 21st day of November, 1998 at around 8:00 o'clock in the morning, at *Barangay* ___________, Municipality

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[1] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the rule on Violence Against Women and Their Children, effective November 5, 2004.

[2] CA *rollo,* pp. 16-17.

of Lopez, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an uncle and a relative by consanguinity within the third civil degree of one "Maria", armed with an ice-pick, with lewd design, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one "Maria", a minor, 12 years of age against her will.

Contrary to law.[3]

Appellant pleaded "not guilty" when arraigned. Trial on the merits thereafter ensued.

Ruling of the Regional Trial Court

On July 24, 2002, the Regional Trial Court of Calauag, Quezon, Branch 63, rendered its Decision[4] finding the appellant guilty. The trial court based its judgment of conviction on the following factual findings:

This Court painstakingly scrutinized with great caution the testimony of private complainant x x x and found the same to be clear, straightforward, credible and convincing. At the time when the rape incidents happened [on] November 21, 1998, the victim x x x was, as alleged by the prosecution, just a twelve (12) years old barrio lass living in the house of her paternal grandparents in *Barangay* x x x, Quezon. It was in the said house where she was forcibly deflowered by her uncle Reynaldo Albalate, Jr. on two separate incidents that transpired on that fateful day of November 21, 1998. "Maria" candidly testified that in the morning of the said day while she was alone in the house of her grandparents, the accused Reynaldo Albalate, Jr. armed with an ice pick forcibly removed her dress and placed himself on top of her. Afterwards, Reynaldo Albalate, Jr. inserted his penis in her private part and at the same time kissed and warned her that if she will tell x x x anybody what he had done to her, he will kill her x x x. She added that on the evening of the same day (November 21, 1998) the accused Reynaldo Albalate, Jr. first boxed her, then undressed her and once again put himself on top of her and proceeded to rape her. "Maria" reported the rape incidents to her grandmother x x x who is also the mother of the accused x x x

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

[4] *Id.* at 25-41; penned by Judge Mariano A. Morales, Jr.

but her grandmother told her that she x x x was lying x x x. When asked by the Court x x x whether she offered resistance when she was raped by the accused x x x, the victim x x x averred that "*nagpapalag po ako*" x x x. In the course of the cross-examination conducted by the defense counsel, the victim x x x even disclosed that when she was raped by the accused x x x in the morning of November 21, 1998, she was alone in her grandmother's house because she told her cousin Ruel x x x to tend [to] the carabao. She added that when her cousin Ruel came back, the latter saw that she was being raped by the accused x x x. She also categorically testified that when the accused proceeded to rape her, there was bleeding in her vagina and she was hurt. When she urinated, it was very painful. She pointed out that the subject rape incident was her first sexual experience x x x.

On the other hand, the accused in order to exculpate himself from the crime charged in the two Informations interposed the defense of denial and alibi. Accused x x x denied that he twice raped the victim x x x at about 8:00 o'clock in the morning and about 9:00 o'clock in the evening of November 21, 1998 x x x. He also claimed that the parents of the victim x x x were mad at him that is why they filed the instant cases against him. Reynaldo explained that when they were young, the victim's father was angry with him because of the sharing of copras in their farm. One day, they had a fight and "Maria's" father chased and boxed him so he boxed the former. [The other defense witness, Florentina Escleto, tried to bolster the alleged innocence of the accused of the crimes.] The said witness tried to establish the defense of alibi in favor of the accused x x x. She testified that when the subject incidents of rape happened on November 21, 1998 at *Barangay* x x x, Quezon, the accused x x x was with her and her son making copra at Barangay Ilayang Ilog-B, Lopez, Quezon. She added that accused x x x arrived at Brgy. Ilayang Ilog-B on November 18, 1998 and only left said *Barangay* at the end of the month of November 1998 x x x. This Court carefully scrutinized and weighed the defense of denial and alibi proffered by the accused and was not persuaded by the same. The denial and alibi of the accused deserve scant consideration. x x x

In the case at bar, accused x x x was positively identified in a straightforward and categorical manner by the victim x x x as the defiler of her womanhood on two occasions on x x x November 21, 1998. Thus, the denial and alibi interposed by the accused wilted and crumbled in the face of such positive identification. It is also

quite interesting x x x that when the accused x x x testified in open court x x x, he only advanced the defense of flat denial. He never mentioned x x x that when the alleged rape incidents happened on November 21, 1998 x x x he was at Brgy. Ilayang Ilog-B, Lopez, Quezon helping Florentina Escleto and her son in making copra. It was only when Florentina Escleto testified x x x that the evidence of alibi cropped up. No other witnesses were presented by the defense to bolster the alibi. Even the son of Florentina Escleto who she claimed was with her and accused x x x in making copra at Brgy. Ilayang Ilog-B, Lopez, Quezon on November 21, 1998 was not presented to shore up the defense of alibi. Thus, it is not hard for this Court to discern that the accused's defenses of denial and alibi were mere concoction, undeserving of any evidentiary weight and value.

It is also [worth noting] that the accused x x x tried to impute ill-motive on the part of the victim x x x and her parents for filing the instant cases against him. He claimed that the parents of the victim particularly the victim's father was mad at him because when they were still young, they had a fight wherein he hacked the former. However, the said allegation of the accused was not fully substantiated by any other evidence that would clearly show the alleged ill-motive on the part of the complainant and her parents. Further, to the mind of this Court, it is inconceivable that the victim x x x and her parents would concoct a story of rape over such alleged quarrel between the victim's father and the accused and thus subject "Maria" to public humiliation and shame. x x x.[5]

x x x x x x x x x

Again, it is worth repeating that this Court found the testimony of private complainant x x x to be clear, straightforward and convincing thus, worthy of credence. She categorically testified that accused x x x through force and intimidation ha[d] carnal knowledge of her against her will on two separate occasions that occurred in the morning and in the evening of November 21, 1998 x x x.[6]

The trial court noted that although the prosecution satisfactorily established that appellant was a relative of the victim by consanguinity within the 3rd civil degree, it however failed to

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[5] *Id.* at 34-36.

[6] *Id.* at 38.

prove the victim's minority. It held that while the victim testified that she was only 12 years old when the rape incidents transpired, the same could not be deemed conclusive and binding upon the court because no other evidence such as a birth certificate was presented to corroborate or substantiate the victim's minority.[7]

The dispositive portion of the Decision of the trial court reads:

> WHEREFORE, in view of all the foregoing considerations, this Court hereby finds accused Reynaldo Albalate, Jr. GUILTY beyond reasonable doubt of the crime of RAPE both in Criminal Case No. 3169-C and Criminal Case No. 3170-C and hereby sentences said accused to suffer the penalty of *RECLUSION PERPETUA* in both cases and to pay the private offended party "Maria" the amount of FIFTY THOUSAND PESOS (₱50,000.00) as civil indemnity plus the amount of FIFTY THOUSAND PESOS (₱50,000.00) as moral damages in each case.
>
> The accused is to be credited [for] his preventive imprisonment if proper and any pursuant to the provision of Article 29 of the Revised Penal Code as amended by R.A. 6127 and E.O. 214.
>
> SO ORDERED.[8]

Ruling of the Court of Appeals

On appeal, appellant mainly argued that the prosecution failed to prove his guilt beyond reasonable doubt and thus the trial court erred in finding him guilty of two counts of rape. Appellant claimed that he could not have raped the victim because the examining physician testified that "Maria" did not suffer any hymenal lacerations. Appellant also alleged that the trial court failed to consider the fact that the victim had ill-motives to testify against him considering that the victim's father had a previous quarrel with the appellant. The defense also argued that the veracity of the victim's testimony was weakened by the prosecution's failure to present the testimony of Ruel, the victim's cousin, to corroborate the testimony of the victim.

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[7] *Id.* at 39-40.

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

The Court of Appeals, however, did not find merit in appellant's contentions. Thus, in its Decision[9] dated May 3, 2006, the Court of Appeals affirmed *in toto*[10] the Decision of the trial court.

The appellate court did not dignify appellant's defenses of denial and alibi in view of the fact that he was positively identified by the victim as the perpetrator of the crime. Appellant's imputation of ill-motives was also disregarded. The Court of Appeals opined that "no member of the victim's family would subject the victim to the stigma and embarrassment concomitant with a rape trial, if he or she is not motivated by an honest desire to have the malefactor punished". Anent the findings of the examining physician that the victim suffered no hymenal lacerations, the Court of Appeals opined that the same did not mean that the victim was not raped. It held that a medical examination is not indispensable in rape cases. The perpetrator of the crime may be found guilty based solely on the testimony of the victim if the same is found to be credible. Finally, the Court of Appeals held that the veracity of the prosecution's evidence was not diminished by its failure to present the testimony of Ruel which would only be corroborative.

As regards the penalties imposed by the trial court, the Court of Appeals held that:

> With respect to the propriety of the penalty imposed, the Court agrees with the finding of the RTC that there is no concurrence of the aggravating circumstances of the victim's minority and her relationship to the accused-appellant which would warrant the imposition of the death penalty. Hence, accused-appellant was properly meted the penalty of *reclusion perpetua* in Criminal Case

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[9] *Id.* at 131-137; penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Remedios A. Salazar-Fernando and Hakim S. Abdulwahid.

[10] The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the instant appeal is DENIED and the assailed Decision dated July 24, 2002 of the RTC of Calauag, Quezon, Branch 63, is hereby AFFIRMED *in toto.*

SO ORDERED.

No. 3169-C. On the other hand, the Court noted that the rape under Criminal Case No. 3170-C was committed with the use of an ice pick, which is a deadly weapon. Article 335 of the Revised Penal Code provides that "whenever the rape is committed with the use of a deadly weapon x x x, the penalty shall be *reclusion perpetua* to death." In relation thereto, Article 63 of the same Code prescribes that when a penalty is composed of two (2) indivisible penalties, and there are neither mitigating nor aggravating circumstances in the commission of the deed, as in this case, the lesser penalty shall be applied. Accordingly, no reversible error was likewise committed by the RTC in imposing the penalty of *reclusion perpetua* against accused-appellant in the latter case.[11]

On November 20, 2006, we required the parties to submit their respective supplemental briefs[12] but both manifested that they are adopting the allegations and arguments in their respective appellant's/appellee's briefs and would thus no longer submit their supplemental briefs.[13]

Our Ruling

We *AFFIRM* with *MODIFICATION* the Decision of the Court of Appeals.

Guided by the principles that: "a) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution and c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense,"[14] we hold that both the trial court and the Court of Appeals correctly found appellant guilty of two counts of rape committed on November 21, 1998.

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[11] CA *rollo,* pp. 136-137.

[12] *Rollo*, p. 10.

[13] *Id.* at 11-12 & 13-15.

[14] *People v. Manalili,* G.R. No. 184598, June 23, 2009.

Findings of the trial court on the credibility of witnesses and their testimonies are accorded great weight and respect.

The trial court found the testimony of "Maria" to be clear, straightforward and credible. Thus:

> This Court painstakingly scrutinized with great caution the testimony of private complainant "Maria" in the cases at bar and found the same to be clear, straightforward, credible and convincing.[15] x x x.
>
> x x x x x x x x x
>
> Again, it is worth repeating that this Court found the testimony of private complainant "Maria" to be clear, straightforward and convincing thus, worthy of credence. She categorically testified that accused Reynaldo Albalate, Jr. through force and intimidation ha[d] carnal knowledge of her against her will on two separate incidents that occurred in the morning and in the evening of November 21, 1998 x x x.[16]

On appeal, said finding was affirmed by the Court of Appeals.

We find no reason to deviate from the said findings. "In rape cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect, because the judge has the direct opportunity to observe them on the stand and ascertain whether they are telling the truth or not."[17] We have "long adhered to the rule that findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless it overlooked substantial facts and circumstances, which if considered, would materially affect the result of the case."[18]

Jurisprudence is replete with rulings that an appellant could justifiably be convicted based solely on the credible testimony

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

[16] *Id.* at 38.

[17] *People v. Manalili*, *supra* note 14.

[18] *Id.*

of the victim. Besides, there is nothing in the records which would indicate that the trial court and the Court of Appeals overlooked or failed to appreciate some facts which if considered would change the outcome of the case.

The prosecution failed to satisfactorily establish the minority of the victim.

The Informations alleged that "Maria" was a 12-year old minor when she was ravished by her uncle, a relative by consanguinity within the 3rd civil degree. The prosecution's evidence as to the age of the victim constituted merely of the victim's testimony. We find this bare testimony insufficient proof of her age. As we held in *People v. Manalili,*[19] "the minority of the victim and her relationship to the offender must be alleged in the criminal complaint or information and proved conclusively and indubitably as the crime itself." We also ruled in *People v. Tabanggay*[20] that —

> x x x there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. x x x

As such, both the trial court and the Court of Appeals correctly held that the minority of the victim was not satisfactorily established. Corollarily, we held in *People v. Lopit*[21] that:

> In the prosecution of criminal cases, especially those involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established. Qualifying circumstances or special qualifying circumstances must be proved with equal certainty and clearness as the crime itself; otherwise, there can be no conviction of the crime in its qualified form. As a qualifying circumstance of the crime of rape, the concurrence of the victim's

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[19] *Id.*

[20] 390 Phil. 67, 91 (2000).

[21] G.R. No. 177742, December 17, 2008, 574 SCRA 372.

minority and her relationship to the accused-appellant must be both alleged and proven beyond reasonable doubt.[22]

We also reiterate the guidelines set forth in *People v. Pruna*[23] in appreciating the age, either as an element of the crime or as a qualifying circumstance, *viz:*

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.

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[22] *Id.* at 383.

[23] 439 Phil. 440, 471 (2002).

Appellant's denial and alibi deserve no consideration at all.

When appellant took the witness stand, he denied that he raped the victim. However, other than his self-serving testimony, he offered no evidence to support his denial. We have held that, "denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters."[24] In this case, appellant's denial crumbles under the weight of "Maria's" positive identification of appellant as her lecherous attacker.

Likewise, we afford no evidentiary value to appellant's claim that the filing of the rape charges was orchestrated by the victim's parents, particularly her father who allegedly harbored ill-feelings towards appellant. Other than the fact that this claim was unsubstantiated, we find appellant's claim too general to be believed. He merely claimed that he fought with the victim's father when they were both still young. But he failed to provide any detail as to when this alleged incident happened.

The alibi proffered by the appellant must be rejected. Both the trial court and the Court of Appeals correctly noted that appellant failed to make any mention about this alleged alibi when he was placed on the witness stand. It was only when defense witness Florentina Escleto (Escleto) testified that this alibi cropped up. At any rate, the same deserves no consideration at all. Escleto claimed to be a friend of the appellant. It is settled jurisprudence that an alibi "becomes less plausible when it is corroborated by relatives and friends who may not be impartial witnesses."[25] Much less in the instant case considering that appellant himself did not proffer any alibi; it was only Escleto who thought of offering this defense of alibi. Besides, the defense failed to establish that it was physically impossible

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[24] *People v. Manalili*, *supra* note 14.

[25] *Id.*

for the appellant to be at the crime scene at the time the rape incidents were committed.

Propriety of the penalties imposed.

The rape incidents were committed on November 21, 1998 and thus are governed by Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353 which took effect on October 22, 1997. Articles 266-A and 266-B of the Revised Penal Code read thus:

ART. 266-A. *Rape, When and How Committed.* – Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machinations or grave abuse of authority;

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned should be present;

x x x x x x x x x

ART. 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying 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 x x x x x x

Due to the failure of the prosecution to prove the qualifying circumstance of minority, appellant could only be held liable for simple rape on two counts. Thus, the trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua* and to pay the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages for each count of rape.[26] In addition, the award of exemplary damages in the amount of ₱30,000.00[27] is proper considering the presence of the aggravating circumstance of relationship.[28]

WHEREFORE, the Decision of the Court of Appeals dated May 3, 2006 in CA-G.R. CR No. 00213 finding appellant Reynaldo Albalate, Jr. guilty beyond reasonable doubt of two counts of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay "Maria" the amounts ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, for each count, is *AFFIRMED* with the *MODIFICATION* that appellant is further ordered to pay the amount of ₱30,000.00 as exemplary damages, for each count of rape.

SO ORDERED.

Carpio (Chairperson),[*] *Leonardo-de Castro,*[**] *Brion,* and *Abad, JJ.,* concur.

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[26] *Id. See People v. Araojo,* G.R. No. 185203, September 17, 2009; *People v. Arcosiba,* G.R. No. 181081, September 4, 2009; *People v. Gragasin,* G.R. No. 186496, August 25, 2009.

[27] *People v. Manalili, supra* note 14.

[28] Article 2230 of the Civil Code provides: In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[*] Per Special Order No. 775 dated November 3, 2009.

[**] Additional member per Special Order No. 776 dated November 3, 2009.

FIRST DIVISION

[G.R. No. 175393. December 18, 2009]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **THE REGIONAL TRIAL COURT OF PASIG CITY, BRANCH 71, CRESENCIANO RABELLO, JR., Sheriff IV, RTC-BRANCH 71, PASIG CITY; and EDUARDO M. SANTIAGO, substituted by his widow, ROSARIO ENRIQUEZ *VDA. DE* SANTIAGO,** *respondents.*

[G.R. No. 177731. December 18, 2009]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **HON. CELSO LAVIÑA, Presiding Judge, RTC, Pasig City, Branch 71, CRESENCIANO RABELLO, JR., Sheriff, RTC-71, PASIG CITY, and EDUARDO M. SANTIAGO, substituted by his widow, ROSARIO ENRIQUEZ *VDA. DE* SANTIAGO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF FINALITY OF JUDGMENTS; EXCEPTIONS THERETO, NOT APPLICABLE.—** The doctrine of finality of judgments accepts of exceptions only under certain circumstances, as we have held in *Spouses Gomez v. Correa, et al.*, x x x. None of the exceptional circumstances to this doctrine exist in this case. The modification that would result should the petition be granted would not involve merely clerical errors, but would entail presentation of alleged newly-discovered evidence that should have been raised as affirmative defenses during trial. x x x What petitioner seeks to do is for this Court to now hold that there had already been reconveyance, conducted through various transactions, of the subject properties even *before* the commencement of the case with the RTC, and, in effect, for us to nullify a final and executory judgment that

had been passed upon by the RTC, the CA, and this Court in the first SC case. This we cannot do; not with the submissions presented to us by petitioner; not during the execution stage of the proceedings; not even under the veiled threat that in failing to grant the petition, we will be deciding against the fate of the GSIS funds that exist for the service of government employees who deserve to be favored in law under the principles of social justice and equity.

2. ID.; ID.; ID.; EXECUTION; GSIS CANNOT CLAIM IMMUNITY FROM THE ENFORCEMENT OF THE FINAL AND EXECUTORY JUDGMENT AGAINST IT; RULING IN *RUBIA VS. GSIS,* APPLIED.— Regarding the alleged exemption of the funds and properties of GSIS, we quote with approval pertinent portions of the Decision of the CA dated August 3, 2006 in **CA-G.R. SP No. 84079**: The petition and pending incidents hinge on the principal issue of whether the exemption from execution and garnishment of the funds and properties of GSIS under Sec. 39 of Rep. Act No. 8291 may be invoked to quash the writ of execution issued pursuant to the final and executory judgment against it. We rule in the negative. In *Rubia vs. GSIS* (432 SCRA 529), the Supreme Court ruled that the exemption from execution enjoyed by GSIS under Sec. 39 of Rep. Act No. 8291 is not absolute. x x x The processual exemption of the GSIS funds and properties under Section 39 of the GSIS Charter, in our view, should be read consistently with its avowed principal purpose: to maintain actuarial solvency of the GSIS in the protection of assets which are to be used to finance the retirement, disability and life insurance benefits of its members. Clearly, the exemption should be limited to the purposes and objects covered. Any interpretation that would give it an expansive construction to exempt all GSIS assets from legal processes absolutely would be unwarranted. x x x [U]nder Section 36, the GSIS may be held liable for the contracts it has entered into in the course of its business investments. For GSIS cannot claim a special immunity from liability in regard to its business ventures under said Section. Nor can it deny contracting parties, in our view, the right of redress and the enforcement of a claim, particularly as it arises from a purely contractual relationship, of a private character between an individual and the GSIS. In the instant

case, the final and executory judgment arose from loans extended by GSIS to private respondent's predecessors-in-interest in the course of its business and secured by a mortgage. As in *Rubia*, GSIS' relationship with private respondent's predecessors-in-interest is purely private and contractual in nature. As such, GSIS cannot claim immunity from the enforcement of the final and executory judgment against it. Petitioner is asking this Court to reverse our findings in *Rubia*, *supra*, and as a result, rule that the immunity granted to it by Rep. Act No. 8291 is absolute. We see no reason to depart from the conclusions reached in said case. In fact, all the more should GSIS not be allowed to hide behind such immunity in this case, where its obligation arises not just from a simple business transaction, but from its utter failure to return properties that it had wrongfully foreclosed.

3. **LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; CLIENTS ARE BOUND BY THE MISTAKES, NEGLIGENCE AND OMISSION OF THEIR COUNSEL.—** [O]n petitioner's contention that it should not be bound by the failure of its former lawyers to timely raise the affirmative defense of reconveyance, we are not convinced. Clients are bound by the mistakes, negligence and omission of their counsel. While in exceptional circumstances, clients may be excused from the failure of counsel, the grounds raised in the present case do not persuade this Court to consider it as an exception to the rule.

APPEARANCES OF COUNSEL

GSIS Law Office for GSIS.

Ramirez Lazaro Patricio and Associates Law Office for Rosario Enriquez *Vda. de* Santiago.

Herrera Teehankee and Cabrera Law Offices for movant Jaime C. Vistar.

Ricardo C. Pilares, Jr. & Victor Avecilla for movant Atty. Jose A. Suing.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The case now before us stems from two petitions that were consolidated upon motion of petitioner Government Service Insurance System (GSIS). We are well aware of the impact and the significance of the matters presented here on both parties and after careful study of the laws and jurisprudence applicable, we now discuss the facts, issues, and arguments from which we have reached our conclusion. As the final arbiter of all legal questions, we intend this decision to put an end to this long-drawn litigation.

The first case, docketed as **G.R. No. 175393**, is a Petition for *Certiorari* and Prohibition[1] seeking to annul respondent trial court's Orders dated November 20, 2006 and September 12, 2006 issued in Civil Case No. 59439 entitled *Eduardo M. Santiago, substituted by his widow, Rosario Enriquez Vda. De Santiago v. GSIS,* and to perpetually restrain respondent sheriff from enforcing said Orders of respondent trial court.

The second case, docketed as **G.R. No. 177731**, is a Petition for Review on *Certiorari*[2] filed under Rule 45 of the Rules of Court, as amended, which seeks to reverse and set aside: (1) the Decision[3] of the Court of Appeals (CA) dated August 3, 2006 partially granting the Petition for *Certiorari* and Prohibition and affirming with modifications the assailed Orders of the respondent trial court, in *GSIS v. Hon. Celso Laviña, Presiding Judge, Regional Trial Court – Pasig City, Branch 71, Cresenciano Rabello, Jr., Sheriff, RTC-71, Pasig City, and Eduardo M. Santiago, substituted by his widow, Rosario Enriquez Vda. De Santiago*, docketed as CA-G.R. SP No. 84079, and (2) the CA Resolution dated April 27, 2007 denying petitioner's Verified Motion for Reconsideration.

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[1] *Rollo,* G.R. No. 177731, pp. 3-55.

[2] *Id.* at 17.

[3] *Id.* at 69.

I. FACTS OF THE CASE

From September 1956 to October 1957, spouses Jose C. Zulueta and Soledad Ramos (Zulueta spouses) obtained various loans from GSIS totaling ₱3,117,000.00 secured by a real estate mortgage on several parcels of land located in Pasig City and covered by Transfer Certificates of Title (TCTs) Nos. 26105, 37177, and 50356 (the mother titles) in their name. Because of the Zulueta spouses' default, GSIS, on August 14, 1974, extrajudicially foreclosed the mortgages dated September 25, 1956, March 6, 1957, April 4, 1957, and October 15, 1957, for ₱5,229,917.84. Being the highest bidder, GSIS was issued a certificate of sale by the sheriff.

On November 25, 1975, GSIS consolidated its title over the lots subject of the foreclosure sale. Subsequently, GSIS disposed of the foreclosed properties together with lots not covered by the foreclosure sale.

On March 6, 1980, GSIS sold the foreclosed properties to Yorkstown Development Corporation, which sale was disapproved by the Office of the President of the Philippines. The Register of Deeds of Rizal cancelled the land titles issued to Yorkstown Development Corporation.[4]

After GSIS had re-acquired the properties sold to Yorkstown Development Corporation, it began disposing the foreclosed lots, *including the excluded ones*. The lots had already been divided by the Zulueta spouses into smaller lots but GSIS consolidated title on the three mother titles, because these were what the Zulueta spouses had earlier mortgaged to it. Under the first mortgage on September 25, 1956, out of the 199 lots covered by TCT No. 26105, 78 lots (subject lots) were expressly excluded from the mother title's mortgage.

On April 7, 1990, Antonio Vic Zulueta (Antonio), the Zulueta spouses' successor-in-interest, transferred all his rights and

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[4] On July 2, 1980, TCT No. 23552 was issued canceling TCT No. 21926; TCT No. 23553 cancelled TCT No. 21925; and TCT No. 23554 cancelling TCT No. 21924, all in the name of GSIS.

interests[5] in the excluded lots to Eduardo M. Santiago (Santiago), whose lawyer wrote a letter dated May 11, 1989 asking GSIS to return said lots.

On May 7, 1990, Antonio, represented by Santiago, filed an action for reconveyance of the excluded lots against GSIS in the Regional Trial Court (RTC) of Pasig City (Branch 71), presided over by Hon. Celso Laviña (respondent judge), docketed as **Civil Case No. 59439** and entitled *Eduardo M. Santiago, et al. v. GSIS*. After a court battle between Antonio and Santiago wherein the former sought the revocation of the Special Power of Attorney in favor of the latter, Antonio was substituted by Eduardo Santiago who, upon his death on March 6, 1996, was later substituted by his widow, Rosario Enriquez *Vda. de* Santiago (private respondent), as plaintiff in the case.

After trial, respondent judge rendered a Decision[6] dated December 17, 1997, finding that neither prescription nor laches had set in. The dispositive portion[7] of the Decision reads:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendant:
>
> Ordering defendant to reconvey to plaintiff the seventy-eight (78) lots released and excluded from the foreclosure sale including the additional exclusion from the public sale, namely:
>
> a. Lot Nos. 1, 6, 7, 8, 9, 10 and 13, Block I (Old Plan).
> b. Lot Nos. 1, 3, 4, 5, 7, 8, 10, Block II (Old Plan).
> c. Lot Nos. 3, 10, 12 and 13, Block I (New Plan), Block III (Old Plan).
> d. Lot Nos. 7, 14 and 20, Block III (New Plan), Block V (Old Plan).
> e. Lot Nos. 13 and 20, Block IV (New Plan), Block VI (Old Plan).
> f. Lot Nos. 1, 2, 3 and 10, Block V (New Plan), Block VII (Old Plan).
> g. Lot Nos. 1, 5, 8, 15, 26 and 27, Block VI (New Plan), Block VIII (Old Plan).

[5] *Rollo,* G.R. No. 177731, p. 119.

[6] *Id.* at 110-125.

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

h. Lot Nos. 7 and 12, Block VII (New Plan), Block II (Old Plan).
i. Lot Nos. 1, 4 and 6, Block VIII (New Plan), Block X (Old Plan).
j. Lot 5, Block X (New Plan), Block XII (Old Plan).
k. Lot 6, Block XI (New Plan), Block XII (Old Plan).
l. Lots 2, 5, 12 and 15, Block I.
m. Lots 6, 9 and 11, Block II.
n. Lots 1, 5, 6, 7, 16 and 23, Block 3.
o. Lot 6, Block 4.
p. Lots 5, 12, 13 and 24, Block 5.
q. Lots 10 and 16, Block 6.
r. Lots 6 and 15, Block 7.
s. Lots 13, 24, 28 and 29, Block 8.
t. Lots 1, 11, 17 and 22, Block 9.
u. Lots 1, 2, 3 and 4, Block 10.
v. Lots 1, 2, 3 and 5 (New), Block 11.

2. Ordering defendant to pay plaintiff, if the [78] excluded lots could not be reconveyed [,] the fair market value of each of said lots.

3. Ordering the Registry of Deeds of Pasig City … to cancel the land titles covering the excluded lots in the name of defendant or any of its successors-in-interest including all derivative titles therefrom and to issue new land titles in plaintiff's name.

4. Ordering the Register of Deeds of Pasig City… to cancel the Notices of *Lis Pendens* inscribed in TCT No. PT-80342 under Entry No. PT-12267/T-23554; x x x TCT No. PT-81812 under Entry No. PT-12267/T-23554; and TCT No. PT-84913 under Entry No. PT-12267/T-23554.

5. Costs of suit.

Counterclaims filed by defendant, intervenors Urbano and intervenors Gonzales are DISMISSED.

SO ORDERED.

Petitioner appealed the aforesaid decision to the CA, docketed as **CA-G.R. CV No. 62309** (the first CA case) which, in a decision dated February 22, 2002, affirmed the same. GSIS went up to the Supreme Court *via* a petition for review on *certiorari* docketed as **G.R. No. 155206** (the first SC case). The first CA decision was affirmed *in toto* by the Supreme

Court in a decision dated October 28, 2003, which became final and executory on February 24, 2004.

On April 2, 2004, private respondent filed a motion before the RTC for execution of its decision. Opposing the motion, GSIS pointed out that under Sec. 39 of Republic Act No. 8291, otherwise known as the GSIS Act of 1997, and existing jurisprudence, its funds and properties were exempt from execution.

On April 27, 2004, respondent judge issued an order granting the motion for execution and fixing the current fair market value of the subject lots,[8] which were ordered reconveyed to private respondent, at ₱35,000.00 per square meter, or a total of ₱1,166,165,000.00 computed on the basis of an aggregate area of 33,319 square meters. In arriving at said value, respondent judge explained:

> "x x x [The] Court considers the amount of ₱35,000.00 per square meter, of all the reconveyed 78 lots, representing the current fair market value which value is well within the range [₱10,000.00 – ₱45,000.00 per square meter] established and found by the trial court, affirmed by the Court of Appeals and has been considered binding and conclusive upon the Supreme Court per its Decision dated October 28, 2003 which has become final and executory on February 24, 2004."[9]

Pursuant to the order of execution, respondent judge issued a writ of execution[10] on April 28, 2004. Acting upon said writ, Sheriff Cresenciano Rabello, Jr. (respondent sheriff), along with private respondent's counsel, Atty. Jose Suing (Atty. Suing), went to the GSIS main office on April 29, 2004 to serve the same and a notice addressed to Atty. Winston F. Garcia, president and general manager of GSIS, demanding payment of the abovementioned amount of ₱1,166,165,000.00. On the same date, respondent sheriff and Atty. Suing served notices of garnishment on GSIS' banks, namely: Development Bank of

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[8] *Id.* at 477.

[9] *Id.* at 72.

[10] *Id.* at 176.

the Philippines (DBP), Land Bank of the Philippines, Philippine National Bank (PNB), and Philippine Veterans Bank.

On May 4, 2004, GSIS filed a motion to quash writ of execution (motion to quash) on the grounds that: (i) it was exempt from execution under Sec. 39 of Rep. Act No. 8291; (ii) it was deprived of the opportunity to contest the order of execution since the writ of execution was served before its receipt of an official copy of said order; and (iii) the lower court's valuation of the subject lots at ₱35,000.00 per square meter was unrealistic, too high and without legal and factual basis.[11]

Private respondent opposed GSIS' motion to quash,[12] arguing as follows: (i) that the motion is *pro forma* as it merely repeated the grounds discussed in GSIS' opposition and supplemental opposition to her motion for execution; (ii) that GSIS was duly served a copy of the order of execution through its counsel, Atty. Lucio L. Yu, Jr., who read the same when he met respondent sheriff and Atty. Suing during their April 29, 2004 visit to the

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[11] GSIS attached an internal Memorandum (Annex "A") dated December 18, 2003 to its Motion to Quash, with subject "Appraisal of Property" (San Antonio Village), and provides:

2. Valuation

2.1 Pricing

The evaluation of the prices of lot (*sic*) was made on the basis of the zonal valuation costs prepared by the Bureau of Internal Revenue as certified by [the] Revenue District Officer of Pasig City, Metro Manila to insure viability, subject to the prevailing conditions.

2.2 Lot pricing

Prevailing prices at Malvar [St.] is xxx **₱12,000**./sq. m. (zonal).

For Amber, Araneta, Atienza, Capinpin, [L]im, Lukban, [and] Segundo [Sts.], xxx price is ₱15,000/sq. m. (zonal).

[Per our] own appraisal, the price is reasonable and may therefore be adopted.

Remarks:

Appraisal was based on the street where the lots are situated for reasons of (*sic*) property lots [were] not listed on the appraisal request.

[12] *Rollo,* G.R. No. 177731, p. 194.

GSIS main office; and (iii) that the lower court's determination of the current market value of the subject lots was based on its findings which were affirmed by the CA and the Supreme Court.[13]

On **May 13, 2004**, respondent judge issued an **Order**[14] disposing as follows:

WHEREFORE, the Motion to Quash Writ of Execution is hereby DENIED for lack of merit.

The Motion for Issuance of Writ of Execution or Order for Cancellation of *Lis Pendens* and the Motion to cancel Notice of *Lis Pendens*, with their merits, are both GRANTED.

SO ORDERED.

Thereafter, on May 21, 2004, petitioner filed before the CA a special civil action for *certiorari* and prohibition docketed as **CA-G.R. SP No. 84079** (the second CA case), with prayer for temporary restraining order (TRO) and/or writ of preliminary injunction to annul the Orders dated April 27, 2004 and May 13, 2004, respectively, and the Writ of Execution dated April 28, 2004, ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of respondent judge for denying GSIS' motion to quash. Petitioner alleged that its funds and properties were exempt from execution.

Petitioner likewise filed a Petition for *Mandamus*[15] with prayer for temporary mandatory restraining order and writ of preliminary injunction before the RTC of Pasay City dated May 20, 2004. The petition was a special civil action for *mandamus* under Rule 65 of the Revised Rules of Court seeking to compel PNB and DBP (respondent banks) to release the deposit made by petitioner by allowing petitioner GSIS to withdraw its funds and monies deposited in respondent banks. The RTC Pasay City, Branch 115, in **Civil Case No. 04-0316**

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[13] Petitioner GSIS filed a Reply to the Opposition to Defendant's Motion to Quash Writ of Execution; *rollo,* G.R. No. 175393, pp. 198-209.

[14] *Rollo,* G.R. No. 177731, p. 73.

[15] *Id.* at 286-295.

CFM, issued an Order[16] dated May 26, 2004 granting the TRO on the ground that pursuant to Rep. Act No. 8291, the funds of GSIS cannot be subject of any garnishment, considering that GSIS badly needed the money to finance its daily operations. A portion of the RTC Order is quoted below:

"Between whatever right or obligation the banks may have to retain the deposits and let another party withdraw it and the right of the depositor GSIS, who acts in behalf of millions of beneficiaries who will suffer the moment the financial condition of GSIS is compromised, this Court finds the choice commonsensical.

"Considering that the rights of the GSIS over its own funds has been firmly established plus the unimaginable scenario of chaos the country might face the moment the public has learned that the funds of the only Government Agency tasked to provide social security protection of the government workers is in jeopardy is almost certain this Court deems it best to issue a status quo order.

WHEREFORE, respondent PNB and DBP are restrained from honoring the garnishing of the GSIS funds x x x (faded text in *rollo*).

On May 31, 2004, RTC Pasay City Branch 115 issued an Order[17] in Civil Case No. 04-0316 CFM that provides:

"In compliance with the *Ex-parte* Request for Clarification of Order dated 26 May 2004, directing the parties to preserve the status quo and in … light of the Temporary Restraining Order issued by the Court of Appeals dated May 27, 2004, in CA-G.R. SP. 84079 case entitled "*Government Service Insurance System vs. Hon. Celso Laviña, et al.*", restraining the garnishment of the subject deposits, clarification is hereby made that the status quo contemplated in the Order refers to the condition of the parties prior to the service of the Notice of Garnishment on the respondent banks by the Sheriff of the RTC-71 of Pasig City and that the said status quo Order was never intended to prevent petitioner GSIS from withdrawing the funds and monies deposited in the respondent banks.

SO ORDERED."[18]

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[16] *Id.* at 298-299.

[17] *Id.* at 300.

[18] *Supra* note 16.

Meantime, in its Decision in **CA-GR SP No. 84079,** the CA held:

WHEREFORE, premises considered, the instant petition is PARTIALLY GRANTED. The orders dated April 27, 2004 and May 13, 2004 and writ of execution dated April 28, 2004, all issued by the Regional Trial Court of Pasig City (Branch 71) in Civil Case No. 59439 entitled "*Eduardo M. Santiago, etc., vs. Government Service Insurance System*", are AFFIRMED with MODIFICATIONS in (i) that said orders and writ shall be for the satisfaction of the decision dated December 17, 1997 rendered in said case to the extent of the sum of ₱399,828,000.99; and (ii) that said court is directed to immediately conduct a hearing for the purpose of determining the fair market value of the subject lots as of April 29, 2004 and, upon such determination, issue an order of execution and the corresponding writ for the unsatisfied portion of the decision, if any.

The motion for reconsideration of our resolution dated July 27, 2004 and motion to allow immediate partial execution filed by respondent Rosario Enriquez *Vda. de* Santiago are PARTIALLY GRANTED in that the writ of preliminary injunction heretofore issued by this Court is PARTIALLY LIFTED, such that execution of the decision in Civil Case No. 59439 for the amount of ₱399,828,000.00 may immediately proceed while the writ of preliminary injunction against the execution of the rest of the judgment award is made PERMANENT subject to the disposition in the preceding paragraph.

For lack of merit, the motion to cite GSIS and others for direct contempt is DENIED.

SO ORDERED.[19]

On August 15, 2006, petitioner filed a **Verified Motion for Reconsideration**[20] of the Decision dated August 3, 2006 on the main ground that it should not be deprived of what it alleged was the "main mode of satisfying the judgment, *i.e.,* reconveyance." Petitioner attached as Annex "A" a Memorandum[21] entitled "Status of 78 Lots Covered by Writ of Execution in Civil Case No. 59439 xxx as annotated in TCT No. 23554 of the Registry

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[19] *Rollo,* G.R. No. 177731, pp. 86-87.

[20] *Rollo,* G.R. No. 175393, pp. 224-237.

[21] *Id.* at 240-242.

of Deeds, Pasig City," which states that "the total number of lots adjudged is only 76 not 78 and the total area should not be 33,319 [sq. m.] but only 32,534 [sq. m.]."

The respondent trial court issued an **Order**[22] **dated November 20, 2006** denying the petitioner's Urgent Motion for Reconsideration, the Urgent Motion to Quash Order of Delivery of Money,[23]and the Manifestation to Set Case for Presentation of Rebuttal Evidence[24] dated October 19, 2006.[25]

On November 24, 2006, petitioner GSIS filed with respondent trial court a Manifestation and Urgent Motion for Inhibition[26] "on the ground, among others, that respondent judge's undue and passionate haste in executing the final judgment, and related acts, reveal clearly his bias towards private respondent Santiago."

Subsequently, petitioner filed with this Court a **Petition for *Certiorari* and Prohibition, docketed as G.R. No. 175393 (the second SC case),** with prayer for a TRO and/or a Writ of Preliminary Injunction, claiming that the questioned Orders and the Order of Delivery of Money were issued and enforced with grave abuse of discretion amounting to lack or excess of jurisdiction, or in excess of jurisdiction, in the absence of factual and legal bases; and that petitioner had no plain, speedy and adequate remedy in the ordinary course of law except the present petition, to protect its interest against the enforcement of the subject Orders.[27]

This Court issued a **Resolution**[28] **dated December 13, 2006** dismissing the Petition in G.R. No. 175393 for: (a) being a wrong mode of appeal; and (b) violating the rule on forum

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[22] *Rollo,* G.R. No. 177731, pp. 451-465.

[23] *Id.* at 89-95.

[24] *Id.* at 98-100.

[25] *Id.* at 59-73.

[26] *Id.* at 466-470.

[27] *Rollo,* G.R. No. 175393, p. 11.

[28] *Rollo,* G.R. No. 175393, p. 270.

shopping. On March 12, 2007, this Court issued another Resolution[29] denying with finality petitioner's Motion for Reconsideration of the earlier Resolution dated December 13, 2006. The Court said:

"It is rather obvious that petitioner's Motion for Reconsideration pending with the CA and its present Petition, while ostensibly directed at different orders of the RTC, are actually aimed at only one objective: to thwart implementation of the modified April 28, 2004 Writ of Execution. Such simultaneous recourse to two remedies at different fora for a single objective is plain forum shopping. Forum shopping exists not only when a final judgment in one case will amount to *res judicata* in another, but also where the elements of *litis pendentia* are present, *i.e.*, regardless of which party will prevail, the result of one action will be determinative of that of the other action. Specifically, if we give due course to the present Petition, our proceedings would have to take precedence over the resolution by the CA of petitioner's Motion for Reconsideration. Our decision would also bind the CA On the issue of the April 28, 2004 Writ of Execution. There is also the possibility that if the CA Proceeds to resolve petitioner's Motion for Reconsideration, its resolution will preempt our action on the present Petition. Either way, one court will be pitted against the other in an appalling scheme petitioner should not get away with.

Having declared the present Petition improper for forum shopping, petitioner's request that it be treated as a Petition for Review on *Certiorari* under Rule 45 is not feasible.

WHEREFORE, the Motion for Reconsideration is DENIED with finality.

SO ORDERED.[30]

On March 28, 2007, however, petitioner filed a Motion for Leave to File and For Admission of Second Motion for Reconsideration with Prayer to Set Case for Oral Arguments. On **April 4, 2007**, this Court issued a **Resolution**[31] **granting**

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[29] *Id.* at 322-324.

[30] *Id.* at 323-324.

[31] *Rollo,* G.R. No. 177731, pp. 472-473.

petitioner's Motion and setting aside the Resolution dated December 13, 2006; reinstating the petition; requiring respondents therein to comment on the petition; and resolving to issue a TRO[32] enjoining respondents therein, their representatives or assigns, and/or any person acting for and in their behalf, from enforcing the Orders dated November 20, 2006 and September 12, 2006 of respondent trial court and the Order of Delivery of Money dated September 14, 2006 of respondent Sheriff in Civil Case No. 59439 of the RTC, Branch 71, Pasig City.

This Court resolved to refer the petition in G.R. No. 175393 to the Court *En Banc* for disposition; however, on June 19, 2007, the Court resolved to return the case to the Third Division.[33]

On April 27, 2007, the CA denied petitioner's motion for reconsideration in CA-G.R. SP No. 84079. Hence, GSIS filed this **Petition for Review on *Certiorari* docketed as G.R. No. 177731 (the third SC case).**

II. THEORY OF PETITIONER

In G.R. No. 177731, petitioner alleges that the CA committed a manifest reversible error:

1. In ordering the respondent trial court to proceed with the second option of requiring the petitioner GSIS to pay private respondent for the value of the lots initially pegged at ₱12,000.00 without affording petitioner GSIS the opportunity to show compliance with the first option of reconveyance of the lots;
2. In ignoring the exemption from execution of the funds and assets of petitioner GSIS under Section 39 of Section 1 of the GSIS Act of 1997 (R.A. No. 8291); and
3. In holding that petitioner GSIS is barred by *estoppel* from invoking the prior sale, reconveyance and segregation of lots and double enumeration of two lots, because these allegedly delve into the correctness of respondent trial court's decision.[34]

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[32] *Id.* at 474-476.

[33] *Rollo,* G.R. No. 175393, p. 410.

[34] *Rollo,* G.R. No. 177731, p. 44.

In its **MEMORANDUM**,[35] petitioner summarizes the issues involved in this case as follows:

I. Whether it is grave abuse of discretion or gross reversible error for the respondent trial court to ignore or modify the judgment of the Supreme Court.

A. Whether there has been actual or constructive compliance with the judgment directing the reconveyance of the 78 lots which are the subject matter of this case.

B. Whether in the absence of denial by the private respondent of the fact of reconveyance to the buyers of private respondent's assignor of the lots in question, petitioner GSIS should be deemed to have satisfied the decision under the first option of reconveyance. Otherwise, there would be unjust enrichment and double indemnification.

C. Whether the respondent trial court acted with obvious partiality toward the private respondent.

II. Whether it is tenable that when a literal and blind execution of a judgment shall result in grievous error and injustice, the judgment should be executed in a faithful manner that harmonizes with truth and equity. If necessary to avoid distortions, falsehood, and marked injustice, whether the Supreme Court may even reverse and set aside its earlier judgment.

A. Whether a party litigant is necessarily bound by the mistakes or grave negligence of its former counsel and officials or employees.

III. Whether the respondent trial court committed reversible error when it ruled on the issue of prescription

IV. Whether it is state policy that GSIS funds are exempt from garnishment. Whether just claims of litigants should be decided in a way that does not conflict with such public policy.[36]

In claiming that "execution should harmonize with truth and equity,"[37] petitioner avers that finality of judgment is a principle

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[35] *Rollo,* G.R. No. 175393, pp. 605-670.

[36] *Id.* at 618-619.

[37] *Id.* at 634.

needed in the administration of justice; however, in cases where gross injustice shall result from insistence on the principle, it has to be disregarded. Petitioner further avers that the present litigation is one such case. Petitioner alleges that the principle of law that the sacred principle of justice should not be sacrificed at the altar of technicalities has remained unchanged up to the present, and claims that it has been reiterated from time to time by this Honorable Court.

Petitioner argues that "substantive merit, not technicalities, should be considered by this honorable Court."[38] Under the November 20, 2006 Order of the respondent trial court, the sale by Jose Zulueta of the subject lots to his buyers may no longer be raised at this time, but petitioner urges this Court to hold otherwise. Petitioner likewise contends that a "final judgment may be modified or reversed,"[39] and cites cases where this Court allegedly ruled so. Petitioner argues that where there is deviation from a final judgment, as in the present case, and non-reopening will result in gross injustice to the petitioner and unjust enrichment to the respondent, the wrong decision can still be reconsidered and reversed.

Petitioner likewise alleges that it is not bound by the negligence of its lawyers, and claims that it is not true that it failed to raise the defense of previous reconveyance as the records of this case would easily bear out that petitioner mentioned during the proceedings held in the respondent trial court that there had already been reconveyance. Petitioner submits that any negligence of its former lawyers in not including the fact of reconveyance in their Answer or in not capitalizing upon it throughout the trial proceedings should not prejudice the interests of the 1,500,000 GSIS members and pensioners.

Petitioner reiterates its argument that "even if correct, the claim for reconveyance has prescribed."[40] Lastly, regarding

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[38] *Id.* at 636.

[39] *Id.* at 638.

[40] *Id.* at 643.

the alleged "ethical dimensions" of the case, petitioner argues: "One Billion Pesos shortens the actuarial life of the GSIS by one full year. The amount represents the cash dividends of 621 policy holders for one and a half years."[41] Even though private respondent's lawyers are highlighting her advanced age and failing health, petitioner points out that she had already agreed to pay 54% of the net benefits from the case to three of her lawyers. Petitioner quotes the September 12, 2006 Order of the RTC Pasig City where it stated, "The proceedings have become a fight among the lawyers for their alleged attorney's fees."[42]

Petitioner likewise claims that under Sec. 39 of Rep. Act No. 8291, the GSIS Act of 1997, its funds are exempt from taxes, legal processes, liens, attachments, garnishments, and executions, and such exemption is a state policy based on the Constitution under its social justice provisions.

Lastly, petitioner asks that this Court revisit the ruling in *Rubia v. GSIS*,[43] which held that the GSIS exemption from execution is not absolute. Petitioner makes the following averments regarding this issue:

> Rubia distinguishes between GSIS funds to pay for benefits and funds intended for investments. There is no such distinction. All funds including those invested and the income derived from them are funds used to pay benefits. GSIS never views its income from investments as "profits". All income goes to benefit payments, if not current, then for the future when the billions now paid annually will multiply several times because most of the 1,200,000 current members and the employees succeeding them will have retired.
>
> The amount involved in Rubia is relatively nominal. But when unlawful or unjustified claims like the Billion Peso garnishment in this case comes up, the true meaning and correct interpretation of the GSIS Charter become imperative.
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> x x x x x x x x x

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[41] *Id.* at 646.

[42] *Id.* at 647.

[43] G.R. No. 151439, June 21, 2004, 432 SCRA 529.

GSIS respectfully submits that the trust funds under its stewardship have the same public character as funds of regular departments, bureaus, and offices of the Government. GSIS is not in business, in the commercial meaning of the word. GSIS tries to make its trust fund earn in order to meet the heavy demands and requirements of the future. In the same way as funds needed to construct school buildings or to buy tanks, helicopters, and other defense equipment may not be garnished to pay debts of the Department of Education and Culture or the Department of National Defense, so should funds intended for pensions of public servants, their death compensation or disability benefits be freed from the perils of execution and garnishment. Or defraudation as in this case.

x x x x x x x x x

The law provides for the exemption of GSIS funds from court processes, execution, garnishment, and other levies. It does not follow that parties with legitimate grievances cannot have any means of redress. The law provides for the handling of claims against regular departments, bureaus, and offices. The exemption of GSIS from court processes means that the same procedure for regular government offices should apply to it. Having removed regular procedures like attachment and garnishment, the law provides the mode of redress against exempt agencies and institutions for persons filing cases against GSIS.

x x x x x x x x x

Clearly, the forcible execution of the final judgment in this Santiago case will no doubt violate Section 39 of Section 1 of R.A. No. 8291 and the State policy relative to the preservation and maintenance of the actuarial solvency of the funds of petitioner GSIS.[44]

III. THEORY OF PRIVATE RESPONDENT

In her **Consolidated Memorandum (in G.R. No. 175393) and Comment (in G.R. No. 177731) (With Motion *Ad Cautelam* For Leave To File)**,[45] private respondent avers that:

44. The issues tackled here can be divided into four (4) groups. The ***First Group***, those which have been already laid to rest by the

[44] *Rollo,* G.R. No. 175393, pp. 649-650.

[45] *Id.* at 839-910.

finality of judgment of the RTC, 1st CA Decision and the 1st SC Decision but which petitioner GSIS is reviving in the current incidents of these proceedings. The ***Second Group*** consist of those raised in the Petition in GR No. 175393 (2nd SC Case). The ***Third Group*** are those raised in Petition in GR No. 177731 (3rd SC Case). The ***Fourth Group*** comprises the issue of "Reconveyance" and related matters.

45. The issues are therefore the following:

45. A. **FIRST GROUP OF ISSUES**

I. Whether or not there is forum shopping and therefore the petitions should already be dismissed;

II. Whether or not, the subject case having become final and executory, the instant two petitions should be dismissed;

III. Whether or not Prescription or Laches has set in;

IV. Whether or not petitioner GSIS funds or properties are exempt from execution;

Violation of other Rules

45. B. **SECOND GROUP OF ISSUES** (Raised in G.R. No. 175393, 2nd SC Case)

V. Whether or not the RTC Order dated 12 September 2006 sought to be reconsidered was, in fact, prematurely issued;

VI. Whether or not respondent RTC deviated from the final and executory judgment when it effectively ruled that the judgment against the petitioner GSIS should be satisfied through the alternative and secondary mode (*i.e.*, payment of the fair market value of the 78 lots, computed at ₱12,000.00 per square meter) without according the petitioner GSIS the primary mode of satisfying the same judgment (*i.e.*, reconveyance of the said lots);

VII. Whether or not in the absence of denial by the private respondent's lawyers, with the actual reconveyance to the latter of some 59 out of 78 lots in question, the petitioner GSIS should be deemed to have satisfied the judgment to the extent of the same approximately fifty nine (59) lots; otherwise, there would be a clear case of unjust enrichment and double indeminification (sic);

VIII. Whether or not [the] Honorable Presiding Judge of the respondent RTC acted with obvious partiality toward respondent; and

IX. This Honorable Court, in G.R. No. 140393, entitled "*Dela Merced vs. GSIS, et al.*" having also decreed the reconveyance of the lots to Dela Merced, which include at least one (1) of the subject 78 lots, the physical impossibility of the petitioner GSIS reconveying a singular lot to two different parties has to be clarified;

45. C. **THIRD GROUP OF ISSUES** (raised in G.R. No. 177731, 3rd SC Case). [Whether or not the Court of Appeals committed the following manifest reversible errors:]

X. [In] ordering respondent trial court to proceed with the second option of requiring the petitioner GSIS to pay the private [respondent] for the value of the lots initially pegged at ₱12,000.00 without affording petitioner GSIS the opportunity to show compliance with the first option of reconveyance of the lots;

XI. [In] ignoring the exemption from execution of the funds and assets of petitioner GSIS under Section 39 and Section 1 of the GSIS Act of 1997 (R.A. No. 8291); and

XII. In holding that petitioner GSIS is barred by estoppel from invoking the prior sale reconveyance and segregation of lots and double enumeration of two lots, because these allegedly delve into the correctness of respondent trial court's decision.

45. D. **FOURTH GROUP OF ISSUES** ("Reconveyance" and related issues)

XIII. G.R. No. 177731 (3rd SC Case) is not a petition for review – it is actually a camouflaged petition for re-opening of the case.

XIV. "Reconveyance" was introduced progressively in a creeping manner – from none or nothing to a bare allegation and now to a complete "defense". Hence, it should be dismissed for being unreliable.

XV. "Reconveyance" is no longer just a matter of defeating the execution. G.R. No. 177731 as made, is a matter of defense to be introduced in the RTC.

XVI. GSIS is not even consistent of how many lots have been "reconveyed".

XVII. "Reconveyance" has not been proved as fact, as petitioner GSIS would want to impress.

XVIII. The Honorable Court should not refer the case back to the RCT (sic) for the "… *conduct of a hearing to determine the actual*

number of lots which have already been transferred or reconveyed."[46]

Private respondent claims that the issues expressly raised in G.R. No. 177731 were already tackled in G.R. No. 175393, and that the issue that GSIS was barred by estoppel from invoking the prior sale reconveyance and segregation of lots and double enumeration of two lots was already raised in the second CA case as well as the first and second SC cases. Private respondent also claims that all these prove that this Court had been right in dismissing the petition for forum shopping.

Private respondent notes that the body of the third SC Case (G.R. No. 177731), which should discuss matters taken up in the CA decision under review, actually contains an introduction of "new matters regarding the so-called prior 'reconveyance' allegedly made by GSIS to Zulueta"[47] that were not raised in the questioned CA decision.

Private respondent alleges that forum shopping is clearly present here. As the CA finally resolved the pending Motion for Reconsideration filed by petitioner in CA-G.R. SP No. 84079 by denying/dismissing it, GSIS filed a Petition for Review on *Certiorari* of said CA decision to this Court (G.R. No. 177731), and then moved for consolidation of that case with G.R. No. 175393 because the issues were the same.

Private respondent contends that "[there] is no controversy at all that the RTC Decision has become final and executory."[48] She states that "the doctrine of finality of judgments is grounded on fundamental considerations of public policy and sound practice — once judgment becomes final and executory, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party," citing *Quelnan v. VHF Philippines*.[49]

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[46] *Id.* at 858-862.

[47] *Id.* at 861-862.

[48] *Id.* at 865.

[49] G.R. No. 138500, September 16, 2005, 470 SCRA 73.

Regarding the issue of prescription or laches, private respondent argues that it should no longer be looked into again in this instance, as it had already been laid to rest when the RTC Decision, affirmed by both the CA and this Court, had become final and executory. In fact, private respondent points out that the issue of prescription or laches had been admitted by petitioner and was not raised in the petition itself, but was only raised again in the latter's Memorandum of Arguments in the second SC Case. This issue had thus been laid to rest when the decision in the first SC case became final and executory. As held in CA-G.R. CV No. 62309 dated February 22, 2002:

> Neither is defendant-appellee guilty of laches. We agree with the ruling of the lower court that plaintiff and her predecessors cannot be held guilty of laches. There is no evidence that they actually slept on their rights. Lawful owners have a right to demand the return of property at anytime as long as possession was unauthorized or merely tolerated (*Quevada vs. Glorioso,* 294 SCRA 608). Besides, the essential elements of laches are not present in this case, especially a delay in asserting plaintiff's right.

Anent petitioner's contention that the CA decision dissolving the TRO/injunction is not immediately executory, private respondent argues, among others, that the CA decision categorically called for its immediate implementation, and the RTC, being an inferior court, was not free to entertain a contrary view, until and unless the CA reverses itself.

As regards petitioner's claim that the RTC deviated from the final judgment sought to be executed when it failed to accord GSIS the "primary mode of satisfying the same judgment (*i.e.*, reconveyance of the said lots)," private respondent counters, the alleged "primary" mode of execution had already been rendered impossible by petitioner's own acts, as found by the branch sheriff who attempted to execute on the subject real properties.

Private respondent points out that "it was GSIS itself claiming in October 11, 1996 yet (when the case was still being tried at the RTC) that it could no longer return the titles back to the then plaintiff" and that "although it had all the records even

then, [petitioner] did not claim that it had already returned 58 lots to the plaintiff (as it is claiming now)."[50] Since it had already known fully well that it could not actually reconvey, it was thus "sophisticated misrepresentation" for petitioner to insist that reconveyance should first be effected and then claim that it had already been accomplished through some alleged dispositions even prior to the filing of the case.

With regard to petitioner's allegation that there had already been partial execution of the RTC decision by prior reconveyance, private respondent argues that the alleged sale by Zulueta is a matter of defense that could no longer be brought up at the execution stage. Private respondent contends that petitioner's allegation is preposterous, as reconveyance in satisfaction of the RTC decision is against reason and the natural order of things, for the past cannot come after the future, and execution cannot come before judgment or the filing of the case in the RTC.

Private respondent avers that petitioner, in reality, wants to re-open an "immutable final and executory decision of the courts," under a form of new trial not found in the Rules of Court, which if allowed would trivialize or even destroy other core procedural principles, which, due to their importance, actually overlap considerations for attainment of substantial justice.[51] Private respondent points out that petitioner's claims of previous reconveyance of subject properties to the former plaintiff's predecessor or his assignees are mere conjectures and broad allegation of facts, for while it says it has returned many lots to the old Zulueta or his assignees, it has not identified said lots, stated how many were supposed to have been reconveyed, or presented the deed of conveyances it alleged to have executed. These indefinite claims before this Court, which is not a trier of facts, cannot legally and rightfully be the basis for this Court to lend its extraordinary power in a petition for *certiorari* to review, modify or annul the RTC's Orders.

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[50] *Rollo,* G.R. No. 175393, p. 889.

[51] *Id.* at 891.

Private respondent submits that "the tentativeness of [the] GSIS claims, together with the said violation of the rule against forum shopping, should prompt the Honorable Court to dismiss the petition."[52] Petitioner uses an internal memorandum, which has no probative value, to bolster its claim of reconveyance. Said document was introduced for the first time in the second petition to this Court, and being a private document, it needs to be authenticated in court by a competent witness in order to be considered by the courts as evidence. Since this Court is not a trier of facts, it cannot for the first time consider evidence without the lower court having passed its judgment on it.

With regard to petitioner's contention that respondent judge acted with obvious partiality towards private respondent, the latter argues that the acts being questioned were all within the power of the RTC to do and were appropriate and proper for the occasion, but they happened to be adverse rulings in resolving issues raised by GSIS.

Anent petitioner's contention that "at least one" of the subject lots was involved in *Dela Merced v. GSIS, et al.*,[53] thus making it physically impossible for GSIS to reconvey the same lot to two different parties, private respondent alleges that GSIS is not sure as to the identity of the alleged Dela Merced lot *vis-à-vis* the subject lots, and a mere conjecture cannot possibly be the basis for this Court to make the extraordinary order for the *de facto* re-opening of a final and executory judgment.[54]

As to the fourth group of issues involving reconveyance and its related issues, private respondent avers that a major portion of the petition in G.R. No. 177731 (the third SC case) is devoted to a new statement of facts "enumerating, detailing and discussing the alleged incidents of 'reconveyance,'" which were narrated as if they were part of the records of the case, when in truth they were never mentioned, discussed, introduced, much less

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[52] *Id.* at 894.

[53] G.R. No. 140393, September 11, 2001, 365 SCRA 1.

[54] *Rollo,* G.R. No. 175393, p. 900.

proved in the four cases filed prior to this case. Private respondent further avers that a petition for review, by its very name and nature, "deals with what has been taken up in the court *a quo*."[55]

Private respondent reiterates that the issue of "previous reconveyance" was only mentioned after the RTC decision, the first CA case, and the first SC case, respectively, had already become final and executory. This Court had thus been made to accept and appreciate allegations of facts directly introduced to it by petitioner GSIS. The alleged reconveyance may have been testified to in the RTC, but it was not put in issue in the proceedings and on appeal. This "prior reconveyance" of the subject lots to Zulueta was a matter of defense (not execution) that should have been presented in the trial court.[56]

Private respondent contends that contrary to petitioner's claim, documents from the Register of Deeds[57] show that it was GSIS, and not Zulueta, which had conveyed the lots to third parties.

Finally, private respondent avers that while petitioner says that the purpose of the referral back to the RTC is to make the mechanical act of determining the actual number of lots already reconveyed, it really will entail the presentation of evidence that indeed such lots were sold, transferred, or assigned by Zulueta himself, which in effect, would mean re-opening the case itself, a course of action that is incongruous to the finality of the decision, which has been admitted by the GSIS.

Private respondent prays that this Court render judgment in her favor by ordering as follows:

a. Dismissing the instant petitions for violation of the rule against forum shopping and/or for lack of merit;

b. In G.R. No. 175393, declaring the assailed RTC Order dated 12 September 2006 and the assailed RTC Order dated 20 November 2006 valid in so far as the same refer to the execution or garnishment

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[55] *Id.* at 901-902.

[56] *Id.* at 904-905.

[57] *Id.* at 906-907.

of funds up to the extent of ₱399,828,000 (but the allocation of said amount to the plaintiff and the attorneys claiming attorney's fees or the entitlement of all or any of the latter to attorney's fees is left to the lower court/s to determine);

c. Ordering the RTC to immediately implement and enforce the order or writ of execution and/or notice of garnishment; and

d. Ordering the RTC to conduct proceedings to determine the market value of the subject 78 lots and thereafter execute or cause the execution of the remaining unsatisfied portion of the decision.[58]

IV. DISCUSSION

The doctrine of finality of judgments accepts of exceptions only under certain circumstances, as we have held in *Spouses Gomez v. Correa, et al.*,[59]:

> It is settled that when a final judgment is executory, it becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.
>
> The only recognized exceptions are the correction of clerical errors or the making of so-called *nunc pro tunc* entries in which case there is no prejudice to any party, and where the judgment is void. None of these has been shown to be present to justify the "modification" of the judgment. Parenthetically, the modification was made not by the same court (CFI of Pasig) that rendered the judgment.

None of the exceptional circumstances to this doctrine exist in this case. The modification that would result should the petition be granted would not involve merely clerical errors, but would entail presentation of alleged newly-discovered evidence that should have been raised as affirmative defenses during trial.

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[58] *Id.* at 909-910.

[59] G.R. No. 153923, October 2, 2009.

Moreover, the judgment involved herein has been upheld, and not declared void, by this Court. As correctly cited by private respondent, we have made the following pronouncements regarding this doctrine:

> xxx Public policy and sound practice demand that at the risk of occasional errors, judgment of courts should become final at some definite date. The Court frowns upon frivolous appeals and any dilatory maneuver calculated to defeat or frustrate the ends of justice and fair play (*Philippine National Bank v. Court of Appeals*).[60]
>
> xxx Once a decision is final and executory, it can no longer be attacked by any party or be modified directly or indirectly, even by the Court (*Philippine Commercial & Industrial Bank v. Court of Appeals*).[61]
>
> xxx To once again re-open that issue through a different avenue would defeat the existence of our courts as final arbiters of legal controversies. Having attained finality, the decision is beyond review or modification even by this Court (*Toledo-Banaga v. Court of Appeals)*.[62]

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 also has the correlative right to enjoy the finality of the resolution of his case. The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of

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[60] G.R. No. 81524, February 4, 2000, 324 SCRA 714, 726.

[61] G.R. No. 120739, July 20, 2000, 336 SCRA 258, 265.

[62] G.R. No. 127941, January 28, 1999, 302 SCRA 331, 341.

peace and order by setting justiciable controversies with finality (*Gallardo-Corro v. Gallardo*).[63]

What petitioner seeks to do is for this Court to now hold that there had already been reconveyance, conducted through various transactions, of the subject properties even *before* the commencement of the case with the RTC, and, in effect, for us to nullify a final and executory judgment that had been passed upon by the RTC, the CA, and this Court in the first SC case. This we cannot do; not with the submissions presented to us by petitioner; not during the execution stage of the proceedings; not even under the veiled threat that in failing to grant the petition, we will be deciding against the fate of the GSIS funds that exist for the service of government employees who deserve to be favored in law under the principles of social justice and equity.

Being government employees ourselves, we understand the need to preserve the actuarial solvency of the GSIS, especially at this time when, right after the series of calamities that have severely affected the country, GSIS needs to release funds for the various loan applications being made nationwide. Petitioner had already been subjected to much criticism caused by the delay in the processing and releasing of the loan proceeds due to glitches in its computer system and the sheer volume of applications. The Court, in dismissing this petition, is aware of the predicament that petitioner finds itself in at this time, however, justice requires us to look at both sides and at the entirety of the case now before us. In doing so, we recognize that rights of private citizens had already arisen and we uphold such rights.

Even if petitioner claims that it recognizes the finality of the RTC decision, as affirmed by both the CA and this Court, and that it only wants that the execution be conducted properly, to grant the petition would be to negate the factual findings of the RTC and to render useless the conclusions reached in the three levels of the judiciary on the reconveyance of the subject properties.

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[63] G.R. No. 136228, January 30, 2001, 350 SCRA 568, 578. Emphasis ours.

Regarding the alleged exemption of the funds and properties of GSIS, we quote with approval pertinent portions of the Decision of the CA dated August 3, 2006 in **CA-G.R. SP No. 84079**:

The petition and pending incidents hinge on the principal issue of whether the exemption from execution and garnishment of the funds and properties of GSIS under Sec. 39 of Rep. Act No. 8291 may be invoked to quash the writ of execution issued pursuant to the final and executory judgment against it. We rule in the negative.

In *Rubia vs. GSIS* (432 SCRA 529), the Supreme Court ruled that the exemption from execution enjoyed by GSIS under Sec. 39 of Rep. Act No. 8291 is not absolute. The *Rubia* case stemmed from an action for specific performance and damages filed by Marino E. Rubia (or "Rubia") seeking refund of his overpayment on his housing loan with GSIS. The RTC of Laguna (San Pedro, Branch 93) ruled in favor of Rubia. The decision having become final and, upon Rubia's motion, the RTC issued a writ of execution, on the strength of which the sheriff served a notice of garnishment against the account of GSIS with LBP. GSIS filed a motion to quash the writ of execution but it was denied. Thus, GSIS' funds with LBP, to the extent of the amount of the judgment award in favor of Rubia, were garnished and turned over to him in satisfaction of the writ of execution. On the matter of GSIS' exemption from execution, the Supreme Court ratiocinated, thus:

> In so far as Section 39 of the GSIS charter exempts the GSIS from execution, suffice it to say that such exemption is not absolute and does not encompass all the GSIS funds. By way of illustration and as may be gleaned from the Implementing Rules and Regulation of the GSIS Act of 1997, one exemption refers to social security benefits and other benefits of GSIS members under Republic Act No. 8291 in connection with financial obligations of the members to other parties. The pertinent GSIS Rule provides:
>
> Rule XV. Funds of the GSIS
>
> Section 15.7 Exemption of Benefits of Members from Tax, Attachment, Execution, Levy or other Legal Processes. — The social security benefits and other benefits of GSIS members under R.A. 8291 shall be exempt from tax, attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial agencies or administrative bodies in

> connection with all financial obligations of the member, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties or incurred in connection with his position or work, as well as COA disallowances. Monetary liability in favor of the GSIS, however, may be deducted from the benefits of the member. x x x
>
> The processual exemption of the GSIS funds and properties under Section 39 of the GSIS Charter, in our view, should be read consistently with its avowed principal purpose: to maintain actuarial solvency of the GSIS in the protection of assets which are to be used to finance the retirement, disability and life insurance benefits of its members. Clearly, the exemption should be limited to the purposes and objects covered. Any interpretation that would give it an expansive construction to exempt all GSIS assets from legal processes absolutely would be unwarranted.
>
> Furthermore, the declared policy of the State in Section 39 of the GSIS Charter granting GSIS an exemption from tax, lien, attachment, levy, execution, and other legal processes should be read together with the grant of power to the GSIS to invest its "excess funds" under Section 36 of the same Act. Under Section 36, the GSIS is granted the ancillary power to invest in business and other ventures for the benefit of the employees, by using its excess funds for investment purposes. In the exercise of such function and power, the GSIS is allowed to assume a character similar to a private corporation. Thus, it may sue and be sued, as also, explicitly granted by its charter. Needless to say, where proper, under Section 36, the GSIS may be held liable for the contracts it has entered into in the course of its business investments. For GSIS cannot claim a special immunity from liability in regard to its business ventures under said Section. Nor can it deny contracting parties, in our view, the right of redress and the enforcement of a claim, particularly as it arises from a purely contractual relationship, of a private character between an individual and the GSIS.

In the instant case, the final and executory judgment arose from loans extended by GSIS to private respondent's predecessors-in-interest in the course of its business and secured by a mortgage. As in *Rubia*, GSIS' relationship with private respondent's predecessors-in-interest is purely private and contractual in nature. As such, GSIS

cannot claim immunity from the enforcement of the final and executory judgment against it.[64]

Petitioner is asking this Court to reverse our findings in *Rubia*, *supra*, and as a result, rule that the immunity granted to it by Rep. Act No. 8291 is absolute. We see no reason to depart from the conclusions reached in said case. In fact, all the more should GSIS not be allowed to hide behind such immunity in this case, where its obligation arises not just from a simple business transaction, but from its utter failure to return properties that it had wrongfully foreclosed. As we have held in the first SC case, G.R. No. 155206:

> The Court agrees with the findings and conclusion of the trial court and the CA. The petitioner is not an ordinary mortgagee. It is a government financial institution and, like banks, is expected to exercise greater care and prudence in its dealings, including those involving registered lands.[65]

Petitioner questions the manner in which execution was conducted in this case, and insists that reconveyance should be the "primary mode" and then payment only a "secondary mode." We do not agree. We quote with approval the discussion of the second CA decision, where the court held:

> x x x [There] is no need for respondent judge to first issue a writ of execution for the reconveyance of the subject lots. Such recourse would merely be an exercise in futility because as shown in the Sheriff's Partial Report dated May 3, 2004 x x x, reconveyance was not possible as of April 29, 2004 since the subject lots were no longer registered in the name of GSIS. To quote said partial report:
>
>> "That considering the seventy eight (78) excluded lots were already sold by the GSIS to third party buyers as stated and attested by Mr. Manuel Ibabao, GSIS Acquired Asset Officer IV, in his submission and presentation of List of Lots Excluded from Foreclosure to the Honorable Court and was marked as

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[64] *Rollo,* G.R. No. 177731, pp. 79-81.

[65] *GSIS v. Santiago*, G.R. No. 155206, October 28, 2003, 414 SCRA 563, 570.

Exhibit 3, dated October 11, 1996, reconveyance of GSIS of said lots to the plaintiff is no longer possible; as verified and confirmed by the undersigned during his levy on said lots on April 29, 2004 together with Sheriff Marcial Estrellado, subject excluded lots are not only titled to individual buyers in good faith but they have also constructed their houses and buildings there and having [resided] therein for so many years with some other lots being sold and resold to other new buyers; for purposes of attaching/levying subject excluded lots now would be impossible and ineffective because the owners are in actual possession of their lots they being buyers in good faith with corresponding possession of titles to it. Reconveyance of the seventy eight (78) excluded lots mentioned in paragraph 1 (a to v) of the Decision dated December 17, 1997 is very impossible so that on paragraph 2, garnishment is resorted to."

Nevertheless, We find merit in GSIS' claim that the valuation of the subject lots at ₱35,000.00 per square meter has no factual and legal basis. While said valuation falls within the ₱10,000.00 to ₱45,000.00 range as the estimated market value of said properties per testimony of Eduardo M. Santiago, as alluded to by the RTC, it did not "set out in its decision the facts which had been proved and its conclusions culled therefrom" *(People vs. Lizada*, 396 SCRA 62). Indeed, "(t)rial courts should not merely reproduce the respective testimonies of witnesses of both parties and come out with its decretal conclusion" *(People vs. Lizada, supra*).

Besides, the fair market value of the subject lots cannot be a mere ballpark figure. There should be some factual and legal basis for arriving at a reasonable valuation of the lots. Admittedly, the price range mentioned in the final and executory judgment against GSIS is too wide and encompassing that further analysis is necessary to establish with more exactitude the fair market value of the subject lots.

GSIS asserts that respondent sheriff committed grave abuse of discretion in serving the writ of execution prior to its receipt of an official copy of the order of execution, thereby depriving it of an opportunity to contest said order. Contrary to its claim, GSIS was given the opportunity to question the order of execution as, in fact, it filed an opposition and supplemental opposition to private respondent's motion for execution in the court below. Even supposing that GSIS was denied the opportunity to move for reconsideration of the order of execution, this was subsequently

cured when it filed the motion to quash where it raised its objections to the issuance of the order and writ of execution.

x x x x x x x x x

Since GSIS did not deny the facts stated in the sheriff's partial report, We accord the same full faith and credit in keeping with the presumption of regularity in the performance of official duty.

GSIS further contends that instead of immediately serving the notices of garnishment on its banks, respondent sheriff should have effected the reconveyance of the subject lots to private respondent. As earlier discussed, respondent sheriff already made a determination in his partial report dated May 3, 2004 that reconveyance of the subject properties was no longer possible. Hence, he properly acted in proceeding to enforce the payment of the fair market value of the subject lots.

x x x x x x x x x

Based on GSIS' own appraisal of lands in San Antonio Village as of December 18, 2003, the reasonable value of the subject lots ranged from ₱12,000.00 to ₱15,000.00 per square meter depending on the street where a particular lot is located (Annex "R", petition). Since GSIS itself has admitted that the reasonable value of the subject lost, which have an aggregate area of 33,319 square meters, was at least ₱12,000.00 per square meter or a total value of ₱399,828,000.00, partial execution may now proceed on the basis of said valuation. Any difference between the ₱12,000.00 per square meter valuation and the fair market value of the subject lots as of April 29, 2004, as may be finally determined by the court *a quo*, can be recovered later. It is the fair market value of the subject lots as of April 29, 2004 which must be reckoned for purposes of enforcing the judgment in question because it was on that date that it was ascertained that reconveyance of those lots was no longer possible.

This is as it should be in order to afford private respondent partial satisfaction of the judgment which she and her predecessors-in-interest have long sought. As found in said judgment, private respondent and her privies have been deprived of ownership and enjoyment of the subject lots since November 1975. To add insult to injury, it took them almost fourteen years to obtain a final and executory judgment against GSIS.

On the other hand, the quantity (78 lots) and area (33,319 square meters) of the lots adjudged to be reconveyed cannot be reduced. It is settled that final and executory judgment is immutable and cannot be altered except for correction of clerical errors or making of *nunc pro tunc* entries (*Mayon Estate Corporation vs. Altrua*, 440 SCRA 377).

Indeed, if we are to keep and sustain the people's faith in the judicial system, We must ensure that those who have won their cases on the merits will obtain the relief they patiently sought. Otherwise, our courts might as well be decision mills churning out judgments which are nothing more than Pyrrhic victories for the prevailing parties.

The dispositive portion of the questioned CA decision reads:

WHEREFORE, premises considered, the instant petition is PARTIALLY GRANTED. The orders dated April 27, 2004 and May 13, 2004 and writ of execution dated April 28, 2004, all issued by the Regional Trial Court of Pasig City (Branch 71) in Civil Case No. 59439 entitled "*Eduardo M. Santiago, etc., vs. Government Service Insurance System*", are AFFIRMED with MODIFICATIONS in (i) that said orders and writ shall be for the satisfaction of the decision dated December 17, 1997 rendered in said case to the extent of the sum of ₱399,828,000.99; and (ii) that said court is directed to immediately conduct a hearing for the purpose of determining the fair market value of the subject lots as of April 29, 2004 and, upon such determination, issue an order of execution and the corresponding writ for the unsatisfied portion of the decision, if any.

The motion for reconsideration of our resolution dated July 27, 2004 and motion to allow immediate partial execution filed by respondent Rosario Enriquez *Vda. de* Santiago are PARTIALLY GRANTED in that the writ of preliminary injunction heretofore issued by this Court is PARTIALLY LIFTED, such that execution of the decision in Civil Case No. 59439 for the amount of ₱399,828,000.00 may immediately proceed while the writ of preliminary injunction against the execution of the rest of the judgment award is made PERMANENT subject to the disposition in the preceding paragraph.

For lack of merit, the motion to cite GSIS and others for direct contempt is DENIED.

SO ORDERED.[66]

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[66] *Rollo,* G.R. No. 177731, pp. 81-87.

Since petitioner filed a Motion for Reconsideration of the above decision, the CA issued a Resolution in **CA-G.R. SP NO. 84079**[67] and held:

> The asserted sale, reconveyance and segregation of lots, as well as the alleged double-enumeration of two lots (Lot 7, Block 2 and Lot 7, Block 3, with areas 396 and 389 square meters, respectively) delve into the correctness of the trial court's decision. However, an issue not timely presented in the proceedings before the lower court is barred by the principle of estoppel (*Springsun Management Systems Corporation vs. Camerino*, 449 SCRA 65).
>
> It is too late for petitioner to seek modification of the trial court's decision which has already become final and executory. All that is needed to be done is to carry out the terms and conditions of said decision. This is consistent with the doctrine of finality of judgments (*Clavano, Inc. vs. Housing and Land Use Regulatory Board*, 378 SCRA 172).
>
> Consequently, no new and cogent reason as presented in the motion for reconsideration which would warrant reconsideration of Our decision.
>
> On the other hand, Sec. 37, Rule 138 of the Revised Rules of Court provides that an attorney shall have a lien "upon all judgments for the payment of money, and executions issued in pursuance of such judgments, which he has secured in a litigation of his client, from and after the time when he shall have caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgment, or issuing such execution, x x x. As the judgment involved in this case was rendered by the Regional Trial Court of Pasig City (Branch 71), it is in that court where the asserted charging lien should be recorded.
>
> WHEREFORE, for lack of merit, the motion for reconsideration and notice of charging lien and motion for recording of charging lien are DENIED.
>
> SO ORDERED.

It has not escaped our notice that petitioner deliberately filed two cases, herein consolidated, involving the same parties and

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[67] *Id.* at 89-91.

issues, in its desperate attempt to stay the execution of the judgment against it. Petitioner should be reminded that our rules on forum shopping are meant to prevent the possibility of conflicting decisions being rendered by different fora upon the same issues.[68] Petitioner is admonished from bending the rules of procedure to suit its purposes. Obedience to the rules promulgated by this Court to ensure the efficient administration of justice must be the norm, and not the exception.

Lastly, on petitioner's contention that it should not be bound by the failure of its former lawyers to timely raise the affirmative defense of reconveyance, we are not convinced. Clients are bound by the mistakes, negligence and omission of their counsel. While in exceptional circumstances, clients may be excused from the failure of counsel, the grounds raised in the present case do not persuade this Court to consider it as an exception to the rule. Indeed, as we have held in *Romago, Inc. v. Siemens Building Technologies, Inc.*:[69]

> Public interest demands an end to every litigation and a belated effort to reopen a case that has already attained finality will serve no purpose other than to delay the administration of justice. To reverse the CA Decision denying petitioner's petition for relief from judgment would put a premium on the negligence of petitioner's former counsel and encourage endless litigation. If the negligence of counsel is generally admitted as a justification for opening cases, there would never be an end to a suit so long as a new counsel can be employed who could allege and show that prior counsel had not been sufficiently diligent, experienced or learned. We, therefore, write *finis* to this litigation.[70]

WHEREFORE, in view of the foregoing, the consolidated petitions docketed as **G.R. Nos. 175393 and 177731** are hereby *DISMISSED*. The **Decision of the Court of Appeals** dated August 3, 2006 in **CA-G.R. SP No. 84079** and **Resolution**

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[68] *Collantes v. Court of Appeals*, G.R. No. 169604, March 6, 2007, 517 SCRA 561, 568.

[69] G.R. No. 181969, October 2, 2009.

[70] *Ibid.*

dated April 27, 2007 modifying the **Orders** by respondent judge dated November 20, 2006 and September 12, 2006 issued in **Civil Case No. 59439** are hereby *AFFIRMED*.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Bersamin, and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 180218. December 18, 2009]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **DEVELOPMENT RESOURCES CORPORATION, represented by Carlos Chua and THE REGISTER OF DEEDS OF DAVAO CITY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE STATE HAS THE BURDEN TO PROVE THE GROUND FOR REVERSION OF LAND TO THE PUBLIC DOMAIN.—** Since a complaint for reversion can upset the stability of registered titles through the cancellation of the original title and the others that emanate from it, the State bears a heavy burden of proving the ground for its action. Here, the Republic fails to discharge such burden. For one, it failed to present the original or a certified true copy of LC Map 47 but only its electronic reproduction, which has no probative value.

2. **ID.; ID.; DOCUMENTARY EVIDENCE; A DOCUMENT WHICH WAS NEITHER MARKED NOR CERTIFIED AS A REPRODUCTION OF THE ORIGINAL CANNOT BE CONSIDERED AS AN OFFICIAL OR ORIGINAL COPY.—**

While evidence is admissible when the original of a document is in the custody of a public officer or is recorded in a public office, as in this case, there is a need to present a certified copy of it issued by the public officer having custody of the document to prove its contents. The Republic of course claims that its version of LC Map 47 should be regarded as the original itself because it was the official copy of the region furnished by the National Mapping and Resources Inventory Authority where the original is kept. But, as admitted by Crisanto Galo, the Land Evaluation Coordinator for DENR Region XI, the copy they presented was neither marked nor certified as a reproduction of the original. Hence, it cannot be considered as an official copy, much less an original copy.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Gancayco Balasbas & Associates Law Offices for respondents.

D E C I S I O N

ABAD, *J*.:

This case is about the probative weight of a Land Classification (LC) Map which the Republic of the Philippines (Republic) presented to prove that the land was not alienable and disposable at the time it was adjudicated to the original owner.

The Facts and the Case

Eighty-seven years ago on October 14, 1922 the Court of First Instance of Davao, sitting as cadastral court, adjudicated Lot 544 of Cad-102 in Davao City, consisting of 260,818 square meters, in favor of Antonio Matute. Three years later, or on December 15, 1925 the Register of Deeds issued Original Certificate of Title (OCT) 493 to him by virtue of Decree 195328. Since then, several transfer certificates of title (TCTs) derived from OCT 493 were issued, including TCT 44671, covering **Lot 1** of Pcs-16678, with an area of 36,485 sq m and TCT 44675,

covering **Lot 5** also of Pcs-16678 with an area of 33,415 sq m, both in the name of respondent Development Resources Corporation (DRC).[1]

On April 5, 1993 petitioner Republic, acting through the Office of the Solicitor General, filed a complaint before the Regional Trial Court (RTC) of Davao City[2] for cancellation of TCT 44671 and TCT 44675 and for the reversion of Lots 1 and 5 of Pcs-16678 to the public domain. The Republic claimed that no valid title vested in 1922 on Antonio Matute, respondent DRC's predecessor, because all of Lot 544 from which the two lots came was still a public forest and inalienable on October 14, 1922.[3] The Republic asserted that only on August 6, 1923 was Lot 544 declared alienable based on LC Map 47.[4] The Republic presented a certification to this effect from the Department of Environment and Natural Resources (DENR).[5] DRC, on the other hand, contended that its two lots could no longer be reverted to the public domain because they are now private properties held by purchasers in good faith.[6]

On October 25, 2001 the RTC dismissed the complaint, holding that the Republic failed to prove that the subject lots were still part of the public domain when the same were adjudicated to Antonio Matute.[7] The RTC ruled that LC Map 47 has no probative value because: (1) the copy presented in court was a reproduction and not the original or certified copy; and (2) it does not show that the land was declared alienable and disposable only as of August 6, 1923; rather that it was certified on that date.[8]

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[1] These lots are occupied by the members of the San Juan Villagers Association who filed with the DENR a petition praying for the reversion of said parcels of land to the public domain.

[2] Branch 11.

[3] Docketed as Civil Case No. 21967-93, records, p. 1.

[4] *Rollo*, p. 53.

[5] *Id.* at 54.

[6] Answer with Counterclaim, records, 274.

[7] Penned by Judge Wenceslao E. Ibabao, *rollo*, p. 56.

[8] *Id.* at 74-77.

On appeal, the Court of Appeals affirmed the decision of the trial court,[9] holding that there is nothing in LC Map 47 which states that prior to August 6, 1923, Lot 544 was not yet alienable and disposable and not open to private ownership,[10] hence, this recourse by the Republic.

Question Presented

The only question the petition presents is whether or not respondent DRC's titles over Lots 1 and 5 of Pcs-16678 of the Davao Cadastre can be cancelled, having been supposedly issued when, based on LC Map 47, these lots were still inalienable lands of the public domain.

The Court's Ruling

Since a complaint for reversion can upset the stability of registered titles through the cancellation of the original title and the others that emanate from it, the State bears a heavy burden of proving the ground for its action.[11] Here, the Republic fails to discharge such burden. For one, it failed to present the original or a certified true copy of LC Map 47 but only its electronic reproduction,[12] which has no probative value.[13]

The Court held in *SAAD Agro-Industries, Inc. v. Republic of the Philippines*[14] that a mere photocopy of an LC Map is not a competent evidence of the existence of such map. While evidence is admissible when the original of a document is in the custody of a public officer or is recorded in a public office, as in this case, there is a need to present a certified copy of it

[9] Penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Jane Aurora C. Lantion and Elihu A. Ybañez, *id.* at 25.

[10] *Id.* at 38.

[11] *SAAD Agro-Industries, Inc. v. Republic of the Philippines*, G.R. No. 152570, September 27, 2006, 503 SCRA 522, 528-529.

[12] *Rollo*, p. 75.

[13] *Republic of the Philippines v. Regional Trial Court, Branch 18*, G.R. No. 172931, June 18, 2009.

[14] *Supra* note 11, at 531.

issued by the public officer having custody of the document to prove its contents.

The Republic of course claims that its version of LC Map 47 should be regarded as the original itself because it was the official copy of the region furnished by the National Mapping and Resources Inventory Authority where the original is kept.[15] But, as admitted by Crisanto Galo, the Land Evaluation Coordinator for DENR Region XI, the copy they presented was neither marked nor certified as a reproduction of the original.[16] Hence, it cannot be considered as an official copy, much less an original copy.

For another, the courts below correctly held that LC Map 47 does not state on its face that Lot 544 became alienable and disposable only on the date appearing on that Map, namely, on August 6, 1923, about 10 months after Lots 1 and 5 of Pcs-16678 of the Davao Cadastre were adjudicated to Antonio Matute. The DENR certification[17] has no additional value since it was just based on the same map.

In *Sta. Monica Industrial and Development Corporation v. Court of Appeals*,[18] the Republic offered in evidence LC Map 2427 to prove that at the time the land was decreed to the original owner, it had not yet been released and still fell within the forest zone. The Court did not, however, give credence to the map because it did not conclusively state the actual classification of the land at the time it was adjudicated to the original owner. It does not help the Republic's case that the subject lots were part of a cadastral survey initiated by the Government to encourage titling of the lands in Davao by those in legitimate possession.

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[15] *Rollo*, p. 118.

[16] TSN, October 14, 1998, pp. 412-413.

[17] "This is to certify that a tract of land containing an area of about 26,0818 [sic] sq. meters, more or less, located at Lanang, Davao City as surveyed for Mr. Federico Malubay, the back thereof is verified and found to be within Project No.1, Alienable or Disposable, certified on August 6, 1923 per LC Map No. 47." (*Rollo*, p. 54)

[18] G.R. No. 83290, September 21, 1990, 189 SCRA 792, 800.

The courts below, therefore, correctly dismissed the subject reversion suit for failure of the Republic to discharge its evidential burden.

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

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Brion, and *Del Castillo, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-05-1953. December 21, 2009]

MAYOR HADJI AMER R. SAMPIANO, SOMER ABDULLAH, SALIC TAMPUGAO, ANTHONY ABI, SAGA POLE INOG, TORORAC DOMATO, KING MARONSING, MARGARITA SOLAIMAN, HADJI ACMAD MAMENTING and BILLIE JAI LAINE T. OGKA, *complainants, vs.* **JUDGE CADER P. INDAR, Acting Presiding Judge, Regional Trial Court, Branch 12, Malabang, Lanao del Sur,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; DETERMINED BY THE MATERIAL ALLEGATIONS OF THE COMPLAINT AND THE LAW; APPLICATION.— It is settled that jurisdiction over the subject matter on the existence of the action is determined by the material allegations of the complaint and the law, irrespective of whether or not the plaintiff is entitled to recover all or some of the claims or relief sought therein. Such jurisdiction cannot be made to depend upon the defenses set up in the court or upon a motion to dismiss for, otherwise, the question of jurisdiction would depend almost

entirely on the defendant. Once jurisdiction is vested, the same is retained up to the end of the litigation. In this case, the petition prayed, among others, that Go should cease and desist from ordering PNB-Marawi through its branch manager to release the IRA for the month of October 2004 and the succeeding months to Sampiano and Macabato or their agents. The issue here involves the determination of whether Ogka is entitled to the issuance of a TRO or an injunction and not the application or enforcement of election law. Undeniably, the RTC has jurisdiction over such action pursuant to Section 21 of BP 129.

2. **ID.; ID.; ID.; THE PROPER COURT HAS JURISDICTION TO DEFER OR SUSPEND THE RELEASE OF THE INTERNAL REVENUE ALLOTMENT UNDER SECTION 286 OF THE LOCAL GOVERNMENT CODE WHEN THERE IS A LEGAL QUESTION PRESENTED BEFORE IT.—** We agree with respondent Judge that the automatic release of the IRA under Section 286 is a mandate to the national government through the Department of Budget and Management to effect automatic release of the said funds from the treasury directly to the local government unit, free from any holdbacks or liens imposed by the national government. However, this automatic release of the IRA from the national treasury does not prevent the proper court from deferring or suspending the release thereof to particular local officials when there is a legal question presented in the court pertaining to the rights of the parties to receive the IRA or to the propriety of the issuance of a TRO or a preliminary injunction while such rights are still being determined.

3. **ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; AUTHORITY OF THE COURTS TO ISSUE TEMPORARY RESTRAINING ORDER (TRO), EXPLAINED.—** Section 5, Rule 58 of the Rules of Court x x x expressly prohibit[s] the grant of preliminary injunction without hearing and prior notice to the party or person sought to be enjoined. However, courts are authorized to issue *ex parte* a TRO effective only for seventy-two (72) hours if it should appear from the facts shown by affidavits or by the verified petition that great or irreparable injury would result to the applicant before the matter could be heard on notice. Within the aforesaid period of time, the Court should conduct a summary hearing to determine if a TRO shall be issued. The

TRO, however, shall be effective only for a period of twenty (20) days from notice to the party or person sought to be enjoined. During the 20-day period, the judge must conduct a hearing to consider the propriety of issuing a preliminary injunction. At the end of such period, the TRO automatically terminates without need of any judicial declaration to that effect, leaving the court no discretion to extend the same.

4. LEGAL ETHICS; JUDGES; ABSENCE OF ILL MOTIVE ON ISSUING AN ORDER VIOLATING THE RULES OF COURT.— Sampiano adduced no evidence to prove that the issuance of the October 11, 2004 Order was motivated by bad faith. Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of a sworn duty through some motive or intent or ill-will; it partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage. In issuing the assailed Order, respondent Judge was not at all motivated by bad faith, dishonesty, hatred and some other motive; rather, he took into account the circumstances obtaining between the parties x x x Since there is no showing that respondent Judge was motivated by bad faith or ill motives in rendering the assailed Order, and this is his first offense, we sustain the penalty recommended by the OCA to be imposed on respondent Judge for violating Section 5, Rule 58 of the Rules of Court.

D E C I S I O N

LEONARDO-DE CASTRO, *J*.:

This administrative case against respondent Judge Cader P. Indar of the Regional Trial Court (RTC), Branch 12, Malabang, Lanao del Sur stemmed from a complaint[1] filed by Hadji Amer R. Sampiano (Sampiano), incumbent Mayor, and the members of the *Sangguniang Bayan* of the Municipality of Balabagan,

[1] *Rollo*, pp. 2-10.

Lanao del Sur, charging said judge with gross and wanton ignorance of the law, grave abuse of authority, manifest partiality and serious acts of impropriety in connection with the issuance of an Order[2] dated October 11, 2004 in Special Civil Action (SCA) No. 12-173,[3] entitled *Sumulong Sampiano Ogka (Ogka) v. Philippine National Bank(PNB)-Marawi Branch, represented by its Branch Manager Sandorie T. Disomangcop (Disomangcop), Atty. Alvin C. Go (Go), Hadji Amer Sampiano and Mamarinta Macabato (Macabato),* for Prohibition and Injunction with Temporary Restraining Order (TRO) and Preliminary Injunction.

The antecedent facts are as follows:

Prior to the filing of the present administrative case, complainant Sampiano filed before the Commission on Elections (Comelec) a Petition for Annulment of Proclamation with Prayer for Preliminary Injunction/TRO[4] against his rival mayoralty candidate, his uncle Ogka, and the Municipal Board of Canvassers of Balabagan, Lanao del Sur composed of Vadria Pungginagina and Zenaida Mante. The case was docketed as SPC No. 04-285. It appears that the Comelec issued the following: Order dated August 4, 2004[5] (authorizing the vice-mayor to temporarily assume the duties and responsibilities as mayor due to the double proclamation of Sampiano and Ogka for the position of mayor), Order dated

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[2] Annex "B" of the Complaint; *id.* at 48.

[3] Annex "A" of the Complaint; *id.* at 11-19.

[4] Annex "C-32" of the Complaint; *id.* at 81-94.

[5] Annex "A-14" of the Complaint; *id.* at 24-25.

ORDER

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In the meantime, considering that this is a case of double proclamation, petitioner [Sampiano] having been issued a Certificate of Canvass and Proclamation dated May 24, 2004 and respondent's [Ogka's] claim being based on the Certificate of Canvass and Proclamation dated June 6, 2004, both parties are ordered to cease and desist from performing the function of Mayor of Balabagan, Lanao del Sur. While the case is pending, the duly elected vice-mayor is directed to temporarily assume the post of Mayor of said municipality pursuant to the rule on succession as provided for under the Local Government Code to avoid a vacuum of leadership in the municipality.

August 12, 2004[6] (recalling the Order authorizing the assumption of the vice-mayor as the mayor, and instead maintaining the status *quo* prevailing at the time of the issuance of the said Order), and Order dated September 9, 2004[7] (clarifying the Order of August 12, 2004). Pursuant to the said Orders, Sampiano was ordered to act, perform and discharge the duties, functions and responsibilities as mayor "*to prevent paralysis to public service*" pending determination and final resolution of the controversy involving the mayorship of the Municipality of Balabagan.

Aggrieved, Ogka filed, on September 13, 2004, an Urgent Motion for Reconsideration of the September 9, 2004 Order.[8] He also informed in writing,[9] the Chief Legal Counsel of PNB,

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[6] Annex "A-16" of the Complaint; *id.* at 26-29.

ORDER

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hereby **orders** as follows:

1) to **set aside** the second paragraph of its Order dated 04 August 2004, which reads:

"In the meantime, considering that this is a case . . . .

2) to **maintain the status quo** prevailing at the time of the issuance of the foregoing Order.

[7] Annex "A-20" of the Complaint; *id.* at 30-32.

ORDER

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the Commission (First Division) **CLARIFIES** that:

1. The "Status Quo" to be maintained and referred to in the August 12, 2004 Order means that the petitioner [Sampiano] shall hold office and exercise the powers and duties of Mayor.

and hereby **ORDERS** that:

1. Petitioner **Hadji Amer R. Sampiano** shall **PERFORM** the functions, duties and responsibilities of **MUNICIPAL MAYOR** of the Municipality of Balabagan, Lanao del Sur.
2. The foregoing Order shall **TAKE EFFECT IMMEDIATELY** to prevent paralysis to public service in the aforementioned municipality.

[8] Annex "A-23" of the Complaint; *id.* at 33-46.

[9] Annex "A-37" of the Complaint; *id.* at 47.

Atty. Alvin C. Go, and asked him not to release the IRA (Internal Revenue Allotment which is the share of the local government unit in national internal revenue taxes) for the Municipality of Balabagan, Lanao del Sur until the controversy involving the mayorship of the said municipality now pending with the Comelec shall have been finally resolved. He cited Section 2, Rule 19 of the Comelec Rules of Procedure which provides that a motion for reconsideration, if not *pro-forma*, suspends the execution or implementation of the decision, resolution, order or ruling. However, on the basis of the Comelec Order dated September 9, 2004, Go directed PNB-Marawi to release the July, August, and September 2004 IRA for the Municipality of Balabagan, Lanao del Sur to Sampiano and Macabato (the Municipal Treasurer). In turn, PNB-Marawi acting through its manager, Disomangcop, released on September 14, 2004 the pending IRA for the months of July to September 2004. To temporarily suspend the release by the PNB-Marawi of the October 2004 IRA while his Urgent Motion for Reconsideration of the September 9, 2004 Order of the Comelec is pending resolution, Ogka filed on October 11, 2004, a special civil action for Prohibition and Injunction with TRO and Preliminary Injunction,[10] docketed as SCA No. 12-173, with the RTC, Branch 12, Malabang, Lanao del Sur presided over by herein respondent Judge. The petition contained the following prayer:

WHEREFORE, all the foregoing premises considered, petitioner thru counsel, most respectfully prays this Honorable Court that:

(1) Considering the urgency of the subject matter of the petition, a temporary restraining order (TRO) be immediately issued upon the filing of this petition ORDERING

(a) respondent Atty. Alvin C. Go to cease and desist from issuing an order ordering the respondent PNB-Marawi Branch manager Sandorie T. Disomangcop to release the October 2004 IRA and the months thereafter to respondents Hadji Amer Sampiano and Mamarinta Macabato or their agents or persons acting for and in their behalves,

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[10] *Supra* note 3.

(b) respondent PNB-Marawi thru Sandorie T. Disomangcop to cease and desist from accepting and honoring any withdrawal check(s) for the October 2004 IRA of Balabagan signed by respondents Hadji Amer Sampiano and Mamarinta Macabato and or releasing the October 2004 IRA for Balabagan, Lanao del Sur to respondents Mamarinta Macabato and Hadji Amer Sampiano or their agents or persons acting for and in their behalves, and

c) respondents Hadji Amer Sampiano and Mamarinta Macabato including their agents or persons acting for and in their behalves to cease and desist from withdrawing/releasing the October 2004 IRA for Balabagan, Lanao del Sur from the respondent PNB-Marawi; and

(2) After, notice and hearing, a writ of preliminary injunction (WPI) be issued against the respondents including the persons acting for and in their behalves under the same terms and conditions as the TRO for a period lasting until the petition in SPC No. 04-285 pending before the Comelec shall have been finally decided.[11]

On the same day, respondent Judge issued an Order setting the hearing of the petition on October 14, 2004. He likewise directed, pending resolution of the said petition, the PNB-Marawi (represented by Disomangcop and Go) to hold or defer the release of the IRA for the Municipality of Balabagan unless ordered otherwise by the court, thus:

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In the meantime, considering that the urgency of the Petitioner (sic) and while the petition is pending resolution of the Court, the Philippine National Bank represented by its Branch Manager Sandorie T. Disomangcop and Atty. Alvic C. Go, are hereby ordered to hold or defer the release of the Internal Revenue Allotment (IRA) intended for the Municipal Government of Balabagan unless ordered otherwise by this Court.[12]

Sampiano also alleged that during the October 14, 2004 hearing, his counsel clarified with respondent Judge if the

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[11] *Id.* at 18.

[12] *Supra* note 2.

October 11, 2004 Order was in the nature of a TRO. Respondent Judge replied that it was not. His counsel then vigorously prodded respondent Judge to immediately lift the said Order so as not to deprive the officials and employees of the Municipality of Balabagan from receiving their hard earned salaries, but respondent Judge did not heed the said request.[13] As manifested during the said hearing, Sampiano and Macabato through counsel filed their Motion to Dismiss the petition (SCA No. 12-173) on October 19, 2004. In the said motion, they prayed not only for the dismissal of the said petition for lack of jurisdiction over the subject matter and for failure to state a cause of action, but also for the lifting of the October 11, 2004 Order.[14]

Sampiano considered the October 11, 2004 Order as a "SUPER ORDER" because it was not only issued *ex-parte* but also it directed the PNB-Marawi to hold or defer the release of the IRA "until ordered otherwise by [the] court." He likened the said Order to a TRO and a writ of preliminary injunction, and insisted that in both instances, prior notice and hearing are required. He added that a TRO has a limited life of twenty (20) days while a writ of preliminary injunction is effective only during the pendency of the case and only after posting the required injunction bond. Sampiano further claimed that the said Order was issued in violation of Section 286 of the Local Government Code (LGC), which provides for the automatic release of the share of the local government unit from the national government.[15] Sampiano prayed that respondent Judge be dismissed from judicial service for gross ignorance of the law, grave abuse of authority, manifest partiality and serious acts of impropriety for the following reasons:

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[13] *Rollo*, pp. 4 and 8.

[14] Annex "C" of the Complaint; *id.* at 49-64.

[15] Sec. 286. **Automatic Release of Shares**. – (a) The share of each local government unit shall be released, without need of any further action, directly to the provincial, city, municipal or *barangay* treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the National Government for whatever purpose.

1. Assumption of jurisdiction over SCA 12-173 the subject matter of which concerns the enforcement of election laws by the Comelec; and
2. *Ex-parte* issuance of the October 11, 2004 order freezing the IRA of the Municipality of Balabagan "unless ordered otherwise by the Court."

By 1st Indorsement of November 8, 2004, then Court Administrator Presbitero J. Velasco, Jr. (now Supreme Court Associate Justice) required respondent Judge to file his comment and to show cause why no disciplinary action should be taken against him for violation of his professional responsibility as a lawyer.[16]

In his Comment[17] dated December 24, 2004, respondent Judge denied the charges against him and prayed for the dismissal of the complaint. His explanation as summarized by the OCA is as follows:

> xxx He believed that he could not be administratively sanctioned as he did not commit any administrative lapses. His court assumed jurisdiction over [SCA] No. 12-173 as it is a petition for prohibition and injunction and not an enforcement of election laws. While he considered the said petition as an improper remedy, hence, the court should not have taken cognizance of the case, he had nevertheless acted on it since the petition prays for the issuance of temporary restraining order and preliminary injunction, both an auxiliary remedy which concerns the *"enforcement of legal right or a matter that partakes of a question of law"* and not the enforcement of election laws.
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> Considering the urgency of the petition and before granting the prayer for the issuance of the TRO, he immediately issued an order on October 11, 2004, which defer or hold the release of the Internal Revenue Allotment (IRA) pending resolution of the petition by the court and thereafter set the hearing of the petition on October 14, 2004. Respondent emphasized that the October 11, 2004 order DID NOT FREEZE the IRA but merely HELD or DEFERRED its release to any person including petitioner Sumulong Sampiano Ogka (who

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[16] *Rollo*, p. 99.

[17] *Id.* at 101-110.

is the complainant's uncle), a party to the election case who also holds [a] "COMELEC proclamation" as duly elected mayor of Balabagan. Said proclamation was neither annulled nor invalidated by the COMELEC pending resolution of the petitioner Ogka's Motion for Reconsideration of the above-mentioned three (3) orders. Since petitioner Ogka was left with no alternative to protect his interest in the IRA and to prevent irreparable injury, he filed the instant petition with the prayer for the issuance of TRO and preliminary injunction.

The main issue in petitioner Ogka's petition is the determination of whether petitioner is entitled to the issuance of TRO and later, a permanent injunction to hold the release of the IRA to Hadji R. Sampiano or to any person acting in his behalf considering that petitioner is also a holder of [a] "COMELEC" proclamation.

There is no question that the COMELEC is vested under the Constitution with the enforcement of election laws. However, he [respondent] did not arrogate upon himself such power as he neither contracted nor annulled any order of the COMELEC. Under Section 21 of B.P. 129, the RTC has exclusive original jurisdiction in the issuance of writ of prohibition and injunction. Hence, he simply applied Rule 58 of the Rules of Court, which is the prevailing rule applicable in determining the merits of the subject petition. He did not require petitioner to post a bond because the 11 October 2004 Order is a mere "**initiatory**" action necessary to determine whether it warrants the issuance of the TRO and preliminary injunction. It is only after such determination that the posting of bond is required. His careful actions are supposed to be considered as an exercise of judicial function and judicial prerogatives.

Moreover, he was also cautious in his actions to avert the already growing tension between the warring families newly aroused by the result of the May 10, 2004 election. Hence, he has to relax the application of the rules and harmonize it with the temperament of the protagonists who are Maranaos belonging to the same family clan.

Concerning the alleged violation of the pertinent provision of the Local Government Code, respondent believes that the provision on the automatic release of IRA is not a shield or immunity to the authority of the courts to interfere, interrupt or suspend its release when there is a legal question presented before it in order to determine the rights of the parties concerned.

Lastly, respondent was not able to continue handling the subject case, particularly the complainant's motion to dismiss save the

issuance of an order requiring petitioner Ogka to file his comment to the said motion considering that he was already relieved of his duties and responsibilities as presiding judge of RTC, Branch 12, Malabang pursuant to Administrative Order No. 154-2004 designating and assigning him on permanent detail in all the branches of the RTC, Cotabato City. Hence, it was already the new acting judge in the person of Hon. Rasad G. Balindong who proceeded with the hearing of the subject petition. Upon verification, he learned that Judge Balindong had already issued an order dated 25 November 2004 dismissing the subject petition.

Considering all of the foregoing, respondent prays for the immediate dismissal of the instant complaint for being preposterous so that he can concentrate on his judicial tasks more important than the instant harassment suit.[18]

The OCA filed with the Court an Administrative Matter for Agenda with the following recommendation.

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court our recommendation that respondent judge be found guilty of ignorance of the law for violating Section 5 of Rule 58, Revised Rules on Civil Procedure and that he be imposed a penalty of FINE in the sum of Ten Thousand (₱10,000.00) pesos.[19]

In a Resolution dated September 7, 2005, the Court resolved to re-docket the case as a regular administrative matter and on December 11, 2006, we required the parties to manifest, within ten (10) days from notice, whether they were submitting this case for resolution on the basis of the pleadings already filed. Both parties failed to comply; hence, we considered the case submitted for resolution.

We agree with the findings of the OCA that the October 11, 2004 Order is essentially a preliminary injunction order, and that the respondent Judge failed to comply with the provisions of Section 5, Rule 58 of the Rules of Court.

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[18] *Id.* at 138-139.

[19] *Id.* at 140-141.

We shall first tackle the question of whether the RTC had acquired jurisdiction over the petition. It is settled that jurisdiction over the subject matter on the existence of the action is determined by the material allegations of the complaint and the law, irrespective of whether or not the plaintiff is entitled to recover all or some of the claims or relief sought therein. Such jurisdiction cannot be made to depend upon the defenses set up in the court or upon a motion to dismiss for, otherwise, the question of jurisdiction would depend almost entirely on the defendant. Once jurisdiction is vested, the same is retained up to the end of the litigation.[20] In this case, the petition prayed, among others, that Go should cease and desist from ordering PNB-Marawi through its branch manager to release the IRA for the month of October 2004 and the succeeding months to Sampiano and Macabato or their agents. The issue here involves the determination of whether Ogka is entitled to the issuance of a TRO or an injunction and not the application or enforcement of election law. Undeniably, the RTC has jurisdiction over such action pursuant to Section 21 of BP 129, which provides:

> SEC 21. *Original jurisdiction in other cases.* - Regional Trial Courts shall exercise original jurisdiction:
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> > (1) in the issuance of writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and *injunction* which may be enforced in any part of their respective regions; xxx (italics ours)

Sampiano's claim that the October 11, 2004 Order was in contravention of Section 286 of the LGC on the automatic release of the share of the local government unit is untenable. We agree with respondent Judge that the automatic release of the IRA under Section 286 is a mandate to the national government through the Department of Budget and Management to effect automatic release of the said funds from the treasury directly to the local government unit, free from any holdbacks or liens imposed by the national government. However, this automatic release of the IRA from the national treasury does not prevent

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[20] *Dandoy v. Maglangit*, G.R. No. 144652, December 16, 2005, 478 SCRA 195, 200.

the proper court from deferring or suspending the release thereof to particular local officials when there is a legal question presented in the court pertaining to the rights of the parties to receive the IRA or to the propriety of the issuance of a TRO or a preliminary injunction while such rights are still being determined.

A cursory reading of the said Order reveals that it was in effect a TRO or preliminary injunction order. The Order directed PNB's Go and Disomangcop to hold or defer the release of the IRA to Sampiano and Macabato while the petition is pending resolution of the trial court and unless ordered otherwise by the court. This Order was merely consistent with the relief prayed for in respondent's petition for prohibition and injunction.

Section 5, Rule 58 of the Rules of Court provides:

SEC. 5. *Preliminary injunction not granted without notice; exception*. – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from the facts shown by the affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order (as amended by *En Banc* Resolution of the Supreme Court, Bar Matter No. 803, dated February 17, 1998).

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case

is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of the effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two (72) hours provided therein.

The above-quoted provisions expressly prohibit the grant of preliminary injunction without hearing and prior notice to the party or person sought to be enjoined. However, courts are authorized to issue *ex parte* a TRO effective only for seventy-two (72) hours if it should appear from the facts shown by affidavits or by the verified petition that great or irreparable injury would result to the applicant before the matter could be heard on notice. Within the aforesaid period of time, the Court should conduct a summary hearing to determine if a TRO shall be issued. The TRO, however, shall be effective only for a period of twenty (20) days from notice to the party or person sought to be enjoined. During the 20-day period, the judge must conduct a hearing to consider the propriety of issuing a preliminary injunction. At the end of such period, the TRO automatically terminates without need of any judicial declaration to that effect, leaving the court no discretion to extend the same.[21]

Here, respondent Judge issued the October 11, 2004 Order on the very same day it was filed, and without any hearing and prior notice to herein complainants. As discussed above, respondent was allowed by the Rules to issue *ex parte* a TRO of limited effectivity and, in that time, conduct a hearing to determine the propriety of extending the TRO or issuing a writ of preliminary injunction.

Respondent conducted the hearing of the petition on October 14, 2004 or on the third day of the issuance of a TRO *ex parte*. Atty. Romaraban Macabantog (Macabantog) and Atty. Tingcap Mortaba (Mortaba) — counsels for Ogka and Sampiano, respectively — argued in their clients' behalf. Sampiano and

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[21] *Columbres v. Madronio*, A.M. No. MTJ-02-1461, March 31, 2005, 454 SCRA 185, 192.

Macabato were also present. During the said hearing, Atty. Mortaba manifested that his clients would either file an answer or a motion to dismiss the petition (in SCA No. 12-173), while Atty. Macabantog opted to file a rejoinder after the latter has submitted their answer or motion to dismiss.[22] On October 19, 2004, Sampiano and Macabato filed a Motion to Dismiss the petition, wherein, they prayed, among others, for the recall or lifting of the October 11, 2004 Order. Respondent Judge pointed out that he was able to make an initial action on the Motion to Dismiss the petition by requiring Ogka to comment[23] on the said motion before turning the case to the incoming Acting Presiding Judge, Judge Rosad B. Balindong, on October 22, 2004.[24] The October 11, 2004 Order was lifted in an Order dated October 27, 2004 issued by the latter.[25] Hence, the TRO issued *ex parte* was effective for eleven (11) days from October 11, 2004 until October 22, 2004 in violation of the Rules. Only a TRO issued after a summary hearing can last for a period of twenty days.

It is worthy to note that the said October 11, 2004 Order was subsequently lifted by the succeeding judge on the ground that the requisites for issuance of a writ of preliminary injunction were not present.

However, Sampiano adduced no evidence to prove that the issuance of the October 11, 2004 Order was motivated by bad faith. Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of a sworn duty through some motive or intent or ill-will; it partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do

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[22] *Rollo*, p. 123.

[23] *Id.* at 130.

[24] *Id.* at 127.

[25] *Id.* at 131-132.

wrong or cause damage.[26] In issuing the assailed Order, respondent Judge was not at all motivated by bad faith, dishonesty, hatred and some other motive; rather, he took into account the circumstances obtaining between the parties as can be gleaned from his Comment, and we quote:

> This should be considered an exercise of judicial functions and judicial prerogatives in the most cautious manner taking into account the factual and serious circumstances obtaining between petitioner Ogka and his Uncle Mayor Sampiano whose family were already at war with each other.
>
> Further, respondent judge was cautious in his court actions in this petition in order to avert the already growing tension between the warring families aroused anew by the result of the May 10, 2004 elections. xxx[27]

Since there is no showing that respondent Judge was motivated by bad faith or ill motives in rendering the assailed Order, and this is his first offense, we sustain the penalty recommended by the OCA to be imposed on respondent Judge for violating Section 5, Rule 58 of the Rules of Court.

WHEREFORE, the penalty of a fine of Ten Thousand Pesos (₱10,000.00) is hereby imposed on respondent Judge for the above-mentioned violation of the Rules of Court.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[26] *Planas v. Reyes*, A.M. No. RTJ-05-1905, February 23, 2005, 452 SCRA 146, 160.

[27] *Rollo*, p. 107.

THIRD DIVISION

[G.R. No. 163872. December 21, 2009]

RTG CONSTRUCTION, INC. and/or ROLITO GO/ RUSSET CONSTRUCTION AND DEVELOPMENT CORPORATION, *petitioners, vs.* **ROBERTO FACTO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; NON-COMPLIANCE WITH THE NOTICE AND HEARING REQUIREMENTS.— Procedural due process in the dismissal of employees requires notice and hearing. The employer must furnish the employee two written notices before termination may be effected. The first notice apprises the employee of the particular acts or omissions for which his dismissal is sought, while the second notice informs the employee of the employer's decision to dismiss him. The requirement of a hearing, on the other hand, is complied with as long as there is an opportunity to be heard; an actual hearing need not necessarily be conducted. In the present case, while petitioners complied with the second notice, apprising Facto of petitioner's decision to terminate him from his employment, the records are bereft of any evidence to prove that there was compliance with the first notice as well as with the requirement of a hearing. Undoubtedly, the various memoranda issued to Facto between April 1997 and May 1998 did not satisfy the requirement of first notice, as these referred to different offenses and only served to inform him of his suspension. Neither did the Memorandum dated June 7, 2000 serve as the first notice contemplated under the law. The acts being referred to therein were committed on June 3, 2000, on the bases of which Facto was suspended. On the other hand, the Memorandum dated August 10, 2000, informing Facto of his dismissal, referred to a different act or violation that was allegedly committed only a day earlier or on August 9, 2000. Thus, Facto was never given the first notice, required by law, of the particular act or omission upon which his dismissal was based.

2. **ID.; ID.; ID.; BENEFITS GRANTED TO A DISMISSED EMPLOYEE BASED ON A JUST CAUSE.—** The Court notes that although it has already been settled with finality that Facto's dismissal was based on a just cause, this has no bearing on the issue of awarding him service incentive leave pay and 13th month pay. Prior to his dismissal, Facto performed work as a regular employee of petitioners, and he is entitled to the benefits provided under the law. Thus, in *Agabon*, even while the Court found that the dismissal was for a just cause, the employee was still awarded his monetary claims. With respect to the award of service incentive leave pay, the first paragraph of Article 95 of the Labor Code provides that every employee who has rendered at least one year of service shall be entitled to a yearly incentive leave of five days with pay. In the present case, since Facto had been in the employ of petitioners for more than eight (8) years at the time that he was dismissed, he is undoubtedly entitled to service incentive leave benefits. As regards the 13th month pay, an employee who has resigned, or whose services were terminated at any time before the payment of the 13th month pay, is entitled to this monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his resignation or termination from the service.

3. **ID.; ID.; ID.; AWARD OF ATTORNEY'S FEES TO A DISMISSED EMPLOYEE, UPHELD.—** [W]e find no error committed by the CA in affirming the award of attorney's fees. Settled is the rule that in actions for recovery of wages, or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interests, a monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code; Section 8, Rule VIII, Book III of its Implementing Rules; and paragraph 7, Article 2208 of the Civil Code. The award of attorney's fees is proper, and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.

4. **ID.; ID.; ID.; THE BURDEN RESTS ON THE EMPLOYER TO PROVE PAYMENT OF EMPLOYEE'S BENEFITS; APPLICATION.—** Where the employee alleges nonpayment, the general rule is that the burden rests on the employer to prove payment, rather than on the employee to prove nonpayment. The

reason for the rule is that the pertinent personnel files, payrolls, records, remittances and similar documents — which will show that the 13th month pay, service incentive leave and other claims of workers, have been paid — are not in the possession of the employee, but in the custody and absolute control of the employer. Since, in the instant case, petitioners have not shown any proof of payment of the correct amount of 13th month pay and service incentive leave pay, the Court affirms the rulings of the Labor Arbiter, the NLRC and the CA, awarding Facto's monetary claims.

APPEARANCES OF COUNSEL

George L. Howard for petitioners.
Julio F. Andres, Jr. for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] and Resolution[2] of the Court of Appeals (CA) dated August 21, 2003 and June 3, 2004, respectively, in CA-G.R. SP No. 73789.

The factual and procedural antecedents of the case are as follows:

Petitioner RTG Construction, Inc. is a domestic corporation engaged in the construction business. Petitioner Rolito Go is its principal stockholder.

In March 1982, private respondent Roberto Facto was employed by RTG Construction as helper mechanic. In 1985, he was promoted to the position of junior mechanic. In the course of Facto's employment, RTG Construction changed its corporate name to Russet Construction and Development Corporation.

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[1] Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Renato C. Dacudao and Mario L. Guarina III, concurring; *rollo*, pp. 23-32.

[2] *Id.* at 43.

During Facto's employment, more particularly between April 1997 and May 1998, he was suspended on four occasions because of various infractions ranging from absenteeism to creating disturbance in the workplace. Separate memoranda were issued on different dates apprising him of such suspensions.[3]

On June 7, 2000, Facto was again suspended on the ground that he went to work under the influence of alcohol. Pertinent portions of the Memorandum which was issued to Facto on the same date by reason of such offense read as follows:

> Last Saturday June 03, 2000 – you reported to work obviously under the influence of intoxicating liquor. As per report of your immediate supervisor, you have some arguments and confrontation with regards to the assigned works to you. To avoid prolonged arguments, you were advised by your supervisor to go back home and return to work when you are on your normal condition, but you refused to do so. Your supervisor instructed our company guard to escort you out of the company premises. Under Article No. 6 of our company's rules and regulations "Any employee under the influence of liquor will not be permitted to work. The mere fact that you have violated the above-mentioned rules and regulations, you are hereby suspended for fourteen (14) working days without pay and will take effect tomorrow June 08 to June 24, 2000.
>
> Repetition of same offense may cause your dismissal from the service.
>
> Strict compliance is hereby enjoined.
>
> (Sgd.)
> **ELSA A. GO**
> Officer-in-Charge[4]

On August 10, 2000, Facto again received a Memorandum of even date, this time informing him that he was terminated from his employment effective that same day. The Memorandum reads, thus:

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[3] See Annexes "C", "D", "E" and "G" to Respondent's Position Paper; records, pp. 22-24, 26.

[4] Records, p. 28.

MEMORANDUM

DATE	:	August 10, 2000
TO	:	**Mr. ROBERTO FACTO** Jr. Mechanic
FROM	:	THE MANAGEMENT
SUBJECT	:	"TERMINATION"

This is in view of the memorandum issued to you last June 07, 2000, wherein you were given a final warning stating that repetition of same offense committed by you will cause your dismissal from service.

It seems that you had intentionally ignored said final warning and had committed the same offense again yesterday August 09, 2000. Therefore, the management has decided to terminate your services effective today, August 10, 2000.

(Sgd.)
ELSA A. GO
Officer-in-Charge[5]

On August 24, 2000, Facto files a Complaint[6] for illegal dismissal against RTG Construction and Go. The Complaint was later amended to implead Russet Construction.

Facto alleged in his Position Paper[7] that his termination was illegal, as the same was not based on just or authorized cause. He also alleged that he was denied his right to due process because he was not given the chance to explain his side.

Herein petitioners filed their Position Paper[8] contending that Facto's dismissal was not illegal. Petitioners claimed that since 1994, Facto had continuously committed violations of company

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[5] *Id.* at 30.

[6] *Id.* at 2.

[7] *Id.* at 8.

[8] *Id.* at 17.

rules, and that his termination from employment was due to this series of infractions.

Facto filed his Reply[9] asserting, among others, that the allegations of petitioners were all fabrications concocted by his supervisor who was mad at him.

The case was then submitted for decision.

On May 31, 2001, the Labor Arbiter handling the case rendered a Decision in favor of Facto, the dispositive portion of which reads as follows:

> WHEREFORE, consistent with the foregoing tenor, judgment is hereby rendered finding the dismissal of complainant from employment illegal. Respondents RTG Construction, Inc., Russet Construction and Development Corporation and/or Rolito Go are ordered to pay complainant jointly and severally the amount of ₱128,227.69 representing his backwages and separation pay in lieu of reinstatement.
>
> Respondents are further ordered to pay the sum of ₱7,682.50 as and by way of complainant's service incentive leave pay and proportionate 13th month pay for the year 2000, and an equivalent amount of ₱13,591.01 as complainant's ten percent (10%) attorney's fees based on the total judgment award of ₱135,910.19.
>
> SO ORDERED.[10]

Aggrieved, petitioners filed an appeal with the National Labor Relations Commission (NLRC).

On February 21, 2002, the NLRC promulgated a Resolution[11] dismissing petitioners' appeal and affirming the Labor Arbiter's Decision *in toto*.

Petitioners filed a Motion for Reconsideration, but the NLRC denied it in an Order[12] dated July 30, 2002.

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

[10] *Id.* at 103-104.

[11] *Id.* at 325-327.

[12] *Id.* at 352-353.

Petitioners then filed a special civil action for *certiorari* with the CA assailing the February 21, 2002 Resolution and July 30, 2002 Order of the NLRC.[13]

On August 21, 2003, the CA rendered judgment, disposing as follows:

> WHEREFORE, premises considered, the decision of the Labor Arbiter dated 31 May 2001 is MODIFIED in that: (1) the dismissal of private respondent is LEGAL; (2) backwages, 13th month pay and service incentive leave pay are hereby awarded; plus (3) five (5%) percent of the total amount awarded herein, as and for attorney's fees.
>
> For computing the amounts due, this case is REMANDED to the Labor Arbiter, who is directed to act with dispatch.
>
> SO ORDERED.[14]

Unsatisfied with the CA Decision, petitioners filed a Motion for Reconsideration, but the CA denied it in its Resolution[15] dated June 3, 2004.

Hence, the instant petition raising the following assignment of errors:

1. THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE NLRC DID NOT ABUSE ITS DISCRETION AND THAT PETITIONERS FAILED TO ADDUCE CONVINCING EVIDENCE IN SUPPORT THEREOF;
2. THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE FACTS AND FINDINGS OF THE NLRC ARE ALL IN ACCORDANCE WITH THE EVIDENCE; and
3. THE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN AFFIRMING *IN TOTO* THE APPEALED DECISION OF THE NLRC DESPITE THE PRESENCE OF PALPABLE AND PATENT ERRORS THEREIN.[16]

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[13] CA *rollo*, pp. 2-14.

[14] *Id.* at 136.

[15] *Id.* at 155.

[16] *Rollo,* p. 13.

Petitioners submit that the errors raised are interrelated; thus, these are jointly discussed.

Petitioners' main contention is that the CA erred in finding that they were guilty of violating respondent's right to due process. They argue that the series of memoranda issued to Facto clearly satisfies the requirements of fairness and due process.

The Court is not persuaded.

Procedural due process in the dismissal of employees requires notice and hearing.[17] The employer must furnish the employee two written notices before termination may be effected.[18] The first notice apprises the employee of the particular acts or omissions for which his dismissal is sought, while the second notice informs the employee of the employer's decision to dismiss him.[19] The requirement of a hearing, on the other hand, is complied with as long as there is an opportunity to be heard; an actual hearing need not necessarily be conducted.[20]

In the present case, while petitioners complied with the second notice, apprising Facto of petitioner's decision to terminate him from his employment, the records are bereft of any evidence to prove that there was compliance with the first notice as well as with the requirement of a hearing.

Undoubtedly, the various memoranda issued to Facto between April 1997 and May 1998 did not satisfy the requirement of first notice, as these referred to different offenses and only served to inform him of his suspension. Neither did the Memorandum dated June 7, 2000 serve as the first notice contemplated under the law. The acts being referred to therein were committed on June 3, 2000, on the bases of which Facto

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[17] *Herminigildo Inguillo v. First Philippine Scales, Inc., et al.,* G.R. No. 165407, June 5, 2009, citing *Landtex Industries v. Court of Appeals*, 529 SCRA 631, 652 (2007).

[18] *Id.*

[19] *Id.*

[20] *Id.*

was suspended. On the other hand, the Memorandum dated August 10, 2000, informing Facto of his dismissal, referred to a different act or violation that was allegedly committed only a day earlier or on August 9, 2000. Thus, Facto was never given the first notice, required by law, of the particular act or omission upon which his dismissal was based.

Moreover, petitioner failed to afford Facto his right to be heard in connection with the aforementioned charge. Section 2(d), Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code states that:

> Sec. 2. *Security of Tenure.* – x x x
>
> (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> For termination of employment based on just causes as defined in Article 282 of the Labor Code:
>
> x x x x x x x x x
>
> (i) A written notice served on the employee specifying the ground or grounds for termination, and **giving said employee reasonable opportunity within which to explain his side**.
>
> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires, is given **opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him**.
>
> (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. (Emphases supplied.)

From the afore-cited provision, it is implicit that these requirements afford the employee an opportunity to explain his side, respond to the charge, present his or her evidence and rebut the evidence presented against him or her. In the instant case, compliance with these requirements are absent.

Petitioners also question the award of backwages by the CA to Facto. In ruling that Facto was entitled to backwages by

reason of petitioners' denial of his right to due process, the CA cited *Serrano v. National Labor Relations Commission*.[21] However, the doctrine in the said case has already been abandoned. The prevailing rule now is enunciated in the leading case *Agabon v. National Labor Relations Commission*,[22] wherein it was held that if the dismissal was for a just cause but procedural due process was not observed, the dismissal should be upheld; however, in lieu of payment of backwages, the employer shall be made liable to pay indemnity in the form of nominal damages, the amount of which is addressed to the sound discretion of the court, taking into account relevant circumstances. Prevailing jurisprudence sets the amount of nominal damages at ₱30,000.00, which the Court finds proper and sufficient in the present case.[23]

Petitioners further contend that since Facto's dismissal was found by the CA to be legal, the appellate court should not have awarded service incentive leave pay, 13th month pay and attorney's fees.

The Court does not agree.

The Court notes that although it has already been settled with finality that Facto's dismissal was based on a just cause, this has no bearing on the issue of awarding him service incentive leave pay and 13th month pay. Prior to his dismissal, Facto performed work as a regular employee of petitioners, and he is entitled to the benefits provided under the law.[24] Thus, in *Agabon*,[25] even while the Court found that the dismissal was for a just cause, the employee was still awarded his monetary claims.

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[21] 380 Phil. 416 (2000).

[22] 485 Phil. 248 (2004).

[23] *Faeldonia v. Tong Yak Groceries*, G.R. No. 182499, October 2, 2009; *Mantle Trading Services, Inc. and/or Bobby del Rosario v. NLRC and Pablo S. Madriaga,* G.R. No. 166705, July 28, 2009; *Inguillo v. First Philippine Scales*, *Inc*., *et al., supra* note 17.

[24] *Mantle Trading Services, Inc., et al. v. NLRC, et al.*, *supra.*

[25] *Supra* note 22.

With respect to the award of service incentive leave pay, the first paragraph of Article 95 of the Labor Code provides that every employee who has rendered at least one year of service shall be entitled to a yearly incentive leave of five days with pay. In the present case, since Facto had been in the employ of petitioners for more than eight (8) years at the time that he was dismissed, he is undoubtedly entitled to service incentive leave benefits.

As regards the 13th month pay, an employee who has resigned, or whose services were terminated at any time before the payment of the 13th month pay, is entitled to this monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his resignation or termination from the service.[26]

Facto claims that he was not paid the above-mentioned benefits for certain periods during his employment. Where the employee alleges nonpayment, the general rule is that the burden rests on the employer to prove payment, rather than on the employee to prove nonpayment.[27] The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and similar documents — which will show that the 13th month pay, service incentive leave and other claims of workers, have been paid — are not in the possession of the employee, but in the custody and absolute control of the employer.[28] Since, in the instant case, petitioners have not shown any proof of payment of the correct amount of 13th month pay and service incentive leave pay, the Court affirms the rulings of the Labor Arbiter, the NLRC and the CA, awarding Facto's monetary claims.

Finally, we find no error committed by the CA in affirming the award of attorney's fees. Settled is the rule that in actions

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[26] See No. 6, Revised Guidelines on the Implementation of the 13th Month Pay Law (Presidential Decree No. 851); *Mantle Trading Services, Inc., et al. v. NLRC, et al., supra* note 23.

[27] *Id.*

[28] *Id.*

for recovery of wages, or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interests, a monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code;[29] Section 8, Rule VIII, Book III of its Implementing Rules;[30] and paragraph 7, Article 2208 of the Civil Code.[31] The award of attorney's fees is proper, and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages.[32] There need only be a showing that the lawful wages were not paid accordingly.[33]

WHEREFORE, the petition is *PARTLY GRANTED*. The Decision of the Court of Appeals dated August 21, 2003 is *MODIFIED* by deleting the award for backwages. In lieu thereof, petitioners are *ORDERED* to pay respondent nominal damages in the amount of Thirty Thousand Pesos (₱30,000.00). In all other respects, the assailed Decision and Resolution of the Court of Appeals are *AFFIRMED*.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Del Castillo,*[*] *JJ.,* concur.

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[29] Art. 111. *Attorney's fees*. – (a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered. x x x

[30] SEC. 8. *Attorney's fees* – Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

[31] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers.

[32] *Baron Republic Theatrical v. Peralta*, G.R. No. 170525, October 2, 2009.

[33] *Id.*

[*] Additional member per Special Order No. 805 dated December 4, 2009.

FIRST DIVISION

[G.R. No. 173329. December 21, 2009]

SUSAN G. PO and LILIA G. MUTIA, *petitioners, vs.* **OMERO DAMPAL,**[*] *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEALS FROM THE DARAB DECISION SHOULD BE FILED WITH THE COURT OF APPEALS BY VERIFIED PETITION UNDER RULE 43.—** Sec. 1 of Rule XIV of the DARAB Revised Rules of Procedure dwells on ***how*** appeals to the **DARAB Board** from the decisions, resolutions or final orders of the **Adjudicator** are to be taken. How petitioners could have been misled to file their appeal from the DARAB's Decision to the Court of Appeals via *certiorari* escapes comprehension. Under Rule 43 of the Rules of Court, appeals from the decisions of the DARAB should be filed with the Court of Appeals by verified petition for review.

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI* IS DISMISSIBLE WHEN AVAILED OF AS A WRONG REMEDY; EXCEPTIONS THERETO, NOT APPLICABLE.—** While a petition for *certiorari*, when availed of as a wrong remedy, is dismissible, there are exceptions thereto, *viz*: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority. None of these circumstances is present in the case at bar, however. The denial by the appellate court of petitioners' "MOTION FOR LEAVE TO AMEND PETITION AND FOR ADMISSION OF AMENDED PETITION" filed on October 28, 2005 is thus in order. For the records show that petitioners filed the petition for *certiorari* on the last day of the 15-day period to appeal or on October 5, 2005.

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[*] The Court of Appeals was omitted following Section 4 of Rule 45 which provides that lower courts or judges should not be impleaded either as petitioner or respondent.

3. **LABOR AND SOCIAL LEGISLATION; AGRICULTURAL LAND REFORM CODE OF 1963 (RA 3844) AS AMENDED; EFFECT OF LACK OF WRITTEN NOTICE OF SALE ON THE AGRICULTURAL LESSEE.—** Sec. 12 of Republic Act No. 3844 or the Agricultural Land Reform Code of 1963, as amended by Republic Act No. 6389, otherwise known as the *Code of Agrarian Reforms of the Philippines*, provides: [that] x x x **In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same** x x x **The right of redemption under this Section may be exercised within one hundred eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale, and shall have priority over any other right of legal redemption**. x x x The admitted lack of *written* notice on Dampal and the DAR thus tolled the running of the prescriptive period. Petitioners' contention that Dampal must be considered to have had constructive knowledge thereof fails in light of the *express* requirement for notice to be in writing.

APPEARANCES OF COUNSEL

Cabanlet Law Office for petitioners.
Elpedio N. Cabasan for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

On December 19, 1984, two farm lots located in Manolo Fortich, Bukidnon which were covered by OCT No. P-4146 and OCT No. 4147, with an approximate area of 2.5773 and 2.0651 hectares, respectively, were mortgaged for ₱33,000.00 by the spouses Florencio and Ester Causin, through their attorney-in-fact Manuel Causin, to the now-defunct Rural Bank of Tagoloan, Inc.

For failure to pay the obligation, the bank foreclosed the mortgage and sold the lots at public auction on July 8, 1992 to petitioner Susan G. Po (Susan) who was the highest bidder. OCT No. P-4146 and OCT No. 4147 were subsequently

cancelled and TCT No. T-39280 and TCT No. 39281 were, in their stead, issued in Susan's favor, following the spouses Causin's failure to redeem the property.

On September 13, 1993, Susan sold the lot covered by TCT No. 39281 to her herein co-petitioner Lilia G. Mutia (Lilia) who was issued TCT No. T-40193.

On September 29, 1994, the spouses Causin and their tenant-herein respondent Omero Dampal (Dampal) filed with the Regional Trial Court of Manolo Fortich a complaint against the bank for *Annulment of the Real Estate Mortgage and Sale*, docketed as Civil Case No. 94-280 (the civil case).

While the civil case was pending or on June 16, 1997, Dampal filed a complaint against Susan and Lilia before the Department of Agrarian Reform Adjudication Board (DARAB) Region X, for *Legal Redemption with Preliminary Mandatory Injunction*, docketed as DARAB Case No. X-05-361.

By Decision[1] of September 16, 1997, the Regional Adjudicator of DARAB Region X disallowed the redemption prayed for on the ground of prescription, albeit he declared that Dampal is entitled to security of tenure as a tenant; and that although Dampal was not given notice in writing of the public auction sale, he was deemed to have knowledge thereof because of the civil case for annulment, hence, there was substantial compliance with the rules.

Dampal's motion for reconsideration having been denied by Order[2] dated October 28, 1997, he appealed to the DARAB Central Office where it was docketed as DARAB Case No. 7315.

By Decision[3] of October 19, 2004, the DARAB Central Office *reversed* the Adjudicator's ruling. It held that Dampal, as a

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[1] DARAB records, pp. 72-75. Penned by Regional Adjudicator Jimmy V. Tapangan.

[2] *Id.* at 83-84. Penned by Regional Adjudicator Jimmy V. Tapangan.

[3] *Id.* at 99-105. Penned by Asst. Secretary Rustico T. de Belen and concurred in by Vice Chairman Lorenzo R. Reyes and Members Augusto P. Quijano, Edgar A. Igano and Rolando G. Mangulabnan.

tenant, had the right to redeem the mortgage in the amount of ₱40,000.00 plus interest; and that the right had not prescribed, owing to the lack of *written* notice to him and to the DAR of the sale. It accordingly ordered the cancellation of the title issued in favor of Susan and that of Lilia and the issuance of new ones in Dampal's favor, upon his payment of the redemption amount. Susan and Lilia's motion for reconsideration of the said Decision was denied by Resolution[4] of July 7, 2005, hence, they appealed via *certiorari* to the Court of Appeals.

By Resolution[5] of October 19, 2005, the appellate court, holding that petitioners should have appealed the DARAB Decision via Rule 43, instead of Rule 65, dismissed petitioners' petition for *certiorari*.

Petitioners thereupon filed before the appellate court a Motion for Leave to Amend Petition and for Admission of Amended Petition, which motion was denied by Resolution[6] of March 28, 2006. In denying the motion, the appellate court held that dismissal due to error in the mode of appeal cannot be reconsidered by the mere expediency of filing an amended petition. Moreover, it noted that it was filed out of time.

Petitioners moved for reconsideration of the appellate court's March 28, 2006 Resolution, alleging that their error in the choice of remedy was excusable as they relied on Sec. 1, Rule XIV of the DARAB Revised Rules of Procedure, reading:

Sec. 1. *Appeal to the Board*. – An appeal may be taken to the Board from a resolution, decision or final order of the Adjudicator that completely disposes of the case by either or both of the parties within a period of fifteen (15) days from receipt of the resolution/decision/final order appealed from or of the denial of the movant's motion for reconsideration in accordance with section 12, Rule X by:

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[4] *Id.* at 125-127. Penned by Asst. Secretary Edgar A. Igano and concurred in by Vice-Chairman Lorenzo R. Reyes and Members Augusto P. Quijano and Delfin B. Samson.

[5] CA *rollo*, p. 104. Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr.

[6] *Id.* at 207.

1.1 filing a Notice of Appeal with the Adjudicator who rendered the decision or final order appealed from;

1.2 furnishing copies of said Notice of Appeal to all parties and the Board; and

1.3 paying an appeal fee of Seven Hundred Pesos (Php700.00) to the DAR Cashier where the Office of the Adjudicator is situated or through postal money order, payable to the DAR Cashier where the Office of the Adjudicator is situated, at the option of the appellant.

A pauper litigant shall be exempt from the payment of the appeal fee.

Proof of service of Notice of Appeal to the affected parties and to the Board and payment of appeal fee shall be filed, within the reglementary period, with the Adjudicator *a quo* and shall form part of the records of the case.

Non-compliance with the foregoing shall be a ground for dismissal of the appeal. (underscoring supplied)

By Resolution[7] of May 22, 2006, the appellate court denied the motion for reconsideration, holding that nothing in the above-quoted Sec. 1 of Rule XIV states that the remedy of an aggrieved party from an adverse decision of the DARAB is by *certiorari*, and that the applicable rule is Sec. 1, Rule XV of the 2003 DARAB Revised Rules of Procedure.

On petitioners' attribution of the *faux pas* to their counsel, the appellate court held that they are bound thereby. Hence, this petition.

Petitioners assert that the appellate court, in dismissing their petition due to technicality, denied them the opportunity to establish the merits of their case. They maintain that Dampal's right of redemption has prescribed, he having admitted Susan's acquisition of title to the property as early as 1993 but that it was only in 1997 that he filed the action for redemption before the DARAB.

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[7] *Id.* at 212-217. Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr.

They thus conclude that the need for sending him notice in writing could be dispensed with; and that Dampal's inaction estopped him from asserting his right as a tenant.

The petition is bereft of merit.

The earlier-quoted Sec. 1 of Rule XIV of the DARAB Revised Rules of Procedure dwells on ***how*** appeals to the **DARAB Board** from the decisions, resolutions or final orders of the **Adjudicator** are to be taken. How petitioners could have been misled to file their appeal from the DARAB's Decision to the Court of Appeals via *certiorari* escapes comprehension.

Under Rule 43 of the Rules of Court, appeals from the decisions of the DARAB should be filed with the Court of Appeals by verified petition for review. Thus, Sec. 1 of Rule 43 provides:

SECTION 1. *Scope*. – This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, **Department of Agrarian Reform under Republic Act No. 6657**, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

SECTION 2. *Where to appeal*. – An appeal under this Rule may be taken to the **Court of Appeals** within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.

SECTION 3. How appeal taken. – Appeal shall be taken by filing a **verified petition for review** x x x (**emphasis and underscoring supplied**)

Sec. 1, Rule XV of the 2003 DARAB Revised Rules of Procedure provides:

Section 1. *Appeal to the Court of Appeals.* – Any decision, order, resolution, award or ruling of the Board on any agrarian dispute or any matter pertaining to the application, implementation, enforcement, interpretation of agrarian reform laws or rules and regulations promulgated thereunder, may be brought on appeal within fifteen (15) days from receipt of a copy thereof, to the Court of Appeals in accordance with the Rules of Court. (underscoring supplied)

While a petition for *certiorari*, when availed of as a wrong remedy, is dismissible, there are exceptions thereto, *viz*: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.[8] None of these circumstances is present in the case at bar, however.

The denial[9] by the appellate court of petitioners' "MOTION FOR LEAVE TO AMEND PETITION AND FOR ADMISSION OF AMENDED PETITION" filed on October 28, 2005 is thus in order. For the records show that petitioners filed the petition for *certiorari* on the last day of the 15-day period to appeal or on October 5, 2005.

The belated filing of the Amended Petition is inexcusable.

Time and again, we held that rules of procedure exist for a noble purpose, and to disregard such rules, in the guise of liberal construction, would be to defeat such purpose. **Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party**. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. **Rules are not intended to hamper litigants or complicate litigation; they help provide a vital system of justice where suitors may be heard following judicial procedure and in the correct forum. Public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules.**[10] (emphasis supplied)

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[8] *Vide Hanjin Engineering and Construction Co., Ltd. v. Court of Appeals*, G.R. No. 165910, 10 April 2006, 487 SCRA 78, 100.

[9] CA *rollo*, p. 00271.

[10] *Audi AG v. Mejia*, G.R. No. 167533, July 27, 2007, 528 SCRA 378, 385.

Technicality aside, on the merits, petitioners failed to establish that in deciding the case, the DARAB committed grave abuse of discretion.

In its disquisition, the DARAB held that absence of *written* notice to the tenant of the sale, as well as to the DAR, is indispensable, particularly in view of Sec. 12 of Republic Act No. 3844, as amended by Republic Act No. 6389, which mandates that the 180-day period must be reckoned from the notice in writing upon registration of the sale.

Sec. 12 of Republic Act No. 3844 or the Agricultural Land Reform Code of 1963, as amended by Republic Act No. 6389, otherwise known as the *Code of Agrarian Reforms of the Philippines*, provides:

> Sec. 12. *Lessee's right of redemption.* – **In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same** at a reasonable price and consideration: *Provided*, That where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him. **The right of redemption under this Section may be exercised within one hundred eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale, and shall have priority over any other right of legal redemption.** The redemption price shall be the reasonable price of the land at the time of the sale. (emphasis supplied)

The admitted lack of *written* notice on Dampal and the DAR thus tolled the running of the prescriptive period. Petitioners' contention that Dampal must be considered to have had constructive knowledge thereof fails in light of the *express* requirement for notice to be in writing.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

EN BANC

[G.R. No. 176951. December 21, 2009]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) represented by LCP National President JERRY P. TREÑAS, CITY OF ILOILO represented by MAYOR JERRY P. TREÑAS, CITY OF CALBAYOG represented by MAYOR MEL SENEN S. SARMIENTO, and JERRY P. TREÑAS in his personal capacity as taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF BAYBAY, PROVINCE OF LEYTE; MUNICIPALITY OF BOGO, PROVINCE OF CEBU; MUNICIPALITY OF CATBALOGAN, PROVINCE OF WESTERN SAMAR; MUNICIPALITY OF TANDAG, PROVINCE OF SURIGAO DEL SUR; MUNICIPALITY OF BORONGAN, PROVINCE OF EASTERN SAMAR; and MUNICIPALITY OF TAYABAS, PROVINCE OF QUEZON,** *respondents.* **CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS, CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, and CITY OF TAGUM,** *petitioners-in-intervention.*

[G.R. No. 177499. December 21, 2009]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) represented by LCP National President JERRY P. TREÑAS, CITY OF ILOILO represented by MAYOR

JERRY P. TREÑAS, CITY OF CALBAYOG represented by MAYOR MEL SENEN S. SARMIENTO, and JERRY P. TREÑAS in his personal capacity as taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF LAMITAN, PROVINCE OF BASILAN; MUNICIPALITY OF TABUK, PROVINCE OF KALINGA; MUNICIPALITY OF BAYUGAN, PROVINCE OF AGUSAN DEL SUR; MUNICIPALITY OF BATAC, PROVINCE OF ILOCOS NORTE; MUNICIPALITY OF MATI, PROVINCE OF DAVAO ORIENTAL; and MUNICIPALITY OF GUIHULNGAN, PROVINCE OF NEGROS ORIENTAL,** *respondents.* **CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS, CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, and CITY OF TAGUM,** *petitioners-in-intervention.*

[G.R. No. 178056. December 21, 2009]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) represented by LCP National President JERRY P. TREÑAS, CITY OF ILOILO represented by MAYOR JERRY P. TREÑAS, CITY OF CALBAYOG represented by MAYOR MEL SENEN S. SARMIENTO, and JERRY P. TREÑAS in his personal capacity as taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF CABADBARAN, PROVINCE**

OF AGUSAN DEL NORTE; MUNICIPALITY OF CARCAR, PROVINCE OF CEBU; and MUNICIPALITY OF EL SALVADOR, MISAMIS ORIENTAL, *respondents.* **CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS, CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, and CITY OF TAGUM,** *petitioners-in-intervention.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT; VOTING REQUIREMENT IN CASES INVOLVING THE CONSTITUTIONALITY OF A LAW, DISCUSSED; CASE AT BAR.—** The basic issue tendered in this motion for reconsideration of the June 2, 2009 Resolution boils down to whether or not the required vote set forth in x x x Sec. 4(2), Art. VIII [of the Constitution] is limited only to the initial vote on the petition or also to the subsequent voting on the motion for reconsideration where the Court is called upon and actually votes on the constitutionality of a law or like issuances. Or, as applied to this case, would a minute resolution dismissing, on a tie vote, a motion for reconsideration on the sole stated ground—that the "basic issues have already been passed"— suffice to hurdle the voting requirement required for a declaration of the unconstitutionality of the cityhood laws in question? The 6-6 vote on the motion to reconsider the Resolution of March 31, 2009, which denied the initial motion on the sole ground that "the basic issues had already been passed upon" betrayed an evenly divided Court on the issue

of whether or not the underlying Decision of November 18, 2008 had indeed passed upon the issues raised in the motion for reconsideration of the said decision. But at the end of the day, the single issue that matters and the vote that really counts really turn on the constitutionality of the cityhood laws. And be it remembered that the inconclusive 6-6 tie vote reflected in the April 28, 2009 Resolution was the last vote on the issue of whether or not the cityhood laws infringe the Constitution. Accordingly, the motions of the respondent LGUs, in light of the 6-6 vote, should be deliberated anew until the required concurrence on the issue of the validity or invalidity of the laws in question is, on the merits, secured. It ought to be clear that a deadlocked vote does not reflect the "majority of the Members" contemplated in Sec. 4 (2) of Art. VIII of the Constitution, x x x. Webster defines "majority" as "a number greater than half of a total." In plain language, this means 50% plus one. In *Lambino v. Commission on Elections*, Justice, now Chief Justice, Puno, in a separate opinion, expressed the view that "**a deadlocked vote of six (6) is not a majority and a non-majority cannot write a rule with precedential value**." As may be noted, x x x Sec. 4 of Art. VIII, as couched, exacts a majority vote in the determination of a case involving the constitutionality of a statute, without distinguishing whether such determination is made on the main petition or thereafter on a motion for reconsideration. This is as it should be, for, to borrow from the late Justice Ricardo J. Francisco: "x x x [E]ven assuming x x x that the constitutional requirement on the concurrence of the 'majority' was initially reached in the x x x *ponencia*, the same is inconclusive as it was still open for review by way of a motion for reconsideration."

2. **ID.; ID.; ID.; ID.; ID.; RULES ON THE TIE-VOTE SITUATION IN CONJUNCTION WITH SECTION 4 (2), ARTICLE VII OF THE CONSTITUTION APPLIED IN VIEW OF A DEADLOCK VOTE ON THE CONSTITUTIONALITY ISSUE OF THE CITYHOOD LAWS.—** [S]ince the instant cases fall under Sec. 4 (2), Art. VIII of the Constitution, the [rules on a tie-vote situation, *i.e.,* Sec. 7, Rule 56 and the complementary A.M. No. 99-1-09-SC] ought to be applied in conjunction with the prescription of the Constitution that the cases "shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on

the issues in the instant cases and voted thereon." To repeat, the last vote on the issue of the constitutionality of the cityhood bills is that reflected in the April 28, 2009 Resolution—a 6-6 deadlock. On the postulate then that *first*, the finality of the November 18, 2008 Decision has yet to set in, the issuance of the precipitate entry of judgment notwithstanding, and *second*, the deadlocked vote on the second motion for reconsideration did not definitely settle the constitutionality of the cityhood laws, the Court is inclined to take another hard look at the underlying decision. Without belaboring in their smallest details the arguments for and against the procedural dimension of this disposition, it bears to stress that the Court has the power to suspend its own rules when the ends of justice would be served thereby. In the performance of their duties, courts should not be shackled by stringent rules which would result in manifest injustice. Rules of procedure are only tools crafted to facilitate the attainment of justice. Their strict and rigid application must be eschewed, if they result in technicalities that tend to frustrate rather than promote substantial justice. Substantial rights must not be prejudiced by a rigid and technical application of the rules in the altar of expediency. When a case is impressed with public interest, a relaxation of the application of the rules is in order. Time and again, this Court has suspended its own rules or excepted a particular case from their operation whenever the higher interests of justice so require. x x x The Court, by a vote of 6-4, grants the respondent LGUs' motion for reconsideration of the Resolution of June 2, 2009, as well as their May 14, 2009 motion to consider the second motion for reconsideration of the November 18, 2008 Decision unresolved, and also grants said second motion for reconsideration.

3. ID.; ID.; LEGISLATIVE DEPARTMENT; THE POWER OF CONGRESS TO IMPOSE CRITERIA OR INDICATORS OF VIABILITY FOR CREATION OF LOCAL GOVERNMENT UNITS CANNOT BE LIMITED BY THE CRITERIA EMBODIED IN THE LOCAL GOVERNMENT CODE.— [S]ince Congress wields the vast poser of creating political subdivisions, surely it can exercise the lesser authority of requiring a set of criteria, standards, or ascertainable indicators of viability for their creation. Thus, the only conceivable reason why the Constitution employs the clause "**in accordance with the criteria established in the local government code**" is

to lay stress that it is Congress alone, and no other, which can impose the criteria. x x x It remains to be observed at this juncture that when the 1987 Constitution speaks of the LGC, the reference cannot be to any specific statute or codification of laws, let alone the LGC of 1991. Be it noted that at the time of the adoption of the 1987 Constitution, Batas Pambansa Blg. (BP) 337, the then LGC, was still in effect. Accordingly, had the framers of the 1987 Constitution intended to isolate the embodiment of the criteria only in the LGC, then they would have actually referred to BP 337. Also, they would then not have provided for the enactment by Congress of a new LGC, as they did in Art. X, Sec. 3 of the Constitution. Consistent with its plenary legislative power on the matter, Congress can, via either a consolidated set of laws or a much simpler, single-subject enactment, impose the said verifiable criteria of viability. These criteria need not be embodied in the local government code, albeit this code is the ideal repository to ensure, as much as possible, the element of uniformity. Congress can even, after making a codification, enact an amendatory law, adding to the existing layers of indicators earlier codified, just as efficaciously as it may reduce the same.

4. ID.; ID.; R.A. 9009 AMENDING SECTION 450 OF THE LOCAL GOVERNMENT CODE OF 1991; RATIONALE.— The rationale behind the enactment of RA 9009 to amend Sec. 450 of the LGC of 1991 can reasonably be deduced from Senator Pimentel's sponsorship speech on S. Bill No. 2157. Of particular significance is his statement regarding the basis for the proposed increase from PhP 20 million to PhP 100 million in the income requirement for municipalities wanting to be converted into cities, *viz*: **Senator Pimentel**. Mr. President, I would have wanted this bill to be included in the whole set of proposed amendments that we have introduced to precisely amend the [LGC]. However, it is a fact that there is a **mad rush of municipalities wanting to be converted into cities**. Whereas in 1991, when the [LGC] was approved, there were only 60 cities, today the number has increased to 85 cities, with 41 more municipalities applying for conversion x x x. **At the rate we are going, I am apprehensive that before long this nation will be a nation of all cities and no municipalities**. It is for that reason, Mr. President, that we are proposing among other things, that the financial requirement, which, under the

[LGC], is fixed at ₱20 million, be raised to ₱100 million to enable a municipality to have the right to be converted into a city, and the ₱100 million should be sourced from locally generated funds. Congress to be sure knew, when RA 9009 was being deliberated upon, of the pendency of several bills on cityhood, wherein the applying municipalities were qualified under the then obtaining PhP 20 million-income threshold.

5. **ID.; ID.; ID.; COMPLEMENTARY LEGISLATIVE INTENTIONS IN THE ENACTMENT OF R.A. 9009.—** What the x x x Pimentel-Drilon exchange eloquently indicates are the following complementary legislative intentions: (1) the then pending cityhood bills would be outside the pale of the minimum income requirement of PhP 100 million that S. Bill No. 2159 proposes; and (2) RA 9009 would not have any retroactive effect insofar as the cityhood bills are concerned. Given the foregoing perspective, it is not amiss to state that the basis for the inclusion of the exemption clause of the cityhood laws is the clear-cut intent of Congress of not according retroactive effect to RA 9009. Not only do the congressional records bear the legislative intent of exempting the cityhood laws from the income requirement of PhP 100 million. Congress has now made its intention to exempt express in the challenged cityhood laws.

6. **ID.; ID.; BILL OF RIGHTS; EQUAL PROTECTION OF THE LAWS, EXPLAINED.—** [T]he equal protection clause proscribes undue favor as well as hostile discrimination. Hence, a law need not operate with equal force on all persons or things to be conformable with Sec. 1, Art. III of the Constitution. The equal protection guarantee is embraced in the broader and elastic concept of due process, every unfair discrimination being an offense against the requirements of justice and fair play. It has nonetheless come as a separate clause in Sec. 1, Art. III of the Constitution to provide for a more specific protection against any undue discrimination or antagonism from government. Arbitrariness in general may be assailed on the basis of the due process clause. But if a particular challenged act partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause. This constitutional protection extends to all persons, natural or artificial, within the territorial jurisdiction. Artificial persons, as the respondent LGUs herein, are, however, entitled to protection only insofar

as their property is concerned.

7. **ID.; ID.; ID.; ID.; FOUR REQUISITES OF REASONABLE CLASSIFICATION, PRESENT.—** As a matter of settled legal principle, the fundamental right of equal protection does not require absolute equality. It is enough that all persons or things similarly situated should be treated alike, both as to rights or privileges conferred and responsibilities or obligations imposed. The equal protection clause does not preclude the state from recognizing and acting upon factual differences between individuals and classes. It recognizes that inherent in the right to legislate is the right to classify, necessarily implying that the equality guaranteed is not violated by a legislation based on reasonable classification. Classification, to be reasonable, must (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) not be limited to existing conditions only; and (4) apply equally to all members of the same class. The Court finds that all these requisites have been met by the laws challenged as arbitrary and discriminatory under the equal protection clause.

8. **ID.; ID.; ID.; ID.; ID.; THE FAVORABLE TREATMENT ACCORDED THE 16 MUNICIPALITIES BY CITYHOOD LAWS RESTS ON SUBSTANTIAL DISTINCTION.—** [T]he favorable treatment accorded the sixteen (16) municipalities by the cityhood laws rests on substantial distinction. Indeed, respondent LGUs, which are subjected only to the erstwhile PhP 20 million income criterion instead of the stringent income requirement prescribed in RA 9009, are substantially different from other municipalities desirous to be cities. Looking back, we note that respondent LGUs had pending cityhood bills before the passage of RA 9009. There lies part of the tipping difference. And years before the enactment of the amendatory RA 9009, respondents LGUs had already met the income criterion exacted for cityhood under the LGC of 1991. Due to extraneous circumstances, however, the bills for their conversion remained unacted upon by Congress.

9. **ID.; ID.; ID.; ID.; ID.; THE EXEMPTION OF RESPONDENT MUNICIPALITIES FROM THE PHP 100 MILLION INCOME REQUIREMENT UNDER THE CITYHOOD LAWS IS GERMANE TO THE PURPOSE OF SAID**

LAWS.— The classification is also germane to the purpose of the law. The exemption of respondent LGUs/municipalities from the PhP 100 million income requirement was meant to reduce the inequality occasioned by the passage of the amendatory RA 9009. From another perspective, the exemption was unquestionably designed to insure that fairness and justice would be accorded respondent LGUs. Let it be noted that what were then the cityhood bills covering respondent LGUs were part and parcel of the original 57 conversion bills filed in the 11th Congress, 33 of those became laws before the adjournment of that Congress. The then bills of the challenged cityhood laws were not acted upon due, *inter alia*, to the impeachment of then President Estrada, the related *jueteng* scandal investigations conducted before, and the EDSA events that followed the aborted impeachment.

10. ID.; ID.; ID.; ID.; ID.; THE ENACTMENT OF CITYHOOD LAWS PROMOTED EQUALITY BETWEEN RESPONDENT MUNICIPALITIES AND 33 OTHER MUNICIPALITIES, WHICH HAS ALREADY BEEN ELEVATED TO CITY STATUS.— While the equal protection guarantee frowns upon the creation of a privileged class without justification, inherent in the equality clause is the exhortation for the Legislature to pass laws promoting equality or reducing existing inequalities. The enactment of the cityhood laws was in a real sense an attempt on the part of Congress to address the inequity dealt the respondent LGUs. These laws positively promoted the equality and eliminated the inequality, doubtless unintended, between respondent municipalities and the thirty-three (33) other municipalities whose cityhood bills were enacted during the 11th Congress. Respondent municipalities and the 33 other municipalities, which had already been elevated to city status, were all found to be qualified under the old Sec. 450 of the LGC of 1991 during the 11th Congress. As such, both respondent LGUs and the 33 other former municipalities are under like circumstances and conditions. There is, thus, no rhyme or reason why an exemption from the PhP 100 million requirement cannot be given to respondent LGUs. Indeed, to deny respondent LGUs/ municipalities the same rights and privileges accorded to the 33 other municipalities when, at the outset they were similarly situated, is tantamount to denying the former the protective

mantle of the equal protection clause.

11. **ID.; ID.; ID.; ID.; ID.; THE NON-RETROACTIVE EFFECT OF RA 9009 IS NOT LIMITED IN APPLICATION ONLY TO CONDITIONS EXISTING AT THE TIME OF ITS ENACTMENT.—** [T]he non-retroactive effect of RA 9009 is not limited in application only to conditions existing at the time of its enactment. It is intended to apply for all time, as long as the contemplated conditions obtain. To be more precise, the legislative intent underlying the enactment of RA 9009 to exclude would-be-cities from the PhP 100 million criterion would hold sway, as long as the corresponding cityhood bill has been filed before the effectivity of RA 9009 **and** the concerned municipality qualifies for conversion into a city under the original version of Sec. 450 of the LGC of 1991. Viewed in its proper light, the common exemption clause in the cityhood laws is an application of the non-retroactive effect of RA 9009 on the cityhood bills**.** It is not a declaration of certain rights, but a mere declaration of prior qualification and/or compliance with the non-retroactive effect of RA 9009.

12. **ID.; ID.; CONSTITUTIONALITY OF CITYHOOD LAWS; OPERATIVE FACT DOCTRINE, APPLIED.—** The existence of the cities consequent to the approval of the creating, but challenged, cityhood laws in the plebiscites held in the affected LGUs is now an operative fact. New cities appear to have been organized and are functioning accordingly, with new sets of officials and employees. Other resulting events need not be enumerated. The operative fact doctrine provides another reason for upholding the constitutionality of the cityhood laws in question.

CARPIO, *J.*, *dissenting opinion*:

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT; RULES ON TIE-VOTE; THREE SITUATIONS CONTEMPLATED BY SECTION 7, RULE 56 OF THE RULES OF COURT GOVERNING TIE-VOTES IN THE *EN BANC*.—** [Section 7, Rule 56 of the Rules of Court] x x x contemplates three possible instances where the Supreme Court *en banc* may be equally divided in opinion or where the necessary majority in the votes cannot be had. *First*, **in actions instituted originally in the Supreme Court**, if there is a tie-vote, the Court *en banc* shall deliberate again. After such

re-deliberation and the Court remains equally divided, which means that **no decision** had been reached, the original action shall be dismissed. In such a case, the tie-vote results in the dismissal of the action without establishing any jurisprudential precedent. x x x *Second*, **in cases appealed to the Supreme Court**, Section 7 of Rule 56 explicitly provides that if the Court *en banc* is still equally divided after re-deliberation, the judgment or order appealed from shall stand affirmed. A tie-vote in cases arising under the Court's appellate jurisdiction translates into a summary affirmance of the lower court's ruling. **In short, the tie-vote in the *en banc* cannot amend or reverse a prior majority action of a lower court, whose decision stands affirmed.** *Third*, **on all incidental matters, which include motions for reconsideration, Section 7 of Rule 56 specifically states that if the Court *en banc* is evenly divided on such matters, the petition or motion shall be denied.**

2. **ID.; ID.; ID.; ID.; ID.; A.M. NO. 99-1-09-SC SETTLES ANY DOUBT ON HOW A TIE-VOTE ON A MOTION FOR RECONSIDERATION SHOULD BE INTERPRETED; IT APPLIES TO ALL CASES HEARD BY THE COURT *EN BANC*.—** To settle any doubt on how a tie-vote on a motion for reconsideration should be interpreted, the Court *en banc* issued a clarificatory Resolution on 26 January 1999 in A.M. No. 99-1-09-SC, as follows: A MOTION FOR THE CONSIDERATION OF A DECISION OR RESOLUTION OF THE COURT *EN BANC* OR OF A DIVISION MAY BE GRANTED UPON A VOTE OF A MAJORITY OF THE MEMBERS OF THE *EN BANC* OR OF A DIVISION, AS THE CASE MAY BE, WHO ACTUALLY TOOK PART IN THE DELIBERATION OF THE MOTION. **IF THE VOTING RESULTS IN A TIE, THE MOTION FOR RECONSIDERATION IS DEEMED DENIED.** The clear and simple language of the clarificatory *en banc* Resolution requires no further explanation. If the voting of the Court *en banc* results in a tie, the motion for reconsideration is deemed denied. **The Court's prior majority action on the main decision stands affirmed.** This clarificatory Resolution applies to **all cases heard by the Court *en banc*,** which includes not only cases involving the constitutionality of a law, but also, as expressly stated in Section 4(2), Article VIII of the Constitution, "**all other cases which under the Rules of Court**

are required to be heard *en banc*." In short, Section 4(2) requires a majority vote of the Court *en banc* not only in cases involving the constitutionality of a law, but also in all other cases that are heard by the Court *en banc.*

3. **ID.; ID.; ID.; ID.; ID.; A TIE-VOTE ON A MOTION FOR RECONSIDERATION DOES NOT AND CANNOT SUPERSEDE THE PRIOR MAJORITY VOTE ON THE MAIN DECISION.—** [I]f the Philippine Supreme Court *en banc* is evenly split in its opinion on a motion for reconsideration, it is not a deadlock vote that must be resolved; it is simply not a majority vote, and the motion for reconsideration is defeated. **More importantly, the tie-vote on a motion for reconsideration does not and cannot, in any instance and for any reason, supersede the prior majority vote on the main decision.**

4. **ID.; ID.; ID.; ID.; ALL CASES REQUIRED TO BE HEARD BY THE COURT *EN BANC* SHALL BE DECIDED BY A MAJORITY VOTE OF THE COURT *EN BANC*; APPLICATION.—** Under Section 4(2), Article VIII of the Constitution, the requirement of a majority vote of the Supreme Court *en banc* applies not only to the constitutionality of a law, but also to the constitutionality of treaties, executive agreements, ordinances, regulations, ***and all other cases which under the Rules of Court shall be heard by the Court en banc*. To repeat, any case which is heard by the Court *en banc* shall be decided by a majority vote of the Court *en banc*.** To insure equal protection of the law, all cases required to be heard by the Court *en banc* under Section 4(2), Article VII of the Constitution must be governed by the same rules on voting, whether on the main decision or on the motion for reconsideration. There can be no one rule for cases involving the constitutionality of a law and another rule for all other cases. The Constitution makes no such distinction in Section 4(2) of Article VIII. Undeniably, the Constitution does not require that motions for reconsideration in cases involving the constitutionality of a law shall be treated differently from motions for reconsideration in other cases heard by the Court *en banc*. There is no basis for such a different treatment, and such a different treatment would violate the equal protection of the law. Where the Constitution does not distinguish, this Court must not create a forced and baseless distinction. **In**

the present cases, the voting on the main petitions was 6-5 to declare the sixteen Cityhood Laws unconstitutional. Clearly, there was compliance with Section 4(2), Article VIII of the 1987 Constitution since a majority of the members of the Court *en banc,* who actually took part in the deliberations, voted to declare unconstitutional the sixteen Cityhood Laws.

5. **ID.; ID.; ID.; ID.; RULES ON TIE-VOTE; A TIE-VOTE ON THE SECOND MOTION FOR RECONSIDERATION NECESSARILY RESULTED IN THE DENIAL THEREOF; CASE AT BAR.— In the first motion for reconsideration, a majority of 7-5 voted to deny the motion for reconsideration. Again, there was a clear majority that denied the first motion for reconsideration.** The majority of the Court *en banc* struck down the sixteen Cityhood Laws twice, first, during the deliberations on the main petitions, and second, during the deliberations on the first motion for reconsideration. Thereafter, by deliberating on the second motion for reconsideration filed by respondents, the Court in effect allowed the filing of a second motion for reconsideration, which is generally prohibited under the Rules of Court. **The Court *en banc*, voting 6-6, denied the second motion for reconsideration in the Resolution of 28 April 2009**. The 6-6 tie-vote by the Court *en banc* on the second motion for reconsideration necessarily resulted in the denial of the second motion for reconsideration. **Certainly, the 6-6 tie-vote did not overrule the prior majority *en banc* Decision of 18 November 2008, and the prior majority *en banc* Resolution of 31 March 2009 denying reconsideration.** The tie-vote on the second motion for reconsideration is not the same as a tie-vote on the main decision. The Court *en banc* need not deliberate again because in case of a tie-vote on a second motion for reconsideration, which is an incidental matter, such motion is lost. The tie-vote plainly signifies that there is no majority to overturn the prior 18 November 2008 Decision and 31 March 2009 Resolution, and the second motion for reconsideration must thus be denied. Further, the tie-vote on the second motion for reconsideration did not mean that the present cases were left undecided because there remain the Decision of 18 November 2008 and Resolution of 31 March 2009 where majority of the Court *en banc* concurred in decreeing the unconstitutionality of the sixteen Cityhood Laws. **In short, the 18 November 2008 Decision and 31 March**

2009 Resolution, which were both reached with the concurrence of a majority of the Court *en banc,* are not reconsidered but stand affirmed. These prior majority actions of the Court *en banc* can only be overruled by a new majority vote, not a tie-vote because a tie-vote cannot overrule a prior affirmative action.

6. **ID.; ID.; ID.; ID.; ID.; THE RULES ON TIE-VOTE DO NOT CONTRAVENE THE MANDATE OF SECTION 4 (2), ARTICLE VIII OF THE CONSTITUTION.—** Applying Section 7, Rule 56 and the clarificatory Resolution in A.M. No. 99-1-09-SC to the present cases does not in any manner contravene the mandate of Section 4(2), Article VIII of the Constitution. To repeat, the Court *en banc* deliberated on the petitions and, **by a majority vote of 6-5**, granted the petitions and declared the sixteen Cityhood Laws unconstitutional in the Decision of 18 November 2008. Again, **by a clear majority vote of 7-5**, the Court *en banc* voted to deny the first motion for reconsideration. **Therefore, contrary to the *ponencia*, the present cases were decided with the concurrence of a majority of the Court *en banc* when it declared the unconstitutionality of the sixteen Cityhood Laws, pursuant to Section 4(2), Article VIII of the Constitution**. A.M. No. 99-1-09-SC applies to all cases heard by the Court *en banc*. Whether the case involves the constitutionality of a law, ordinance or regulation, **or any civil, administrative or criminal case which under the Rules of Court must be heard *en banc*,** the case must be decided by a majority vote of the Court *en banc* as expressly required by Section 4(2), Article VIII of the Constitution. Any tie-vote in the motion for reconsideration results in the denial of the motion for reconsideration pursuant to A.M. No. 99-1-09-SC, which governs all cases heard by the Court *en banc*.

7. **ID.; ID.; ID.; ID.; ID.; THE TIE-VOTE ON THE SECOND MOTION FOR RECONSIDERATION DOES NOT LEAVE THE CASE UNDECIDED SINCE THE PREVIOUS DECISION/RESOLUTION MUST STAND.—** There is nothing left to be resolved precisely because the tie-vote on the second motion for reconsideration simply means that there was no majority vote to overturn the 18 November 2008 Decision, and the second motion for reconsideration is lost. **The tie in the voting does not leave the case undecided. There is still**

the 18 November 2008 Decision and the 31 March 2009 Resolution which must stand in view of the failure of the members of the Court *en banc* to muster the necessary vote for their reconsideration. No further proceedings, much less re-deliberations by the Court *en banc*, are required.

8. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; PLEADINGS FILED IN DIRECT CONTRAVENTION OF THE COURT'S DIRECTIVE ARE MERE SCRAPS OF PAPER AND UNWORTHY OF ATTENTION.— The Court had explicitly directed the parties, in the 28 April 2009 Resolution, to refrain from filing further pleadings as it would no longer entertain the same. Yet, respondents opted to ignore and persistently defy such directive.** Aside from filing the Motion to Amend the Resolution of April 28, 2009, respondents filed three more pleadings, namely, (1) Motion for Reconsideration of the Resolution of 2 June 2009, (2) Urgent Motion to Resolve Pending Incidents, and (3) Appeal to Honorable Chief Justice Reynato S. Puno and Associate Justice Antonio Eduardo B. Nachura to Participate in the Resolution of Respondents' Motion for Reconsideration of the Resolution of June 2, 2009. **All these pleadings, which were filed in direct contravention of the Court's directive in the 28 April 2009 Resolution, are prohibited and are mere scraps of paper, unworthy of the Court's attention.**

9. **ID.; ID.; FINALITY OF JUDGMENTS; EFFECT; CASE AT BAR.—** Since the second motion for reconsideration was denied, pursuant to Section 7 of Rule 56, there is absolutely nothing which would preclude the 18 November 2008 Decision from becoming final after fifteen (15) days from receipt by the parties of the 28 April 2009 Resolution denying the second motion for reconsideration. x x x Litigations must end and terminate at some point. In the present cases, that point must be reckoned after the lapse of 15 days from the date of receipt by respondents' counsel of the 28 April 2009 Resolution denying the second motion for reconsideration or on 21 May 2009, as certified by the Deputy Clerk of Court and Chief of the Judicial Records Office. Whether respondents understood, or simply refuse to understand, the meaning of this statement, there is no other meaning than to consider G.R. Nos. 176951, 177499, and 178056 finally closed and terminated

on 21 May 2009. Well-entrenched is the rule that a decision that has acquired finality becomes immutable and unalterable, no longer subject to attack and cannot be modified directly or indirectly, and the court which rendered it, including this Court, had lost jurisdiction to modify it. The Court laid down this rule precisely "(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 why courts exist." As Justice Bersamin stated in *Apo Fruits Corporation v. Court of Appeals*: [T]he 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.** Hence, when the 18 November 2008 Decision became final on 21 May 2009, this Court can no longer entertain and consider further arguments or submissions from the parties respecting the correctness of the decision, and nothing more is left to be discussed, clarified or done in these cases.

APPEARANCES OF COUNSEL

Puno & Puno for petitioners.
Danny C. Serrano for Cabadbaran City.
Ricardo Bering for Cities of Carcar & El Salvador.
Benjamin Paradela Uy for Municipality of Tandag.
Lionel A. Titong for Municipality of Borongan.
Noel T. Tiampong for Municipalities of Catbalogan, Samar & Lamitan, Basilan.
Rodolfo R. Zabella, Jr. for Municipality of Tayabas.
Jaime V. Agtang for Municipality of Batac.
Estelito P. Mendoza for the Cities of Baybay, Bogo (Cebu), *et al.*
Immanuel M. Garde for Himamaylan City.
Vincent V. Dangazo for Gingoog City.
Cicero V. Malate, O.D. for San Roque, Iriga City.
Cesar Malazarte for Legaspi City.
Rori James Lawrence R. Miraflor for Bayawan City.
Marlo C. Bancoro for Pagadian City.

Kara Aimee M. Quevenco for City of Silay.
Francisco C. Geronilla for Mayor of Mati.
Francisco V. Mijares, Jr. & Socorro D'Marie T. Inting for Municipality of Guihulngan.
Randy B. Bulwayan for Municipality of Tabuk.
*City Legal Offic*e for City of La Carlota.
Carlos M. Rubin for Tangub City.
Paulino Salvador C. Leachon for Calapan City.
*Jose Augusto J. Salva*dor for City of Tayabas
Teodulfo A. Deguito for Batangas City.
Virgilio P. Alconera for General Santos City.
Antonio M. Casiple for Victorias City.
Carlos H. Lozada for Municipality of Bayugan.
Jaime R. Ramos for Oroquieta City.
Ernest A. Soberano for Santiago City.
Lucieden G. Raz for Tagaytay City.
Racma R. Fernandez for Cauayan City.
Raoul C. Creencia and Edwin M. Carillo for Cities of Mati, Davao and Carcar, Cebu.
Norberto B. Patriarca for City Government of Zamboanga.
Reggie C. Placido for City of Cadiz.
Manuel M. Lepardo, Jr. for Ludivina T. Mas, *et al.*
Ferdinand H. Ebarle for Association of Bayugan City Employees.

D E C I S I O N

VELASCO, JR., *J*.:

Ratio legis est anima. The spirit rather than the letter of the law. A statute must be read according to its spirit or intent,[1] for what is within the spirit is within the statute although it is not within its letter, and that which is within the letter but not within the spirit is not within the statute.[2] Put a bit differently, that

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[1] *Roa v. Collector of Customs*, 23 Phil. 315 (1912).

[2] *People v. Purisima*, Nos. L-42050-66, L-46229-32, L-46313-16 & L-46997, November 20, 1978, 86 SCRA 542; *Villanueva v. City of Iloilo*, No. L-26521, December 28, 1968, 26 SCRA 578.

which is within the intent of the lawmaker is as much within the statute as if within the letter; and that which is within the letter of the statute is not within the statute unless within the intent of the lawmakers.[3] Withal, courts ought not to interpret and should not accept an interpretation that would defeat the intent of the law and its legislators.[4]

So as it is exhorted to pass on a challenge against the validity of an act of Congress, a co-equal branch of government, it behooves the Court to have at once one principle in mind: the presumption of constitutionality of statutes.[5] This presumption finds its roots in the tri-partite system of government and the corollary separation of powers, which enjoins the three great departments of the government to accord a becoming courtesy for each other's acts, and not to interfere inordinately with the exercise by one of its official functions. Towards this end, courts ought to reject assaults against the validity of statutes, barring of course their clear unconstitutionality. To doubt is to sustain, the theory in context being that the law is the product of earnest studies by Congress to ensure that no constitutional prescription or concept is infringed.[6] Consequently, before a law duly challenged is nullified, an unequivocal breach of, or a clear conflict with, the Constitution, not merely a doubtful or argumentative one, must be demonstrated in such a manner as

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[3] *Alonzo v. Intermediate Appellate Court*, G.R. No. 72873, May 28, 1987, 150 SCRA 259; *Roa v. Collector of Customs*, *supra*; *U.S. v. Co Chico*, 14 Phil. 128 (1909).

[4] *Garcia v. Social Security Commission Legal and Collection*, G.R. No. 170735, December 17, 2007, 540 SCRA 456, 472; citing *Escosura v. San Miguel Brewery, Inc.*, 114 Phil. 225 (1962).

[5] *Coconut Oil Refiners Association, Inc. v. Torres*, G.R. No. 132527, July 29, 2005, 465 SCRA 47; citing *Basco v. Philippine Amusements and Gaming Corporation,* G.R. No. 91649, May 14, 1991, 197 SCRA 52; *Yu Cong Eng v. Trinidad,* 47 Phil. 387 (1925) and other cases.

[6] *Cawalig v. COMELEC*, G.R. Nos. 146319 & 146342, October 26, 2001, 368 SCRA 453.

[7] *Cawalig v. COMELEC*, *id. Peralta v. COMELEC*, Nos. L-47771, L-47803, L-47816, L-47767, L-47791 & L-47827, March 11, 1978, 82 SCRA 30.

to leave no doubt in the mind of the Court.[7]

BACKGROUND

The consolidated petitions for prohibition commenced by the League of Cities of the Philippines (LCP), City of Iloilo, City of Calbayog, and Jerry P. Treñas[8] assail the constitutionality of the sixteen (16) laws,[9] each converting the municipality covered thereby into a city (cityhood laws, hereinafter) and

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[8] Mayor of Iloilo City.

[9] The sixteen (16) cityhood laws are the following:

1. R.A. 9389, otherwise known as "An Act converting the Municipality of Baybay in the Province of Leyte into a component city to be known as City of Baybay." Lapsed into law on March 15, 2007;
2. R.A. 9390 - as "An Act converting the municipality of Bogo in the Province of Cebu into a component city to be known as City of Bogo." Lapsed into law on March 15, 2007;
3. R.A. 9391 - "An Act converting the Municipality of Catbalogan in the Province of Western Samar into a component city to be known as the City of Catbalogan." Lapsed into law on March 15, 2007;
4. R.A. 9392 - "An Act converting the Municipality of Tandag in the Province of Surigao del Sur into a component city to be known as City of Tandag." Lapsed into law on March 15, 2007;
5. R.A. 9394 - "An Act converting the Municipality of Borongan in the Province of Eastern Samar into a component city to be known as City of Borongan." Lapsed into law on March 16, 2007;
6. R.A. 9398 - "An Act converting the Municipality of Tayabas in the Province of Quezon into a component city to be known as City of Tayabas." Lapsed into law on March 18, 2007;
7. R.A. 9393 - "An Act converting the Municipality of Lamitan in the Province of Basilan into a component city to be known as City of Lamitan." Lapsed into law on March 15, 2007;
8. R.A. 9404 - "An Act converting the Municipality of Tabuk in the Province of Kalinga into a component city to be known as City of Tabuk." Lapsed into law on March 23, 2007;
9. R.A. 9405 - "An Act converting the Municipality of Bayugan in the Province of Agusan del Sur into a component city to be known as City of Bayugan." Lapsed into law on March 23, 2007;
10. R.A. 9407 - "An Act converting the Municipality of Batac in the Province of Ilocos Norte into a component city to be known as City of Batac." Lapsed into law on March 24, 2007;
11. R.A. 9408 - "An Act converting the Municipality of Mati in the Province

seek to enjoin the Commission on Elections (COMELEC) from conducting plebiscites pursuant to subject laws.

By Decision[10] dated November 18, 2008, the Court *en banc*, by a 6-5 vote, granted the petitions and nullified the sixteen (16) cityhood laws for being violative of the Constitution, specifically its Section 10, Article X and the equal protection clause.

Subsequently, respondent local government units (LGUs) moved for reconsideration, raising, as one of the issues, the validity of the factual premises not contained in the pleadings of the parties, let alone established, which became the bases of the Decision subject of reconsideration.[11] By Resolution of March 31, 2009, a divided Court denied the motion for reconsideration.

A second motion for reconsideration followed in which respondent LGUs prayed as follows:

WHEREFORE, respondents respectfully pray that the Honorable Court reconsider its "Resolution" dated March 31, 2009, in so

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of Davao Oriental into a component city to be known as City of Mati." Lapsed into law on March 24, 2007;

12. R.A. 9409 - "An Act converting the Municipality of Guihulngan in the Province of Negros Oriental into a component city to be known as City of Guihulngan." Lapsed into law on March 24, 2007;

13. R.A. 9434 - "An Act converting the Municipality of Cabadbaran in the Province of Agusan del Norte into a component city to be known as City of Cabadbaran." Lapsed into law on April 12, 2007;

14. R.A. 9436 - "An Act converting the Municipality of Carcar in the Province of Cebu into a component city to be known as City of Carcar." Lapsed into law on April 15, 2007;

15. R.A. 9435 - "An Act converting the Municipality of El Salvador in the Province of Misamis Oriental into a component city to be known as City of El Salvador." Lapsed into law on April 12, 2007; and

16. R.A. 9491 - "An Act converting the Municipality of Naga in the Province of Cebu into a component city to be known as City of Naga." Lapsed into law on July 15, 2007.

[10] Penned by Associate Justice Antonio T. Carpio.

[11] *Rollo* (G.R. No. 178056), p. 2845. As alleged, the Court assumed that each of the cities existing when the cityhood bills were enacted had an income of PhP 100 million or more.

far as it denies for "lack of merit" respondents' "Motion for Reconsideration" dated December 9, 2008 and in lieu thereof, considering that new and meritorious arguments are raised by respondents' "Motion for Reconsideration" dated December 9, 2008 to grant afore-mentioned "Motion for Reconsideration" dated December 9, 2008 and dismiss the "Petitions For Prohibition" in the instant case.

Per **Resolution** dated **April 28, 2009**, the Court, voting 6-6, disposed of the motion as follows:

By a vote of 6-6, the Motion for Reconsideration of the Resolution of 31 March 2009 is DENIED for lack of merit. The motion is denied since there is no majority that voted to overturn the Resolution of 31 March 2009.

The Second Motion for Reconsideration of the Decision of 18 November 2008 is DENIED for being a prohibited pleading, and the Motion for Leave to Admit Attached Petition in Intervention x x x filed by counsel for Ludivina T. Mas, *et al.* are also DENIED. No further pleadings shall be entertained. Let entry of judgment be made in due course. x x x

On **May 14, 2009**, respondent LGUs filed a *Motion to Amend the Resolution of April 28, 2009 by Declaring Instead that Respondents' "Motion for Reconsideration of the Resolution of March 31, 2009" and "Motion for Leave to File and to Admit Attached 'Second Motion for Reconsideration of the Decision Dated November 18, 2008' Remain Unresolved and to Conduct Further Proceedings Thereon*."

Per its **Resolution of June 2, 2009**, the Court declared the May 14, 2009 motion adverted to as expunged in light of the entry of judgment made on May 21, 2009. Justice Leonardo-de Castro, however, taking common cause with Justice Bersamin to grant the motion for reconsideration of the April 28, 2009 Resolution and to recall the entry of judgment, stated the observation, and with reason, that the entry was effected "before the Court could act on the aforesaid motion which was filed within the 15-day period counted from receipt of the April 28, 2009 Resolution."[12]

[12] Per Justice Leonardo-de Castro's Reflections.

Forthwith, respondent LGUs filed a *Motion for Reconsideration of the Resolution of June 2, 2009* to which some of the petitioners and petitioners-in-intervention filed their respective comments. The Court will now rule on this incident. But first, we set and underscore some basic premises:

(1) The initial motion to reconsider the November 18, 2008 Decision, as Justice Leonardo-de Castro noted, indeed raised new and substantial issues, inclusive of the matter of the correctness of the factual premises upon which the said decision was predicated. The 6-6 vote on the motion for reconsideration per the Resolution of March 31, 2009, which denied the motion on the sole ground that "the basic issues have already been passed upon" reflected a divided Court on the issue of whether or not the underlying Decision of November 18, 2008 had indeed passed upon the basic issues raised in the motion for reconsideration of the said decision;

(2) The aforesaid May 14, 2009 *Motion to Amend Resolution of April 28, 2009* was precipitated by the tie vote which served as basis for the issuance of said resolution. This May 14, 2009 motion—which mainly argued that a tie vote is inadequate to declare a law unconstitutional—remains unresolved; and

(3) Pursuant to Sec. 4(2), Art. VIII of the Constitution, all cases involving the constitutionality of a law shall be heard by the Court *en banc* and decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

The basic issue tendered in this motion for reconsideration of the June 2, 2009 Resolution boils down to whether or not the required vote set forth in the aforesaid Sec. 4(2), Art. VIII is limited only to the initial vote on the petition or also to the subsequent voting on the motion for reconsideration where the Court is called upon and actually votes on the constitutionality of a law or like issuances. Or, as applied to this case, would a minute resolution dismissing, on a tie vote, a motion for reconsideration on the sole stated ground—that the "basic issues have already been passed"— suffice to hurdle the voting

requirement required for a declaration of the unconstitutionality of the cityhood laws in question?

The 6-6 vote on the motion to reconsider the Resolution of March 31, 2009, which denied the initial motion on the sole ground that "the basic issues had already been passed upon" betrayed an evenly divided Court on the issue of whether or not the underlying Decision of November 18, 2008 had indeed passed upon the issues raised in the motion for reconsideration of the said decision. But at the end of the day, the single issue that matters and the vote that really counts really turn on the constitutionality of the cityhood laws. And be it remembered that the inconclusive 6-6 tie vote reflected in the April 28, 2009 Resolution was the last vote on the issue of whether or not the cityhood laws infringe the Constitution. Accordingly, the motions of the respondent LGUs, in light of the 6-6 vote, should be deliberated anew until the required concurrence on the issue of the validity or invalidity of the laws in question is, on the merits, secured.

It ought to be clear that a deadlocked vote does not reflect the "majority of the Members" contemplated in Sec. 4 (2) of Art. VIII of the Constitution, which requires that:

> All cases involving the constitutionality of a treaty, international or executive agreement, or law shall be heard by the Supreme Court *en banc*, x x x shall be decided with the **concurrence of a majority** of the Members who actually took part in the deliberations on the issues in the case and voted thereon. (Emphasis added.)

Webster defines "majority" as "a number greater than half of a total."[13] In plain language, this means 50% plus one. In *Lambino v. Commission on Elections*, Justice, now Chief Justice, Puno, in a separate opinion, expressed the view that "**a deadlocked vote of six (6) is not a majority and a non-majority cannot write a rule with precedential value**."[14]

As may be noted, the aforequoted Sec. 4 of Art. VIII, as

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[13] WEBSTER'S *THIRD NEW INTERNATIONAL DICTIONARY* 1363.

[14] G.R. Nos. 174153 & 174299, October 25, 2006, 505 SCRA 160.

couched, exacts a majority vote in the determination of a case involving the constitutionality of a statute, without distinguishing whether such determination is made on the main petition or thereafter on a motion for reconsideration. This is as it should be, for, to borrow from the late Justice Ricardo J. Francisco: "x x x [E]ven assuming x x x that the constitutional requirement on the concurrence of the 'majority' was initially reached in the x x x *ponencia*, the same is inconclusive as it was still open for review by way of a motion for reconsideration."[15]

To be sure, the Court has taken stock of the rule on a tie-vote situation, *i.e.*, Sec. 7, Rule 56 and the complementary A.M. No. 99-1-09- SC, respectively, providing that:

SEC. 7. *Procedure if opinion is equally divided*. – Where the court *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall again be deliberated on, and if after such deliberation no decision is reached, the original action commenced in the court shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied.

A.M. No. 99-1-09-SC – x x x A motion for reconsideration of a decision or resolution of the Court *En Banc* or of a Division may be granted upon a vote of a majority of the *En Banc* or of a Division, as the case may be, who actually took part in the deliberation of the motion.

If the voting results in a tie, the motion for reconsideration is deemed denied.

But since the instant cases fall under Sec. 4 (2), Art. VIII of the Constitution, the aforequoted provisions ought to be applied in conjunction with the prescription of the Constitution that the cases "shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the instant cases and voted thereon." To repeat, the last vote on the issue of the constitutionality of the cityhood bills is

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[15] Cited in the opinion of Chief Justice Puno in *Lambino.*

[16] Sec. 10, Rule 51 of the Rules of Court provides that "If no appeal or motion for new trial or reconsideration is filed within the time provided in

that reflected in the April 28, 2009 Resolution—a 6-6 deadlock.

On the postulate then that *first*, the finality of the November 18, 2008 Decision has yet to set in, the issuance of the precipitate[16] entry of judgment notwithstanding, and *second*, the deadlocked vote on the second motion for reconsideration did not definitely settle the constitutionality of the cityhood laws, the Court is inclined to take another hard look at the underlying decision. Without belaboring in their smallest details the arguments for and against the procedural dimension of this disposition, it bears to stress that the Court has the power to suspend its own rules when the ends of justice would be served thereby.[17] In the performance of their duties, courts should not be shackled by stringent rules which would result in manifest injustice. Rules of procedure are only tools crafted to facilitate the attainment of justice. Their strict and rigid application must be eschewed, if they result in technicalities that tend to frustrate rather than promote substantial justice. Substantial rights must not be prejudiced by a rigid and technical application of the rules in the altar of expediency. When a case is impressed with public interest, a relaxation of the application of the rules is in order.[18] Time and again, this Court has suspended its own rules or excepted a particular case from their operation whenever the higher interests of justice so require.[19]

While perhaps not on all fours with the case, because it involved a purely business transaction, what the Court said in *Chuidian v. Sandiganbayan*[20] is most apropos:

To reiterate what the Court has said in *Ginete vs. Court of Appeals*

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these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments."

[17] *Uy v. Land Bank of the Philippines*, G.R. No. 136100, July 24, 2000, 336 SCRA 419.

[18] *Tomawis v. Tabao-Caudang*, G.R. No. 166547, September 12, 2007, 533 SCRA 68.

[19] *Piczon v. Court of Appeals*, G.R. Nos. 76378-81, September 24, 1990, 190 SCRA 31, 38.

[20] G.R. Nos. 156383 & 160723, July 31, 2006, 497 SCRA 327.

and other cases, the rules of procedure should be viewed as mere instruments designed to facilitate the attainment of justice. They are not to be applied with severity and rigidity when such application would clearly defeat the very rationale for their conception and existence. Even the Rules of Court reflects this principle. The power to suspend or even disregard rules, inclusive of the one-motion rule, can be so pervasive and compelling as to alter even that which this Court has already declared to be final. The peculiarities of this case impel us to do so now.

The Court, by a vote of 6-4, grants the respondent LGUs' motion for reconsideration of the Resolution of June 2, 2009, as well as their May 14, 2009 motion to consider the second motion for reconsideration of the November 18, 2008 Decision unresolved, and also grants said second motion for reconsideration.

This brings us to the substantive aspect of the case.

The Undisputed Factual Antecedents in Brief

During the 11th Congress,[21] fifty-seven (57) cityhood bills were filed before the House of Representatives.[22] Of the fifty-seven (57), thirty-three (33) eventually became laws. The twenty-four (24) other bills were not acted upon.

Later developments saw the introduction in the Senate of Senate Bill (S. Bill) No. 2157[23] to amend Sec. 450 of Republic Act No. (RA) 7160, otherwise known as the Local Government Code (LGC) of 1991. The proposed amendment sought to increase the income requirement to qualify for conversion into a city from PhP 20 million average annual income to PhP 100 million locally generated income.

In March 2001, S. Bill No. 2157 was signed into law as RA 9009 to take effect on June 30, 2001. As thus amended by

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[21] July 1998 and June 2001.

[22] Journal, Senate 13th Congress 59th Session 1238 (January 23, 2007).

[23] Entitled "*An Act Amending Section 450 of Republic Act No. 7160, Otherwise Known as The Local Government Code of 1991, by Increasing the Average Annual Income Requirement for a Municipality or Cluster of Barangays to be Converted into a Component City.*"

RA 9009, Sec. 450 of the LGC of 1991 now provides that "[a] municipality x x x may be converted into a component city if it has a [certified] locally generated average annual income x x x of at least [PhP 100 million] for the last two (2) consecutive years based on 2000 constant prices."

After the effectivity of RA 9009, the Lower House of the 12th Congress adopted in July 2001 House (H.) Joint Resolution No. 29[24] which, as its title indicated, sought to exempt from the income requirement prescribed in RA 9009 the 24 municipalities whose conversions into cities were not acted upon during the previous Congress. The 12th Congress ended without the Senate approving H. Joint Resolution No. 29.

Then came the 13th Congress (July 2004 to June 2007), which saw the House of Representatives re-adopting H. Joint Resolution No. 29 as H. Joint Resolution No. 1 and forwarding it to the Senate for approval.

The Senate, however, again failed to approve the joint resolution. During the Senate session held on November 6, 2006, Senator Aquilino Pimentel, Jr. asserted that passing H. Resolution No. 1 would, in net effect, allow a wholesale exemption from the income requirement imposed under RA 9009 on the municipalities. For this reason, he suggested the filing by the House of Representatives of individual bills to pave the way for the municipalities to become cities and then forwarding them to the Senate for proper action.[25]

Heeding the advice, sixteen (16) municipalities filed, through their respective sponsors, individual cityhood bills. Common to all 16 measures was a provision exempting the municipality covered from the PhP 100 million income requirement.

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[24] Entitled "*Joint Resolution to Exempt Certain Municipalities Embodied in Bills Filed in Congress Before June 30, 2001 from the Coverage of [RA] 9009*." Annex "A", Memorandum of Petitioners.

[25] Journal, Senate 13th Congress, 59th Session, pp. 1238-40, cited in Justice Reyes' Dissent, p. 37.

As of June 7, 2007, both Houses of Congress had approved the individual cityhood bills, all of which eventually lapsed into law on various dates. Each cityhood law directs the COMELEC, within thirty (30) days from its approval, to hold a plebiscite to determine whether the voters approve of the conversion.

As earlier stated, the instant petitions seek to declare the cityhood laws unconstitutional for violation of Sec. 10, Art. X of the Constitution, as well as for violation of the equal-protection clause. The wholesale conversion of municipalities into cities, the petitioners bemoan, will reduce the share of existing cities in the Internal Revenue Allotment (IRA), since more cities will partake of the internal revenue set aside for all cities under Sec. 285 of the LGC of 1991.[26]

Petitioners-in-intervention, LPC members themselves, would later seek leave and be allowed to intervene.

Aside from their basic plea to strike down as unconstitutional the cityhood laws in question, petitioners and petitioners-in-intervention collectively pray that an order issue enjoining the COMELEC from conducting plebiscites in the affected areas. An alternative prayer would urge the Court to restrain the poll body from proclaiming the plebiscite results.

On July 24, 2007, the Court *en banc* resolved to consolidate the petitions and the petitions-in-intervention. On March 11, 2008, it heard the parties in oral arguments.

The Issues

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[26] Sec. 285 of the 1991 LGC provides: *Allocation to Local Government Units*. — The share of [LGUs] in the [IRA] shall be allocated in the following manner:

(a) Provinces — Twenty-three percent (23%);

(b) Cities — Twenty-three percent (23%);

(c) Municipalities — Thirty-four percent (34%); and

(d) *Barangays* — Twenty percent (20%)

Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

(a) Population — Fifty percent (50%);

In the main, the issues to which all others must yield pivot on whether or not the cityhood laws violate (1) Sec. 10. Art. X of the Constitution and (2) the equal protection clause.

In the November 18, 2008 Decision granting the petitions, Justice Antonio T. Carpio, for the Court, resolved the twin posers in the affirmative and accordingly declared the cityhood laws unconstitutional, deviating as they do from the uniform and non-discriminatory income criterion prescribed by the LGC of 1991. In so doing, the *ponencia* veritably agreed with the petitioners that the Constitution, in clear and unambiguous language, requires that all the criteria for the creation of a city shall be embodied and written in the LGC, and not in any other law.

After a circumspect reflection, the Court is disposed to reconsider.

Petitioners' threshold posture, characterized by a strained interpretation of the Constitution, if accorded cogency, would veritably curtail and cripple Congress' valid exercise of its authority to create political subdivisions.

By constitutional design[27] and as a matter of long-established principle, the power to create political subdivisions or LGUs is essentially legislative in character.[28] But even without any constitutional grant, Congress can, by law, create, divide, merge, or altogether abolish or alter the boundaries of a province, city, or municipality. We said as much in the fairly recent case, *Sema v. COMELEC*.[29] The 1987 Constitution, under its Art. X, Sec. 10,

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(b) Land Area — Twenty-five percent (25%); and

(c) Equal sharing — Twenty-five percent (25%)

x x x x x x x x x

[27] Both the 1973 and 1987 Constitutions contain provisions on the creation of LGUs and both specifically provides that the creation shall be in accordance with the criteria established in the local government code.

[28] *Torralba v. Municipality of Sibagat*, No. 59180, January 29, 1987, 147 SCRA 390, 394; *Sema v. COMELEC*, *infra*.

[29] G.R. Nos. 177597 & 178628, July 16, 2008, 558 SCRA 700.

nonetheless provides for the creation of LGUs, thus:

> Section 10. No province, city, municipality, or *barangay* shall be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established **in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. (Emphasis supplied.)

As may be noted, the afore-quoted provision specifically provides for the creation of political subdivisions "**in accordance with the criteria established in the local government code**," subject to the approval of the voters in the unit concerned. The criteria referred to are the verifiable indicators of viability, *i.e.*, area, population, and income, now set forth in Sec. 450 of the LGC of 1991, as amended by RA 9009. The petitioners would parlay the thesis that these indicators or criteria must be written only in the LGC and not in any other statute. Doubtless, the code they are referring to is the LGC of 1991. Pushing their point, they conclude that the cityhood laws that exempted the respondent LGUs from the income standard spelled out in the amendatory RA 9009 offend the Constitution.

Petitioners' posture does not persuade.

The supposedly infringed Art. X, Sec. 10 is not a new constitutional provision. Save for the use of the term "**barrio**" in lieu of "***barangay***," "**may be**" instead of "**shall**," the change of the phrase "**unit or units**" to "**political unit**" and the addition of the modifier "**directly**" to the word "**affected**," the aforesaid provision is a substantial reproduction of Art. XI, Sec. 3 of the 1973 Constitution, which reads:

> Section 3. No province, city, municipality, or ***barrio*** **may be** created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the **unit or units** affected. (Emphasis supplied.)

It bears notice, however, that the "**code**" similarly referred to in the 1973 and 1987 Constitutions is clearly but a law Congress

enacted. This is consistent with the aforementioned plenary power of Congress to create political units. Necessarily, since Congress wields the vast poser of creating political subdivisions, surely it can exercise the lesser authority of requiring a set of criteria, standards, or ascertainable indicators of viability for their creation. Thus, the only conceivable reason why the Constitution employs the clause "**in accordance with the criteria established in the local government code**" is to lay stress that it is Congress alone, and no other, which can impose the criteria. The eminent constitutionalist, Fr. Joaquin G. Bernas, S.J., in his treatise on Constitutional Law, specifically on the subject provision, explains:

Prior to 1965, there was a certain lack of clarity with regard to the power to create, divide, merge, dissolve, or change the boundaries of municipal corporations. The extent to which the executive may share in this power was obscured by *Cardona v. Municipality of Binangonan*.[30] *Pelaez v. Auditor General* subsequently clarified the *Cardona* case when the Supreme Court said that "the authority to *create* municipal corporations is essentially legislative in nature."[31] *Pelaez*, however, conceded that "the power to fix such common boundary, in order to avoid or settle conflicts of jurisdiction between adjoining municipalities, may partake of an *administrative* nature-involving as it does, the adoption of means and ways to *carry into effect* the law creating said municipalities."[32] *Pelaez* was silent about division, merger, and dissolution of municipal corporations. But since division in effect *creates* a new municipality, and both dissolution and merger in effect abolish a legal creation, it may fairly be inferred that these acts are also *legislative* in nature.

Section 10 [Art. X of the 1987 Constitution], which is a legacy from the 1973 Constitution, goes further than the doctrine in the *Pelaez* case. It not only makes creation, division, merger, abolition or substantial alteration of boundaries of provinces, cities, municipalities x x x subject to "criteria established in the

[30] 36 Phil. 547 (1917).

[31] No. L-23825, December 24, 1965, 15 SCRA 569, 576.

[32] *Id.*

[33] Bernas, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*, *A COMMENTARY* 124 (1996).

local government code," **thereby declaring these actions properly legislative**, but it also makes creation, division, merger, abolition or substantial alteration of boundaries "subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected."[33] x x x (Emphasis added.)

It remains to be observed at this juncture that when the 1987 Constitution speaks of the LGC, the reference cannot be to any specific statute or codification of laws, let alone the LGC of 1991.[34] Be it noted that at the time of the adoption of the 1987 Constitution, Batas Pambansa Blg. (BP) 337, the then LGC, was still in effect. Accordingly, had the framers of the 1987 Constitution intended to isolate the embodiment of the criteria only in the LGC, then they would have actually referred to BP 337. Also, they would then not have provided for the enactment by Congress of a new LGC, as they did in Art. X, Sec. 3[35] of the Constitution.

Consistent with its plenary legislative power on the matter, Congress can, via either a consolidated set of laws or a much simpler, single-subject enactment, impose the said verifiable criteria of viability. These criteria need not be embodied in the local government code, albeit this code is the ideal repository to ensure, as much as possible, the element of uniformity. Congress can even, after making a codification, enact an amendatory law, adding to the existing layers of indicators earlier codified, just as efficaciously as it may reduce the same. In this case, the amendatory RA 9009 upped the already codified income requirement from PhP 20 million to PhP 100 million. At the end of the day, the passage of amendatory laws is no different from the enactment of laws, *i.e.*, the cityhood laws specifically

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[34] Became effective on January 1, 1992.

[35] Section 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization x x x allocate among the different local government units their powers, responsibilities and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

exempting a particular political subdivision from the criteria earlier mentioned. Congress, in enacting the exempting law/s, effectively decreased the already codified indicators.

Petitioners' theory that Congress must provide the criteria solely in the LGC and not in any other law strikes the Court as illogical. For if we pursue their contention to its logical conclusion, then RA 9009 embodying the new and increased income criterion would, in a way, also suffer the vice of unconstitutionality. It is startling, however, that petitioners do not question the constitutionality of RA 9009, as they in fact use said law as an argument for the alleged unconstitutionality of the cityhood laws.

As it were, Congress, through the medium of the cityhood laws, validly decreased the income criterion *vis-à-vis* the respondent LGUs, but without necessarily being unreasonably discriminatory, as shall be discussed shortly, by reverting to the PhP 20 million threshold what it earlier raised to PhP 100 million. The legislative intent not to subject respondent LGUs to the more stringent requirements of RA 9009 finds expression in the following uniform provision of the cityhood laws:

> Exemption from Republic Act No. 9009. – The City of x x x shall be exempted from the income requirement prescribed under Republic Act No. 9009.

In any event, petitioners' constitutional objection would still be untenable even if we were to assume purely *ex hypothesi* the correctness of their underlying thesis, *viz*: that the conversion of a municipality to a city shall be in accordance with, among other things, the income criterion set forth in the LGC of 1991, and in no other; otherwise, the conversion is invalid. We shall explain.

Looking at the circumstances behind the enactment of the laws subject of contention, the Court finds that the LGC-amending RA 9009, no less, intended the LGUs covered by the

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[36] Discussed in some detail in retired Justice Ruben T. Reyes' dissent from the original Decision.

cityhood laws to be exempt from the PhP 100 million income criterion. In other words, the cityhood laws, which merely carried out the intent of RA 9009, adhered, in the final analysis, to the "**criteria established in the Local Government Code**," pursuant to Sec. 10, Art. X of the 1987 Constitution. We shall now proceed to discuss this exemption angle.[36]

Among the criteria established in the LGC pursuant to Sec.10, Art. X of the 1987 Constitution are those detailed in Sec. 450 of the LGC of 1991 under the heading "*Requisites for Creation*." The section sets the minimum income qualifying bar before a municipality or a cluster of *barangay*s may be considered for cityhood. Originally, Sec. 164 of BP 337 imposed an average regular annual income "of **at least ten million pesos** for the last three consecutive years" as a minimum income standard for a municipal-to-city conversion. The LGC that BP 337 established was superseded by the LGC of 1991 whose then Sec. 450 provided that "[a] municipality or cluster of *barangays* may be converted into a component city if it has an average annual income, x x x of **at least twenty million pesos** (₱20,000,000.00) for at least two (2) consecutive years based on 1991 constant prices x x x." RA 9009 in turn amended said Sec. 450 by further increasing the income requirement to PhP 100 million, thus:

> Section 450. *Requisites for Creation*. – (a) A municipality or a cluster of *barangays* may be converted into a component city if it has a locally generated average annual income, as certified by the Department of Finance, of at least **One Hundred Million Pesos (₱100,000,000.00) for the last two (2) consecutive years** based on 2000 constant prices, and if it has either of the following requisites:
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> x x x x x x x x x
>
> (c) The average annual income shall include the income accruing

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[37] Whenever possible, the words in a statute must be given their ordinary meaning. See *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, G.R. No. 127882, December 1, 2004, 445 SCRA 1; citing *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng Mga Manggagawang Pilipino, Inc.*, G.R. Nos. 160261-63 & 160277, November 10, 2003, 415 SCRA 44.

to the general fund, exclusive of special funds, transfers, and non-recurring income. (Emphasis supplied.)

The legislative intent is not at all times accurately reflected in the manner in which the resulting law is couched. Thus, applying a *verba legis*[37] or strictly literal interpretation of a statute may render it meaningless and lead to inconvenience, an absurd situation or injustice.[38] To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself,[39] resort should be to the rule that the spirit of the law controls its letter.[40]

It is in this respect that the history of the passage of RA 9009 and the logical inferences derivable therefrom assume relevancy in discovering legislative intent.[41]

The rationale behind the enactment of RA 9009 to amend Sec. 450 of the LGC of 1991 can reasonably be deduced from Senator Pimentel's sponsorship speech on S. Bill No. 2157. Of particular significance is his statement regarding the basis for the proposed increase from PhP 20 million to PhP 100 million in the income requirement for municipalities wanting to be converted into cities, *viz*:

Senator Pimentel. Mr. President, I would have wanted this bill to be included in the whole set of proposed amendments that we have introduced to precisely amend the [LGC]. However, it is a fact that there is a **mad rush of municipalities wanting to be converted into cities**. Whereas in 1991, when the [LGC] was approved, there were only 60 cities, today the number has increased to 85 cities, with 41 more municipalities applying for conversion x x x. **At the**

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[38] *Solid Homes v. Tan*, G.R. Nos. 145156-57, July 29, 2005, 465 SCRA 137; *Southern Cross Cement Corporation v. Cement Manufacturers Association of the Philippines*, G.R. No. 158540, August 3, 2005, 465 SCRA 532.

[39] *Senarillos v. Hermosisima*, 100 Phil. 501 (1956); *Torres v. Limjap,* 56 Phil. 141 (1931); *Tamayo v. Gsell*, 35 Phil. 953 (1916); *U.S. v. Tamparong,* 31 Phil. 321 (1915).

[40] *Id.*

[41] *Coconut Oil Refiners Association v. Torres*, G.R. No. 132527, July 29, 2005, 465 SCRA 47.

rate we are going, I am apprehensive that before long this nation will be a nation of all cities and no municipalities.

It is for that reason, Mr. President, that we are proposing among other things, that the financial requirement, which, under the [LGC], is fixed at ₱20 million, be raised to ₱100 million to enable a municipality to have the right to be converted into a city, and the ₱100 million should be sourced from locally generated funds.

Congress to be sure knew, when RA 9009 was being deliberated upon, of the pendency of several bills on cityhood, wherein the applying municipalities were qualified under the then obtaining PhP 20 million-income threshold. These included respondent LGUs. Thus, equally noteworthy is the ensuing excerpts from the floor exchange between then Senate President Franklin Drilon and Senator Pimentel, the latter stopping short of saying that the income threshold of PhP 100 million under S. Bill No. 2157 would not apply to municipalities that have pending cityhood bills, thus:

THE PRESIDENT. The Chair would like to ask for some clarificatory point. x x x

THE PRESIDENT. This is just on the point of the **pending bills** in the Senate which propose the conversion of a number of municipalities into cities and **which qualify under the present standard.**

We would like to know the view of the sponsor: <u>Assuming that this bill becomes a law, will the Chamber apply the standard as proposed in this bill to those bills which are pending for consideration?</u>

SENATOR PIMENTEL, Mr. President, <u>it might not be fair to make this bill x x x [if] approved, **retroact** to the bills that are pending in the Senate for conversion from municipalities to cities</u>.

THE PRESIDENT. Will there be an appropriate language crafted to reflect that view? Or does it not become a policy of the Chamber, assuming that this bill becomes a law x x x that it will apply to those bills which are already approved by the House under the old version of the [LGC] and are now pending in the Senate? The Chair does not know if we can craft a language which will limit the application to those which are not yet in the Senate. Or is that a policy that the Chamber will adopt?

SENATOR PIMENTEL. Mr. President, personally, I do not think it is necessary to put that provision because what we are saying here will form part of the interpretation of this bill. Besides, if there is no retroactivity clause, I do not think that the bill would have any retroactive effect.

THE PRESIDENT. So the understanding is that those bills which are already pending in the Chamber will not be affected.

SENATOR PIMENTEL. **These will not be affected**, Mr. President.[42] (Emphasis and underscoring supplied.)

What the foregoing Pimentel-Drilon exchange eloquently indicates are the following complementary legislative intentions: (1) the then pending cityhood bills would be outside the pale of the minimum income requirement of PhP 100 million that S. Bill No. 2159 proposes; and (2) RA 9009 would not have any retroactive effect insofar as the cityhood bills are concerned.

Given the foregoing perspective, it is not amiss to state that the basis for the inclusion of the exemption clause of the cityhood laws is the clear-cut intent of Congress of not according retroactive effect to RA 9009. Not only do the congressional records bear the legislative intent of exempting the cityhood laws from the income requirement of PhP 100 million. Congress has now made

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[42] *See* Justice Reyes' Dissent promulgated on November 18, 2008; citing II Record, Senate, 13th Congress, pp. 167-168. This is confirmed by the Journal of the Senate on January 29, 2007, p. 1240, which contains the following entry:

REMARKS OF SENATOR PIMENTEL

"Expressing his support for the sentiment of Senator Lim, Senator Pimentel stated that the local government units applying for cityhood are requesting to be exempted from the income requirement because when this was raised by RA 9009, the bills on conversion to cityhood were already pending in the House x x x. He recalled that during the deliberation on said law, when Senate President Drilon asked him if there were pending bills on the creation of cities, he replied that there were three, only to find out later on that there were, in fact, a number of cityhood bills pending in the House x x x. He asked Senator Lim to be more patient and to allow Senators Roxas and Recto to interpellate on the bills the following day."

[43] *Coconut Oil Refiners Association*, *supra* note 41.

its intention to exempt express in the challenged cityhood laws.

Legislative intent is part and parcel of the law, the controlling factor in interpreting a statute. In construing a statute, the proper course is to start out and follow the true intent of the Legislature and to adopt the sense that best harmonizes with the context and promotes in the fullest manner the policy and objects of the legislature.[43] In fact, any interpretation that runs counter to the legislative intent is unacceptable and invalid.[44] *Torres v. Limjap* could not have been more precise:

> The intent of a Statute is the Law. – If a statute is valid, it is to have effect according to the purpose and intent of the lawmaker. **The intent is** x x x **the essence of the law and the primary rule of construction is to ascertain and give effect to that intent**. The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, **although it may not be consistent with the strict letter of the statute**. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the act. **Intent is the spirit which gives life to a legislative enactment**. In construing statutes the proper course is to start out and follow the true intent of the legislature x x x.[45] (Emphasis supplied.)

As emphasized at the outset, behind every law lies the presumption of constitutionality.[46] Consequently, to him who

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[44] *National Police Commission v. De Guzman, Jr.*, G.R. No. 106724, February 9, 1994, 229 SCRA 801.

[45] *Torres v. Limjap*, *supra* note 39; citing Sutherland, *STATUTORY CONSTRUCTION*, Vol. II, pp. 693-695.

[46] *Heller v. Doe by Doe*, 509 US 312, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993); *Abbas v. Commission on Elections*, G.R. Nos. 89651 & 89965, November 10, 1989, 179 SCRA 287; *Salas v. Jarencio*, G.R. No. L-29788, August 30, 1972, 46 SCRA 734; *Yu Cong Eng v. Trinidad*, 47 Phil. 387 (1925).

[47] *Peralta v. Commission on Elections*, Nos. L-47771, L-47803, L-47816, L-47767, L-47791 & L-47827, March 11, 1978, 82 SCRA 30; citing *Cooper v. Telfair,* 4 Dall. 14; Dodd, *CASES ON CONSTITUTIONAL LAW* 56 (3rd ed., 1942).

would assert the unconstitutionality of a statute belongs the burden of proving otherwise. Laws will only be declared invalid if a conflict with the Constitution is beyond reasonable doubt.[47] Unfortunately for petitioners and petitioners-in-intervention, they failed to discharge their heavy burden.

It is contended that the deliberations on the cityhood bills and the covering joint resolution were undertaken in the 11th and/or the 12th Congress. Accordingly, so the argument goes, such deliberations, more particularly those on the unapproved resolution exempting from RA 9009 certain municipalities, are without significance and would not qualify as extrinsic aids in construing the cityhood laws that were passed during the 13th Congress, Congress not being a continuing body.

The argument is specious and glosses over the reality that the cityhood bills—which were already being deliberated upon even perhaps before the conception of RA 9009—were again being considered during the 13th Congress after being tossed around in the two previous Congresses. And specific reference to the cityhood bills was also made during the deliberations on RA 9009. At the end of the day, it is really immaterial if Congress is not a continuing legislative body. What is important is that the debates, deliberations, and proceedings of Congress and the steps taken in the enactment of the law, in this case the cityhood laws in relation to RA 9009 or vice versa, were part of its legislative history and may be consulted, if appropriate, as aids in the interpretation of the law.[48] And of course the earlier cited Drilon-Pimentel exchange on whether or not the 16 municipalities in question would be covered by RA 9009 is another vital link to the historical chain of the cityhood bills. This and other proceedings on the bills are spread in the Congressional journals, which cannot be conveniently reduced to pure rhetoric without meaning whatsoever, on the simplistic and *non-sequitur* pretext that Congress is not a continuing body

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[48] *Esso Standard Eastern, Inc. v. Commissioner of Internal Revenue*, G.R. No. 28508, July 7, 1989, 175 SCRA 149; cited in *Coconut Oil Refiners Association v. Torres*, *supra*.

and that unfinished business in either chamber is deemed terminated at the end of the term of Congress.

This brings us to the challenge to the constitutionality of cityhood laws on equal protection grounds.

To the petitioners, the cityhood laws, by granting special treatment to respondent municipalities/LGUs by way of exemption from the standard PhP 100 million minimum income requirement, violate Sec.1, Art. III of the Constitution, which in part provides that no person shall "**be denied the equal protection of the laws**."

Petitioners' challenge is not well taken. At its most basic, the equal protection clause proscribes undue favor as well as hostile discrimination. Hence, a law need not operate with equal force on all persons or things to be conformable with Sec. 1, Art. III of the Constitution.

The equal protection guarantee is embraced in the broader and elastic concept of due process, every unfair discrimination being an offense against the requirements of justice and fair play. It has nonetheless come as a separate clause in Sec. 1, Art. III of the Constitution to provide for a more specific protection against any undue discrimination or antagonism from government. Arbitrariness in general may be assailed on the basis of the due process clause. But if a particular challenged act partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause.[49] This constitutional protection extends to all persons, natural or artificial, within the territorial jurisdiction. Artificial persons, as the respondent LGUs herein, are, however, entitled to protection only insofar as their property is concerned.[50]

In the proceedings at bar, petitioner LCP and the intervenors cannot plausibly invoke the equal protection clause, precisely because no deprivation of property results by virtue of the

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[49] *Phil. Judges Association v. Prado*, G.R. No. 105371, November 11, 1993, 227 SCRA 703.

[50] *Smith, Bell & Co. v. Natividad*, 40 Phil. 136 (1919).

enactment of the cityhood laws. The LCP's claim that the IRA of its member-cities will be substantially reduced on account of the conversion into cities of the respondent LGUs would not suffice to bring it within the ambit of the constitutional guarantee. Indeed, it is presumptuous on the part of the LCP member-cities to already stake a claim on the IRA, as if it were their property, as the IRA is yet to be allocated. For the same reason, the municipalities that are not covered by the uniform exemption clause in the cityhood laws cannot validly invoke constitutional protection. For, at this point, the conversion of a municipality into a city will only affect its status as a political unit, but not its property as such.

As a matter of settled legal principle, the fundamental right of equal protection does not require absolute equality. It is enough that all persons or things similarly situated should be treated alike, both as to rights or privileges conferred and responsibilities or obligations imposed. The equal protection clause does not preclude the state from recognizing and acting upon factual differences between individuals and classes. It recognizes that inherent in the right to legislate is the right to classify,[51] necessarily implying that the equality guaranteed is not violated by a legislation based on reasonable classification. Classification, to be reasonable, must (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) not be limited to existing conditions only; and (4) apply equally to all members of the same class.[52] The Court finds that all these requisites have been met by the laws challenged as arbitrary and discriminatory under the equal protection clause.

As things stand, the favorable treatment accorded the sixteen (16) municipalities by the cityhood laws rests on substantial distinction. Indeed, respondent LGUs, which are subjected only to the erstwhile PhP 20 million income criterion instead of the stringent income requirement prescribed in RA 9009, are

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[51] Bernas, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*, *A COMMENTARY* 124 (1996).

[52] *Id.*

substantially different from other municipalities desirous to be cities. Looking back, we note that respondent LGUs had pending cityhood bills before the passage of RA 9009. There lies part of the tipping difference. And years before the enactment of the amendatory RA 9009, respondents LGUs had already met the income criterion exacted for cityhood under the LGC of 1991. Due to extraneous circumstances, however, the bills for their conversion remained unacted upon by Congress. As aptly observed by then Senator, now Manila Mayor, Alfredo Lim in his speech sponsoring H. Joint Resolution No. 1, or the cityhood bills, respondent LGUs saw themselves confronted with the "**changing of the rules in the middle of the game**." Some excerpts of Senator Lim's sponsorship speech:

x x x [D]uring the Eleventh Congress, fifty-seven (57) municipalities applied for city status, confident that each has met the requisites for conversion under Section 450 of the [LGC], particularly the income threshold of ₱20 million. Of the 57 that filed, thirty-two (32) were enacted into law; x x x while the rest – twenty-four (24) in all – failed to pass through Congress. Shortly before the long recess of Congress in February 2001, to give way to the May elections x x x, Senate Bill No. 2157, which eventually became [RA] 9009, was passed into law, effectively raising the income requirement for creation of cities to a whooping ₱100 million x x x. **Much as the proponents of the 24 cityhood bills then pending struggled to beat the effectivity of the law on June 30, 2001, events that then unfolded were swift and overwhelming that Congress just did not have the time to act on the measures**.

Some of these intervening events were x x x the **impeachment of President Estrada** x x x and the **May 2001 elections**.

The imposition of a much higher income requirement for the creation of a city x x x was unfair; like any sport – changing the rules in the middle of the game.

Undaunted, they came back during the [12th] Congress x x x. They filed House Joint Resolution No. 29 seeking exemption from the higher income requirement of RA 9009. **For the second time, [however], time ran out from them**.

For many of the municipalities whose Cityhood Bills are now under

consideration, this year, at the closing days of the [13th] Congress, marks their **ninth year** appealing for fairness and justice. x x x

I, for one, share their view that fairness dictates that they should be given a legal remedy by which they could be allowed to prove that they have all the necessary qualifications for city status using the criteria set forth under the [LGC] prior to its amendment by RA 9009. Hence, when House Joint Resolution No. 1 reached the Senate x x x I immediately set the public hearing x x x. On July 25, 2006, I filed Committee Report No. 84 x x x. On September 6, I delivered the sponsorship x x x.

x x x By November 14, the measure had reverted to the period of individual amendments. This was when the then acting majority leader, x x x informed the Body that Senator Pimentel and the proponents of House Joint Resolution No. 1 have agreed to the proposal of the Minority Leader for the House to first approve the individual Cityhood Bills of the qualified municipalities, along with the provision exempting each of them from the higher income requirement of RA 9009. x x x This led to the certification issued by the proponents short-listing fourteen (14) municipalities deemed to be qualified for city-status.

Acting on the suggestion of Senator Pimentel, the proponents lost no time in working for the approval by the House of Representatives of their individual Cityhood Bills, each containing a provision of exemption from the higher income requirement of RA 9009. On the last session day of last year, December 21, the House transmitted to the Senate the Cityhood Bills of twelve out of the 14 pre-qualified municipalities. Your Committee immediately conducted the public hearing x x x.

The whole process I enumerated [span] **three Congresses** x x x.

In essence, the Cityhood Bills now under consideration will have the same effect as that of House Joint Resolution No. 1 because each of the 12 bills seeks exemption from the higher income requirement of RA 9009. The proponents are invoking the **exemption on the basis of justice and fairness**.

Each of the 12 municipalities has all the requisites for

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[53] Journal, Senate 13th Congress, 59th Session, pp. 1238-1240 (January 23, 2007); cited in Justice Reyes' Dissenting Opinion, pp. 33-37.

conversion into a component city based on the old requirements set forth under Section 450 of the [LGC], prior to its amendment by RA 9009, namely: x x x[53] (Emphasis supplied.)

In hindsight, the peculiar conditions, as depicted in Senator Lim's speech, which respondent LGUs found themselves in were unsettling. They were qualified cityhood applicants before the enactment of RA 9009. Because of events they had absolutely nothing to do with, a spoiler in the form of RA 9009 supervened. Now, then, to impose on them the much higher income requirement after what they have gone through would appear to be indeed "**unfair**," to borrow from Senator Lim. Thus, the imperatives of fairness dictate that they should be given a legal remedy by which they would be allowed to prove that they have all the necessary qualifications for city status, using the criteria set forth under the LGC of 1991 prior to its amendment by RA 9009. Truly, the peculiar conditions of respondent LGUs, which are actual and real, provide sufficient grounds for legislative classification.

To be sure, courts, regardless of doubts they might be entertaining, cannot question the wisdom of the congressional classification, if reasonable, or the motivation underpinning the classification.[54] By the same token, they do not sit to determine the propriety or efficacy of the remedies Congress has specifically chosen to extend. That is its prerogative. The power of the Legislature to make distinctions and classifications among persons is, to reiterate, neither curtailed nor denied by the equal protection clause. A law can be violative of the constitutional limitation only when the classification is without reasonable basis.

The classification is also germane to the purpose of the law. The exemption of respondent LGUs/municipalities from the PhP 100 million income requirement was meant to reduce the inequality occasioned by the passage of the amendatory RA 9009. From another perspective, the exemption was unquestionably designed

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[54] *Pangilinan v. Maglaya*, G.R. No. 104216, August 20, 1993, 225 SCRA 511.

to insure that fairness and justice would be accorded respondent LGUs. Let it be noted that what were then the cityhood bills covering respondent LGUs were part and parcel of the original 57 conversion bills filed in the 11th Congress, 33 of those became laws before the adjournment of that Congress. The then bills of the challenged cityhood laws were not acted upon due, *inter alia*, to the impeachment of then President Estrada, the related *jueteng* scandal investigations conducted before, and the EDSA events that followed the aborted impeachment.

While the equal protection guarantee frowns upon the creation of a privileged class without justification, inherent in the equality clause is the exhortation for the Legislature to pass laws promoting equality or reducing existing inequalities. The enactment of the cityhood laws was in a real sense an attempt on the part of Congress to address the inequity dealt the respondent LGUs. These laws positively promoted the equality and eliminated the inequality, doubtless unintended, between respondent municipalities and the thirty-three (33) other municipalities whose cityhood bills were enacted during the 11th Congress. Respondent municipalities and the 33 other municipalities, which had already been elevated to city status, were all found to be qualified under the old Sec. 450 of the LGC of 1991 during the 11th Congress. As such, both respondent LGUs and the 33 other former municipalities are under like circumstances and conditions. There is, thus, no rhyme or reason why an exemption from the PhP 100 million requirement cannot be given to respondent LGUs. Indeed, to deny respondent LGUs/ municipalities the same rights and privileges accorded to the 33 other municipalities when, at the outset they were similarly situated, is tantamount to denying the former the protective mantle of the equal protection clause. In effect, petitioners and petitioners-in-intervention are creating an absurd situation in which an alleged violation of the equal protection clause of the Constitution is remedied by another violation of the same clause. The irony is not lost to the Court.

Then too the non-retroactive effect of RA 9009 is not limited in application only to conditions existing at the time of its enactment. It is intended to apply for all time, as long as the

contemplated conditions obtain. To be more precise, the legislative intent underlying the enactment of RA 9009 to exclude would-be-cities from the PhP 100 million criterion would hold sway, as long as the corresponding cityhood bill has been filed before the effectivity of RA 9009 **and** the concerned municipality qualifies for conversion into a city under the original version of Sec. 450 of the LGC of 1991.

Viewed in its proper light, the common exemption clause in the cityhood laws is an application of the non-retroactive effect of RA 9009 on the cityhood bills. It is not a declaration of certain rights, but a mere declaration of prior qualification and/or compliance with the non-retroactive effect of RA 9009.

Lastly and in connection with the third requisite, the uniform exemption clause would apply to municipalities that had pending cityhood bills before the passage of RA 9009 and were compliant with then Sec. 450 of the LGC of 1991, which prescribed an income requirement of PhP 20 million. It is hard to imagine, however, if there are still municipalities out there belonging in context to the same class as the sixteen (16) respondent LGUs. Municipalities that cannot claim to belong to the same class as the 16 cannot seek refuge in the cityhood laws. The former have to comply with the PhP 100 million income requirement imposed by RA 9009.

A final consideration. The existence of the cities consequent to the approval of the creating, but challenged, cityhood laws in the plebiscites held in the affected LGUs is now an operative fact. New cities appear to have been organized and are functioning accordingly, with new sets of officials and employees. Other resulting events need not be enumerated. The operative fact doctrine provides another reason for upholding the constitutionality of the cityhood laws in question.

In view of the foregoing discussion, the Court ought to abandon as it hereby abandons and sets aside the Decision of November 18, 2008 subject of reconsideration. And by way of summing up the main arguments in support of this disposition, the Court hereby declares the following:

(1) Congress did not intend the increased income requirement in RA 9009 to apply to the cityhood bills which became the cityhood laws in question. In other words, Congress intended the subject cityhood laws to be exempted from the income requirement of PhP 100 million prescribed by RA 9009;

(2) The cityhood laws merely carry out the intent of RA 9009, now Sec. 450 of the LGC of 1991, to exempt respondent LGUs from the PhP 100 million income requirement;

(3) The deliberations of the 11th or 12th Congress on unapproved bills or resolutions are extrinsic aids in interpreting a law passed in the 13th Congress. It is really immaterial if Congress is not a continuing body. The hearings and deliberations during the 11th and 12th Congress may still be used as extrinsic reference inasmuch as the same cityhood bills which were filed before the passage of RA 9009 were being considered during the 13th Congress. Courts may fall back on the history of a law, as here, as extrinsic aid of statutory construction if the literal application of the law results in absurdity or injustice.

(4) The exemption accorded the 16 municipalities is based on the fact that each had pending cityhood bills long before the enactment of RA 9009 that substantially distinguish them from other municipalities aiming for cityhood. On top of this, each of the 16 also met the PhP 20 million income level exacted under the original Sec. 450 of the 1991 LGC.

And to stress the obvious, the cityhood laws are presumed constitutional. As we see it, petitioners have not overturned the presumptive constitutionality of the laws in question.

WHEREFORE, respondent LGUs' Motion for Reconsideration dated June 2, 2009, their "Motion to Amend the Resolution of April 28, 2009 by Declaring Instead that Respondents' 'Motion for Reconsideration of the Resolution of March 31, 2009' and 'Motion for Leave to File and to Admit Attached Second Motion for Reconsideration of the Decision Dated November 18, 2008' Remain Unresolved and to Conduct Further Proceedings," dated May 14, 2009, and their second Motion for Reconsideration of the Decision dated November 18, 2008 are *GRANTED*. The

June 2, 2009, the March 31, 2009, and April 31, 2009 Resolutions are *REVERSED* and *SET ASIDE*. The entry of judgment made on May 21, 2009 must accordingly be *RECALLED*.

The instant consolidated petitions and petitions-in-intervention are *DISMISSED*. The cityhood laws, namely Republic Act Nos. 9389, 9390, 9391, 9392, 9393, 9394, 9398, 9404, 9405, 9407, 9408, 9409, 9434, 9435, 9436, and 9491 are declared *VALID* and *CONSTITUTIONAL*.

SO ORDERED.

DISSENTING OPINION

CARPIO, *J.*:

"A.M. No. 99-1-09-SC (dated 26 January 1999): ***In the Matter of Clarifying the Rule in Resolving Motions for Reconsideration***

The Court Resolved as follows:

A MOTION FOR THE CONSIDERATION OF A DECISION OR RESOLUTION OF THE COURT EN BANC OR OF A DIVISION MAY BE GRANTED UPON A VOTE OF A MAJORITY OF THE MEMBERS OF THE EN BANC OR OF A DIVISION, AS THE CASE MAY BE, WHO ACTUALLY TOOK PART IN THE DELIBERATION OF THE MOTION.

IF THE VOTING RESULTS IN A TIE, THE MOTION FOR RECONSIDERATION IS DEEMED DENIED." (Emphasis supplied)

x x x x x x x x x

[T]he reason for the rule (of immutability of final judgments) 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.**

— Justice Lucas P. Bersamin, *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, 4 December 2009

The *ponencia* states that "since the instant cases fall under Sec. 4(2), Art. VIII of the Constitution, [Sec. 7, Rule 56 and the Resolution in A.M. No. 99-1-09-SC] ought to be applied in conjunction with the prescription of the Constitution that the cases 'shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the instant cases and voted thereon.'"

I dissent.

I.
The Rules on Tie-Vote

Section 7, Rule 56 of the Rules of Court expressly governs tie-votes in the *en banc*, thus:

> SEC. 7. *Procedure if opinion is equally divided.* **Where the court *en banc* is equally divided in opinion**, or the necessary majority cannot be had, the case shall again be deliberated on, and if after such deliberation no decision is reached, the original action commenced in the court shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and **on all incidental matters, the petition or motion shall be denied.** (Emphasis supplied)

This provision contemplates three possible instances where the Supreme Court *en banc* may be equally divided in opinion or where the necessary majority[1] in the votes cannot be had.

First, **in actions instituted originally in the Supreme Court**, if there is a tie-vote, the Court *en banc* shall deliberate again. After such re-deliberation and the Court remains equally divided, which means that **no decision** had been reached, the original action shall be dismissed. In such a case, the tie-vote results in the dismissal of the action without establishing any jurisprudential precedent.

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[1] "Majority" means the number greater than half or more than half of any total (*Perez v. Dela Cruz*, 137 Phil. 393, 410 [1969], citing Webster's International Dictionary, Unabridged).

Significantly, a deadlock vote on an original action is not novel to the Court. In fact, the Court had experienced such a deadlock in *Cruz v. Secretary of Environment and Natural Resources*,[2] *Badoy, Jr. v. Comelec*,[3] *Antonio, Jr. v. Comelec*,[4] *Agudo v. Comelec*,[5] and *People v. Lopez*.[6]

1. *Cruz v. Secretary of Environment and Natural Resources*

In *Cruz v. Secretary of Environment and Natural Resources,* petitioners Isagani Cruz and Cesar Europa brought a suit for prohibition and *mandamus* as citizens and taxpayers, **assailing the constitutionality of certain provisions of Republic Act No. 8371**, otherwise known as the *Indigenous Peoples Rights Act of 1997 (IPRA)*, and its Implementing Rules and Regulations. Petitioners challenged the constitutionality of the IPRA "on the ground that its provisions amount to an unlawful deprivation of the State's ownership over lands of the public domain as well as minerals and other natural resources therein, in violation of the regalian doctrine embodied in Section 2, Article XII of the Constitution." The Court, *via* a *Per Curiam* resolution, dismissed the petition because the Court was equally divided in opinion, to wit:

After due deliberation on the petition, the members of the Court voted as follows:

Seven (7) voted to dismiss the petition. Justice Kapunan filed an opinion, which the Chief Justice and Justices Bellosillo, Quisumbing, and Santiago join, sustaining the validity of the challenged provisions of R.A. 8371. Justice Puno also filed a separate opinion sustaining all challenged provisions of the law with the exception of Section 1, Part II, Rule III of NCIP Administrative Order No. 1, series of 1998, the Rules and Regulations Implementing the IPRA, and Section 57 of the IPRA which he contends should be interpreted as dealing with

[2] 400 Phil. 904 (2000).

[3] No. L-32546, 17 October 1970, 35 SCRA 285, 301.

[4] 143 Phil. 241, 259-260 (1970).

[5] 144 Phil. 462-463 (1970).

[6] 78 Phil. 286, 318 (1947).

the large-scale exploitation of natural resources and should be read in conjunction with Section 2, Article XII of the 1987 Constitution. On the other hand, Justice Mendoza voted to dismiss the petition solely on the ground that it does not raise a justiciable controversy and petitioners do not have standing to question the constitutionality of R.A. 8371.

Seven (7) other members of the Court voted to grant the petition. Justice Panganiban filed a separate opinion expressing the view that Sections 3 (a)(b), 5, 6, 7 (a)(b), 8, and related provisions of R.A. 8371 are unconstitutional. He reserves judgment on the constitutionality of Sections 58, 59, 65, and 66 of the law, which he believes must await the filing of specific cases by those whose rights may have been violated by the IPRA. Justice Vitug also filed a separate opinion expressing the view that Sections 3(a), 7, and 57 of R.A. 8371 are unconstitutional. Justices Melo, Pardo, Buena, Gonzaga-Reyes, and De Leon join in the separate opinions of Justices Panganiban and Vitug.

As the votes were equally divided (7 to 7) and the necessary majority was not obtained, the case was redeliberated upon. However, after redeliberation, the voting remained the same. Accordingly, pursuant to Rule 56, Section 7 of the Rules of Civil Procedure, the petition is DISMISSED.[7] (Emphasis supplied)

On motion for reconsideration, the Court *en banc*, by virtue of Section 7, Rule 56, denied the petitioners' motion for reconsideration since the members of the Court *en banc* were equally divided on such motion. In a minute Resolution promulgated on 21 September 2001, the Court stated that "the members of the Court who took part in the original deliberations on the petition find no reason to modify or in any way alter their views on the questions raised by petitioners and reiterated in their motion for reconsideration and therefore maintain their votes as stated in the resolution of December 6, 2000." Justice Angelina Sandoval Gutierrez took no part on the ground that she did not participate in the deliberations on the petition.

In short, the tie-vote on the main decision cannot invalidate the prior action of the Legislative and Executive branches in enacting RA 8371. Moreover, the tie-vote on the motion

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[7] *Id.* at 930-931.

for reconsideration resulted in the denial of the motion for reconsideration. Thus, RA 8371 stands as valid.

2. *Badoy, Jr. v. Comelec*

In *Badoy, Jr. v. Comelec*, petitioner Badoy, Jr. prayed that **Section 12(F) of Republic Act No. 6132 or *The 1971 Constitutional Convention Act* be declared unconstitutional.** The voting of the Supreme Court Justices standing at five (5) votes in favor of constitutionality and five (5) votes against, **the constitutionality of the provision was deemed upheld** in conformity with Section 10, Article VIII of the Constitution then in force. The petitions were, therefore, denied.

3. *Antonio, Jr. v. Comelec*

In *Antonio, Jr. v. Comelec*, the Supreme Court Justices were evenly divided on the issue of whether the Comelec should have ordered, as it did, a recanvass and proclamation on the basis of the returns of certain precincts in Batanes. Five Justices believed that such a proclamation was a necessary precedent to a protest in the House Electoral Tribunal. Five other Justices dissented. **The Court, pursuant to the Rules of Court, ordered a rehearing** on the petition in G.R. No. L-31609 entitled *Agudo v. Comelec*.

4. *Agudo v. Comelec*

In *Agudo v. Comelec,* where the Court reheard G.R. No. L-31609, "the equal division (5 to 5) in the Justices' opinions had persisted, thus calling for the application of Section 11, Rule 56 of the 1964 Revised Rules of Court."[8] Accordingly, the Court ordered the dismissal of the petition.

5. *People v. Lopez*

In *People v. Lopez,* then Solicitor General Lorenzo M. Tañada, filed in the name of the People of the Philippines, a petition for

[8] SEC. 11. Procedure if opinion is equally divided. — Where the court *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on re-hearing no decision is reached, the action shall be dismissed if originally commenced in the court; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied.

prohibition to enjoin Associate Judge Eusebio M. Lopez from conducting further proceedings and from otherwise taking further cognizance of criminal cases for treason against Benigno S. Aquino (No. 3527) and against Antonio de las Alas, and other treason cases of similar nature. After the case was firstly heard, the Justices taking part were equally divided and no decision could be rendered; so the Court ordered a rehearing in accordance with Section 2 of Rule 56 in relation with Section 1 of Rule 58. The case was submitted again for deliberation and decision. The votes remained tied at 4-4. Thus, the petition was denied.

The above-cited cases, involving actions originally commenced in the Supreme Court, clearly demonstrate that the Court has consistently applied the Rules on tie-vote. In accordance with such rules, the evenly divided Court directed the rehearing of those cases[9] and when, after the rehearings, the tie-vote persisted, the Court ordered the dismissal or denial of the petitions.

Second, **in cases appealed to the Supreme Court**, Section 7 of Rule 56 explicitly provides that if the Court *en banc* is still equally divided after re-deliberation, the judgment or order appealed from shall stand affirmed. A tie-vote in cases arising under the Court's appellate jurisdiction translates into a summary affirmance of the lower court's ruling.[10] **In short, the tie-vote in the *en banc* cannot amend or reverse a prior majority action of a lower court, whose decision stands affirmed.**

Third, **on all incidental matters, which include motions for reconsideration, Section 7 of Rule 56 specifically states that if the Court *en banc* is evenly divided on such matters, the petition or motion shall be denied.**

To settle any doubt on how a tie-vote on a motion for reconsideration should be interpreted, the Court *en banc* issued a clarificatory Resolution on 26 January 1999 in A.M. No. 99-1-09-SC, as follows:

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[9] See also *People v. Alcover*, 82 Phil. 681, 692 (1949).

[10] Michael Coenen, *Original Jurisdiction Deadlocks*, 118 YLJ 1003, March 2009.

A MOTION FOR THE CONSIDERATION OF A DECISION OR RESOLUTION OF THE COURT *EN BANC* OR OF A DIVISION MAY BE GRANTED UPON A VOTE OF A MAJORITY OF THE MEMBERS OF THE *EN BANC* OR OF A DIVISION, AS THE CASE MAY BE, WHO ACTUALLY TOOK PART IN THE DELIBERATION OF THE MOTION.

IF THE VOTING RESULTS IN A TIE, THE MOTION FOR RECONSIDERATION IS DEEMED DENIED. (Emphasis supplied)

The clear and simple language of the clarificatory *en banc* Resolution requires no further explanation. If the voting of the Court *en banc* results in a tie, the motion for reconsideration is deemed denied. **The Court's prior majority action on the main decision stands affirmed.**[11] This clarificatory Resolution applies to **all cases heard by the Court *en banc*,** which includes not only cases involving the constitutionality of a law, but also, as expressly stated in Section 4(2), Article VIII of the Constitution, "**all other cases which under the Rules of Court are required to be heard *en banc***." In short, Section 4(2) requires a majority vote of the Court *en banc* not only in cases involving the constitutionality of a law, but also in all other cases that are heard by the Court *en banc*.

The principle that a multi-member judicial body such as the Supreme Court cannot, based on a tie-vote, overrule a prior action is consistently applied in legislative bodies as well.[12] In the book *The Standard Code of Parliamentary Procedure*, the author Alice Sturgis writes:

A tie vote on a motion means that the same number of members has voted in the affirmative as in the negative. Since a majority vote, or more than half of the legal votes case, is required to adopt a

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[11] In *Fortich v. Corona*, retired Justice Jose Melo, in his Separate Opinion on the motion for reconsideration, stated that **"in our own Court *En Banc*, if the voting is evenly split, on a 7-7 vote, one (1) slot vacant, or with one (1) justice inhibiting or disqualifying himself, the motion (for reconsideration) shall, of course, not be carried because that is the end of the line."** (Emphasis supplied)

[12] See Edward A. Hartnett, *Ties in the Supreme Court of the United States*, 44 WMMLR 643, December 2002.

motion, an equal or tie vote means that the motion is lost because it has failed to receive a majority vote. **A tie vote on a motion is not a deadlock vote that must be resolved; it is simply not a majority vote, and the motion is lost.**[13] (Emphasis supplied)

Similarly, if the Philippine Supreme Court *en banc* is evenly split in its opinion on a motion for reconsideration, it is not a deadlock vote that must be resolved; it is simply not a majority vote, and the motion for reconsideration is defeated. **More importantly, the tie-vote on a motion for reconsideration does not and cannot, in any instance and for any reason, supersede the prior majority vote on the main decision.**

II.
The Tie-Vote on the Second Motion for Reconsideration

Section 4(2), Article VIII of the 1987 Constitution provides:

2) All cases involving the constitutionality of a treaty, international or executive agreement, or law which shall be heard by the Supreme Court *en banc*, and **all other cases which under the Rules of Court are required to be heard *en banc***, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, **shall be decided with the concurrence of majority of the members who actually took part in the deliberations on the issues in the case and voted thereon.** (Emphasis supplied)

Under Section 4(2), Article VIII of the Constitution, the requirement of a majority vote of the Supreme Court *en banc* applies not only to the constitutionality of a law, but also to the constitutionality of treaties, executive agreements, ordinances, regulations, ***and all other cases which under the Rules of Court shall be heard by the Court en banc***. **To repeat, any**

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[13] Alice Sturgis, *The Standard Code of Parliamentary Procedure*, Revised by the American Institute of Parliamentarians, 4th Edition, pp. 136-137. (http://books.google.com.ph/books?id=clk1qOdWp4C&dq=alice+sturgis+parliamentary+procedure&printsec=frontover&source=bl&ots=rF wU0kuABG&sig=MzvI6eH4M2HlNsWIu0zSdflfvSo&hl=tl&ei= lLKDSpuoNMnIkAXzqPS5Bw&sa=X&oi=book_result&ct=result&resnum=3#v=onepage&q=&f=false)

case which is heard by the Court *en banc* shall be decided by a majority vote of the Court *en banc*.

To insure equal protection of the law, all cases required to be heard by the Court *en banc* under Section 4(2), Article VII of the Constitution must be governed by the same rules on voting, whether on the main decision or on the motion for reconsideration. There can be no one rule for cases involving the constitutionality of a law and another rule for all other cases. The Constitution makes no such distinction in Section 4(2) of Article VIII. Undeniably, the Constitution does not require that motions for reconsideration in cases involving the constitutionality of a law shall be treated differently from motions for reconsideration in other cases heard by the Court *en banc*. There is no basis for such a different treatment, and such a different treatment would violate the equal protection of the law. Where the Constitution does not distinguish, this Court must not create a forced and baseless distinction.

In the present cases, the voting on the main petitions was 6-5 to declare the sixteen Cityhood Laws unconstitutional. Clearly, there was compliance with Section 4(2), Article VIII of the 1987 Constitution since a majority of the members of the Court *en banc,* who actually took part in the deliberations, voted to declare unconstitutional the sixteen Cityhood Laws.

In the first motion for reconsideration, a majority of 7-5 voted to deny the motion for reconsideration. Again, there was a clear majority that denied the first motion for reconsideration. The majority of the Court *en banc* struck down the sixteen Cityhood Laws twice, first, during the deliberations on the main petitions, and second, during the deliberations on the first motion for reconsideration.

Thereafter, by deliberating on the second motion for reconsideration filed by respondents, the Court in effect allowed the filing of a second motion for reconsideration, which is generally prohibited under the Rules of Court. **The Court *en banc*, voting 6-6, denied the second motion for reconsideration in the Resolution of 28 April 2009**.

The 6-6 tie-vote by the Court *en banc* on the second motion for reconsideration necessarily resulted in the denial of the second motion for reconsideration. **Certainly, the 6-6 tie-vote did not overrule the prior majority *en banc* Decision of 18 November 2008, and the prior majority *en banc* Resolution of 31 March 2009 denying reconsideration.** The tie-vote on the second motion for reconsideration is not the same as a tie-vote on the main decision. The Court *en banc* need not deliberate again because in case of a tie-vote on a second motion for reconsideration, which is an incidental matter, such motion is lost. The tie-vote plainly signifies that there is no majority to overturn the prior 18 November 2008 Decision and 31 March 2009 Resolution, and the second motion for reconsideration must thus be denied. Further, the tie-vote on the second motion for reconsideration did not mean that the present cases were left undecided because there remain the Decision of 18 November 2008 and Resolution of 31 March 2009 where majority of the Court *en banc* concurred in decreeing the unconstitutionality of the sixteen Cityhood Laws. **In short, the 18 November 2008 Decision and 31 March 2009 Resolution, which were both reached with the concurrence of a majority of the Court *en banc,* are not reconsidered but stand affirmed.**[14] **These prior majority actions of the Court *en banc* can only be overruled by a new majority vote, not a tie-vote because a tie-vote cannot overrule a prior affirmative action.**

Applying Section 7, Rule 56 and the clarificatory Resolution in A.M. No. 99-1-09-SC to the present cases does not in any manner contravene the mandate of Section 4(2), Article VIII of the Constitution. To repeat, the Court *en banc* deliberated on the petitions and, **by a majority vote of 6-5**, granted the petitions and declared the sixteen Cityhood Laws unconstitutional in the Decision of 18 November 2008. Again, **by a clear majority vote of 7-5**, the Court *en banc* voted to deny the first motion

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[14] In *Defensor-Santiago v. COMELEC*, G.R. No. 127325, 19 March 1997, the Court, by a vote of 6-6 with one (1) justice inhibiting himself and another justice refusing to rule on the ground that the issue was not ripe for adjudication, denied the motion for reconsideration. The case of *Lambino v. Comelec* cited *Defensor-Santiago v. COMELEC*.

for reconsideration. **Therefore, contrary to the *ponencia*, the present cases were decided with the concurrence of a majority of the Court *en banc* when it declared the unconstitutionality of the sixteen Cityhood Laws, pursuant to Section 4(2), Article VIII of the Constitution.**

A.M. No. 99-1-09-SC applies to all cases heard by the Court *en banc*. Whether the case involves the constitutionality of a law, ordinance or regulation, **or any civil, administrative or criminal case which under the Rules of Court must be heard *en banc***, the case must be decided by a majority vote of the Court *en banc* as expressly required by Section 4(2), Article VIII of the Constitution. Any tie-vote in the motion for reconsideration results in the denial of the motion for reconsideration pursuant to A.M. No. 99-1-09-SC, which governs all cases heard by the Court *en banc*.

Further, to treat the second motion for reconsideration not as an incidental matter would certainly render inutile the distinction set forth in Section 7, Rule 56 among original actions commenced in this Court, appeals from the judgments of lower courts, and incidental matters, such as motions.

III.
Precedents Applying Section 7, Rule 56

In *Santiago v. Comelec*,[15] involving the constitutionality of Republic Act No. 6735 (RA 6735), entitled "An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefor," the Court *en banc*, in an 8-5 vote, held that RA 6735 is "incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned." While the Court *en banc* did not expressly declare RA 6735 unconstitutional, the majority of the Court *en banc* ruled that RA 6735, the law governing the implementation of the initiative system, was insufficient to amend the Constitution. The majority of the Court *en banc* concluded that "the COMELEC should

[15] 336 Phil. 848 (1997).

be permanently enjoined from entertaining or taking cognizance of any petition for initiative on amendments on the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system."[16] **On motion for reconsideration, the Court *en banc* voted 6-6-1,[17] inevitably resulting in the denial of the motion for reconsideration and affirmance of the prior majority action on the main petition. In other words, the Court *en banc*'s ruling in *Santiago* that RA 6735 was inadequate to amend the Constitution, obtained *via* an 8-5 vote, was deemed affirmed**

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[16] The dispositive portion of the decision in *Santiago* provides:

WHEREFORE, judgment is hereby rendered

a) GRANTING the instant petition;

b) DECLARING R.A. No. 6735 inadequate to cover the system of initiative on amendments to the Constitution, and to have failed to provide sufficient standard for subordinate legislation;

c) DECLARING void those parts of Resolutions No. 2300 of the Commission on Elections prescribing rules and regulations on the conduct of initiative or amendments to the Constitution; and

d) ORDERING the Commission on Elections to forthwith DISMISS the DELFIN petition (UND-96-037).

The Temporary Restraining Order issued on 18 December 1996 is made permanent as against the Commission on Elections, but is LIFTED against private respondents.

Resolution on the matter of contempt is hereby reserved.

SO ORDERED.

[17] The minute Resolution of 10 June 1997 pertinently states: "Two members of the Court did not take part in the deliberations: Padilla, *J.*, who is on sick leave and who, in any case, had from the outset inhibited himself from taking part in the cases at bar on account of his personal relationship with the attorney of one of the parties; and Torres, *J.*, who inhibited himself from participation in the deliberation for the reasons set forth in his separate Opinion hereto attached. x x x The remaining Justices actually present thereafter voted on the issue of whether the motions for reconsideration should be granted or not, with the following results: Narvasa, *C.J.*, Regalado, Davide, Jr., Romero, Bellosillo, and Kapunan, *JJ.*, voted to DENY said motions for lack of merit; and Melo, Puno, Mendoza, Francisco, Hermosisima, and Panganiban, *JJ.*, voted to GRANT the same. Vitug, *J.*, maintained his opinion that the matter was not ripe for judicial adjudication."

by a tie-vote on the motion for reconsideration. In fact, the Court's decision in Santiago spelled the sudden death of the so-called PIRMA initiative that triggered *Santiago*.

The case of *Cruz v. Secretary of Environment and Natural Resources* also applies to the present cases. **Petitioners in *Cruz v. Secretary of Environment and Natural Resources* challenged the constitutionality of certain provisions of Republic Act No. 8371, otherwise known as the *Indigenous Peoples Rights Act of 1997 (IPRA)*.** There, the Court *en banc* was evenly divided not only on the main petition, but also on the motion for reconsideration. **In a minute Resolution promulgated on 21 September 2001, the Court *en banc*, by virtue of Section 7, Rule 56, denied the petitioners' motion for reconsideration since the members of the Court *en banc* were equally divided on such motion.** As a result, the *Per Curiam* Resolution dismissing the petition stood affirmed and the constitutionality of RA 8371 was deemed upheld.

***Santiago* and *Cruz* are squarely in point with the present cases because *Santiago* and *Cruz*, like the present cases, indisputably involve the constitutionality of a law and a tie-vote on the motion for reconsideration.**

Applying Section 7, Rule 56, the Court *en banc*, instead of prolonging their disposition, outrightly denied the motions for reconsideration in *Santiago* and *Cruz.* No rehearings and no redeliberations were set and conducted to re-examine the motions for reconsideration. This is precisely because such proceedings are absolutely without any basis. For this reason alone, the second motion for reconsideration in these cases must suffer the same fate as the motions for reconsideration in *Santiago* and *Cruz* — it must be summarily denied pursuant to Section 7, Rule 56.

Following the *ponencia*, the cases of *Santiago* and *Cruz* would be deemed unresolved. Worse, the resolutions in *Santiago* and *Cruz* denying reconsideration due to a tie-vote would be deemed a blatant disregard of the mandate of Section 4(2), Article VIII of the 1987 Constitution.

IV.
The Finality of the 18 November 2008 Decision

Respondents, in filing the *Motion to Amend the Resolution of April 28, 2009 By Declaring Instead that Respondents' Motion for Reconsideration of the Resolution of March 31, 2009 and Motion for Leave to File, and To Admit Attached Second Motion for Reconsideration of the Decision Dated November 18, 2008 Remain Unresolved and to Conduct Further Proceedings Thereon* (Motion to Amend the Resolution of April 28, 2009), mistakenly believe that "with the 6-6 vote on the second motion for reconsideration, the issue of whether the Cityhood Laws were unconstitutional remained unresolved." **In the first place, the Motion to Amend the Resolution of April 28, 2009 is a prohibited pleading. A prohibited pleading is a scrap of paper, and can never be placed "on an equal, if not a higher, standing than a motion for reconsideration."**

There is nothing left to be resolved precisely because the tie-vote on the second motion for reconsideration simply means that there was no majority vote to overturn the 18 November 2008 Decision, and the second motion for reconsideration is lost. **The tie in the voting does not leave the case undecided. There is still the 18 November 2008 Decision and the 31 March 2009 Resolution which must stand in view of the failure of the members of the Court *en banc* to muster the necessary vote for their reconsideration.**[18] No further proceedings, much less re-deliberations by the Court *en banc*, are required.

Since the second motion for reconsideration was denied, pursuant to Section 7 of Rule 56, there is absolutely nothing which would preclude the 18 November 2008 Decision from becoming final after fifteen (15) days from receipt by the parties of the 28 April 2009 Resolution denying the second motion for reconsideration.

The Court had explicitly directed the parties, in the 28 April 2009 Resolution, to refrain from filing further pleadings as it would no longer entertain the same. Yet, respondents

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[18] See *Fortich v. Corona*, 371 Phil. 672 (1999).

opted to ignore and persistently defy such directive. Aside from filing the Motion to Amend the Resolution of April 28, 2009, respondents filed three more pleadings, namely, (1) Motion for Reconsideration of the Resolution of 2 June 2009, (2) Urgent Motion to Resolve Pending Incidents, and (3) Appeal to Honorable Chief Justice Reynato S. Puno and Associate Justice Antonio Eduardo B. Nachura to Participate in the Resolution of Respondents' Motion for Reconsideration of the Resolution of June 2, 2009. **All these pleadings, which were filed in direct contravention of the Court's directive in the 28 April 2009 Resolution, are prohibited and are mere scraps of paper, unworthy of the Court's attention.**

Furthermore, having in fact been filed without express leave — no such leave ever having been granted by the Court, these pleadings are mere surplusage that did not need to be acted on, and did not give rise to any pending matter which would effectively forestall the finality of the 18 November 2008 Decision.

Clearly, these various pleadings reflect respondents' desperate attempts to further delay the execution of the final decision in these consolidated cases. As pointed out in petitioners' Comment *Ad Cautelam*,[19] respondents, "by every possible guise and conceivable stratagem, have stubbornly and persistently sought to evade the finality of the 18 November 2008 Decision." Notably, respondents craftily phrased and titled their motions based on the Court's last denial order or resolution, and deliberately avoided reference to the previous repeated denials by the Court." The Court cannot countenance such dilatory tactics.

While it is perfectly fine for respondents to defend their cause with all the vigor and resources at their command, respondents may not be allowed to persist in presenting to the Court arguments which have already been pronounced by final judgment to be without merit and their motions for reconsideration of that judgment which have been denied.[20]

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[19] Filed in compliance with the Resolution of 29 September 2009.

[20] *Ortigas & Company Ltd. Partnership v. Velasco*, G.R. No. 109645, 4 March 1996, 254 SCRA 234.

Litigations must end and terminate at some point. In the present cases, that point must be reckoned after the lapse of 15 days from the date of receipt by respondents' counsel of the 28 April 2009 Resolution denying the second motion for reconsideration or on 21 May 2009, as certified by the Deputy Clerk of Court and Chief of the Judicial Records Office. Whether respondents understood, or simply refuse to understand, the meaning of this statement, there is no other meaning than to consider G.R. Nos. 176951, 177499, and 178056 finally closed and terminated on 21 May 2009.

Well-entrenched is the rule that a decision that has acquired finality becomes immutable and unalterable,[21] no longer subject to attack and cannot be modified directly or indirectly, and the court which rendered it, including this Court, had lost jurisdiction to modify it.[22] The Court laid down this rule precisely "(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 why courts exist."[23] As Justice Bersamin stated in *Apo Fruits Corporation v. Court of Appeals*:[24]

[T]he 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,

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[21] *Ortigas & Company Ltd. Partnership v. Velasco*, G.R. No. 109645, 4 March 1996, 254 SCRA 234; *Long v. Basa*, G.R. Nos. 134963-64, 27 September 2001, 366 SCRA 113; *Fortich v. Corona*, G.R. No. 131457, 24 April 1998, 289 SCRA 624; *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*, G.R. No. 136221, 12 May 2000, 332 SCRA 139; *Seven Brothers Shipping Corporation v. Oriental Assurance Corporation*, G.R. No. 140613, 15 October 2002, 391 SCRA 67; *Li Kim Tho v. Sanchez*, 82 Phil. 776, 778 (1949); *Alcantara v. Ponce*, G.R. No. 131547, 15 December 2005, 478 SCRA 27; *Arnedo v. Llorente*, 18 Phil. 257, 262-263 (1911); *Ramos v. Ramos*, G.R. No. 144294, 11 March 2003, 399 SCRA 43; *Social Security System v. Isip,* G.R. No. 165417, 4 April 2007*,* 520 SCRA 310.

[22] *Ramos v. Ramos*, G.R. No. 144294, 11 March 2003, 399 SCRA 43.

[23] *Ginete v. Court of Appeals*, G.R. No. 127596, 24 September 1998, 296 SCRA 36; *Legarda v. Court of Appeals*, G.R. No. 94457, 16 October 1997, 280 SCRA 642.

[24] G.R. No. 164195, 4 December 2009.

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.** (Emphasis supplied)

Hence, when the 18 November 2008 Decision became final on 21 May 2009, this Court can no longer entertain and consider further arguments or submissions from the parties respecting the correctness of the decision, and nothing more is left to be discussed, clarified or done in these cases.[25]

In fact, in recognition of the finality of the 18 November 2008 Decision, the Commission on Elections issued Resolution No. 8670, while the Department of Budget and Management issued Local Budget Memorandum No. 61.

COMELEC's Resolution No. 8670 ordained that the voters in the 16 respondent municipalities shall vote not as cities, but as municipalities in the 10 May 2010 elections.

On the other hand, the Department of Budget and Management's Local Budget Memorandum No. 61 set forth the Fiscal Year 2009 Final Internal Revenue Allotment Allocation of all the legally existing cities and municipalities in the whole country and the reversion of the 16 "newly-created cities" to municipalities.

Moreover, House Bill No. 6303, introduced by Representatives Carmen L. Cari, Eduardo R. Gullas, Rodolfo G. Plaza, Philip A. Pichay, Thelma Z. Almario, Wilfrido Mark M. Enverga, Manuel S. Agyao, Sharee Ann T. Tan, Edelmiro A. Amante, Mujiv S. Hataman, Jocelyn Sy Limkaichong, Ferdinand R. Marcos, Teodulo M. Coquilla and Yevgeny Vincente B. Emano, sought to amend Republic Act No. 9009 by inserting the following paragraph:

THE INCOME REQUIREMENT PRESCRIBED HEREIN SHALL NOT APPLY TO MUNICIPALITIES WHICH WERE SOUGHT TO BE CONVERTED INTO CITIES AS EMBODIED IN BILLS FILED

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[25] *Alcantara v. Ponce*, G.R. No. 131547, 15 December 2005, 478 SCRA 27 citing *Ortigas & Company Ltd. Partnership v. Velasco*, G.R. No. 109645, 4 March 1996, 254 SCRA 234.

BEFORE JUNE 30, 2001 AND WHOSE CHARTERS HAVE ALREADY BEEN APPROVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES.

House Bill No. 6303, in proposing to amend Republic Act No. 9009 by exempting the 16 respondent municipalities from the increased income requirement under the Local Government Code, is undoubtedly an admission that the 18 November 2008 Decision had become final and the Cityhood Laws are indeed unconstitutional. House Bill No. 6303 is clearly but an "attempt to possibly rectify the conceded fatal defect in the Cityhood Laws."

To repeat, the Court, by a majority vote, ruled that the 16 Cityhood Laws are unconstitutional in its 18 November 2008 Decision. The Court, by another majority vote, denied the first motion for reconsideration of the 18 November 2008 Decision. Then, the Court, by a split-vote, denied the second motion for reconsideration. Contrary to respondents' perception, there is nothing left unresolved by the Court. The 18 November 2008 Decision became final on 21 May 2009. As a consequence, it has become immutable and unalterable, no longer subject to attack and cannot be modified directly or indirectly by this Court, which had lost jurisdiction to alter it.

V.
Final Note

Any ruling of this Court that a tie-vote on a motion for reconsideration reverses a prior majority vote on the main decision would wreak havoc on well-settled jurisprudence of this Court. Such an unprecedented ruling would resurrect contentious political issues long ago settled, such as the PIRMA initiative in *Santiago* and the people's initiative in *Lambino*. Countless other decisions of this Court would come back to haunt it, long after such decisions have become final and executory following the tie-votes on the motions for reconsideration which resulted in the denial of the motions. Such a ruling would destabilize not only this Court, but also the Executive and Legislative Branches of Government. Business transactions made pursuant to final decisions of this Court would also unravel for another round of litigation, dragging along innocent third parties who had relied

on such prior final decisions of this Court. This Court cannot afford to unleash such a catastrophe on the nation.

Accordingly, I vote to **EXPUNGE** from the records, for being prohibited pleadings, the (1) Motion to Amend the Resolution of April 28, 2009; (2) Motion for Reconsideration of the Resolution of June 2, 2009; (3) Urgent Motion to Resolve Pending Incidents; and (4) Appeal to Honorable Chief Justice Reynato S. Puno and Associate Justice Antonio Eduardo B. Nachura to Participate in the Resolution of Respondents' Motion for Reconsideration of the Resolution of June 2, 2009.

FIRST DIVISION

[G.R. No. 177486. December 21, 2009]

PURISIMO BUYCO, *petitioner, vs.* **NELSON BARAQUIA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; NATURE.—** A writ of preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It is merely a provisional remedy, adjunct to the main case subject to the latter's outcome. It is not a cause of action in itself. Being an ancillary or auxiliary remedy, it is available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case. The writ is provisional because it constitutes a temporary measure availed of during the pendency of the action and it is ancillary because it is a mere incident in and is dependent upon the result of the main action.

2. ID.; ID.; ID.; OBJECT OF A PRELIMINARY INJUNCTION.— It is well-settled that the sole object of a preliminary injunction, whether prohibitory or mandatory, is **to preserve the *status quo* until the merits of the case can be heard**. It is usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the *status quo* of the controversy **before a full hearing can be had on the merits of the case**.

3. ID.; ID.; ID.; THE WRIT OF PRELIMINARY INJUNCTION IS AUTOMATICALLY DISSOLVED UPON THE DISMISSAL OF THE ACTION IN WHICH IT HAS BEEN ISSUED; RELEVANT RULING, CITED.— The present case having been heard and found dismissible as it was in fact dismissed, the writ of preliminary injunction is deemed lifted, its purpose as a *provisional* remedy having been served, the appeal therefrom notwithstanding. *Unionbank v. Court of Appeals* enlightens: "x x x **a dismissal,** discontinuance or non-suit of an action **in which a restraining order or temporary injunction has been granted operates as a dissolution of the restraining order or temporary injunction," regardless of whether the period for filing a motion for reconsideration of the order dismissing the case or appeal therefrom has expired**. The rationale therefor is that **even in cases where an appeal is taken from a judgment dismissing an action on the merits, the appeal does not suspend the judgment, hence the general rule applies that a temporary injunction terminates automatically on the *dismissal* of the action**."x x x There being no indication that the appellate court issued an injunction in respondent's favor, the writ of preliminary injunction issued on December 1, 1999 by the trial court was automatically dissolved upon the dismissal of Civil Case No. 26015.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioner.
Cornelio V. Salinas for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Nelson Baraquia (respondent) filed before the Regional Trial Court (RTC) of Iloilo City a complaint[1] against Dominico Buyco and Clemente Buyco (Buycos), *for the establishment of a permanent right of way, injunction and damages* with preliminary injunction and temporary restraining order, to enjoin the Buycos from closing off a private road within their property which he has been using to go to and from the public highway to access his poultry farm.

The Buycos died during the pendency of the case, and were substituted by Purisimo Buyco (petitioner) and his brother Gonzalo.

Branch 39 of the Iloilo RTC granted respondent's application for preliminary injunction.

By Decision[2] of February 14, 2007, the trial court dismissed respondent's complaint for failure to establish the concurrence of the essential requisites for the establishment of an easement of right of way under Articles 649 and 650 of the Civil Code.[3] It accordingly lifted the writ of preliminary injunction.

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[1] Annex "D" of Petition; *rollo*, pp. 45- 49.

[2] Records, pp. 411-419. Penned by Presiding Judge J. Cedrick O. Ruiz.

[3] ART. 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.

In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of the damage caused by such encumbrance.

Respondent filed a notice of appeal of the trial court's decision. Petitioner filed too a notice of partial appeal bearing on to the non-award of prayer for damages.

Respondent later filed with the trial court a motion to cite petitioner and his brother Gonzalo in contempt, alleging that they had closed off the subject road, thus violating the writ of preliminary injunction. The trial court, by Resolution of March 13, 2007,[4] noting that respondent received on March 5, 2007 his copy of its decision while petitioner received his on February 21, 2007, held that the February 14, 2007 decision had not yet become final and executory, hence, the writ of preliminary injunction remained to be valid, efficacious and obligatory, rendering petitioner's act of closing the road on March 1, 2007 an indirect contempt of court. It thus declared petitioner and his brother in contempt of court.

Petitioner moved for reconsideration of the trial court's March 13, 2007 Resolution, contending that a preliminary injunction, once quashed, ceases to exist, and that he and his brother cannot be held guilty of indirect contempt by mere motion.

By Resolution[5] of April 18, 2007, the trial court set aside the March 13, 2007 Resolution and granted petitioner's motion for reconsideration, ruling that petitioner and his brother cannot be held in contempt of court by mere motion and not by verified petition.

On the lifetime of the writ of preliminary injunction, the trial court held that it is its "illumined opinion that the matter of whether a writ of preliminary injunction remains valid until the

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This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts.

ART. 650. The easement of right of way shall be established at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.

[4] Records, pp. 436-439.

[5] Annex "A" of Petition; *rollo,* pp. 32-35. Penned by Presiding Judge J. Cedrick O. Ruiz.

decision annulling the same attains finality is **not firmly entrenched in jurisprudence**, contrary to the position of the defendants." It thereupon quoted a portion of the ruling in the 2006 case of *Lee v. Court of Appeals,*[6] to wit:

> Furthermore, notwithstanding the stand of both parties, the fact remains that the Decision of the Court of Appeals annulling the grant of preliminary injunction in favor of petitioners has not yet become final on 14 December 2000. In fact, such Decision has not yet become final and executory even on the very date of this Decision, in view of petitioners' appeal with us under Rule 45 of the 1997 Rules of Civil Procedure. The preliminary injunction, therefore, issued by the trial court remains valid until the Decision of the Court of Appeals annulling the same attains finality, and violation thereof constitutes indirect contempt which, however, requires either a formal charge or a verified petition.[7] (underscoring in the original decision)

Hence, this petition for review, raising a question of law – whether the lifting of a writ of preliminary injunction due to the dismissal of the complaint is immediately executory, even if the dismissal of the complaint is pending appeal.

The petition is meritorious.

A writ of preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts.[8] It is merely a provisional remedy, adjunct to the main case subject to the latter's outcome.[9] It is not a cause of action in itself.[10] Being an ancillary or auxiliary remedy, it is available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain

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[6] G.R. No. 147191, July 27, 2006, 496 SCRA 668.

[7] *Id.* at 686-687.

[8] Sec. 1, Rule 58, REVISED RULES OF COURT.

[9] *Vide Rualo v. Pitargue,* G.R. No. 140284, 21 January 2005, 449 SCRA 121, 141.

[10] *Vide Batangas Laguna Tayabas Bus Co., Inc. v. Bitanga*, 415 Phil. 43, 56 (2001).

rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case.

The writ is provisional because it constitutes a temporary measure availed of during the pendency of the action and it is ancillary because it is a mere incident in and is dependent upon the result of the main action.[11]

It is well-settled that the sole object of a preliminary injunction, whether prohibitory or mandatory, is **to preserve the *status quo* until the merits of the case can be heard**. It is usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the *status quo* of the controversy **before a full hearing can be had on the merits of the case**.[12]

Indubitably, in the case at bar, the writ of preliminary injunction was granted by the lower court upon respondent's showing that he and his poultry business would be injured by the closure of the subject road. After trial, however, the lower court found that respondent was not entitled to the easement of right of way prayed for, having failed to prove the essential requisites for such entitlement, hence, the writ was lifted.

The present case having been heard and found dismissible as it was in fact dismissed, the writ of preliminary injunction is deemed lifted, its purpose as a *provisional* remedy having been served, the appeal therefrom notwithstanding.

Unionbank v. Court of Appeals[13] enlightens:

"x x x **a dismissal,** discontinuance or non-suit of an action **in which a restraining order or temporary injunction has been granted**

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[11] *Vide* Regalado, *REMEDIAL LAW COMPENDIUM*, Vol. 1 (7th Ed.), p. 606.

[12] *Rava Development Corporation v. Court of Appeals*, G.R. No. 96825, 3 July 1992, 211 SCRA 144, 154.

[13] 370 Phil. 837 (1999) citing *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 645-646, and *Golez v. Leonidas*, No. 56587, August 31, 1981, 107 SCRA 187, 189.

operates as a dissolution of the restraining order or temporary injunction," regardless of whether the period for filing a motion for reconsideration of the order dismissing the case or appeal therefrom has expired. The rationale therefor is that **even in cases where an appeal is taken from a judgment dismissing an action on the merits, the appeal does not suspend the judgment, hence the general rule applies that a temporary injunction terminates automatically on the *dismissal* of the action**." (italics, emphasis and underscoring supplied)

The lower court's citation of *Lee v. Court of Appeals*[14] is misplaced. In *Lee,* unlike in the present case, the original complaint for specific performance and cancellation of real estate mortgage was not yet decided on the merits by the lower court. Thus, the preliminary injunction therein issued subsisted pending appeal of an incident.

There being no indication that the appellate court issued an injunction in respondent's favor, the writ of preliminary injunction issued on December 1, 1999 by the trial court was automatically dissolved upon the dismissal of Civil Case No. 26015.

WHEREFORE, the petition is *GRANTED*. The Resolution dated April 18, 2007 of the trial court is *REVERSED*. The writ of preliminary injunction which Branch 39 of the Iloilo Regional Trial Court issued on December 1, 1999 was automatically dissolved upon its dismissal by Decision of February 14, 2007 of Civil Case No. 26015.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[14] *Supra* note 6.

THIRD DIVISION

[G.R. No. 183317. December 21, 2009]

MARIWASA SIAM CERAMICS, INC., *petitioner, vs.* **THE SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, CHIEF OF THE BUREAU OF LABOR RELATIONS, DEPARTMENT OF LABOR AND EMPLOYMENT, REGIONAL DIRECTOR OF DOLE REGIONAL OFFICE NUMBER IV-A & SAMAHAN NG MGA MANGGAGAWA SA MARIWASA SIAM CERAMICS, INC. (SMMSC-INDEPENDENT),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; AFFIDAVITS OF RECANTATION, NOT GIVEN CREDENCE.—** In the instant case, the affidavits of recantation were executed after the identities of the union members became public, *i.e.*, after the union filed a petition for certification election on May 23, 2005, since the names of the members were attached to the petition. The purported withdrawal of support for the registration of the union was made after the documents were submitted to the DOLE, Region IV-A. The logical conclusion, therefore, following jurisprudence, is that the employees were not totally free from the employer's pressure, and so the voluntariness of the employees' execution of the affidavits becomes suspect. It is likewise notable that the first batch of 25 *pro forma* affidavits shows that the affidavits were executed by the individual affiants on different dates from May 26, 2005 until June 3, 2005, but they were all sworn before a notary public on June 8, 2005. There was also a second set of standardized affidavits executed on different dates from May 26, 2005 until July 6, 2005. While these 77 affidavits were notarized on different dates, 56 of these were notarized on June 8, 2005, the very same date when the first set of 25 was notarized. Considering that the first set of 25 affidavits was submitted to the DOLE on June 14, 2005, it is surprising why petitioner was able to submit the second set of affidavits only on July 12, 2005. Accordingly, we cannot give full credence to these

affidavits, which were executed under suspicious circumstances, and which contain allegations unsupported by evidence. At best, these affidavits are self-serving. They possess no probative value. A retraction does not necessarily negate an earlier declaration. For this reason, retractions are looked upon with disfavor and do not automatically exclude the original statement or declaration based solely on the recantation. It is imperative that a determination be first made as to which between the original and the new statements should be given weight or accorded belief, applying the general rules on evidence. In this case, inasmuch as they remain bare allegations, the purported recantations should not be upheld.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR ORGANIZATIONS; THE LEGITIMACY OF A LABOR ORGANIZATION WAS AFFIRMED DESPITE SUPPORT WITHDRAWAL BY MEMBERS; REASON.—** [E]ven assuming the veracity of the affidavits of recantation, the legitimacy of respondent as a labor organization must be affirmed. While it is true that the withdrawal of support may be considered as a resignation from the union, the fact remains that at the time of the union's application for registration, the affiants were members of respondent and they comprised more than the required 20% membership for purposes of registration as a labor union. Article 234 of the Labor Code merely requires a 20% minimum membership during the application for union registration. It does not mandate that a union must maintain the 20% minimum membership requirement all throughout its existence.

3. **ID.; ID.; LABOR UNIONS; GROUNDS FOR DE-CERTIFYING A UNION, EXPLAINED; APPLICATION.—** For the purpose of de-certifying a union such as respondent, it must be shown that there was misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto; the minutes of ratification; or, in connection with the election of officers, the minutes of the election of officers, the list of voters, or failure to submit these documents together with the list of the newly elected-appointed officers and their postal addresses to the BLR. The bare fact that two signatures appeared twice on the list of those who participated in the organizational meeting would not, to

our mind, provide a valid reason to cancel respondent's certificate of registration. The cancellation of a union's registration doubtless has an impairing dimension on the right of labor to self-organization. For fraud and misrepresentation to be grounds for cancellation of union registration under the Labor Code, the nature of the fraud and misrepresentation must be grave and compelling enough to vitiate the consent of a majority of union members. In this case, we agree with the BLR and the CA that respondent could not have possibly committed misrepresentation, fraud, or false statements. The alleged failure of respondent to indicate with mathematical precision the total number of employees in the bargaining unit is of no moment, especially as it was able to comply with the 20% minimum membership requirement. Even if the total number of rank-and-file employees of petitioner is 528, while respondent declared that it should only be 455, it still cannot be denied that the latter would have more than complied with the registration requirement.

APPEARANCES OF COUNSEL

Batino Law Offices for petitioner.
Nenita C. Mahinay for private respondent.

D E C I S I O N

NACHURA, *J*.:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, seeking to annul the Decision[2] dated December 20, 2007 and the Resolution[3] dated June 6, 2008 of the Court of Appeals in CA-G.R. SP No. 98332.

The antecedent facts are as follows—

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[1] *Rollo*, pp. 14-34.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr., concurring; *id.* at 354-374.

[3] *Id.* at 388-389.

On May 4, 2005, respondent Samahan Ng Mga Manggagawa Sa Mariwasa Siam Ceramics, Inc. (SMMSC-Independent) was issued a Certificate of Registration[4] as a legitimate labor organization by the Department of Labor and Employment (DOLE), Region IV-A.

On June 14, 2005, petitioner Mariwasa Siam Ceramics, Inc. filed a Petition for Cancellation of Union Registration against respondent, claiming that the latter violated Article 234[5] of the Labor Code for not complying with the 20% requirement, and that it committed massive fraud and misrepresentation in violation of Article 239[6] of the same code. The case was docketed as Case No. RO400-0506-AU-004.

On August 26, 2005, the Regional Director of DOLE IV-A issued an Order granting the petition, revoking the registration of respondent, and delisting it from the roster of active labor unions.

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[4] *Rollo,* p. 110.

[5] ART. 234. ***REQUIREMENTS OF REGISTRATION***

Any applicant labor organization, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

x x x x x x x x x

(c) The names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate. (Emphasis supplied.)

[6] ART. 239. ***GROUNDS FOR CANCELLATION OF UNION REGISTRATION***

The following shall constitute grounds for cancellation of union registration:

(a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;

x x x x x x x x x

(c) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, the list of voters, or failure to submit these documents together with the list of the newly-elected/appointed officers and their postal addresses within thirty (30) days from election. (Emphasis supplied.)

Aggrieved, respondent appealed to the Bureau of Labor Relations (BLR).

In a Decision[7] dated June 14, 2006, the BLR granted respondent's appeal and disposed as follows—

WHEREFORE, premises considered, the appeal by Samahan ng Manggagawa sa Mariwasa Siam Ceramics, Inc. (SMMSC-Independent) is hereby GRANTED, and the Decision dated 26 August 2005 by DOLE-Region-IV-A Director Maximo B. Lim is hereby REVERSED and SET ASIDE. Samahan ng Manggagawa sa Mariwasa Siam Ceramics, Inc. (SMMSC-Independent), under Registration Certificate No. RO400-200505-UR-002, remains in the roster of legitimate labor organizations.

SO DECIDED.[8]

Petitioner filed a Motion for Reconsideration but the BLR denied it in a Resolution[9] dated February 2, 2007.

Petitioner sought recourse with the Court of Appeals (CA) through a Petition for *Certiorari*; but the CA denied the petition for lack of merit.

Petitioner's motion for reconsideration of the CA Decision was likewise denied, hence, this petition based on the following grounds—

Review of the Factual Findings of the Bureau of Labor Relations, adopted and confirmed by the Honorable Court of Appeals is warranted[;]

The Honorable Court of Appeals seriously erred in ruling that the affidavits of recantation cannot be given credence[;]

The Honorable Court of Appeals seriously erred in ruling that private respondent union complied with the 20% membership requirement[; and]

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[7] *Rollo*, pp. 70-77.

[8] *Id.* at 77.

[9] *Id.* at 67-68.

The Honorable Court of Appeals seriously erred when it ruled that private respondent union did not commit misrepresentation, fraud or false statement.[10]

The petition should be denied.

The petitioner insists that respondent failed to comply with the 20% union membership requirement for its registration as a legitimate labor organization because of the disaffiliation from the total number of union members of 102 employees who executed affidavits recanting their union membership.

It is, thus, imperative that we peruse the affidavits appearing to have been executed by these affiants.

The affidavits uniformly state—

Ako, _____________, Pilipino, may sapat na gulang, regular na empleyado bilang Rank & File sa Mariwasa Siam Ceramics, Inc., Bo. San Antonio, Sto. Tomas, Batangas, matapos na makapanumpa ng naaayon sa batas ay malaya at kusang loob na nagsasaad ng mga sumusunod:

1. *Ako ay napilitan at nilinlang sa pagsapi sa Samahan ng mga Manggagawa sa Mariwasa Siam Ceramics, Inc. o SMMSC-Independent sa kabila ng aking pag-aalinlangan[;]*

2. *Aking lubos na pinagsisihan ang aking pagpirma sa sipi ng samahan, at handa ako[ng] tumalikod sa anumang kasulatan na aking nalagdaan sa kadahilanan na hindi angkop sa aking pananaw ang mga mungkahi o adhikain ng samahan.*

SA KATUNAYAN NANG LAHAT, ako ay lumagda ng aking pangalan ngayong ika-____ ng ______, 2005 dito sa Lalawigan ng Batangas, Bayan ng Sto. Tomas.

____
Nagsasalaysay

Evidently, these affidavits were written and prepared in advance, and the *pro forma* affidavits were ready to be filled out with the employees' names and signatures.

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[10] *Id.* at 22, 26, 29, and 31.

The first common allegation in the affidavits is a declaration that, in spite of his hesitation, the affiant was forced and deceived into joining the respondent union. It is worthy to note, however, that the affidavit does not mention the identity of the people who allegedly forced and deceived the affiant into joining the union, much less the circumstances that constituted such force and deceit. Indeed, not only was this allegation couched in very general terms and sweeping in nature, but more importantly, it was not supported by any evidence whatsoever.

The second allegation ostensibly bares the affiant's regret for joining respondent union and expresses the desire to abandon or renege from whatever agreement he may have signed regarding his membership with respondent.

Simply put, through these affidavits, it is made to appear that the affiants recanted their support of respondent's application for registration.

In appreciating affidavits of recantation such as these, our ruling in *La Suerte Cigar and Cigarette Factory v. Director of the Bureau of Labor Relations*[11] is enlightening, *viz*—

> On the second issue—whether or not the withdrawal of 31 union members from NATU affected the petition for certification election insofar as the 30% requirement is concerned, We reserve the Order of the respondent Director of the Bureau of Labor Relations, it appearing undisputably that the 31 union members had withdrawn their support to the petition before the filing of said petition. It would be otherwise if the withdrawal was made after the filing of the petition for it would then be presumed that the withdrawal was not free and voluntary. The presumption would arise that the withdrawal was procured through duress, coercion or for valuable consideration. In other words, the distinction must be that withdrawals made before the filing of the petition are presumed voluntary unless there is convincing proof to the contrary, whereas withdrawals made after the filing of the petition are deemed involuntary.
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> The reason for such distinction is that if the withdrawal or retraction is made before the filing of the petition, the names of employees

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[11] G.R. No. 55674, July 25, 1983, 123 SCRA 679.

supporting the petition are supposed to be held secret to the opposite party. Logically, any such withdrawal or retraction shows voluntariness in the absence of proof to the contrary. Moreover, it becomes apparent that such employees had not given consent to the filing of the petition, hence the subscription requirement has not been met.

When the withdrawal or retraction is made after the petition is filed, the employees who are supporting the petition become known to the opposite party since their names are attached to the petition at the time of filing. Therefore, it would not be unexpected that the opposite party would use foul means for the subject employees to withdraw their support.[12]

In the instant case, the affidavits of recantation were executed after the identities of the union members became public, *i.e.*, after the union filed a petition for certification election on May 23, 2005, since the names of the members were attached to the petition. The purported withdrawal of support for the registration of the union was made after the documents were submitted to the DOLE, Region IV-A. The logical conclusion, therefore, following jurisprudence, is that the employees were not totally free from the employer's pressure, and so the voluntariness of the employees' execution of the affidavits becomes suspect.

It is likewise notable that the first batch of 25 *pro forma* affidavits shows that the affidavits were executed by the individual affiants on different dates from May 26, 2005 until June 3, 2005, but they were all sworn before a notary public on June 8, 2005.

There was also a second set of standardized affidavits executed on different dates from May 26, 2005 until July 6, 2005. While these 77 affidavits were notarized on different dates, 56 of these were notarized on June 8, 2005, the very same date when the first set of 25 was notarized.

Considering that the first set of 25 affidavits was submitted to the DOLE on June 14, 2005, it is surprising why petitioner was able to submit the second set of affidavits only on July 12, 2005.

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[12] *Id.* at 707-708.

Accordingly, we cannot give full credence to these affidavits, which were executed under suspicious circumstances, and which contain allegations unsupported by evidence. At best, these affidavits are self-serving. They possess no probative value.

A retraction does not necessarily negate an earlier declaration. For this reason, retractions are looked upon with disfavor and do not automatically exclude the original statement or declaration based solely on the recantation. It is imperative that a determination be first made as to which between the original and the new statements should be given weight or accorded belief, applying the general rules on evidence. In this case, inasmuch as they remain bare allegations, the purported recantations should not be upheld.[13]

Nevertheless, even assuming the veracity of the affidavits of recantation, the legitimacy of respondent as a labor organization must be affirmed. While it is true that the withdrawal of support may be considered as a resignation from the union, the fact remains that at the time of the union's application for registration, the affiants were members of respondent and they comprised more than the required 20% membership for purposes of registration as a labor union. Article 234 of the Labor Code merely requires a 20% minimum membership during the application for union registration. It does not mandate that a union must maintain the 20% minimum membership requirement all throughout its existence.[14]

Respondent asserts that it had a total of 173 union members at the time it applied for registration. Two names were repeated in respondent's list and had to be deducted, but the total would still be 171 union members. Further, out of the four names alleged to be no longer connected with petitioner, only two names should be deleted from the list since Diana Motilla and T.W. Amutan

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[13] *Philippine Long Distance Company v. The Late Romeo F. Bolso*, G.R. No. 159701, August 17, 2007, 530 SCRA 550.

[14] However, this does not prevent another union within the same company from challenging the status of the union as the legitimate labor organization authorized to represent the interests of the employees with the management.

resigned from petitioner only on May 10, 2005 and May 17, 2005, respectively, or after respondent's registration had already been granted. Thus, the total union membership at the time of registration was 169. Since the total number of rank-and-file employees at that time was 528, 169 employees would be equivalent to 32% of the total rank-and-file workers complement, still very much above the minimum required by law.

For the purpose of de-certifying a union such as respondent, it must be shown that there was misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto; the minutes of ratification; or, in connection with the election of officers, the minutes of the election of officers, the list of voters, or failure to submit these documents together with the list of the newly elected-appointed officers and their postal addresses to the BLR.[15]

The bare fact that two signatures appeared twice on the list of those who participated in the organizational meeting would not, to our mind, provide a valid reason to cancel respondent's certificate of registration. The cancellation of a union's registration doubtless has an impairing dimension on the right of labor to self-organization. For fraud and misrepresentation to be grounds for cancellation of union registration under the Labor Code, the nature of the fraud and misrepresentation must be grave and compelling enough to vitiate the consent of a majority of union members.

In this case, we agree with the BLR and the CA that respondent could not have possibly committed misrepresentation, fraud, or false statements. The alleged failure of respondent to indicate with mathematical precision the total number of employees in the bargaining unit is of no moment, especially as it was able to comply with the 20% minimum membership requirement. Even if the total number of rank-and-file employees of petitioner is 528, while respondent declared that it should only be 455, it

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[15] *Air Philippines Corporation v. Bureau of Labor Relations*, G.R. No. 155395, June 22, 2006, 492 SCRA 243.

still cannot be denied that the latter would have more than complied with the registration requirement.

WHEREFORE, the petition is *DENIED*. The assailed December 20, 2007 Decision and the June 6, 2008 Resolution of the Court of Appeals are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Del Castillo,*[*] *JJ.,* concur.

EN BANC

[G.R. No. 184935. December 21, 2009]

DESEDERIO O. MONREAL, *petitioner, vs.* **COMMISSION ON ELECTIONS and FELIPE M. ALDAY,** *respondents.*

[G.R. No. 184938. December 21, 2009]

NESTOR RACIMO FORONDA, *petitioner, vs.* **COMMISSION ON ELECTIONS and LEOPOLDO CRUZ MANALILI,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PREJUDICIAL QUESTION, EXPLAINED.— A prejudicial question is that which arises in a case, the resolution of which is a logical antecedent of the issue involved in that case. Because the jurisdiction to try and resolve the prejudicial question has been lodged in another tribunal, however, the rule is that the proceedings in the first case may be suspended to await the resolution of the prejudicial question in the second case.

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[*] Additional member per Special Order No. 805 dated December 4, 2009.

2. POLITICAL LAW; ELECTIONS; DISQUALIFICATION; THE DISQUALIFICATION CASES CANNOT BE SUSPENDED BY THE PENDENCY OF UNCONSTITUTIONALITY ISSUE OF R.A. 9164.— [W]hat has been involved is the alleged unconstitutionality of the second paragraph of Section 2 of R.A. 9164, which reckons the three-term limit rule from the year 1994 before the passage of the law on March 19, 2002. It is a settled doctrine in this jurisprudence that laws are presumptively constitutional until they are found otherwise in an appropriate case. Consequently, to suspend the disqualification actions against petitioners, while the issue of unconstitutionality of Section 2 of R.A. 9164 was still pending, would be to contravene such established doctrine. It would amount to a preliminary injunction against the implementation of that provision of the law.

3. ID.; ID.; ID.; THE SUBSEQUENT DISQUALIFICATION OF A CANDIDATE DOES NOT RESULT IN THE NULLIFICATION OF THE VOTES INTENDED FOR HIM.— [R]espondent Manalili asks that he be allowed to assume the position of Chairman of his *barangay* in place of petitioner Foronda. Manalili points out that *Labo, Jr. v. Commission on Elections*, which enunciates the doctrine on the rejection of the second placer that triggers the rule on succession, does not apply to his case since the COMELEC has already disqualified Foronda and annulled his proclamation. But that doctrine applies to this case, since the COMELEC ordained Foronda's disqualification only after the elections had taken place. On October 29, 2007, the election day, Foronda was still legally a candidate. It is incorrect to say that, since Foronda has subsequently been disqualified, the votes intended for him should in effect be considered null and void.

APPEARANCES OF COUNSEL

Melita D. Go for Nestor Racimo Foronda & Desederio O. Monreal.

Rosario B. Bautista for Leopoldo Manalili.

Carlos Mayorico E. Caliwara for Felipe M. Alday.

D E C I S I O N

ABAD, *J.*:

This case is about the application of the rule of prejudicial question to an election case and the applicability of the three-term limit rule on elective *barangay* officials.

<u>The Facts and the Case</u>

<u>*In G.R. No. 184935*</u>

Petitioner Desederio Monreal (Monreal) filed his certificate of candidacy for *Punong Barangay* of *Barangay* 178, District I, Caloocan City, in the October 29, 2007 *barangay* elections. But respondent Felipe M. Alday sought his disqualification by the Commission on Elections (COMELEC) in SPA 08-072 (BRGY.) under the three-term limit rule for *barangay* officials embodied in Section 2 of Republic Act (R.A.) 9164. Monreal moved to suspend the hearing of this case on the ground of the pendency before the Regional Trial Court (RTC) of Caloocan City in SCA C-914 (*Conrado Cruz v. Commission on Elections*) of the issue of whether or not the cited law is unconstitutional.

Meantime, petitioner Monreal was declared by the Caloocan City Metropolitan Trial Court as the duly elected *Punong Barangay* in the election protest case he filed against respondent Alday. On May 9, 2008, however, the COMELEC rendered a decision, disqualifying Monreal from seeking election to a fourth term as *Punong Barangay* and canceling his certificate of candidacy. But, invoking the decision rendered on July 30, 2008 by the Caloocan City RTC in SCA C-914, which annulled as unconstitutional the second paragraph of Section 2 of R.A. 9164, he filed a motion for reconsideration in the disqualification case but the COMELEC *En Banc* denied the same on October 2, 2008.

In a parallel development, respondent Alday appealed the decision of the RTC. But the COMELEC, a party to that case, filed a motion for its reconsideration. The parties have not updated the Court regarding the RTC's action on that motion.

In G.R. No. 184938

The essential facts of the case of petitioner Nestor Racimo Foronda (Foronda) are the same as those of petitioner Monreal. Respondent Leopoldo Cruz Manalili sought the cancellation of Foronda's certificate of candidacy for Chairman of *Barangay* 102, District II, Caloocan City, before the COMELEC in SPA 08-078 (BRGY.) for violation of the three-term limit rule. Foronda also sought the suspension of the proceedings in the case in view of the pendency of the issue of unconstitutionality of Section 2 of R.A. 9164 before the Caloocan City RTC in SCA C-914. Meanwhile, Foronda won the election and assumed office.

On May 19, 2008, however, the COMELEC disqualified Foronda and annulled his proclamation as *Barangay* Chairman. He filed a motion for reconsideration, invoking the RTC decision in SCA C-914, but the COMELEC *En Banc* denied the same on September 25, 2008.

Petitioners Monreal and Foronda filed separate petitions for *certiorari* before this Court questioning the identical ruling of the COMELEC against them. Upon their motion, the Court caused the consolidation of their cases.

The Issue Presented

The petitions identically raise the core issue of whether or not the pendency in court of the issue of unconstitutionality of the second paragraph of Section 2 of R.A. 9164, which provides for a three-term limit for *barangay* officials reckoned from 1994, constitutes a prejudicial question to the disqualification cases based on that law against petitioners Monreal and Foronda.

The Ruling of the Court

Petitioners point out that respondent COMELEC gravely abused its discretion when it refused to suspend further proceedings in the disqualification cases against them in view of the prejudicial question they raised. That question—the unconstitutionality of the second paragraph of Section 2 of R.A. 9164, which sets a three-term limit for *barangay* officials—is still pending in court.

Section 2 of R.A. 9164 provides:

Sec. 2. *Term of Office* – The term of office of all *barangay* and *sangguniang kabataan* officials after the effectivity of this Act shall be three (3) years.

No *barangay* elective official shall serve for more than three (3) consecutive terms in the same position: *Provided, however,* That the term of office shall be reckoned from the 1994 *barangay* elections. Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official was elected. (Emphasis supplied)

The RTC of Caloocan City held in SCA C-914 that the retroactive reckoning of the three-term limit rule to the year 1994, before the passage of the law on March 19, 2002 is unconstitutional for having violated a) the principle of prospective application of statutes, b) the equal protection clause, and c) the one-act one-subject rule of the Constitution. But, as already stated, the RTC decision has not yet become final, the same having been appealed by respondent Alday or has been the subject of a motion for reconsideration filed by the COMELEC.

A prejudicial question is that which arises in a case, the resolution of which is a logical antecedent of the issue involved in that case.[1] Because the jurisdiction to try and resolve the prejudicial question has been lodged in another tribunal, however, the rule is that the proceedings in the first case may be suspended to await the resolution of the prejudicial question in the second case.[2]

But, here, what has been involved is the alleged unconstitutionality of the second paragraph of Section 2 of R.A. 9164, which reckons the three-term limit rule from the year 1994 before the passage of the law on March 19, 2002. It is a settled doctrine in this jurisprudence that laws are presumptively

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[1] *Quiambao v. Osorio*, G.R. No. L-48157, March 16, 1988, 158 SCRA 674, 678.

[2] *People v. Consing, Jr.*, 443 Phil. 454, 460 (2003).

constitutional until they are found otherwise in an appropriate case.[3] Consequently, to suspend the disqualification actions against petitioners, while the issue of unconstitutionality of Section 2 of R.A. 9164 was still pending, would be to contravene such established doctrine. It would amount to a preliminary injunction against the implementation of that provision of the law.

Petitioner of course points out that the RTC of Caloocan City has since decided that Section 2 of R.A. 9164 is unconstitutional. But that decision has not yet attained finality and the RTC has issued no order making the same executory pending appeal. Consequently, such provision of law remains in full force.

Parenthetically, no less than this Court found occasion in the past to apply Section 2 to the case of a *punong barangay* who had served for three consecutive terms but who pleaded that he was exempt from it because the municipality where he served had been converted into a city during his last term. The issue of constitutionality of the second paragraph had not been raised, but said this Court:

> **Section 2 of Rep. Act No. 9164, like Section 43 of the Local Government Code from which it was taken, is primarily intended to broaden the choices of the electorate of the candidates who will run for office, and to infuse new blood in the political arena by disqualifying officials from running for the same office after a term of nine years.** x x x[4] (Emphasis supplied)

For his part, respondent Manalili asks that he be allowed to assume the position of Chairman of his *barangay* in place of petitioner Foronda. Manalili points out that *Labo, Jr. v. Commission on Elections*,[5] which enunciates the doctrine on the

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[3] To cite just some: *Macalintal v. Commission on Elections*, 453 Phil. 586, 632 (2003); *People v. Leachon, Jr.*, 357 Phil. 165, 170 (1998); *Social Security Commission v. Judge Bayona*, 115 Phil. 106, 110 (1962).

[4] *Laceda, Sr. v. Limena*, G.R. No. 182867, November 25, 2008, 571 SCRA 603, 607.

[5] G.R. Nos. 105111 and 105384, July 3, 1992, 211 SCRA 297.

rejection of the second placer that triggers the rule on succession, does not apply to his case since the COMELEC has already disqualified Foronda and annulled his proclamation.

But that doctrine applies to this case, since the COMELEC ordained Foronda's disqualification only after the elections had taken place.[6] On October 29, 2007, the election day, Foronda was still legally a candidate.[7] It is incorrect to say that, since Foronda has subsequently been disqualified, the votes intended for him should in effect be considered null and void.[8]

WHEREFORE, the Court *DISMISSES* the petitions of petitioners Desederio Monreal and Nestor Racimo Foronda for lack of merit and *AFFIRMS* the resolutions of the Commission on Elections in SPA 08-072 (BRGY.) dated May 9 and October 2, 2008 in the case of petitioner Monreal and in SPA 08-078 (BRGY.) dated May 19 and September 25, 2008 in the case of petitioner Foronda.

SO ORDERED.

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

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[6] *Cayat v. Commission on Elections*, G.R. Nos. 163776 and 165736, April 24, 2007, 522 SCRA 23, 44.

[7] *Id.*

[8] *Id.*

THIRD DIVISION

[G.R. No. 186234. December 21, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FELIX PALGAN,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; PRINCIPLES THAT GUIDE THE COURT IN RESOLVING RAPE CASES.—** Three principles guide the courts in resolving rape cases: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF THE VICTIM ALONE, IF CREDIBLE, WOULD RENDER ACCUSED-APPELLANT'S CONVICTION INEVITABLE.—** The determination of guilt of appellant depends primarily on the credibility of a victim. Her testimony alone, if credible, would render appellant's conviction inevitable.

3. **ID.; ID.; ID.; GENERALLY, FINDINGS OF FACT OF THE TRIAL COURT ARE ENTITLED TO THE HIGHEST RESPECT AND WILL NOT BE DISTURBED ON APPEAL.—** The rule is settled that the trial court's findings on the credibility of witnesses and of their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that the court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. This is because the trial court, having seen and heard the witnesses themselves and observed their behavior and manner of testifying, is in a better position to decide the question of credibility.

4. **CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; IN RAPE COMMITTED BY A FATHER AGAINST HIS DAUGHTER, THE FATHER'S MORAL ASCENDANCY AND INFLUENCE OVER THE LATTER SUBSTITUTE FOR VIOLENCE AND INTIMIDATION; A CASE OF.—** AAA's failure to resist or to cry for help during those times that she was raped cannot be taken against her. Verily, when threat, intimidation and fear are employed, as was done here by appellant, there is no need to establish physical resistance. Certainly, an added reason for her failure was her stepfather's dominance over her. In rape committed by a father against his daughter, the father's moral ascendancy and influence over the latter substitute for violence and intimidation. The foregoing principle applies in the case of a sexual assault of a stepdaughter by her stepfather and of a goddaughter by a godfather in the sacrament of confirmation.

5. **CIVIL LAW; DAMAGES; CIVIL INDEMNITY; AWARD THEREOF IS MANDATORY UPON THE FINDING OF THE FACT OF RAPE.—** The appellate court correctly ruled when it modified the amount of civil indemnity that the lower court awarded to AAA. The amount of ₱50,000.00 should have been given for each count of rape, or a total of ₱100,000.00, as civil indemnity, which is actually in the nature of actual or compensatory damages, and mandatory upon the finding of the fact of rape.

6. **ID.; ID.; MORAL DAMAGES; PROPER IN CASE AT BAR.—** [The appellate court] however, erred when it only awarded ₱50,000.00 in moral damages. The amount of ₱50,000.00 should have been given for each count of rape, or a total of ₱100,000.00, in accordance with current jurisprudence, which amount is automatically granted in a rape case without need of further proof other than the fact of its commission. For it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

R E S O L U T I O N

NACHURA, *J*.:

For final review by the Court is the trial court's conviction of appellant Felix Palgan for rape. In the October 29, 2008 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00169, the appellate court affirmed with modification the June 24, 2002 Decision[2] of the Regional Trial Court (RTC), Branch 17, Kidapawan City, Cotabato in Criminal Case Nos. 191-98 and 214-98.

Angelina Palgan and appellant Felix Palgan were married on January 31, 1984. Out of their marriage, they begot three children, namely: Abner, Rene and Fe. Before their marriage, Angelina had a daughter named AAA by a man named "Jun," whose surname she could no longer recall.

On March 16, 1997, at around seven o'clock in the evening, AAA, then fourteen (14) years old, was ordered by appellant to go to the rubber plantation, which was about forty (40) meters from their house, both of which places were located in Old Bulatukan, Makilala, Cotabato. At the plantation, appellant inquired if AAA was mad at him, because he learned that she was spreading stories that he was not her father. When she denied this, appellant got angry and removed her dress and panty, laid her down and mounted her. He then undressed himself, held his penis and forcibly inserted it into her vagina. AAA cried and told appellant that it was painful. AAA testified that, after about ten (10) minutes of the push and pull movement, appellant shivered, and that some substance spilled onto her thighs. She did not tell anyone about the incident because appellant threatened her.

On September 9, 1997, at around eight o'clock in the evening, while her mother was away, AAA testified that she was sleeping

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[1] Penned by Associate Justice Michael P. Elbinias, with Associate Justices Rodrigo F. Lim, Jr. and Ruben C. Ayson, concurring; CA *rollo*, pp. 112-120.

[2] CA *rollo*, pp. 14-24.

on the bed, while her three (3) siblings lay on the floor; that appellant woke her up and told her to transfer to the floor, which she obeyed; that he turned the lights off and then touched her cheeks and breasts; that he removed her shorts and panty, while he raised her shirt up to her armpits; and that he removed his shorts and brief, took hold of his penis, and inserted it into her vagina. AAA stated that appellant did the push and pull movement for about ten (10) minutes. Afterwards, she observed that appellant had a chilling motion and that she felt a slippery substance spill onto her thighs. Appellant then put on his clothes.

AAA kept quiet about the incident until her mother, Angelina, discovered a letter in the former's bag. The letter contained the phrase "*he will get angry if I will not let him to (sic) touch my body.*" Angelina caused AAA to reveal that the latter was raped by appellant.

On September 12, 1997, Angelina and AAA reported appellant's acts to the Makilala Police Station.

On the same date, AAA was examined by Dr. Wilson Solis, Municipal Health Officer of Makilala, Cotabato. The internal examination of AAA revealed: "admits middle finger with ease; index and middle finger with slight difficulty; vaginal wall is laxed (sic), not tense; and cervix is firm and non-tender. Laxity of the vaginal wall could be due to repeated manipulation or entry of a foreign body (*e.g.* glans penis)."

Consequently, two Informations for rape were filed as follows:

CRIMINAL CASE NO. 214-98

That on September 9, 1997, in the Municipality of Makilala, Province of Cotabato, Philippines, the said accused, with lewd design, with force and intimidation, did then and there, willfully, unlawfully and feloniously succeeded (sic) in having carnal knowledge with AAA, against her will.

CONTRARY TO LAW.[3]

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[3] *Id.* at 5.

CRIMINAL CASE NO. 191-98

That on March 16, 1997, in the Municipality of Makilala, Province of Cotabato, Philippines, the said accused, with lewd design, with force and intimidation, did then and there, willfully, unlawfully and feloniously succeeded (sic) in having carnal knowledge with AAA, against her will.

CONTRARY TO LAW.[4]

Appellant denied having sexual intercourse with AAA on March 16, 1997, because he was at Sandique Rubber Plantation which was more than one (1) kilometer away from their house in Old Bulatukan, Makilala, Cotabato. He also maintained that on September 9, 1997, when he arrived home, his wife was not there since she had gone to Toril, Davao City. AAA was not there also, because she was probably afraid to be reprimanded, for appellant discovered two love letters sent by the former's boyfriend, Scorpio. Appellant also learned that AAA went to school for 2½ days only in September 1997. Furthermore, he maintained that the reason his stepdaughter implicated him was that he denied his wife's request to sell his 2½-hectare land in order for her to use the proceeds to start a business.

After trial on the merits, the RTC rendered the June 24, 2002 Decision,[5] convicting appellant of two (2) counts of rape in Criminal Case Nos. 191-98 and 214-98, and imposing the penalty of *reclusion perpetua* for each count. The RTC further ordered appellant to pay the victim the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.[6]

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[4] *Id.* at 7.

[5] *Id.* at 14-24.

[6] The dispositive portion of the trial court's Decision reads:

Prescinding from the foregoing considerations, the accused is found guilty beyond reasonable doubt of two (2) counts of rape, particularly found in Criminal Case Nos. 191-98 and 214-98, thus, he is meted the penalty of *reclusion perpetua* for each count and to pay the victim the amount of Fifty thousand (₱50,000.00) pesos as indemnity for rape and Fifty thousand (₱50,000.00) pesos for moral damages.

SO ORDERED. (*Id.* at 24.)

On review, the appellate court affirmed with modification the ruling of the trial court as follows:

WHEREFORE, the Judgment of the court *a quo* finding appellant Felix Palgan guilty for two (2) counts of Rape and sentencing him to suffer the penalty of *Reclusion Perpetua* for each count of Rape, is AFFIRMED WITH MODIFICATION that appellant is to pay private complainant, Michelle Palgan, ₱50,000.00 as Civil Indemnity for each count of Rape, or a total of ₱100,000.00, and, ₱50,000.00 as Moral Damages.

SO ORDERED.[7]

The case having been elevated to this Court, we now finally review the trial and the appellate courts' findings.

We affirm the conviction of appellant Palgan for two counts of rape.

Three principles guide the courts in resolving rape cases: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[8]

The determination of guilt of appellant depends primarily on the credibility of a victim. Her testimony alone, if credible, would render appellant's conviction inevitable.

The rule is settled that the trial court's findings on the credibility of witnesses and of their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that the court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance

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[7] CA *rollo*, p. 119.

[8] *People v. Glivano*, G.R. No. 177565, January 28, 2008, 542 SCRA 656, 662; citing *People v. Malones*, 469 Phil. 301, 318 (2004).

which would have affected the result of the case. This is because the trial court, having seen and heard the witnesses themselves and observed their behavior and manner of testifying, is in a better position to decide the question of credibility.[9]

In the case at bar, the trial court gave full weight and credence to AAA's testimony that appellant raped her on two occasions. AAA testified in a clear, spontaneous and candid manner; she positively identified appellant as the person who raped her; and she stated that she was unable to resist appellant because he was angry and strong.

AAA's failure to resist or to cry for help during those times that she was raped cannot be taken against her. Verily, when threat, intimidation and fear are employed, as was done here by appellant, there is no need to establish physical resistance. Certainly, an added reason for her failure was her stepfather's dominance over her. In rape committed by a father against his daughter, the father's moral ascendancy and influence over the latter substitute for violence and intimidation. The foregoing principle applies in the case of a sexual assault of a stepdaughter by her stepfather and of a goddaughter by a godfather in the sacrament of confirmation.[10]

Moreover, no woman, especially one of tender age like AAA, would concoct a rape complaint and would, at the same time, allow a gynecological examination on herself, as well as subject herself to a public trial if she were not motivated by the desire to have her offender apprehended and punished.[11]

Appellant alleged that his wife instigated AAA's filing of the two rape charges against him because of his adamant refusal to heed his wife's request to sell his 2½-hectare farm land. However, such ill motive imputed to appellant's wife is too flimsy. This is especially so, considering that it is unnatural for appellant's wife to use her daughter as an engine of malice, as no mother

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[9] *People v. Pacina*, G.R. No. 123150, August 16, 2000, 338 SCRA 195, 207.

[10] *People v. Casil*, 311 Phil. 300, 309 (1995).

[11] *People v. Abad*, 335 Phil. 712, 722 (1997).

would stoop down so low as to subject her own daughter to the hardships and shame concomitant to a prosecution for rape, just to assuage the mother's own hurt feelings. Furthermore, appellant's wife would not have dared encourage her daughter to publicly expose the dishonor of the family, unless the crime was, in fact, committed.

On the other hand, appellant's defenses of denial and alibi that he was not in the place where the crimes were allegedly committed are inherently weak and cannot prevail over the positive and categorical testimony of AAA that appellant forcibly had carnal knowledge of her on two occasions.

Hence, the court *a quo* correctly convicted appellant of two counts of rape under Article 266-A(1-a) of the Revised Penal Code for having carnal knowledge of AAA through force, threat and intimidation.

Accordingly, the penalty of *reclusion perpetua* was properly meted out for each count of rape, pursuant to Article 266-B, paragraph 1 of the Revised Penal Code.

The appellate court correctly ruled when it modified the amount of civil indemnity that the lower court awarded to AAA. The amount of ₱50,000.00 should have been given for each count of rape, or a total of ₱100,000.00, as civil indemnity, which is actually in the nature of actual or compensatory damages, and mandatory upon the finding of the fact of rape.[12]

It, however, erred when it only awarded ₱50,000.00 in moral damages. The amount of ₱50,000.00 should have been given for each count of rape, or a total of ₱100,000.00, in accordance with current jurisprudence, which amount is automatically granted in a rape case without need of further proof other than the fact of its commission. For it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award.[13]

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[12] *People v. Molleda*, 463 Phil. 461, 471 (2003).

[13] *People v. Codilan*, G.R. No. 177144, July 23, 2008, 559 SCRA 623, 636.

WHEREFORE, premises considered, the October 29, 2008 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00169 is *AFFIRMED WITH THE MODIFICATION* that the award for Moral Damages is increased to ₱100,000.00, or ₱50,000.00 for each count of rape.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Del Castillo,*[*] *JJ.,* concur.

EN BANC

[G.R. No. 187478. December 21, 2009]

REPRESENTATIVE DANILO RAMON S. FERNANDEZ, *petitioner, vs.* **HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL and JESUS L. VICENTE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) AND SENATE ELECTORAL TRIBUNAL (SET); SOLE JUDGES OF ALL CONTESTS RELATING TO THE ELECTION, RETURNS, AND QUALIFICATIONS OF THEIR RESPECTIVE MEMBERS; *SOLE* EMPHASIZES EXCLUSIVITY OF JURISDICTION.— x x x The 1987 Constitution explicitly provides under Article VI, Section 17 thereof that the HRET and the Senate Electoral Tribunal (SET) shall be the *sole judges* of all contests relating to the election, returns, and *qualifications* of their respective members. The authority conferred upon the Electoral Tribunal is full, clear and complete. The use of the word *sole* emphasizes the exclusivity of the jurisdiction of

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[*] Additional member per Special Order No. 805 dated December 4, 2009.

these Tribunals, which is conferred upon the HRET and the SET after elections and the proclamation of the winning candidates. A candidate who has not been proclaimed and who has not taken his oath of office cannot be said to be a member of the House of Representatives.

2. ID.; ID.; ID.; ID.; ID.; PETITION FOR *QUO WARRANTO*; WITHIN THE EXCLUSIVE JURISDICTION OF THE HRET; FORUM SHOPPING, ABSENT IN CASE AT BAR.— x x x [P]rivate respondent correctly pointed out that a petition for *quo warranto* is within the exclusive jurisdiction of the HRET, and cannot be considered forum shopping even if, as in this case, the COMELEC had already passed upon in administrative or quasi-judicial proceedings the issue of the qualification of the Member of the House of Representatives while the latter was still a candidate.

3. ID.; ID.; ID.; HOUSE OF REPRESENTATIVES; QUALIFICATIONS OF MEMBERS; RESIDENCY REQUIREMENT; COMPLIED WITH IN CASE AT BAR.— Anent the second issue pertaining to petitioner's compliance with the residency requirement for Members of the House of Representatives, after studying the evidence submitted by the parties, we find for petitioner, taking into account our ruling in *Frivaldo v. COMELEC*, which reads in part: This Court has time and **again liberally and equitably construed the electoral laws of our country to give fullest effect to the manifest will of our people, for in case of doubt, political laws must be interpreted to give life and spirit to the popular mandate freely expressed through the ballot.** Otherwise stated, legal niceties and technicalities cannot stand in the way of the sovereign will. xxx For the foregoing reason, the Court must exercise utmost caution before disqualifying a winning candidate, shown to be the clear choice of the constituents that he wishes to represent in Congress. The qualifications of a member of the House of Representatives are found in **Article VI, Section 6 of the Constitution**, which provides: Section 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which

he shall be elected, and **a resident thereof for a period of not less than one year immediately preceding the day of the election.** x x x If it is true that petitioner and his family had been living in Sta. Rosa, Laguna as of February 2006 with the intent to reside therein permanently, that would more than fulfill the requirement that petitioner be a resident of the district where he was a candidate for at least one year before election day, which in this case was May 14, 2007.

4. **ID.; ID.; ID.; ID.; ID.; ID.; PRESENCE IN ONE'S HOME TWENTY-FOUR (24) HOURS A DAY, SEVEN DAYS A WEEK, IS NOT REQUIRED TO FULFILL THE RESIDENCY REQUIREMENT; CASE AT BAR.—** The fact that a few barangay health workers attested that they had failed to see petitioner whenever they allegedly made the rounds in Villa de Toledo is of no moment, especially considering that there were witnesses (including petitioner's neighbors in Villa de Toledo) that were in turn presented by petitioner to prove that he was actually a resident of Villa de Toledo, in the address he stated in his COC. The law does not require a person to be in his home twenty-four (24) hours a day, seven days a week, in order to fulfill the residency requirement. It may be that whenever these health workers do their rounds petitioner was out of the house to attend to his own employment or business. It is not amiss to note that even these barangay health workers, with the exception of one, confirm seeing petitioner's wife at the address stated in petitioner's 2007 COC. Indeed, these health workers' testimonies do not conclusively prove that petitioner did not in fact reside in Villa de Toledo for at least the year before election day.

5. **ID.; ID.; ID.; ID.; ID.; ID.; DOES NOT PROHIBIT OWNERSHIP OF PROPERTY AND EXERCISE OF RIGHTS OF OWNERSHIP THERETO IN OTHER PLACES ASIDE FROM THE ADDRESS INDICATED AS PLACE OF RESIDENCE IN THE CERTIFICATE OF CANDIDACY.—** Neither do we find anything wrong if petitioner sometimes transacted business or received visitors in his Cabuyao house, instead of the alleged Sta. Rosa residence, as there is nothing in the residency requirement for candidates that prohibits them from owning property and exercising their rights of ownership thereto in other places aside from the address they had indicated as their place of residence in their COC.

6. CIVIL LAW; CONTRACTS; FORM OF CONTRACTS; LACK OF PROPER NOTARIZATION DOES NOT NECESSARILY NULLIFY NOR RENDER THE PARTIES' TRANSACTION VOID *AB INITIO*; RELEVANT RULING, CITED.— x x x In the case now before us, although private respondent raised alleged formal defects in the contract of lease, the lessor himself testified that as far as he was concerned, he and petitioner had a valid contract and he confirmed that petitioner and his family are the occupants of the leased premises. Petitioner correctly pointed out that the lack of proper notarization does not necessarily nullify nor render the parties' transaction void *ab initio*. In *Mallari v. Alsol,* we found a contract of lease to be valid despite the non-appearance of one of the parties before a notary public, and ruled in this wise: Notarization converts a private document into a public document. However, the non-appearance of the parties before the notary public who notarized the document does not necessarily nullify nor render the parties' transaction void *ab initio*. Thus: . . . Article 1358 of the New Civil Code on the necessity of a public document is only for convenience, not for validity or enforceability. Failure to follow the proper form does not invalidate a contract. Where a contract is not in the form prescribed by law, the parties can merely compel each other to observe that form, once the contract has been perfected. This is consistent with the basic principle that contracts are obligatory in whatever form they may have been entered into, provided all essential requisites are present. Hence, the Lease Contract is valid despite Mayor Perez's failure to appear before the notary public.

7. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES; QUALIFICATIONS OF MEMBERS; RESIDENCY REQUIREMENT; DOES NOT REQUIRE A CONGRESSIONAL CANDIDATE TO BE A PROPERTY OWNER IN THE DISTRICT WHERE HE SEEKS TO RUN; RATIONALE.— Although it is true that the latest acquired abode is not necessarily the domicile of choice of a candidate, there is nothing in the Constitution or our election laws which require a congressional candidate to sell a previously acquired home in one district and buy a new one in the place where he seeks to run in order to qualify for a congressional seat in that other district. Neither do we see the fact that petitioner was

only leasing a residence in Sta. Rosa at the time of his candidacy as a barrier for him to run in that district. Certainly, the Constitution does not require a congressional candidate to be a property owner in the district where he seeks to run but only that he ***resides*** in that district for at least a year prior to election day. To use ownership of property in the district as the determinative indicium of permanence of domicile or residence implies that only the landed can establish compliance with the residency requirement. This Court would be, in effect, imposing a property requirement to the right to hold public office, which property requirement would be unconstitutional.

8. ID.; ID.; ID.; ID.; ID.; ID.; *BONA FIDE* TRANSFER OF RESIDENCE WAS ADEQUATELY SHOWN IN CASE AT BAR; EXPLAINED.— In the case at bar, there are real and substantial reasons for petitioner to establish Sta. Rosa as his domicile of choice and abandon his domicile of origin and/or any other previous domicile. To begin with, petitioner and his wife have owned and operated businesses in Sta. Rosa since 2003. Their children have attended schools in Sta. Rosa at least since 2005. Although ownership of property should never be considered a requirement for any candidacy, petitioner had sufficiently confirmed his intention to permanently reside in Sta. Rosa by purchasing residential properties in that city even prior to the May 2007 election, as evidenced by certificates of title issued in the name of petitioner and his wife. One of these properties is a residence in Bel-Air, Sta. Rosa which petitioner acquired even before 2006 but which petitioner had been leasing out. He claims that he rented out this property because prior to 2006 he had not decided to permanently reside in Sta. Rosa. This could explain why in early 2006 petitioner had to rent a townhouse in Villa de Toledo— his Bel-Air residence was occupied by a tenant. The relatively short period of the lease was also adequately explained by petitioner – they rented a townhouse while they were in the process of building their own house in Sta. Rosa. True enough, petitioner and his spouse subsequently purchased a lot also in Villa de Toledo in April 2007, about a month before election day, where they have constructed a home for their family's use as a residence. In all, petitioner had adequately shown that his transfer of residence to Sta. Rosa was *bona fide* and was not merely for complying with the residency requirement under election laws.

9. ID.; ID.; ID.; ID.; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); PETITION FOR *QUO WARRANTO*; BURDEN TO PROVE THE VERY FACT OF DISQUALIFICATION BEFORE THE CANDIDATE SHOULD BE CALLED UPON TO DEFEND HIMSELF IS ON THE PETITIONER; CASE AT BAR.— It was incumbent upon private respondent to prove his assertion that petitioner is indeed disqualified from holding his congressional seat. Private respondent's burden of proof was not only to establish that petitioner's domicile of origin is different from Sta. Rosa but also that petitioner's domicile for the one year prior to election day continued to be Pagsanjan, Laguna which was petitioner's domicile of origin or that petitioner had chosen a domicile other than Sta. Rosa, Laguna for that same period. In other words, to prove petitioner's disqualification, the relevant period is the one year period prior to election day. It would be absurd to rule that the petitioner in a *quo warranto* suit only needs to prove that the candidate had some other previous domicile, regardless of how remote in time from election day that previous domicile was established, and then the candidate would already have the burden to prove abandonment of that previous domicile. It is the burden of the petitioner in a *quo warranto* case to first prove the very fact of disqualification before the candidate should even be called upon to defend himself with countervailing evidence. In our considered view, private respondent failed to discharge his burden of proof. Petitioner's COCs for previous elections and his 2005 application for a driver's license only proved that his domicile of origin was Pagsanjan, Laguna and it remained to be so up to 2005. Affidavits/testimonies of respondent's witnesses, at most, tended to prove that petitioner was on several instances found in his house in Cabuyao, Laguna, which was not even his domicile of origin. Cabuyao, Laguna is in the **Second** District of Laguna while petitioner's domicile of origin, Pagsanjan, is in the **Fourth** District of Laguna. Based on private respondent's own documentary submissions, Cabuyao was never even stated as a domicile or residence in any of the petitioner's COCs. Moreover, owning an abode in Cabuyao where petitioner is occasionally found did not prove that Cabuyao is petitioner's real domicile. Indeed, disregarding Cabuyao as petitioner's domicile would be consistent with the established principle that physical presence in a place *sans* the intent to

permanently reside therein is insufficient to establish domicile. Neither did private respondent's submissions refute petitioner's evidence that since February 2006 petitioner has chosen Sta. Rosa as his domicile. To summarize, private respondent's own evidence did not categorically establish where petitioner's domicile is nor did said evidence conclusively prove that for the year prior to the May 14, 2007 petitioner had a domicile other than where he actually resided, *i.e.* Sta. Rosa, Laguna.

10. ID.; ID.; ID.; ID.; QUALIFICATIONS OF MEMBERS; RESIDENCY REQUIREMENT; PURPOSE, NOT DEFEATED IN CASE AT BAR.— We do not doubt that the residency requirement is a means to prevent a stranger or newcomer from holding office on the assumption that such stranger or newcomer would be insufficiently acquainted with the needs of his prospective constituents. However, it is appropriate to point out at this juncture that aside from petitioner's actual, physical presence in Sta. Rosa for more than a year prior to election day, he has demonstrated that he has substantial ties to Sta. Rosa and the First District of Laguna for an even longer period than that. Petitioner has business interests in Sta. Rosa comprised of restaurants and a residential property for lease. Petitioner has two children studying in Sta. Rosa schools even before 2006. These circumstances provided petitioner with material reasons to frequently visit the area and eventually take up residence in the said district. Significantly, petitioner previously served as Board Member and Vice-Governor for the Province of Laguna, of which the First District and Sta. Rosa are a part. It stands to reason that in his previous elected positions petitioner has acquired knowledge of the needs and aspirations of the residents of the First District who were among his constituents. Simply put, petitioner could not be considered a "stranger" to the community which he sought to represent and that evil that the residency requirement was designed to prevent is not present in this case.

APPEARANCES OF COUNSEL

Jose P. Villamor for petitioner.

The Solicitor General for public respondent.

Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero Law Offices for private respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This petition for *certiorari* and prohibition filed under Rule 65 of the Rules of Court stems from the **Decision**[1] in **HRET CASE No. 07-034** for *quo warranto* entitled ***Jesus L. Vicente v. Danilo Ramon S. Fernandez*** promulgated by the House of Representatives Electoral Tribunal (HRET) on December 16, 2008 as well as **Minute Resolution No. 09-080** promulgated on April 30, 2009, likewise issued by the HRET, denying petitioner's Motion for Reconsideration.

The dispositive portion of the questioned Decision reads as follows:

WHEREFORE, the Tribunal DECLARES respondent Danilo Ramon S. Fernandez ineligible for the Office of Representative of [the] First District of Laguna for lack of residence in the district and [ORDERS] him to vacate his office.

As soon as this Resolution becomes final and executory, let notices be sent to the President of the Philippines, the House of Representatives through the Speaker, and the Commission on Audit through its Chairman, pursuant to Rule 96 of the 2004 Rules of the House of Representatives Electoral Tribunal.

No pronouncement as to costs.

SO ORDERED.[2]

On December 22, 2008, petitioner Danilo Ramon S. Fernandez (petitioner) filed a Motion for Reconsideration of the above-quoted Decision. The HRET, in the questioned Resolution, found petitioner's Motion to be "bereft of new issues/arguments that [had] not been appropriately resolved"[3] in the Decision.

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[1] *Rollo,* pp. 64-111.

[2] *Id.* at 107.

[3] *Id.* at 112.

Petitioner thus applied for relief to this Court, claiming that the questioned Decision and Resolution should be declared null and void for having been respectively issued *with grave abuse of discretion amounting to lack of or in excess of jurisdiction*, and praying for the issuance of a writ of prohibition to enjoin and prohibit the HRET from implementing the questioned Decision and Resolution.[4]

The antecedent facts are clear and undisputed.

Petitioner filed for candidacy as Representative of the ***First*** Legislative District of the Province of Laguna in the May 14, 2007 elections. In his Certificate of Candidacy (COC), he indicated his complete/exact address as "No. 13 Maharlika St., Villa Toledo Subdivision, Barangay Balibago, Sta. Rosa City, Laguna" (alleged Sta. Rosa residence).[5]

Private respondent Jesus L. Vicente (private respondent) filed a "Petition to Deny Due Course to and/or Cancel Certificate of Candidacy and Petition for Disqualification" before the Office of the Provincial Election Supervisor of Laguna. This was forwarded to the Commission on Elections (COMELEC) and docketed therein as **SPA No. 07-046 (PES)**. Private respondent sought the cancellation of petitioner's COC and the latter's disqualification as a candidate on the ground of an alleged material misrepresentation in his COC regarding his place of residence, because during past elections, he had declared Pagsanjan, Laguna as his address, and Pagsanjan was located in the ***Fourth*** Legislative District of the Province of Laguna. Private respondent likewise claimed that petitioner maintained another house in Cabuyao, Laguna, which was also outside the First District.[6] The COMELEC (First Division) dismissed said petition for lack of merit.[7]

Petitioner was proclaimed as the duly elected Representative of the First District of Laguna on June 27, 2007, having garnered

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

[5] *Id.* at 156.

[6] *Id.* at 25-26.

[7] *Id.* at 31.

a total of **95,927 votes, winning by a margin of 35,000 votes** over the nearest candidate.[8]

On July 5, 2007, private respondent filed a petition for *quo warranto* before the HRET, docketed as **HRET CASE No. 07-034**, praying that petitioner be declared ineligible to hold office as a Member of the House of Representatives representing the First Legislative District of the Province of Laguna, and that petitioner's election and proclamation be annulled and declared null and void.[9]

Private respondent's main ground for the *quo warranto* petition was that petitioner lacked the required one-year residency requirement provided under Article VI, Section 6 of the 1987 Constitution. In support of his petition, private respondent argued that petitioner falsely declared under oath: (1) his alleged Sta. Rosa residence; (2) the period of his residence in the legislative district before May 14, 2007, which he indicated as one year and two months; and (3) his eligibility for the office where he was seeking to be elected. Private respondent presented the testimony of a certain Atty. Noel T. Tiampong, who stated that petitioner is not from the alleged Sta. Rosa residence but a resident of *Barangay* Pulo, Cabuyao, Laguna; as well as the respective testimonies of *Barangay* Balibago Health Workers who attested that they rarely, if ever, saw respondent in the leased premises at the alleged Sta. Rosa residence; and other witnesses who testified that contrary to the misrepresentations of petitioner, he is not a resident of the alleged Sta. Rosa residence. A witness testified that petitioner attempted to coerce some of the other witnesses to recant their declarations and change their affidavits. Finally, private respondent presented as witness the lawyer who notarized the Contract of Lease dated March 8, 2007 between petitioner as lessee and Bienvenido G. Asuncion as lessor.[10]

Petitioner, as respondent in **HRET Case No. 07-034**, presented as his witnesses residents of Villa de Toledo who testified that they had seen respondent and his family residing in their locality,

[8] *Id.* at 13.

[9] *Id.* at 166.

[10] *Id.* at 67.

as well as Bienvenido G. Asuncion who testified that petitioner is the lessee in Unit No. 13 Block 1 Lot I, Maharlika St., Villa de Toledo Subdivision, Brgy. Balibago, Sta. Rosa City, Laguna. Petitioner likewise presented Mr. Joseph Wade, President of South Point Homeowner's Association of Cabuyao, Laguna, as well as Engr. Larry E. Castro (Castro), who testified that since February 2006 up to the present, petitioner had no longer been residing in his property located at Block 28, Lot 18, South Point Subdivision, Cabuyao, Laguna, and that said property was being offered for sale and temporarily being used by Castro, together with some security men of petitioner and employees of Rafters Music Lounge owned by petitioner.[11] Petitioner testified that he had been a resident of Sta. Rosa even before February 2006; that he owned property in another Sta. Rosa subdivision (Bel-Air); that he and his wife had put up a business therein, the "RAFTERS" restaurant/ bar; and that he had prior residence in another place also at Sta. Rosa as early as 2001.[12]

Since the HRET ruled in favor of private respondent, this petition was filed before us.

In petitioner's assignment of errors, he alleges that the HRET grievously erred and committed grave abuse of discretion:

1. In not placing on the *quo warranto* petitioner Jesus L. Vicente the burden of proving that then respondent (now petitioner) Fernandez is not a qualified candidate for Representative of the First District of the Province of Laguna;
2. When it disregarded the ruling of a co-equal tribunal in SPA No. 07-046;
3. When it added a property qualification to a Member of Congress;
4. When it determined that the petitioner failed to comply with the one (1) year residency requirement based on the contract of lease;

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[11] *Id.* at 71.

[12] *Id.*

5. When it completely disregarded the testimonies of material witnesses;

6. When it failed to consider the intent of the petitioner to transfer domicile based on the totality of the evidence adduced; and

7. When it failed to find the petitioner in HRET Case No. 07-034 guilty of forum-shopping.[13]

On the first assignment of error, petitioner questions the following pronouncement of the HRET in its decision:

In the case before us, petitioner has clearly asserted, and respondent does not deny, that his domicile of origin is Pagsanjan in the Fourth District of Laguna. Hence, the burden is now on respondent to prove that he has abandoned his domicile of origin, or since his birth, where he formerly ran for provincial Board Member of Laguna in 1998, for Vice-Governor of Laguna in 2001 and for Governor of Laguna in 2004. In all his Certificates of Candidacy when he ran for these positions, he indicated under oath that his domicile or permanent residence was in Pagsanjan in the Fourth District of Laguna, not in the First District where he later ran in the last elections.[14]

Petitioner contends that "it is a basic evidentiary rule that the burden of proof is on he who alleges, and he who relies on such an allegation as his cause of action should prove the same."[15] Since private respondent is the party alleging that petitioner is not eligible for his position, it is therefore incumbent on the former, who filed the *quo warranto* case before the HRET, to prove such allegation. He cites in support of his contention Sec. 1, Rule 131 of the Rules of Court, to wit:

SECTION 1. *Burden of proof* . — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

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

[14] *Id.* at 89.

[15] *Id.* at 19.

Petitioner avers that private respondent failed to establish his claim and to adduce evidence sufficient to overcome petitioner's eligibility to be a candidate for Representative of the First District of Laguna.

On the second assignment of error, petitioner submits that the HRET should have been "guided and/or cautioned" by the COMELEC's dispositions in **SPA No. 07-046**, wherein he was adjudged as qualified to run for the position of Congressman of the First District of Laguna by an agency tasked by law and the Constitution to ascertain the qualifications of candidates before election. Petitioner claims that the HRET should have *respected* the findings of the COMELEC and should have discreetly denied the petition.

On the third assignment of error, petitioner argues that under Article V, Section 1, of the 1987 Constitution, any citizen of the Philippines who is a qualified voter may likewise, if so qualified under the appertaining law and the constitution, be able to run and be voted for as a candidate for public office. Said provision reads:

> SECTION 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. **No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.**

Petitioner alleges that in the questioned Decision, the HRET added a new qualification requirement for candidates seeking election to the position of Member of the House of Representatives, and that is, they must be real property owners in the legislative district where they seek election.

On the fourth assignment of error, petitioner addresses private respondent's arguments against the contract of lease that he presented as part of the proof of his compliance with the residency requirement. Petitioner asserts that the nomenclature used by contracting parties to describe a contract does not determine its

nature, but the decisive factor is the intention of the parties to a contract – as shown by their conduct, words, actions, and deeds – prior to, during and after executing the agreement.[16] Petitioner claims that he has presented ample proof of his residency in terms of evidence more numerous and bearing more weight and credibility than those of private respondent. He proceeds to highlight some of the evidence he offered in the *quo warranto* case that allegedly prove that his transfer of residence and intention to reside in Sta. Rosa were proven by his stay in Villa de Toledo, to wit: (1) even earlier than 2006, he had purchased a house and lot in Bel-Air Subdivision in Sta. Rosa which he rented out because he was not yet staying there at that time; (2) he sent his children to schools in Sta. Rosa as early as 2002; and (3) he and his wife established a restaurant business there in 2003. Petitioner contends that when he and his family moved to Sta. Rosa by initially renting a townhouse in Villa de Toledo, it cannot be said that he did this only in order to run for election in the First Legislative District.[17]

As regards the alleged infirmities characterizing the execution of the contract of lease and the renewal of said contract of lease, petitioner contends that these are not material since the lessor, Bienvenido Asuncion, affirmed his stay in his townhouse; the neighbors and other *barangay* personalities confirmed his and his family's stay in their area; and petitioner has continued actual residence in Sta. Rosa from early 2006 to the present. Petitioner claims that all these prove that he had effectively changed his residence and could therefore likewise transfer his voter's registration from Pagsanjan to Sta. Rosa under Sec. 12 of R.A. No. 8189.[18] Petitioner also alleges that he had become qualified to seek elective office in his new place of residence and registration as a voter.

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[16] *Alvaro v. Ternida,* G.R. No. 166183, January 20, 2006, 479 SCRA 288.

[17] *Rollo,* pp. 34-35.

[18] Otherwise known as "The Voter's Registration Act of 1996." **SECTION 12.** ***Change of Residence to Another City or Municipality.*** — Any registered voter who has transferred residence to another city or municipality may apply with the Election Officer of his new residence for the transfer of his registration records.

To further prove that he has made Sta. Rosa his domicile of choice from early 2006 to the present, petitioner points out that he and his wife had purchased a lot in the same area, Villa de Toledo, on April 21, 2007, built a house thereon, and moved in said house with their family.

Regarding the non-notarization of the contract of lease raised by private respondent, petitioner avers that this "does not necessarily nullify nor render the parties' transaction void *ab initio*."[19]

On the fifth assignment of error, petitioner alleges that the HRET relied on private respondent's witnesses in negating petitioner's claim that he had validly resided at the alleged Sta. Rosa residence for more than one year and two months prior to the May 14, 2007 elections, and did not touch on the testimonies of his witnesses. The questioned Decision pointed out petitioner's alleged non-appearance in the day-to-day activities of the Homeowners' Association and considered this as failure to prove that he is a resident of Villa de Toledo, without considering the fact that private respondent failed to discharge the burden of proof in support of his indictment against petitioner.

On the sixth assignment of error, petitioner claims that the questioned Decision was arrived at based on the perceived weakness of his evidence and arguments as respondent, instead of the strength of private respondent's own evidence and arguments in his *quo warranto* petition.

On the seventh and last assignment of error, petitioner alleges that the matters raised in **HRET Case No. 07-034** were no different from the ones raised by private respondent before the COMELEC in **SPA No. 07-046 (PES)**; thus, private respondent's petition should have been dismissed by the HRET for forum-shopping.

In his **Comment** dated June 22, 2009, private respondent summarized the issues raised in petitioner's assignment of errors into two: (1) those that involve the issue of conflict of jurisdiction

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[19] *Mallari v. Alsol,* G.R. No. 150866, March 6, 2006, 484 SCRA 148.

between the HRET and the COMELEC respecting the eligibility, qualification/s or disqualification of elective public officials; and (2) those that involve factual and evidentiary matters designed as supposed errors.[20]

Regarding the first issue, private respondent contends that the 1987 Constitution is most equivocal in declaring that the HRET is the sole judge of all contests relating to the election, returns and qualifications of Members of the House of Representatives, under the following provision:

Art. VI, SECTION 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members.

Private respondent alleges that the above constitutional provision was adopted by the HRET in its Rules, which read:

THE 1998 RULES OF THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL

The House of Representatives Electoral Tribunal hereby adopts and promulgates the following Rules governing its proceedings as the sole judge of all contests relating to the election, returns and qualifications of Members of the House of Representatives, pursuant to Section 17, Article VI of the Constitution.

x x x x x x x x x

RULE 17

Quo Warranto

A verified petition for *quo warranto* contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any voter within ten (10) days after the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.

The rule on verification provided in Section 16 hereof shall apply to petitions for *quo warranto*.

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[20] *Rollo*, p. 212.

x x x x x x x x x

Private respondent concludes from the above that petitioner had no legal basis to claim that the HRET, when reference to the qualification/s of Members of the House of Representatives is concerned, is "co-equal" to the COMELEC, such that the HRET cannot disregard any ruling of COMELEC respecting the matter of eligibility and qualification of a member of the House of Representatives. The truth is the other way around, because the COMELEC is subservient to the HRET when the dispute or contest at issue refers to the eligibility and/or qualification of a Member of the House of Representatives. A petition for *quo warranto* is within the exclusive jurisdiction of the HRET as sole judge, and cannot be considered forum shopping even if another body may have passed upon in administrative or quasi-judicial proceedings the issue of the Member's qualification while the Member was still a candidate. There is forum-shopping only where two cases involve the same parties and the same cause of action. The two cases here are distinct and dissimilar in their nature and character.

Anent the second issue, private respondent contends that petitioner raised errors of judgment, mistakes in the factual findings, and/or flaws in the evidence appreciation, which are appropriate on appeal, but *not* in a petition for *certiorari* which is a special civil action, where the only allowable ground in order to prosper is grave abuse of discretion amounting to lack or in excess of jurisdiction.

For its part, public respondent HRET, through the Solicitor General, filed a Comment dated July 14, 2009, arguing that it did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it held that petitioner failed to comply with the one year residency requirement under Section 6, Article VI of the 1987 Constitution.[21]

The HRET avers that the questioned Decision is supported by factual and legal basis, for it found that the original and extended contracts of lease presented by petitioner were

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[21] *Id.* at 267-291.

defective and fabricated, as it contained "several apparent, if not visible, deficiencies as to form, *i.e.*[,] it being not notarized; the absence of witnesses, the intercalations thereat especially on the term/period of the alleged lease; the absence of respondent's participation therein and some others pointed out in the petition."[22] The Decision states that even if the contract of lease was valid and legitimate, "a fixed period of one year… negates the concept of permanency that would suffice to prove abandonment of respondent's previous residence or domicile at Pagsanjan." The Decision further reads as follows:

> Respondent's connection to the First District of Laguna is an alleged lease agreement of a townhouse unit in the area. **The intention not to establish a permanent home** in the First District of Laguna **is evident in his leasing a townhouse unit instead of buying one. The short length of time he claims to be a resident of the First District of Laguna (and the fact that his domicile of origin is Pagsanjan, Laguna is not within the First District of Laguna) indicate that his sole purpose in transferring his physical residence is not to acquire a new residence or domicile but only to qualify as a candidate for Representative of the First District of Laguna**.[23]
>
> x x x x x x x x x
>
> Exhibit –"3" is the very document that was produced and presented by respondent to attest that while the original contract, replete with infirmities, as only for one year expiring even before the May 14, 2007 elections, here now comes the renewed Contract of Lease, signed by respondent himself, no longer his wife, immaculately perfect on its face, now notarized and properly witnessed, and even the terms and conditions thereof undeniably clear and explicit, with the added feature of a prolonged 2-year period of lease that will go well beyond the May 14, 2007 elections.
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> We cannot however, simply accept the renewed Contract of Lease (Exhibit –"3") on its face. In fact, as succinctly pointed out by petitioner, the renewed Contract of Lease suffers from a more grievous infirmity.

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[22] *Id.* at 272.

[23] *Id.* at 273. Emphasis ours.

x x x As respondent's brother-in-law, Atty. Macalalag is prohibited from notarizing a document that involves the respondent.[24]

x x x x x x x x x

But the lack of notarial authentication does not even constitute the main defect of [Exhibit "3"]. The surfacing of Exhibit "3" very late in the day cannot but lead to the conclusion that the same was a mere afterthought. x x x[25]

x x x x x x x x x

We have to emphasize that the initial one-year lease contract expired on February 27, 2007, and as such, standing alone, the same cannot prove and will not establish the declared one-year and two months prior residence eligibility requirement of respondent, unless it is shown that the expired lease agreement was extended or renewed beyond the May 14, 2007 elections, and, more importantly, accompanied by a copy of the claimed existing renewed lease agreement. x x x[26]

x x x x x x x x x

By the unexplained delay in the production and presentation of Exhibit "3", respondent's residence qualifications suffered a fatal blow. For it can no longer be denied that respondent's claimed residence at the alleged townhouse unit in Sta. Rosa for one year and two months prior to the May 14, 2007 election is not only most doubtful, but also negates the concept of permanency that would suffice to prove abandonment of respondent's previous residence or domicile at Pagsanjan.[27]

Furthermore, the HRET alleges that, as it found in the questioned Decision, the witnesses presented who were residents of Sta. Rosa, Laguna were consistent and credible in disputing petitioner's alleged physical presence at any given time in said place. Among these witnesses were three Barangay Health Workers, one of whom, Rowena Dineros, submitted an affidavit that her job required her to frequently go around Villa de Toledo,

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[24] *Id.* at 274.

[25] *Id.* at 275.

[26] *Id.* at 277.

[27] *Id.* at 278.

knocking on every household door to inquire about its occupants, and not once did she see petitioner at the alleged Sta. Rosa residence. The HRET claims that this testimony was corroborated by another Barangay Health Worker (BHW), Jeanet Cabingas, who stated in her affidavit that every time she accompanied her niece, who was petitioner's goddaughter, to request a favor from petitioner, the latter would ask them to return to his house in Cabuyao, Laguna, even if she was a resident of Sta. Rosa.[28] The Solicitor General quotes the following portion from the questioned Decision:

> What appears very evident from this is that respondent has absolutely not the slightest intention to reside in Sta. Rosa permanently.
>
> This ineluctably confirms that respondent has not developed *animus manendi* over the latter place, Sta. Rosa[,] and that he has not actually abandoned his old domicile of origin in Pagsanjan.[29]

As for the third BHW witness, Flocerfina Torres, the HRET gives credence to her testimony that she conducted a household census in Villa de Toledo every three months, but not once had she seen petitioner in the alleged Sta. Rosa residence, and that she was advised by petitioner to proceed to his house in Cabuyao, Laguna when she had attempted to solicit from petitioner at his "Rafter's establishment because it was near her residence in Sta. Rosa." From the foregoing testimonies, the HRET found in the questioned Decision that:

> The uniform testimony of our 3 BHW witnesses disputing the physical presence of the respondent at his claimed Toledo address during all the time that they were performing their routine duties at that community, and which encompassed the period of "1 year and 2 months before the May 14, 2007 election", revealed that he was not staying in Sta. Rosa.[30]

The HRET likewise contends that the fact that petitioner registered as a voter in Sta. Rosa does not prove that he is a resident

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[28] *Id.* at 281.

[29] *Id.* at 282.

[30] *Id.* at 283.

thereat, given that a voter is required to reside in the place wherein he proposes to vote only for *six months* preceding the election.

The HRET avers that this Court had explained the importance of property ownership in *Aquino v. COMELEC, et al.*[31] and finds no merit in petitioner's insistence that the will of the electorate attests to his residence in Sta. Rosa because, the HRET further avers, "[a] disqualified candidate cannot assume office."[32]

The HRET likewise contends that the purpose of the residency requirement is to ensure that the person elected is familiar with the needs and problems of his constituency.

The issues for determination are: (1) whether the HRET had jurisdiction over the case; and (2) whether petitioner sufficiently complied with the one-year residency requirement to be a Member of the House of Representatives, as provided in the 1987 Constitution.

The first issue is procedural and involves the jurisdiction of the HRET *vis-à-vis* that of the COMELEC in cases involving the qualification of Members of the House of Representatives. Petitioner suggests that the matters raised in **HRET Case No. 07-034** were already passed upon by the COMELEC in **SPA No. 07-046 (PES),** thus the HRET should have dismissed the case for forum-shopping.

We do not agree. The 1987 Constitution explicitly provides under Article VI, Section 17 thereof that the HRET and the Senate Electoral Tribunal (SET) shall be the *sole judges* of all contests relating to the election, returns, and *qualifications* of their respective members. The authority conferred upon the Electoral Tribunal is full, clear and complete. The use of the word *sole* emphasizes the exclusivity of the jurisdiction of these Tribunals,[33] which is conferred upon the HRET and the SET after elections and the proclamation of the winning candidates. A candidate who has not been proclaimed and who has not

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[31] G.R. No. 120265, September 18, 1995, 248 SCRA 400.

[32] *Rollo,* p. 287.

[33] *Co v. Electoral Tribunal of the House Of Representatives,* G.R. Nos. 92191-92, July 30, 1991, 199 SCRA 692, 699.

taken his oath of office cannot be said to be a member of the House of Representatives.[34]

Thus, private respondent correctly pointed out that a petition for *quo warranto* is within the exclusive jurisdiction of the HRET, and cannot be considered forum shopping even if, as in this case, the COMELEC had already passed upon in administrative or quasi-judicial proceedings the issue of the qualification of the Member of the House of Representatives while the latter was still a candidate.

Anent the second issue pertaining to petitioner's compliance with the residency requirement for Members of the House of Representatives, after studying the evidence submitted by the parties, we find for petitioner, taking into account our ruling in *Frivaldo v. COMELEC*,[35] which reads in part:

> This Court has time and **again liberally and equitably construed the electoral laws of our country to give fullest effect to the manifest will of our people, for in case of doubt, political laws must be interpreted to give life and spirit to the popular mandate freely expressed through the ballot.** Otherwise stated, legal niceties and technicalities cannot stand in the way of the sovereign will. xxx (Emphasis supplied)

For the foregoing reason, the Court must exercise utmost caution before disqualifying a winning candidate, shown to be the clear choice of the constituents that he wishes to represent in Congress.

The qualifications of a member of the House of Representatives are found in **Article VI, Section 6 of the Constitution**, which provides:

> Section 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and **a**

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[34] *Supra* note 31 at 417-418.

[35] G.R. Nos. 120295 & 123755, June 28, 1996, 257 SCRA 727, 770-771.

resident thereof for a period of not less than one year immediately preceding the day of the election. (Emphasis supplied)

We find the interpretation of the HRET of the residency requirement under the Constitution to be overly restrictive and unwarranted under the factual circumstances of this case.

The evidence presented by private respondent before the HRET hardly suffices to prove that petitioner failed to comply with the one-year residency requirement under the Constitution. Private respondent's documentary evidence to disqualify petitioner mainly consisted of (a) petitioner's certificates of candidacy (COCs) for various positions in 1998, 2001 and 2004, which all indicated his residence as Pagsanjan, Laguna within the Fourth District of said province; (b) his application for a driver's license in August 2005 that indicated Pagsanjan, Laguna as his residence; and (c) the statement in his COCs including his 2007 COC for Congressman for the First District of Laguna that his place of birth was Pagsanjan, Laguna.

The only thing these pieces of documentary evidence prove is that petitioner's domicile of origin was Pagsanjan, Laguna and it remained his domicile up to 2005, at the latest. On the other hand, what petitioner asserted in his 2007 COC is that he had been a resident of Sta. Rosa, Laguna in the First District of Laguna as of February 2006 and respondent's evidence failed contradict that claim.

If it is true that petitioner and his family had been living in Sta. Rosa, Laguna as of February 2006 with the intent to reside therein permanently, that would more than fulfill the requirement that petitioner be a resident of the district where he was a candidate for at least one year before election day, which in this case was May 14, 2007.

In order to buttress his claim that he and his family actually resided in Sta. Rosa, Laguna beginning at least in February 2006, petitioner's evidence included, among others: (a) original and extended lease contracts for a townhouse in Villa de Toledo, Barangay Balibago, Sta. Rosa, Laguna; (b) certification issued by the President of the Villa de Toledo Homeowners Association, Inc., that petitioner has been a resident of said Subdivision

since February 2006; (c) affidavits of petitioner's neighbors in Villa de Toledo attesting that petitioner has been a resident of said subdivision since February 2006; (d) certification of the *barangay* chairman of Barangay Balibago, Sta. Rosa, Laguna that petitioner is a resident of Villa de Toledo within the said *barangay*; (e) certificates of attendance of petitioner's children in schools located in Sta. Rosa, Laguna since 2005; and (f) DTI certificates of business issued in the name of petitioner and his wife to show that they own and operate businesses in Sta. Rosa, Laguna since 2003.

The fact that a few *barangay* health workers attested that they had failed to see petitioner whenever they allegedly made the rounds in Villa de Toledo is of no moment, especially considering that there were witnesses (including petitioner's neighbors in Villa de Toledo) that were in turn presented by petitioner to prove that he was actually a resident of Villa de Toledo, in the address he stated in his COC. The law does not require a person to be in his home twenty-four (24) hours a day, seven days a week, in order to fulfill the residency requirement. It may be that whenever these health workers do their rounds petitioner was out of the house to attend to his own employment or business. It is not amiss to note that even these *barangay* health workers, with the exception of one, confirm seeing petitioner's wife at the address stated in petitioner's 2007 COC. Indeed, these health workers' testimonies do not conclusively prove that petitioner did not in fact reside in Villa de Toledo for at least the year before election day.

Neither do we find anything wrong if petitioner sometimes transacted business or received visitors in his Cabuyao house, instead of the alleged Sta. Rosa residence, as there is nothing in the residency requirement for candidates that prohibits them from owning property and exercising their rights of ownership thereto in other places aside from the address they had indicated as their place of residence in their COC.

As regards the weight to be given the contract of lease *vis-à-vis* petitioner's previous COCs, we find *Perez v. COMELEC*[36]

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[36] G.R. No. 133944, October 28, 1999, 317 SCRA 641.

to be instructive in this case, and quote the pertinent portions of the decision below:

In the case at bar, the COMELEC found that private respondent changed his residence from Gattaran to Tuguegarao, the capital of Cagayan, in July 1990 on the basis of the following: (1) the affidavit of Engineer Alfredo Ablaza, the owner of the residential apartment at 13-E Magallanes St., Tuguegarao, Cagayan, where private respondent had lived in 1990; (2) the contract of lease between private respondent, as lessee, and Tomas T. Decena, as lessor, of a residential apartment at Kamias St., Tanza, Tuguegarao, Cagayan, for the period July 1, 1995 to June 30, 1996; (3) the marriage certificate, dated January 18, 1998, between private respondent and Lerma Dumaguit; (4) the certificate of live birth of private respondent's second daughter; and (5) various letters addressed to private respondent and his family, which all show that private respondent was a resident of Tuguegarao, Cagayan for at least one (1) year immediately preceding the elections on May 11, 1998.

There is thus substantial evidence supporting the finding that private respondent had been a resident of the Third District of Cagayan and there is nothing in the record to detract from the merit of this factual finding.

Petitioner contends that the fact that private respondent was a resident of Gattaran, at least until June 22, 1997, is shown by the following documentary evidence in the record, to wit: (1) his certificates of candidacy for governor of Cagayan in the 1988, 1992 and 1995 elections; (2) his voter's registration records, the latest of which was made on June 22, 1997; and (3) the fact that private respondent voted in Gattaran, Cagayan, in the elections of 1987, 1988, 1992 and 1995.

The contention is without merit. The fact that a person is registered as a voter in one district is not proof that he is not domiciled in another district. Thus, in *Faypon v. Quirino*, this Court held that the registration of a voter in a place other than his residence of origin is not sufficient to consider him to have abandoned or lost his residence.

Nor is it of much importance that in his certificates of candidacy for provincial governor in the elections of 1988, 1992, and 1995, private respondent stated that he was a resident of Gattaran. Under the law, what is required for the election of

governor is residency in the province, not in any district or municipality, one year before the election.

Moreover, as this Court said in *Romualdez-Marcos v. COMELEC*:

> It is the fact of residence, not a statement in a certificate of candidacy, which ought to be decisive in determining whether or not an individual has satisfied the constitution's residency qualification requirement. The said statement becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.

In this case, although private respondent declared in his certificates of candidacy prior to the May 11, 1998 elections that he was a resident of Gattaran, Cagayan, the fact is that he was actually a resident of the Third District not just for one (1) year prior to the May 11, 1998 elections but for more than seven (7) years since July 1990. **His claim that he had been a resident of Tuguegarao since July 1990 is credible considering that he was governor from 1988 to 1998 and, therefore, it would be convenient for him to maintain his residence in Tuguegarao, which is the capital of the province of Cagayan.**

As always, the polestar of adjudication in cases of this nature is *Gallego v. Vera*, in which this Court held: **"[W]hen the evidence on the alleged lack of residence qualification is weak or inconclusive and it clearly appears, as in the instant case, that the purpose of the law would not be thwarted by upholding the right to the office, the will of the electorate should be respected."** In this case, considering the purpose of the residency requirement, *i.e.*, to ensure that the person elected is familiar with the needs and problems of his constituency, there can be no doubt that private respondent is qualified, having been governor of the entire province of Cagayan for ten years immediately before his election as Representative of that province's Third District.[37]

Thus, in the case above, the Court found that the affidavit of the lessor and the contract of lease were sufficient proof that private respondent therein had changed his residence. In the case now before us, although private respondent raised alleged formal defects in the contract of lease, the lessor himself

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[37] *Id.* at 649-651. Emphasis ours.

testified that as far as he was concerned, he and petitioner had a valid contract and he confirmed that petitioner and his family are the occupants of the leased premises.

Petitioner correctly pointed out that the lack of proper notarization does not necessarily nullify nor render the parties' transaction void *ab initio*. In *Mallari v. Alsol,* we found a contract of lease to be valid despite the non-appearance of one of the parties before a notary public, and ruled in this wise:

> Notarization converts a private document into a public document. However, the non-appearance of the parties before the notary public who notarized the document does not necessarily nullify nor render the parties' transaction void *ab initio*. Thus:
>
> > . . . Article 1358 of the New Civil Code on the necessity of a public document is only for convenience, not for validity or enforceability. Failure to follow the proper form does not invalidate a contract. Where a contract is not in the form prescribed by law, the parties can merely compel each other to observe that form, once the contract has been perfected. This is consistent with the basic principle that contracts are obligatory in whatever form they may have been entered into, provided all essential requisites are present.
>
> Hence, the Lease Contract is valid despite Mayor Perez's failure to appear before the notary public.[38]

The HRET puts undue emphasis on the fact that petitioner is only leasing a townhouse in Sta. Rosa while he owns houses in Pagsanjan and Cabuyao. His ownership of properties in other places has been taken to mean that petitioner did not intend to make Sta. Rosa his permanent residence or that he had not abandoned his domicile of origin.

Although it is true that the latest acquired abode is not necessarily the domicile of choice of a candidate, there is nothing in the Constitution or our election laws which require a congressional candidate to sell a previously acquired home in one district and buy a new one in the place where he seeks to run in order to qualify for a congressional seat in that other

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[38] *Supra* note 19 at 158-159.

district. Neither do we see the fact that petitioner was only leasing a residence in Sta. Rosa at the time of his candidacy as a barrier for him to run in that district. Certainly, the Constitution does not require a congressional candidate to be a property owner in the district where he seeks to run but only that he ***resides*** in that district for at least a year prior to election day. To use ownership of property in the district as the determinative indicium of permanence of domicile or residence implies that only the landed can establish compliance with the residency requirement. This Court would be, in effect, imposing a property requirement to the right to hold public office, which property requirement would be unconstitutional.

This case must be distinguished from *Aquino v. COMELEC*[39] and *Domino v. COMELEC*,[40] where the disqualified candidate was shown to be merely leasing a residence in the place where he sought to run for office. In *Aquino* and *Domino*, there appeared to be no other material reason for the candidate to lease residential property in the place where he filed his COC, except to fulfill the residency requirement under election laws.

In the case at bar, there are real and substantial reasons for petitioner to establish Sta. Rosa as his domicile of choice and abandon his domicile of origin and/or any other previous domicile. To begin with, petitioner and his wife have owned and operated businesses in Sta. Rosa since 2003. Their children have attended schools in Sta. Rosa at least since 2005. Although ownership of property should never be considered a requirement for any candidacy, petitioner had sufficiently confirmed his intention to permanently reside in Sta. Rosa by purchasing residential properties in that city even prior to the May 2007 election, as evidenced by certificates of title issued in the name of petitioner and his wife. One of these properties is a residence in Bel-Air, Sta. Rosa which petitioner acquired even before 2006 but which petitioner had been leasing out. He claims that he rented out this property because prior to 2006 he had not decided to

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[39] *Supra* note 31.

[40] G.R. No. 134015, July 19, 1999, 310 SCRA 546.

permanently reside in Sta. Rosa. This could explain why in early 2006 petitioner had to rent a townhouse in Villa de Toledo— his Bel-Air residence was occupied by a tenant. The relatively short period of the lease was also adequately explained by petitioner — they rented a townhouse while they were in the process of building their own house in Sta. Rosa. True enough, petitioner and his spouse subsequently purchased a lot also in Villa de Toledo in April 2007, about a month before election day, where they have constructed a home for their family's use as a residence. In all, petitioner had adequately shown that his transfer of residence to Sta. Rosa was *bona fide* and was not merely for complying with the residency requirement under election laws.

It was incumbent upon private respondent to prove his assertion that petitioner is indeed disqualified from holding his congressional seat. Private respondent's burden of proof was not only to establish that petitioner's domicile of origin is different from Sta. Rosa but also that petitioner's domicile for the one year prior to election day continued to be Pagsanjan, Laguna which was petitioner's domicile of origin or that petitioner had chosen a domicile other than Sta. Rosa, Laguna for that same period. In other words, to prove petitioner's disqualification, the relevant period is the one year period prior to election day. It would be absurd to rule that the petitioner in a *quo warranto* suit only needs to prove that the candidate had some other previous domicile, regardless of how remote in time from election day that previous domicile was established, and then the candidate would already have the burden to prove abandonment of that previous domicile. It is the burden of the petitioner in a *quo warranto* case to first prove the very fact of disqualification before the candidate should even be called upon to defend himself with countervailing evidence.

In our considered view, private respondent failed to discharge his burden of proof. Petitioner's COCs for previous elections and his 2005 application for a driver's license only proved that his domicile of origin was Pagsanjan, Laguna and it remained to be so up to 2005. Affidavits/testimonies of respondent's witnesses, at most, tended to prove that petitioner was on several instances found in his house in Cabuyao, Laguna, which was not even

his domicile of origin. Cabuyao, Laguna is in the **Second** District of Laguna while petitioner's domicile of origin, Pagsanjan, is in the **Fourth** District of Laguna. Based on private respondent's own documentary submissions, Cabuyao was never even stated as a domicile or residence in any of the petitioner's COCs. Moreover, owning an abode in Cabuyao where petitioner is occasionally found did not prove that Cabuyao is petitioner's real domicile. Indeed, disregarding Cabuyao as petitioner's domicile would be consistent with the established principle that physical presence in a place *sans* the intent to permanently reside therein is insufficient to establish domicile. Neither did private respondent's submissions refute petitioner's evidence that since February 2006 petitioner has chosen Sta. Rosa as his domicile.

To summarize, private respondent's own evidence did not categorically establish where petitioner's domicile is nor did said evidence conclusively prove that for the year prior to the May 14, 2007 petitioner had a domicile other than where he actually resided, *i.e.* Sta. Rosa, Laguna. To be sure, *Gallego v. Vera*[41] decreed that:

> We might add that the manifest intent of the law in fixing a residence qualification is to exclude a stranger or newcomer, unacquainted with the conditions and needs of a community and not identified with the latter, from an elective office to serve that community; and **when the evidence on the alleged lack of residence qualification is weak or inconclusive and it clearly appears, as in the instant case, that the purpose of the law would not be thwarted by upholding the right to the office, the will of the electorate should be respected.** xxx xxx xxx (Emphasis supplied)

Frivaldo[42] likewise prescribed that:

> xxx xxx xxx To successfully challenge a winning candidate's qualifications, the **petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people, would**

[41] G.R. No. L-48641, November 24, 1941, 73 Phil. 453, 459.

[42] *Supra* note 1 at 771-772.

ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote. xxx xxx xxx (Emphasis supplied)

In *Torayno*,[43] the Court had the occasion to say that:

The Constitution and the law requires residence as a qualification for seeking and holding elective public office, in order to give candidates the opportunity to be familiar with the needs, difficulties, aspirations, potentials for growth and all matters vital to the welfare of their constituencies; likewise, it enables the electorate to evaluate the office seekers' qualifications and fitness for the job they aspire for. xxx xxx xxx

Recently, in *Japzon v. COMELEC*,[44] the Court, citing *Papandayan, Jr. v. COMELEC*,[45] said:

In *Papandayan, Jr. v. Commission on Elections,* the Court provided a summation of the different principles and concepts in jurisprudence relating to the residency qualification for elective local officials. Pertinent portions of the *ratio* in *Papandayan* are reproduced below:

> Our decisions have applied certain tests and concepts in resolving the issue of whether or not a candidate has complied with the residency requirement for elective positions. The principle of *animus revertendi* has been used to determine whether a candidate has an "intention to return" to the place where he seeks to be elected. Corollary to this is a determination whether there has been an "abandonment" of his former residence which signifies an intention to depart therefrom. In *Caasi v. Court of Appeals,* this Court set aside the appealed orders of the COMELEC and the Court of Appeals and annulled the election of the respondent as Municipal Mayor of Bolinao, Pangasinan on the ground that respondent's immigration to the United States in 1984 constituted an abandonment of his domicile and residence in the Philippines. Being a green card holder, which was proof that he was a permanent resident or immigrant of the United States, and in the absence of any waiver of his status as such

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[43] G.R. No. 137329, August 9, 2000, 337 SCRA 574, 577.

[44] G.R. No. 180088, January 19, 2009.

[45] G.R. No. 147909, April 16, 2002, 430 Phil. 754, 768-770.

before he ran for election on January 18, 1988, respondent was held to be disqualified under §68 of the Omnibus Election Code of the Philippines (Batas Pambansa Blg. 881).

In *Co v. Electoral Tribunal of the House of Representatives,* respondent Jose Ong, Jr. was proclaimed the duly elected representative of the 2nd District of Northern Samar. The House of Representatives Electoral Tribunal (HRET) upheld his election against claims that he was not a natural born Filipino citizen and a resident of Laoang, Northern Samar. In sustaining the ruling of the HRET, this Court, citing *Faypon v. Quirino,* applied the concept of *animus revertendi* or "intent to return", stating that his absence from his residence in order to pursue studies or practice his profession as a certified public accountant in Manila or his registration as a voter other than in the place where he was elected did not constitute loss of residence. The fact that respondent made periodical journeys to his home province in Laoag revealed that he always had *animus revertendi*.

In *Abella v. Commission on Elections and Larrazabal v. Commission on Elections,* it was explained that the determination of a person's legal residence or domicile largely depends upon the intention that may be inferred from his acts, activities, and utterances. In that case, petitioner Adelina Larrazabal, who had obtained the highest number of votes in the local elections of February 1, 1988 and who had thus been proclaimed as the duly elected governor, was disqualified by the COMELEC for lack of residence and registration qualifications, not being a resident nor a registered voter of Kananga, Leyte. The COMELEC ruled that the attempt of petitioner Larrazabal to change her residence one year before the election by registering at Kananga, Leyte to qualify her to run for the position of governor of the province of Leyte was proof that she considered herself a resident of Ormoc City. This Court affirmed the ruling of the COMELEC and held that petitioner Larrazabal had established her residence in Ormoc City, not in Kananga, Leyte, from 1975 up to the time that she ran for the position of Provincial Governor of Leyte on February 1, 1988. There was no evidence to show that she and her husband maintained separate residences, *i.e.*, she at Kananga, Leyte and her husband at Ormoc City. The fact that she occasionally visited Kananga, Leyte through the years did

> not signify an intention to continue her residence after leaving that place.
>
> In *Romualdez v. RTC, Br. 7, Tacloban City,* the Court held that "domicile" and "residence" are synonymous. The term "residence", as used in the election law, imports not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. "Domicile" denotes a fixed permanent residence to which when absent for business or pleasure, or for like reasons, one intends to return. In that case, petitioner Philip G. Romualdez established his residence during the early 1980's in Barangay Malbog, Tolosa, Leyte. It was held that the sudden departure from the country of petitioner, because of the EDSA People's Power Revolution of 1986, to go into self-exile in the United States until favorable conditions had been established, was not voluntary so as to constitute an abandonment of residence. The Court explained that in order to acquire a new domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. There must be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.

Ultimately, the Court recapitulates in *Papandayan, Jr.* that it is the fact of residence that is the decisive factor in determining whether or not an individual has satisfied the residency qualification requirement.

We do not doubt that the residency requirement is a means to prevent a stranger or newcomer from holding office on the assumption that such stranger or newcomer would be insufficiently acquainted with the needs of his prospective constituents. However, it is appropriate to point out at this juncture that aside from petitioner's actual, physical presence in Sta. Rosa for more than a year prior to election day, he has demonstrated that he has substantial ties to Sta. Rosa and the First District of Laguna for an even longer period than that. Petitioner has business interests in Sta. Rosa comprised of restaurants and a residential property for lease. Petitioner has

two children studying in Sta. Rosa schools even before 2006. These circumstances provided petitioner with material reasons to frequently visit the area and eventually take up residence in the said district. Significantly, petitioner previously served as Board Member and Vice-Governor for the Province of Laguna, of which the First District and Sta. Rosa are a part. It stands to reason that in his previous elected positions petitioner has acquired knowledge of the needs and aspirations of the residents of the First District who were among his constituents.

Simply put, petitioner could not be considered a "stranger" to the community which he sought to represent and that evil that the residency requirement was designed to prevent is not present in this case.

We take this occasion to reiterate our ruling in *Sinaca v. Mula,*[46] to wit*:*

> [When] a candidate has received popular mandate, overwhelmingly and clearly expressed, all possible doubts should be resolved in favor of the candidate's eligibility for to rule otherwise is to defeat the will of the people. Above and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred.

WHEREFORE, premises considered, the petition is hereby *GRANTED*. The decision of the HRET in **HRET CASE No. 07-034** promulgated on December 16, 2008, and its **Minute Resolution No. 09-080** promulgated on April 30, 2009 in the same case, are hereby *REVERSED AND SET ASIDE*.

SO ORDERED.

Puno, C.J., Carpio, Velasco, Jr., Nachura, Brion, Peralta, Bersamin, Del Castillo, Abad, and *Villarama, Jr., JJ.,* concur.

Corona and *Carpio Morales, JJ.,* no part.

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[46] G.R. No. 135691, September 27, 1999, 315 SCRA 266, 282.

FIRST DIVISION

[A.C. No. 7433. December 23, 2009]
(Formerly CBD Case No. 05-1554)

CESAR TALENTO and MODESTA HERRERA TALENTO, *petitioners, vs.* **ATTY. AGUSTIN F. PANEDA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; ATTORNEYS ARE DUTY-BOUND TO DISPLAY UTMOST DILIGENCE AND COMPETENCE IN PROTECTING THE INTERESTS OF HIS CLIENTS; VIOLATED IN CASE AT BAR.— There is no doubt that respondent was woefully remiss in his duty to display utmost diligence and competence in protecting the interests of his clients. The records of this case clearly detailed dire instances of professional neglect which undoubtedly showed respondent's failure to live up to his duties and responsibilities as a member of the legal profession. Petitioners lost Civil Case No. A-2043 in the RTC mainly because they were barred from presenting their evidence in court. This was a result of their being declared in default in the said case as a consequence of respondent's failure to appear at the pre-trial conference. Respondent defended his non-appearance by stating that he had informed petitioners beforehand of a conflict of schedule and that he had instructed them on what to do in his absence, but petitioners vehemently denied this claim. Even if we are to give credence to respondent's justification, this does not excuse him from the fact that he was unable to file a Pre-trial Brief at least three (3) days prior to the scheduled pre-trial conference, as required by the Rules. Respondent alleges that he already prepared the Pre-trial Brief but did not push through with filing it because he was allegedly furnished by petitioner Modesta Herrera Talento with an Amicable Settlement that was forged between the parties before the Barangay Lupon of San Pedro, Agoo, La Union. He claims that he instructed his clients to present said document during the pre-trial conference as he had another

hearing to attend. However, respondent's excuse is untenable as any lawyer worth his salt would readily know that once a case has been filed in court, any amicable settlement between the parties must be approved by the court in order for it to be legally binding in accordance with Section 416 of the Local Government Code of 1991 in relation to the last paragraph of Section 408 of the same Code. Thus, he cannot assume that the case will be deemed closed by virtue of the supposed amicable settlement so as to excuse him from filing the Pre-trial Brief and from appearing at the pre-trial set by the court. With regard to his subsequent error of failing to file the required Appeal Brief which led to the dismissal of his clients' appeal before the CA, respondent did not give any plausible explanation other than merely placing the blame on the incompetence of his secretary in not promptly informing him about her receipt of the Notice of Submission of Appellants' Brief. This mistake by respondent is exacerbated by the fact that he did not care to inform his clients of the dismissal of their appeal in 2002 and it was only in 2005 that his clients learned about this unfortunate turn of events. It is beyond dispute that respondent is duty-bound by his oath as a lawyer to diligently prosecute the case of his clients to the best of his ability within the bounds of law. Regrettably, the facts of this case illustrate respondent's dismal performance of that responsibility, which in its totality could amount to a reprehensible abandonment of his clients' cause. A lawyer, when he undertakes his client's cause, makes a covenant that he will exert all efforts for its prosecution until its final conclusion. He should undertake the task with dedication and care, and he should do no less, otherwise, he is not true to his lawyer's oath.

2. **ID.; ID.; ID.; ID.; ID.; PENALTY.—** x x x [F]or seriously prejudicing his clients' interests due to inexcusable neglect of his professional duties as a lawyer, the IBP Investigating Commissioner recommended the suspension of respondent for one (1) year from the practice of law. The IBP Board of Governors acceded to this recommendation.

DECISION

LEONARDO-DE CASTRO, *J.*:

Before us is the administrative complaint filed by mother and son Modesta Herrera Talento and Cesar Talento charging Atty. Agustin F. Paneda of violation of his oath as a lawyer and neglect of duty.

This case was initiated by petitioners with the filing of a Complaint[1] before the Integrated Bar of the Philippines (IBP) on August 29, 2005. In the said Complaint, petitioners alleged the following:

"a. Sometime in October 17, 2000, a civil complaint was filed by Leticia Herrera. The same complaint was raffled to Regional Trial Court Branch 31, Agoo, La Union presided by Hon. Clifton U. Ganay;

b. This case was entitled: *LETICIA HERERRA, Plaintiff vs. MODESTA H. TALENTO and CESAR TALENTO as Defendants for Quieting of Title*, docketed as Civil Case No. A-2043;

c. [Petitioners] secured the services of Atty. Agustin Paneda to help and defend [them] in the aforementioned case. [Petitioners] paid the attorneys' fees he required from [them] in order that [they] could avail of his services as counsel;

d. Atty. Paneda filed [petitioners'] answer to the complaint on November 14, 2000 and the case was set for pre-trial. The Honorable Court in an order required both parties' counsels to submit their respective pre-trial briefs and appear during the scheduled pre-trial hearing on December 18, 2000;

e. Despite the order and notice to [their] counsel, he did not file or submit a pre-trial brief for [petitioners'] behalf. Much more to [their] surprise and predicament, although [petitioners] attended the pre-trial hearing, he did not appear;

f. As a result of his non-appearance, the counsel for the other party spoke of things beyond our knowledge which the Honorable Court granted being expressly stated and provided in the Rules of Court. [Petitioners] were declared in default because of the failure

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[1] *Rollo*, pp. 2-25.

of [their] counsel to file and submit [petitioners'] pre-trial brief. The Honorable Court allowed the case to be heard *ex parte* much to our damage and prejudice;

g. The Honorable Court issued a decision against [petitioners] simply for failure of [their] counsel Atty. Paneda to submit [petitioners'] pre-trial brief and for his failure to attend the pre-trial of the case. It was simply because of technicality and not based on the merits of the allegations of both parties that [petitioners] lost the case;

h. Atty. Paneda filed a Motion for Reconsideration dated December 27, 2000, but the same was dismissed by the Honorable Court;

i. Atty. Paneda told [petitioners] that he will appeal the case to the Court of Appeals and [they] agreed because [they were] confident of [petitioners'] claim over the parcel of land subject of this case. He filed a notice of appeal on February 8, 2001. [Petitioners] paid the required fees and he even required [petitioners] to shell out more money for the preparation of the Appeal brief;

j. [Petitioners] waited for so long for the decision of the Honorable Court of Appeals and [petitioners] found out later that [petitioners'] appeal was dismissed due to lack of an appeal brief only when [petitioners] went to Atty. Paneda."[2]

In the Order[3] dated August 30, 2005 issued by the IBP Commission on Bar Discipline (Commission), respondent was required to submit his Answer to the Complaint within fifteen (15) days from receipt of the notice. Respondent filed his Answer[4] on October 24, 2005.

In his Answer, respondent states that he honestly believed that he had not violated his oath as a lawyer nor did he commit negligence in handling the case of the petitioners. He likewise avers that there were other considerations and incidents which had intervened in the case that produced adverse reactions. He cites as reason for the non-filing of the Pre-trial Brief the fact

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

[3] *Id.* at 26.

[4] *Id.* at 30-61.

that, before the date set for pre-trial hearing, respondent was informed by petitioners that they had already entered into an Amicable Settlement with the plaintiff. Respondent advised petitioners to submit the said agreement to the Regional Trial Court (RTC) in lieu of the Pre-trial Brief. Respondent did not appear during the pre-trial conference scheduled in the morning of December 19, 2000 because he chose instead to attend the pre-trial conference of the replevin case involving his personal vehicle in Dagupan City which was also set on that same morning.[5] With regard to his failure to file the required Appellants' Brief before the Court of Appeals (CA), he points to his secretary's oversight in promptly informing him of the latter's receipt of the Notice of Submission of Appellants' Brief.[6] Respondent insists that he was not negligent in his practice but there were circumstances beyond his control and were unavoidable. He contends that petitioners should not altogether blame him but they should also accept that the debacle was due to their inaction.[7]

Petitioners refute the foregoing assertions of the respondent.[8] They vehemently deny respondent's claim that they allegedly informed him of the Amicable Settlement prior to the date of pre-trial hearing. In fact, they intended to show the document to him for the very first time at the pre-trial conference in which he did not appear. They likewise belie respondent's claim that he gave instructions to petitioners on what to do during the pre-trial conference in his absence. They further deny respondent's claim that he had informed them beforehand of his inability to attend due to a conflict of schedule. Granting that there was indeed a conflict of schedule, petitioners maintain that respondent is required by Rule 18, Sec. 6 of the Rules of Court[9] to file the

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[5] *Id.* at 31-35.

[6] *Id.* at 56-61.

[7] *Id.* at 36-37.

[8] *Id.* at 62-67.

[9] Rule 18, Section 6. *Pre-trial brief.* – The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

Pre-trial Brief at least three (3) days before the date of pre-trial conference. Finally, petitioners insist that, contrary to respondent's assertion in his Answer, respondent did not exert his best efforts for his clients because, after negligently abandoning them at the RTC, respondent likewise failed to fulfill his duty of safeguarding their interests in the CA when respondent failed to perform a basic legal requirement of filing an Appeal Brief in order for the said court to take cognizance of their Appeal.

The parties were then required by the Commission to appear at a mandatory conference held on November 30, 2005. Petitioner Cesar Talento appeared together with his counsel, Atty. Matthew L. Dati. Co-petitioner Modesta Herrera Talento executed a Special Power of Attorney in favor of Cesar Talento and Atty. Dati. Respondent appeared on his behalf.

After the termination of the hearing, the parties were directed to file their respective verified position papers within ten (10) days from receipt of the Order[10] and were informed that with or without said position papers, the case shall be deemed submitted for report and recommendation. Only petitioners submitted a Position Paper[11] which was received by the Commission on January 4, 2009.

On April 28, 2006, Commissioner Rebecca Villanueva-Maala submitted her Report and Recommendation finding respondent

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(a) A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;

(b) A summary of admitted facts and proposed stipulation of facts;

(c) The issues to be tried or resolved;

(d) The documents or exhibits to be presented, stating the purpose thereof;

(e) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners; and

(f) The number and names of the witnesses, and the substance of their respective testimonies.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

[10] *Rollo*, p. 77.

[11] *Id.* at 91-121.

guilty of gross violation of his duties as a lawyer and of inexcusable negligence with the recommendation that respondent be suspended from the practice of law for a period of one (1) year. The salient portion of the Report reads:

"Respondent's failure to file complainants' Pre-trial Brief, his failure to appear during the Pre-trial Conference because he has to attend to another case, his failure to file complainants' Appeal Brief and his failure to inform complainants of the dismissal of the case at the Court of Appeals are in gross violation of his duties as a lawyer and show inexcusable negligence on his part.

His contention that he told complainants to present the Amicable Settlement agreed upon by the parties for the court's appreciation does not excuse him of his obligation to his clients, much more his allegation that he advised complainants of the futility of the case. It should be noted that the Amicable Settlement was forged by the parties after the case was already filed in court, therefore the same has no legal effect.

The lawyer owes a duty to his client to be competent to perform the legal services which the lawyer undertakes on his behalf. The lawyer should serve his client in a conscientious, diligent and efficient manner and he should provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation (citation omitted).

WHEREFORE, premises considered, we hereby recommend that respondent ATTY. AGUSTIN F. PANEDA be **SUSPENDED** for a period of **ONE YEAR** from receipt hereof from the practice of his profession as a lawyer and as a member of the Bar."[12]

On November 18, 2006, the IBP Board of Governors passed Resolution No. XVII-2006-495 adopting the aforequoted Investigating Commissioner's Report and Recommendation, thus:

"RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and finding the recommendation fully supported by the evidence on record and the applicable laws and

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

rules, and considering Respondent's inexcusable negligence, Atty. Agustin F. Paneda is hereby SUSPENDED from the practice of law for one (1) year."[13]

The only issue to be resolved in this case is whether or not respondent committed gross negligence or misconduct in handling petitioners' case both on trial in the RTC and on appeal in the CA which led to its dismissal without affording petitioners the opportunity to present their evidence.

After a careful consideration of the records of the instant case, this Court agrees with the IBP in its findings and conclusion that respondent's documented acts fall extremely short of the standard of professional duty that all lawyers are required to faithfully adhere to.

The pertinent Canons of the Code of Professional Responsibility provide:

CANON 17 – A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x x x x x x

Rule 18.02 – A lawyer shall not handle any legal matter without adequate preparation.

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

There is no doubt that respondent was woefully remiss in his duty to display utmost diligence and competence in protecting the interests of his clients. The records of this case clearly detailed dire instances of professional neglect which undoubtedly showed respondent's failure to live up to his duties and responsibilities as a member of the legal profession. Petitioners lost Civil Case No. A-2043 in the RTC mainly because they were barred from presenting their evidence in court. This was

[13] *Id.* at 124.

a result of their being declared in default in the said case as a consequence of respondent's failure to appear at the pre-trial conference. Respondent defended his non-appearance by stating that he had informed petitioners beforehand of a conflict of schedule and that he had instructed them on what to do in his absence, but petitioners vehemently denied this claim.

Even if we are to give credence to respondent's justification, this does not excuse him from the fact that he was unable to file a Pre-trial Brief at least three (3) days prior to the scheduled pre-trial conference, as required by the Rules. Respondent alleges that he already prepared the Pre-trial Brief but did not push through with filing it because he was allegedly furnished by petitioner Modesta Herrera Talento with an Amicable Settlement that was forged between the parties before the Barangay Lupon of San Pedro, Agoo, La Union. He claims that he instructed his clients to present said document during the pre-trial conference as he had another hearing to attend.[14] However, respondent's excuse is untenable as any lawyer worth his salt would readily know that once a case has been filed in court, any amicable settlement between the parties must be approved by the court in order for it to be legally binding in accordance with Section 416[15] of the Local Government Code of 1991 in relation to the last paragraph of Section 408[16] of the

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[14] *Id.* at 80-81.

[15] Section 416. *Effect of Amicable Settlement and Arbitration Award.* – The amicable settlement and arbitration award shall have the force and effect of a final judgment of a court upon the expiration of ten (10) days from the date thereof, unless repudiation of the settlement has been made or a petition to nullify the award has been made or a petition to nullify the award has been filed before the proper city or municipal court.

However, this provision shall not apply to court cases settled by the *lupon* under the last paragraph of Section 408 of this Code, in which case the compromise settlement agreed upon by the parties before the *lupon* chairman or the *pangkat* chairman shall be submitted to the court and upon approval thereof, have the force and effect of a judgment of said court.

[16] Section 408. *Subject Matter for Amicable Settlement; Exception Thereto.* – x x x The court in which non-criminal cases not falling within the authority of the *lupon* under this Code are filed may, at any time before trial, *motu proprio* refer the case to the *lupon* concerned for amicable settlement.

same Code. Thus, he cannot assume that the case will be deemed closed by virtue of the supposed amicable settlement so as to excuse him from filing the Pre-trial Brief and from appearing at the pre-trial set by the court.

With regard to his subsequent error of failing to file the required Appeal Brief which led to the dismissal of his clients' appeal before the CA, respondent did not give any plausible explanation other than merely placing the blame on the incompetence of his secretary in not promptly informing him about her receipt of the Notice of Submission of Appellants' Brief.[17] This mistake by respondent is exacerbated by the fact that he did not care to inform his clients of the dismissal of their appeal in 2002 and it was only in 2005 that his clients learned about this unfortunate turn of events.

It is beyond dispute that respondent is duty-bound by his oath as a lawyer to diligently prosecute the case of his clients to the best of his ability within the bounds of law. Regrettably, the facts of this case illustrate respondent's dismal performance of that responsibility, which in its totality could amount to a reprehensible abandonment of his clients' cause.

A lawyer, when he undertakes his client's cause, makes a covenant that he will exert all efforts for its prosecution until its final conclusion. He should undertake the task with dedication and care, and he should do no less, otherwise, he is not true to his lawyer's oath.[18]

As held in the case of *Vda. De Enriquez v. San Jose*:[19]

> The Code of Professional Responsibility in Rule 18.03 enjoins a lawyer not to neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable. A lawyer engaged to represent a client in a case bears the responsibility of protecting the latter's interest with utmost diligence. It is the duty

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

[18] *Pangasinan Electric Cooperative I (PANELCO I) v. Montemayor*, A.C. No. 5739, September 12, 2007, 533 SCRA 1, 7-8.

[19] A.C. No. 3569, February 23, 2007, 516 SCRA 486, 489-490.

of a lawyer to serve his client with competence and diligence and he should exert his best efforts to protect, within the bounds of the law, the interest of his client. It is not enough that a practitioner is qualified to handle a legal matter; he is also required to prepare adequately and give the appropriate attention to his legal work.

In *Balatbat v. Arias*,[20] the Court also held that:

> It must be stressed that public interest requires that an attorney exert his best efforts in the prosecution or defense of a client's cause. A lawyer who performs that duty with diligence and candor not only protects the interests of his client, he also serves the ends of justice, does honor to the bar and helps maintain the respect of the community to the legal profession. Lawyers are indispensable part of the whole system of administering justice in this jurisdiction. At a time when strong and disturbing criticisms are being hurled at the legal profession, strict compliance with one's oath of office and the canons of professional ethics is an imperative.

Accordingly, for seriously prejudicing his clients' interests due to inexcusable neglect of his professional duties as a lawyer, the IBP Investigating Commissioner recommended the suspension of respondent for one (1) year from the practice of law. The IBP Board of Governors acceded to this recommendation.

WHEREFORE, we find respondent Atty. Agustin F. Paneda *GUILTY* of violating Canons 17 and 18 as well as Rules 18.02 and 18.03 of the Code of Professional Responsibility. Accordingly, we *SUSPEND* respondent from the practice of law for ONE (1) YEAR effective upon finality of this Decision.

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

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[20] A.C. No. 1666, April 13, 2007, 521 SCRA 1, 10.

FIRST DIVISION

[A.M. No. P-09-2600. December 23, 2009]

EMMA B. RAMOS, *complainant, vs.* **APOLLO R. RAGOT, Sheriff III, Municipal Trial Court in Cities, Gingoog City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; UNDER OBLIGATION TO PERFORM THE DUTIES OF THEIR OFFICE HONESTLY, FAITHFULLY AND TO THE BEST OF THEIR ABILITY, AND MUST CONDUCT THEMSELVES WITH PROPRIETY AND DECORUM, AND ABOVE ALL ELSE, BE ABOVE SUSPICION.—** x x x [W]e must reiterate that the conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with a heavy burden of responsibility, necessarily so if the faith and confidence of the people in the judiciary are to be maintained. This Court has repeatedly warned that by the very nature of their functions, sheriffs are under obligation to perform the duties of their office honestly, faithfully and to the best of their ability, and must conduct themselves with propriety and decorum, and above all else, be above suspicion.

2. **REMEDIAL LAW; LEGAL ETHICS; LEGAL FEES; SECTION 10, RULE 141 OF THE RULES OF COURT, AS AMENDED; MANDATES SHERIFFS TO COMPLY THEREWITH; VIOLATED IN CASE AT BAR.—** In the implementation of writs or processes of the court for which expenses are to be incurred, sheriffs are mandated to comply with Section 10, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, the pertinent portion of which reads: Sec. 10. Sheriffs, process servers and other persons serving processes. x x x With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards'

fees, warehousing and similar charges, **the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation with the same period for rendering a return on the process.** THE LIQUIDATION SHALL BE APPROVED BY THE COURT. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor. In this case, respondent sheriff served the writ of execution on October 6, 2006 without presenting complainant with a court approved estimate of expenses and without the required deposit from the complainant to the clerk of court. While the records reveal the existence of an approved Itemized Estimated Amount of Expenses dated October 6, 2006, a copy of that same itemized estimated expenses was only given to complainant on February 1, 2007 which was almost four (4) months after the writ of execution was served on the losing party. Likewise in contravention of Rule 141, respondent **directly** received money from the complainant. Respondent's bare denial that he solicited the amount of ₱1,000.00 from the complainant on October 6, 2006 cannot be given credence for he had even signed a receipt for such amount.

3. **ID.; ID.; ID.; ID.; SECTION 10 OF AMENDED ADMINISTRATIVE CIRCULAR NO. 35-2004; DOES NOT ALLOW SHERRIFFS TO DIRECTLY SOLICIT AND RECEIVE MONEY FOR EXPENSES RELATIVE TO THE IMPLEMENTATION OF A WRIT OF EXECUTION; ELUCIDATED.—** We likewise cannot sustain respondent's justification that his solicitation and receipt of the amount of ₱500.00 from complainant on January 18, 2007 were allowed under Section 10 of Amended Administrative Circular No. 35-2004. Said circular merely contains the guidelines in the allocation of the Legal Fees Collected under Rule 141 of the Rules of Court, as amended, between the Special Allowance for the Judiciary Fund and the Judiciary Development Fund and nowhere in Section 10 thereof is it provided that sheriffs

are tasked to directly solicit and receive money for expenses relative to the implementation of a writ of execution. On the contrary, said Section 10 of Amended Administrative Circular No. 35-2004 reproduces the proviso in Rule 141 that ***with regard to sheriff's expenses in executing a writ***, the amount to be estimated by the sheriff is ***subject to the approval of the court*** after which ***the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process.***

4. ID.; ID.; ID.; ID.; SHERIFFS CANNOT UNILATERALLY DEMAND SUMS OF MONEY FROM A PARTY-LITIGANT WITHOUT OBSERVING PROPER PROCEDURE; CASE AT BAR.— x x x [I]n *Bunagan v. Ferraren*, this Court categorically declared that "[a] sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedure, to do so would be tantamount to dishonesty or extortion." Indeed, respondent sheriff should have followed the rules of procedure pertaining to the collection of the fees and expenses to be incurred in the implementation of the writ of execution. No matter how insistent the winning party is a sheriff should take no procedural shortcuts so as to avoid any misunderstanding and/or dispel any suspicion against his integrity.

5. ID.; CIVIL PROCEDURE; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS; RETURN OF WRIT OF EXECUTION; RULE; CONTRAVENED IN CASE AT BAR.— Another infraction committed by respondent sheriff was having failed to render periodic reports every thirty (30) days from his receipt of the writ of execution in violation of Section 14, Rule 39 of the Rules of Court, which provides: Sec. 14. Return of writ of execution. The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. **If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor.** Such writ shall continue in effect during the period within which the judgment may be enforced by motion. **The officer shall make a report to the court every thirty (30) days on the proceedings taken**

thereon until the judgment is satisfied in full, or its effectivity expires. The returns or the periodic report shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties. In addition, a sheriff must make periodic reports on partially satisfied or wholly unsatisfied writs in accordance, in order to apprise the court and the parties of the proceedings undertaken in connection with the writs. The periodic reporting on the status of the writs must be done by the sheriff every thirty (30) days regularly and consistently until they are returned fully satisfied. Here, it was only on February 22, 2007 that respondent made a Sheriff's Return reporting partial satisfaction of the writ. Undeniably, he likewise failed to submit periodic reports regarding the status of the writ every thirty (30) days thereafter until said writ was fully satisfied.

6. **POLITICAL LAW; CONSTITUTIONAL LAW; ADMINISTRATIVE LAW; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; SIMPLE NEGLECT OF DUTY; PENALTY; CASE AT BAR.—** As correctly found by the OCA, respondent is guilty of simple neglect of duty which under Section 52, B(1), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, is punishable with suspension for a period of one (1) month and one (1) day to six (6) months for the first offense. x x x Here, the writ of execution has already been fully implemented as per Sheriff's Return of Service dated October 17, 2007. Furthermore, we note that this is respondent's first offense. After consideration of the relevant rules and the current state of jurisprudence, a suspension of one (1) month and one (1) day, or the minimum penalty, would be properly imposed on respondent.

APPEARANCES OF COUNSEL

Juni Law Office for complainant.

DECISION

LEONARDO-DE CASTRO, *J*.:

In a sworn Affidavit-Complaint[1] dated March 10, 2007, Emma B. Ramos charged Apollo R. Ragot, Sheriff III, Municipal Trial Court in Cities (MTCC), Gingoog City, with grave misconduct, neglect of duty and dishonesty in connection with the implementation of the writ of execution in Criminal Case No. 2005-363.

Complainant alleged that she filed a criminal case against a Mrs. Neneth Kawaling (Mrs. Kawaling) for violation of Batas Pambansa Blg. 22 before the MTCC in Gingoog City. The case was decided on the basis of a Compromise Agreement, wherein Mrs. Kawaling committed to pay a total of ₱60,000.00 in six (6) monthly installments of ₱10,000.00 each. However, for failure of the accused to comply with the terms of the compromise, complainant filed a motion for execution which the trial court granted and in connection therewith issued a Writ of Execution[2] dated August 14, 2006.

In order to enforce the said writ, complainant coordinated with respondent sheriff. On October 6, 2006, complainant and her husband accompanied respondent sheriff to Mrs. Kawaling's residence in Butuan City. The Ramoses used their own vehicle and spent for all the expenses for the trip.

In Butuan City, respondent sheriff was able to serve the writ on Mrs. Kawaling. Complainant and her husband just allowed the sheriff to discuss the writ with Mrs. Kawaling while they watched from a distance. After serving the writ and talking with Mrs. Kawaling, respondent informed the couple that Mrs. Kawaling promised to pay her obligations and the three of them traveled back to Gingoog City together. When they reached Gingoog City, respondent allegedly asked for the amount of ₱1,000.00 from the complainant, who initially questioned the

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

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

sheriff's demand since she and her husband bore all the expenses of their trip to Butuan City. When respondent told her that the payment was "the usual SOP," complainant paid the ₱1,000.00 which respondent acknowledged in a receipt.[3] A week later, Mrs. Kawaling sent a check to the court in the amount of ₱10,750.00 in partial payment of her obligation.

In the following months, complainant repeatedly followed up the full implementation of the writ of execution with respondent since Mrs. Kawaling failed to make any further payments. However, respondent purportedly kept telling complainant to just wait for Mrs. Kawaling to make voluntary payments since levying Mrs. Kawaling's real properties would take years.

On January 18, 2007, respondent sheriff allegedly asked complainant for ₱500.00 to be used for his trip to the Register of Deeds in Butuan City so that he can levy whatever real property he can find in the name of Mrs. Kawaling. Again, complainant paid and respondent issued a receipt[4] for the said amount. After a few days, respondent informed complainant that he had already made a levy with the Register of Deeds but he left the file behind because the signatory was absent.

On February 1, 2007, respondent handed complainant a copy of what appeared to be a court-approved Itemized Estimated Amount of Expenses[5] dated October 6, 2006 in the amount of ₱4,100.00 but he allegedly told her that there was no need to deposit the said amount in court. Instead, he told complainant to just give him some amount for his trip back to Butuan City to follow-up the levy that he made with the Register of Deeds. Complainant did not give the amount requested because respondent refused to issue a receipt for the same.

By this time, complainant was beginning to feel that the sheriff was stonewalling or neglecting her case. In a letter[6]

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[3] *Id.* at 12.

[4] *Id.*

[5] *Id.* at 13.

[6] *Id.* at 14.

dated February 14, 2007, complainant, through counsel, requested the respondent to complete the implementation of the writ of execution. Respondent replied to the aforementioned letter and furnished complainant with a copy of Sheriff's Return of Service[7] dated February 22, 2007, indicating partial satisfaction of the writ of execution. Thereafter, no further action was made by the respondent sheriff with regard to the writ. As of the time of the filing of the complaint, the amount of ₱33,000.00 purportedly remained unsatisfied.

The foregoing circumstances led complainant to believe that respondent is in direct contact and communication with Mrs. Kawaling and the two are the ones deciding when and how much to pay complainant to complainant's prejudice. Hence, complainant was constrained to file this administrative case against respondent.

Then Court Administrator Christopher Lock, in his 1st Indorsement[8] dated March 28, 2007, required respondent sheriff to comment on the complaint.

In his Comment[9] dated April 26, 2007, respondent presented his own version of what happened. Respondent confirmed that on October 6, 2006, complainant and her husband accompanied him to Butuan City to serve the writ of execution on Mrs. Kawaling. On the same date, they were also able to secure certified true copies of tax declarations under the name of Mrs. Kawaling from the city assessor's office. Upon their return to Gingoog City and while they were at complainant's house, complainant's husband allegedly thanked respondent for agreeing to execute the writ even though the required sheriff's expenses had not yet been deposited. Respondent purportedly told the couple not to worry about the sheriff's expenses since they would be accounted for and refunded by the losing party. Respondent then suggested that they charge Mrs. Kawaling the amount of ₱1,000.00 for gasoline, meals and the fees paid at

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[7] *Id.* at 16.

[8] *Id.* at 18.

[9] *Id.* at 19-47.

the Butuan City Assessor's Office. Complainant's husband then allegedly made him sign a ready-made receipt to acknowledge their expenses to Butuan City that day.

On January 18, 2007, respondent sheriff claimed that he reminded complainant about the Notice of Levy on Mrs. Kawaling's real properties. According to respondent, complainant's husband could not drive for them because of a marital spat so he simply asked for money to serve said notice in Butuan City. Complainant gave ₱500.00 which respondent acknowledged in a receipt. The following day, respondent served the Notice of Levy on the Register of Deeds of Butuan City and allegedly incurred expenses in the total amount of ₱559.00.

On February 1, 2007, respondent personally provided complainant a copy of the approved Itemized Amount of Expenses dated October 6, 2006. A few weeks later, respondent allegedly sent a letter[10] to complainant requesting her to deposit the approved estimated amount of expenses with the Clerk of Court so he can continue with the implementation of the writ. Although complainant failed to make the deposit, respondent still went to the Register of Deeds of Butuan City to obtain the Notice of Levy on April 20, 2007.

Respondent sheriff denied having solicited the amount of ₱1,000.00 from complainant, but acknowledged that he signed a prepared receipt which complainant's husband said would be used in claiming for reimbursement of expenses they incurred in going to Butuan City on October 6, 2006. He, however, admitted that he asked for and received from the complainant the amount of ₱500.00 when he went back to Butuan City to file the notice of levy. He claimed that his request for this amount was allowed under Section 10 of Amended Administrative Circular No. 35-2004 on the Guidelines in the Allocation of Legal Fees. After the trip, he purportedly liquidated his expenses and signed a receipt for the amount he received.

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[10] *Id.* at 74.

Respondent denied having told complainant that there was no need to deposit the approved estimate of sheriff's expenses with the Clerk of Court, as in fact, he even wrote a letter dated February 15, 2007 to complainant to that effect. Likewise, he denied transacting directly with Mrs. Kawaling without the complainant's knowledge.

Finally, respondent claimed that he executed the writ before the sheriff's expenses could be deposited because of the complainant's insistence as the latter was worried that Mrs. Kawaling would abscond.

In her reply-affidavit, complainant pointed out that respondent did not deny nor confirm personally receiving the amount of ₱1,000.00 from her on October 6, 2006; that while the Itemized Estimated Amount of Expenses was dated October 6, 2006, the document was given to her only on February 1, 2007; that respondent went back to the Register of Deeds of Butuan City on April 20, 2007, notwithstanding the absence of any deposit from the complainant, only because the present administrative complaint had already been filed against him; and that only after her counsel demanded from respondent to complete the enforcement of the writ did the latter execute the Sheriff's Return of Service dated February 22, 2007.

In the agenda report dated November 24, 2008, the Office of the Court Administrator (OCA) made the following evaluation and recommendation:[11]

EVALUATION: After thorough review of the records of this case, this Office believes that respondent sheriff should be disciplined for non-compliance with the requirements in the implementation of the writ of execution.

First, we observed that respondent sheriff failed to follow the procedure relative to the expenses to be incurred in implementing the writ. Section (10) (1), Rule 141 of the Rules of Court requires the sheriff to prepare and submit to the court for approval a statement of the estimated expenses. Upon approval of the said estimated

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[11] *Id.* at 4-5.

expenses, the interested party shall deposit such amount with the Clerk of Court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. In this case, however, respondent did not wait for the approval of his statement of estimated expenses and served the writ without the required deposit due to the insistence of complainant who got worried that accused might abscond. Respondent should not have deviated from the rules of procedures. He should have waited for complainant to make the deposit because he is obliged to follow the prescribed procedure regardless of the persuasion coming from the complainant. Had he done so, he could have avoided any misunderstanding with the complainant as to the sheriff's expenses.

Respondent's failure to comply with the requirements in the implementation of the writ of execution led him to commit his second mistake. We noticed that respondent sheriff failed to make a return on the implementation of the writ of execution after every thirty (30) days from receipt of the writ.

Respondent stated in his return that he got hold of the writ on October 4, 2006 but he made his first and only return on February 22, 2007. Since the judgment was not satisfied in full within thirty (30) days after his receipt of the writ, respondent should have made the periodic report every thirty (30) days stating the reason/s therefore as required by Section 14, Rule 39 of the Rules of Court. Had he done so, complainant would have no basis charging him of neglect of duty.

Simple Neglect of Duty under Section 52, B(1), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, is punishable with suspension for a period of one (1) month and one (1) day to six (6) months for the first offense. Based on our record, this is the first administrative case filed against respondent sheriff. Hence, we are of the opinion that the penalty of suspension of one (1) month and one (1) day is proper.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, it is respectfully recommended that this case be RE-DOCKETED as a regular administrative matter and APOLLO R. RAGOT, Sheriff, MTCC, Gingoog City, be found GUILTY of SIMPLE NEGLECT OF DUTY and be SUSPENDED for One (1) Month and One (1) day, the same to take effect immediately upon receipt of the Court's decision.

In its Resolution[12] of January 19, 2009, the Court had the instant case re-docketed as a regular administrative matter and required the parties to manifest whether they were submitting the same on the basis of the pleadings filed. In separate manifestations, complainant and respondent separately manifested their conformity to a resolution of the case on the pleadings.

We concur with the OCA's finding and recommended penalty.

At the outset, we must reiterate that the conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with a heavy burden of responsibility, necessarily so if the faith and confidence of the people in the judiciary are to be maintained.[13] This Court has repeatedly warned that by the very nature of their functions, sheriffs are under obligation to perform the duties of their office honestly, faithfully and to the best of their ability, and must conduct themselves with propriety and decorum, and above all else, be above suspicion.[14]

From the record, the following facts have been established:

(a) Respondent received the Writ of Execution on October 4, 2006.

(b) Respondent served the writ on Mrs. Kawaling on October 6, 2006 and acknowledged receiving the amount of ₱1,000.00 directly from complainant by signing a receipt therefor.

(c) On January 18, 2007, respondent asked for and received from complainant the amount of ₱500.00, as also evidenced by a receipt.

(d) Respondent handed a court-approved Itemized Estimated Amount of Expenses dated October 6, 2006 relative to

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[12] *Id.* at 110.

[13] *Letter of Atty. Socorro M. Villamer-Basilla, RTC, Br. 4, Legazpi City on the alleged improper conduct of Manuel L. Arimado, Sheriff IV*, A.M. No. P-06-2128 (formerly A.M. No. 04-6-313-RTC), February 16, 2006, 482 SCRA 455, 458.

[14] *Id.* at 459.

the execution of the writ to complainant only on February 1, 2007.

(e) In a letter dated February 14, 2007, the counsel for complainant requested the respondent to undertake the complete enforcement of the writ of execution.

(f) Thereafter, complainant received from the respondent a Sheriff's Return of Service dated February 22, 2007, reporting therein the partial satisfaction of the writ of execution. This was the first return of service executed by respondent sheriff since receiving the writ of execution and serving the same on Mrs. Kawaling more than four (4) months prior.

(g) Complainant filed an administrative case against respondent sheriff on March 26, 2007.

(h) Respondent submitted to the Court another Sheriff's Return of Service[15] dated October 17, 2007 reporting the full satisfaction of the writ of execution.

In the implementation of writs or processes of the court for which expenses are to be incurred, sheriffs are mandated to comply with Section 10, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, the pertinent portion of which reads:

Sec. 10. Sheriffs, process servers and other persons serving processes.

x x x x x x x x x

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, **the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation with the**

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[15] *Rollo*, p. 119.

same period for rendering a return on the process. THE LIQUIDATION SHALL BE APPROVED BY THE COURT. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor. (emphasis ours)

In this case, respondent sheriff served the writ of execution on October 6, 2006 without presenting complainant with a court approved estimate of expenses and without the required deposit from the complainant to the clerk of court. While the records reveal the existence of an approved Itemized Estimated Amount of Expenses[16] dated October 6, 2006, a copy of that same itemized estimated expenses was only given to complainant on February 1, 2007 which was almost four (4) months after the writ of execution was served on the losing party.

Likewise in contravention of Rule 141, respondent **directly** received money from the complainant. Respondent's bare denial that he solicited the amount of ₱1,000.00 from the complainant on October 6, 2006 cannot be given credence for he had even signed a receipt for such amount.

We likewise cannot sustain respondent's justification that his solicitation and receipt of the amount of ₱500.00 from complainant on January 18, 2007 were allowed under Section 10 of Amended Administrative Circular No. 35-2004.[17] Said circular merely contains the guidelines in the allocation of the Legal Fees Collected under Rule 141 of the Rules of Court, as amended, between the Special Allowance for the Judiciary Fund and the Judiciary Development Fund and nowhere in Section 10 thereof is it provided that sheriffs are tasked to directly solicit and receive money for expenses relative to the implementation of a writ of execution. On the contrary, said Section 10 of Amended Administrative Circular No. 35-2004 reproduces the proviso in Rule 141 that ***with regard to sheriff's expenses in executing a writ***, the amount to be estimated by the sheriff is ***subject to***

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[16] *Supra* note 5.

[17] This circular took effect on August 20, 2004.

the approval of the court after which ***the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process.***

In any event, whether the money was solicited by respondent or voluntarily given to him is of no moment. The fact remains that he personally accepted money from complainant to implement the writ of execution and, worse, without furnishing the latter an estimate of expenses approved by the court in violation of the rules. As we likewise ruled in *Letter of Atty. Socorro M. Villamer-Basilla*:[18]

> x x x Whether the amount was advanced to him [respondent sheriff] by the counsel for the plaintiffs or he offered to return the excess to the plaintiff is beside the point, his mere acceptance of the amount without the prior approval of the court and without him issuing a receipt therefor is clearly a misconduct in office.

Moreover, in *Bunagan v. Ferraren*,[19] this Court categorically declared that "[a] sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedure, to do so would be tantamount to dishonesty or extortion."

Indeed, respondent sheriff should have followed the rules of procedure pertaining to the collection of the fees and expenses to be incurred in the implementation of the writ of execution. No matter how insistent the winning party is a sheriff should take no procedural shortcuts so as to avoid any misunderstanding and/or dispel any suspicion against his integrity.

Another infraction committed by respondent sheriff was having failed to render periodic reports every thirty (30) days from his receipt of the writ of execution in violation of Section 14, Rule 39 of the Rules of Court, which provides:

> Sec. 14. Return of writ of execution. The writ of execution shall be returnable to the court issuing it immediately after the judgment

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[18] *Supra* note 13 at 460.

[19] A.M. No. P-06-2173, January 28, 2008, 542 SCRA 355, 363.

has been satisfied in part or in full. **If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor.** Such writ shall continue in effect during the period within which the judgment may be enforced by motion. **The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires**. The returns or the periodic report shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties. (emphasis ours)

In addition, a sheriff must make periodic reports on partially satisfied or wholly unsatisfied writs in accordance, in order to apprise the court and the parties of the proceedings undertaken in connection with the writs. The periodic reporting on the status of the writs must be done by the sheriff every thirty (30) days regularly and consistently until they are returned fully satisfied.[20]

Here, it was only on February 22, 2007 that respondent made a Sheriff's Return[21] reporting partial satisfaction of the writ. Undeniably, he likewise failed to submit periodic reports regarding the status of the writ every thirty (30) days thereafter until said writ was fully satisfied.

This Court has held time and again that:[22]

Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They are duty-bound to know and to comply with the very basic rules relative to the implementation of writs of execution.

It is undisputed that the most difficult phase of any proceeding is the execution of judgment. The officer charged with this delicate task is the sheriff. The sheriff, as an officer of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. Execution is the fruit and end of the suit and is the life of the law. He is to execute the directives

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[20] *Mariñas v. Florendo*, A.M. No. P-07-2304, February 12, 2009.

[21] *Supra* note 7.

[22] *Supra* note 20.

of the court therein strictly in accordance with the letter thereof and without any deviation therefrom. (citations omitted)

As correctly found by the OCA, respondent is guilty of simple neglect of duty which under Section 52, B(1), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, is punishable with suspension for a period of one (1) month and one (1) day to six (6) months for the first offense.

In *Danao v. Franco, Jr.*,[23] the Court imposed a two-month suspension for simple neglect of duty on the respondent sheriff who simply demanded from complainant the sum of ₱5,000.00 without first furnishing the latter the estimate or detail of the expenses and without securing court approval. But in *Letter of Atty. Socorro M. Villamer-Basilla*,[24] where the respondent sheriff received the amount of ₱1,000.00 from the plaintiffs without furnishing them the estimate or detail of expenses and without securing the court's approval, we imposed a one-month suspension from office.

In *Pesongco v. Estoya*,[25] where a complaint for inefficiency was made against the respondent sheriff, we imposed a one-month suspension for simple neglect of duty, said sheriff having delayed the full implementation of a writ of execution and failed to render periodic returns thereof to the court.

For soliciting and directly receiving money from complainant, failing to file a timely return and failing to execute the writ with dispatch, the respondent sheriff, in *Bunagan v. Ferraren*,[26] was found guilty of grave misconduct, dereliction of duty and conduct prejudicial to the best interest of the service and was meted the penalty of suspension for three (3) months, mitigated in consideration of respondent's long years of service and his previous clean record.

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[23] A.M. No. P-02-1569, November 13, 2002, 391 SCRA 515.

[24] *Supra* note 13.

[25] A.M. No. P-06-2131, March 10, 2006, 484 SCRA 239.

[26] *Supra* note 19.

In the recent case of *Mariñas v. Florendo*,[27] we imposed a fine equivalent to respondent's one-month salary instead of a one-month suspension from office, ratiocinating that the sheriff's work would be left unattended by reason of his absence and such may be used as another excuse to justify his inaction and inefficiency in finally implementing the subject writs.

Here, the writ of execution has already been fully implemented as per Sheriff's Return of Service[28] dated October 17, 2007. Furthermore, we note that this is respondent's first offense. After consideration of the relevant rules and the current state of jurisprudence, a suspension of one (1) month and one (1) day, or the minimum penalty, would be properly imposed on respondent.

WHEREFORE, respondent Apollo R. Ragot, Sheriff III of the MTCC, Gingoog City, is found *GUILTY* of simple neglect of duty and is *SUSPENDED* for One (1) Month and One (1) Day from office. He is *STERNLY WARNED* that a repetition of the same or similar acts in the future shall be dealt with more severely. Let a copy of the decision be attached to his personal record.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[27] *Supra* note 20.

[28] *Supra* note 15.

SECOND DIVISION

[G.R. No. 157038. December 23, 2009]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **JEAN E. RAOET,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE REVIEWED; QUESTION OF LAW AND QUESTION OF FACT, DEFINED.—** A petition for review under Rule 45 of the Rules of Court opens a case for review only on questions of law, not questions of fact. A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt is on the truth or falsity of the alleged facts.
2. **ID.; ID.; ID.; ID.; ISSUES OF EVIDENCE AND COMPENSABILITY.—** In raising questions regarding Francisco's cause of death and its compensability, the GSIS, at first blush, appears to be raising a basic question of fact – the actual cause of Francisco's death. Its question, however, is not on the truth or falsity of the claimed cause of death, but on whether evidence exists supporting the claimed cause of death. Posed in this manner, the question is not purely a factual one as it involves the appreciation of how evidence is to be viewed, and whether such evidence supports or rejects the claimed cause of death. Thus, it is a question we can rule upon in this petition. From the perspective of the CA decision, the issue is not so much the actual cause of death, but a reading of the cause of death from the point of view of compensability. This is essentially a legal issue, touching as it does on the issue of compensability. Hence, it is likewise within the power of this Court to review in this Rule 45 petition.
3. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; PRESIDENTIAL DECREE 626, AS AMENDED; COMPENSABLE SICKNESS; DEFINED.—** P.D. 626, as amended, defines compensable sickness as "any illness

definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment subject to proof by the employee that the risk of contracting the same is increased by the working conditions." Section 1 (b), Rule III of the Amended Rules on Employees' Compensation implements P.D. 626 and requires that for sickness and the resulting disability or death to be compensable, it must be an "occupational disease" included in the list provided (*Annex "A"*), with the conditions attached to the listed sickness duly satisfied; otherwise, the claimant must show proof that the risk of contracting the illness is increased by his working conditions. In plainer terms, to be entitled to compensation, **a claimant must show that the sickness is either**: (1) **a result of an occupational disease listed under Annex "A"** of the Amended Rules on Employees' Compensation **under the conditions Annex "A" sets forth**; or (2) if not so listed, that the **risk of contracting the disease is increased by the working conditions**.

4. **REMEDIAL LAW; EVIDENCE; A DULY-REGISTERED DEATH CERTIFICATE IS CONSIDERED A PUBLIC DOCUMENT AND ENTRIES FOUND THEREIN ARE PRESUMED CORRECT; CASE AT BAR.—** The GSIS maintains that the respondent's claim for income benefits should be denied because she failed to present any proof, documentary or otherwise, that peptic ulcer was the underlying cause for Francisco's death. We disagree with this position, as we find that the respondent submitted sufficient proof of the cause of her husband's death when she presented his death certificate. In *Philippine American Life Insurance Company v. CA*, we held that **death certificates** and the notes by a municipal health officer prepared in the regular performance of his duties **are *prima facie* evidence of facts therein stated**. **A duly-registered death certificate is considered a public document and the entries found therein are presumed correct**, unless the party who contests its accuracy can produce positive evidence establishing a contrary conclusion. We also ruled in *People v. Datun* that **a death certificate establishes the fact of death and its immediate, antecedent, and underlying causes**. Since neither the GSIS nor the ECC presented any evidence to refute that cardiac arrest was the immediate cause, and peptic ulcer was the underlying cause

of Francisco's death, we accept as established, in accordance with the death certificate, that the underlying cause of Francisco's demise was peptic ulcer.

5. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; EMPLOYEES' COMPENSATION COMMISSION; RESOLUTION NO. 1676; COMPENSABLE DISEASES; PEPTIC ULCER, DEFINED.— Contrary to the CA's conclusion, peptic ulcer is a compensable cause of death, pursuant to ECC Resolution No. 1676 dated January 29, 1981, which unmistakably provides that **peptic ulcer is a compensable disease listed under Annex "A"**, provided the claimant is in **an occupation that involves prolonged emotional or physical stress**, as among **professional people**, transport workers and the like. *Peptic Ulcer* is defined as: [A]n ulceration of the mucous membrane of the esophagus, stomach or duodenum, caused by the action of the acid gastric juice. Peptic ulcer is **most common among persons** who are **chronically anxious or irritated, or who otherwise suffer from mental tension**. It occurs about three times as often in men as in women. Symptoms include a pain or gnawing sensation in the epigastric region. The pain occurs from 1 to 3 hours after eating, and is usually relieved by eating or taking an antacid drug. Vomiting, sometimes preceded by nausea, usually follows a severe bout of pain. COMPLICATIONS. If ulcers are untreated, bleeding can occur, leading to anemia and therefore weakness and impaired health. **Blood may be vomited, and appears brownish and like coffee grounds** because of the digestive effect of gastric secretions on the hemoglobin. There may be blood in the stools, giving them a tarry black color**. In acute cases sudden hemorrhage can occur and may be fatal if not treated properly**. x x x **Worry and anxiety can contribute to the development of an ulcer and prevent it from healing**. If emotional tensions persist, an ulcer that has been healed by medical treatment can return. Therefore, every effort is made to help the patient relax. Sometimes counseling or psychotherapy is helpful in relieving emotional strain.

6. ID.; ID.; PRESIDENTIAL DECREE 626, AS AMENDED; PEPTIC ULCER AS A COMPENSABLE ILLNESS; ELUCIDATED.— As already mentioned, Francisco worked as

Engineer A with the NIA, a job with enormous responsibilities. He had to supervise the construction activities of Lateral E and E-1, and review the structural plan and facilities. The stresses these responsibilities carried did not abate for Francisco when he returned from his Temporary Total Disability; he occupied the same position without change of responsibilities until his death on May 5, 2001. Thus, Francisco had continuous exposure to prolonged emotional stress that would qualify his peptic ulcer – a stress-driven ailment – as a compensable cause of death. In arriving at this conclusion, we stress that in determining the compensability of an illness, we do not require that the employment be the sole factor in the growth, development, or acceleration of a claimant's illness to entitle him to the benefits provided for. It is enough that his employment contributed, even if only in a small degree, to the development of the disease. x x x In this case, the chain of causation that led to the peptic ulcer is too obvious to be disregarded. The pressures of Francisco's work – constant, continuing and consistent at his level of responsibility – inevitably manifested their physical effects on Francisco's health and body; the initial and most obvious were the hypertension and coronary artery disease that the GSIS itself recognized. Less obvious, but nevertheless arising from the same pressures and stresses, were the silent killers, like peptic ulcer, that might not have attracted Francisco's attention to the point of driving him to seek immediate and active medical intervention. Ultimately, when the ulcer-producing stresses did not end, his ulcer bled profusely, affecting his heart and causing its arrest. In this manner, Francisco died. That his widow should now be granted benefits for Francisco's death is a conclusion we cannot avoid and is, in fact, one that we should gladly make as a matter of law and social justice.

7. ID.; ID.; ID.; PURPOSE.— Understandably, the GSIS may accuse us of leniency in the grant of compensation benefits in light of the jurisprudential trends in this area of law. Our leniency, however, is not due to our individual predilections or liberal leanings; it proceeds mainly from the character of P.D. 626 as a social legislation whose primordial purpose is to provide meaningful protection to the working class against the hazards of disability, illness, and other contingencies resulting in loss of income. In employee compensation, persons charged by law

to carry out the Constitution's social justice objectives should adopt a liberal attitude in deciding compensability claims and should not hesitate to grant compensability where a reasonable measure of work-connection can be inferred. Only this kind of interpretation can give meaning and substance to the law's compassionate spirit as expressed in Article 4 of the Labor Code – that all doubts in the implementation and interpretation of the provisions of the Labor Code, including their implementing rules and regulations, should be resolved in favor of labor. When the implementors fail to reach up to these standards, this Court, as guardian of the Constitution, necessarily has to take up the slack and order what we must, to ensure that the constitutional objectives are achieved. This is simply what we are doing in this case.

APPEARANCES OF COUNSEL

Chief Legal Counsel (GSIS) for petitioner.
Jose C. Claro for respondent.

D E C I S I O N

BRION, *J*.:

In this Petition for Review on *Certiorari,*[1] petitioner Government Service Insurance System (*GSIS*) seeks to set aside the Court of Appeals (*CA*) Decision[2] dated February 3, 2003 in CA-G.R. SP. No. 72820, which overturned and set aside the July 24, 2002 decision[3] of the Employees' Compensation Commission (*ECC*) in ECC Case No. GM-13079-302, and granted respondent Jean Raoet's (*respondent*) claim for income benefits arising from her husband's death.

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure; *rollo*, pp. 12-31.

[2] Penned by Associate Justice Salvador J. Valdez, with the concurrence of Associate Justice Remedios Salazar-Fernando and Associate Justice Mario L. Guarina III; *id.* at 33-37.

[3] *Id.* at 39-43.

BACKGROUND FACTS

The respondent's husband, Francisco M. Raoet (*Francisco*), entered government service on July 16, 1974 as an Engineer Trainee at the National Irrigation Administration (*NIA*). On July 5, 1978, he was appointed as Junior Civil Engineer, and on April 22, 1981, he rose to the rank of Irrigation Engineer B. On August 1, 1998, he was promoted to the position of Engineer A – the position he held until his death on May 5, 2001. As Engineer A, Francisco supervised the implementation of construction activities of Lateral E and E-1. He was also tasked to review and check the structural plan and the facilities.[4]

In 2000, Francisco was diagnosed with *Hypertension, Severe, Stage III, Coronary Artery Disease,* and he was confined at the Region I Medical Center from July 16 to July 25, 2000.[5] As the GSIS considered this a work-related condition, Francisco was awarded 30 days Temporary Total Disability benefits, plus reimbursement of medical expenses incurred during treatment.

On May 5, 2001, Francisco was rushed to the Dr. Marcelo M. Chan Memorial Hospital because he was vomiting blood.[6] He was pronounced dead on arrival at the hospital. His death certificate listed the causes of his death as follows:

CAUSES OF DEATH

Immediate cause: Cardiac Arrest
Antecedent cause: Acute Massive Hemorrhage
Underlying cause: T/C Bleeding Peptic Ulcer Disease[7]

The respondent, as widow, filed with the GSIS on May 24, 2001 a claim for income benefits accruing from the death of her husband, pursuant to Presidential Decree No. 626 (*P.D. 626*), as amended. On August 31, 2001, the GSIS denied the claim on

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[4] As quoted from the ECC Decision dated July 24, 2002; CA *rollo*, p. 11.

[5] *Id.* at 19.

[6] *Id.* at 21.

[7] *Id.* at 18.

the ground that the respondent did not submit any supporting documents to show that Francisco's death was due to peptic ulcer.

On appeal, the ECC affirmed the findings of the GSIS in its decision of July 24, 2002. According to the ECC, it could not determine if Francisco's death was compensable due to the absence of documents supporting the respondent's claim. Since Francisco had no prior history of consultation relating to peptic ulcer and no autopsy was performed to ascertain the cause of his death, the ECC could not conclude that *Bleeding Peptic Ulcer Disease* was the reason for his demise.

The respondent elevated the case to the CA through a Petition for Review. She cited the following supporting grounds:

1. Employees' Compensation Commission failed to consider that peptic ulcer is an on and off disease which does not need confinement in a hospital or clinic or submission to a Doctor of Medicine because it can be cured by self-medication.

2. The Employees' Compensation Commission failed to consider also that there were medical treatment of Francisco Raoet of occupational and compensable diseases other than peptic ulcer as shown by the medical findings of certificates, Xerox copies of which are attached to this petition.

The CA reversed[8] the ECC decision. The appellate court held that while the Amended Rules on Employees' Compensation does not list peptic ulcer as an occupational disease, Francisco's death should be compensable since its immediate cause was cardiac arrest. Thus, the CA ordered the GSIS to pay the respondent's claim for death benefits under P.D. 626, as amended.

The GSIS, this time, appealed through the present petition, raising the following issues:

I. Whether or not the CA was correct in reversing the decision of the ECC and the GSIS denying the respondent's claim for income benefit under P.D. 626, as amended, for the death of her husband, Francisco.

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[8] Decision of February 3, 2003.

II. Whether or not the ailment *Acute Massive Hemorrhage t/c Bleeding Peptic Ulcer Disease,* which caused the death of the late Francisco, is work-connected or whether there was any proof to show that the risk of contracting the same was increased by factors attendant to his employment.

The GSIS reasons out that since the cause of Francisco's death was peptic ulcer, a disease not included in the occupational diseases listed in Annex "A" of the Amended Rules on Employees' Compensation, proof must be shown that the risk of contracting the disease was increased by his working conditions. The respondent failed to present any such evidence to support her claim apart from her bare allegations. In fact, Francisco's medical records disclose that he did not consult his doctors regarding peptic ulcer. Since no autopsy was performed to ascertain the cause of death, no assurance exists that *Bleeding Peptic Ulcer* was indeed the cause of his death.

The GSIS further argues that Francisco's other ailments, *i.e.*, his hypertension and coronary artery disease, had already been awarded the maximum benefits commensurate to the degree of his disability when he was granted 30 days Temporary Total Disability benefits, plus reimbursement of medical expenses incurred in the treatment of these illnesses. Thus, no death benefit for the same diseases can be claimed.

The GSIS also points out that the employees' compensation trust fund is presently empty, and claims on this fund are being paid by the GSIS from advances coming from its other funds. Accordingly, the GSIS argues that the trust fund would suffer if benefits are paid to claimants who are not entitled under the law.

In contrast, the respondent claims that the issues the GSIS raised are essentially questions of fact which the Court is now barred from resolving in a petition for review on *certiorari*. Thus, she posits that the petition should be denied.

THE COURT'S RULING

We deny the petition for lack of merit.

The Procedural issue

A petition for review under Rule 45 of the Rules of Court opens a case for review only on questions of law, not questions of fact. A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt is on the truth or falsity of the alleged facts.[9]

In raising questions regarding Francisco's cause of death and its compensability, the GSIS, at first blush, appears to be raising a basic question of fact – the actual cause of Francisco's death. Its question, however, is not on the truth or falsity of the claimed cause of death, but on whether evidence exists supporting the claimed cause of death. Posed in this manner, the question is not purely a factual one as it involves the appreciation of how evidence is to be viewed, and whether such evidence supports or rejects the claimed cause of death. Thus, it is a question we can rule upon in this petition.

From the perspective of the CA decision, the issue is not so much the actual cause of death, but a reading of the cause of death from the point of view of compensability. This is essentially a legal issue, touching as it does on the issue of compensability. Hence, it is likewise within the power of this Court to review in this Rule 45 petition.

Factors determining compensability of death

P.D. 626, as amended, defines compensable sickness as "any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment subject to proof by the employee that the risk of contracting the same is increased by the working conditions."

Section 1 (b), Rule III of the Amended Rules on Employees' Compensation implements P.D. 626 and requires that for sickness and the resulting disability or death to be compensable, it must be an "occupational disease" included in the list provided (*Annex "A"*), with the conditions attached to the listed sickness

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[9] *Microsoft Corporation v. Maxicorp, Inc.,* 481 Phil. 550 (2004).

duly satisfied; otherwise, the claimant must show proof that the risk of contracting the illness is increased by his working conditions. In plainer terms, to be entitled to compensation, **a claimant must show that the sickness is either**: (1) **a result of an occupational disease listed under Annex "A"** of the Amended Rules on Employees' Compensation **under the conditions Annex "A" sets forth**; or (2) if not so listed, that the **risk of contracting the disease is increased by the working conditions**.[10]

Based on Francisco's death certificate, the immediate cause of his death was cardiac arrest; the antecedent cause was acute massive hemorrhage, and the underlying cause was bleeding peptic ulcer disease.

The GSIS maintains that the respondent's claim for income benefits should be denied because she failed to present any proof, documentary or otherwise, that peptic ulcer was the underlying cause for Francisco's death.

We disagree with this position, as we find that the respondent submitted sufficient proof of the cause of her husband's death when she presented his death certificate. In *Philippine American Life Insurance Company v. CA*,[11] we held that **death certificates** and the notes by a municipal health officer prepared in the regular performance of his duties **are *prima facie* evidence of facts therein stated**. **A duly-registered death certificate is considered a public document and the entries found therein are presumed correct**, unless the party who contests its accuracy can produce positive evidence establishing a contrary conclusion. We also ruled in *People v. Datun*[12] that **a death certificate establishes the fact of death and its immediate, antecedent, and underlying causes**.

Since neither the GSIS nor the ECC presented any evidence to refute that cardiac arrest was the immediate cause, and peptic ulcer was the underlying cause of Francisco's death, we accept

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[10] *GSIS v. Vicencio*, G.R. No. 176832, May 21, 2009.

[11] 398 Phil. 559 (2000).

[12] 338 Phil. 884 (1997).

as established, in accordance with the death certificate, that the underlying cause of Francisco's demise was peptic ulcer.

The CA decision and Peptic Ulcer as Compensable Illness

In the assailed decision, the CA focused on Francisco's immediate cause of death – cardiac arrest – and ignored the underlying cause of death – peptic ulcer. According to the CA, Francisco's death is compensable even if peptic ulcer is not a listed occupational disease, since Francisco died due to a listed cause – cardiac arrest.

The CA is apparently wrong in its conclusion as it viewed in isolation the immediate cause of death (cardiac arrest), disregarding that what brought about the cardiac arrest was the ultimate underlying cause – peptic ulcer. This error, however, does not signify that Francisco's death is not compensable because peptic ulcer itself, under specific conditions, is a compensable illness.

Contrary to the CA's conclusion, peptic ulcer is a compensable cause of death, pursuant to ECC Resolution No. 1676 dated January 29, 1981, which unmistakably provides that **peptic ulcer is a compensable disease listed under Annex "A"**, provided the claimant is in **an occupation that involves prolonged emotional or physical stress**, as among **professional people**, transport workers and the like.[13]

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[13] Annex "A"

OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

(1) The employee's work must involve the risks described herein;
(2) The disease was contracted as a result of the employee's exposure to the described risks;
(3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;
(4) There was no notorious negligence on the part of the employee.

x x x x x x x x x

The following diseases are considered as occupational when contracted under working conditions involving the risks described herein:

Peptic Ulcer is defined as:

[A]n ulceration of the mucous membrane of the esophagus, stomach or duodenum, caused by the action of the acid gastric juice.

Peptic ulcer is **most common among persons** who are **chronically anxious or irritated, or who otherwise suffer from mental tension**. It occurs about three times as often in men as in women. Symptoms include a pain or gnawing sensation in the epigastric region. The pain occurs from 1 to 3 hours after eating, and is usually relieved by eating or taking an antacid drug. Vomiting, sometimes preceded by nausea, usually follows a severe bout of pain.

COMPLICATIONS. If ulcers are untreated, bleeding can occur, leading to anemia and therefore weakness and impaired health. **Blood may be vomited, and appears brownish and like coffee grounds** because of the digestive effect of gastric secretions on the hemoglobin. There may be blood in the stools, giving them a tarry black color**. In acute cases sudden hemorrhage can occur and may be fatal if not treated properly**.

x x x x x x x x x

Worry and anxiety can contribute to the development of an ulcer and prevent it from healing. If emotional tensions persist, an ulcer that has been healed by medical treatment can return. Therefore, every effort is made to help the patient relax. Sometimes counseling or psychotherapy is helpful in relieving emotional strain.[14] [Emphasis supplied.]

Based on the Annex "A" list and the accompanying requisite condition for compensability, the question that really confronts us is: **did Francisco's occupation involve prolonged emotional or physical stress to make his death due to peptic ulcer compensable?**

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26. **Peptic Ulcer**

An occupation involving **prolonged emotional, or physical stress**, as among professional people, transport workers and the like. [emphasis supplied]

[14] Miller, Benjamin & Keane, Claire. *Encyclopedia and Dictionary of Medicine and Nursing* (1972), pp. 995-996.

A significant point to appreciate in considering this question is that based on the GSIS' own records,[15] Francisco was diagnosed with *Hypertension, Severe, Stage III, Coronary Artery Disease,* and confined at the Region I Medical Center in July 2000. The GSIS found this ailment work-connected and awarded Francisco 30 days Temporary Total Disability benefits. This finding assumes importance in the present case because the established underlying causes of the combination of these diseases are, among others, **the stressful nature and pressures inherent in an occupation.**[16] **This was what the GSIS acknowledged in recognizing Francisco's total temporary disability.**

As already mentioned, Francisco worked as Engineer A with the NIA, a job with enormous responsibilities. He had to supervise the construction activities of Lateral E and E-1, and review the structural plan and facilities.[17] The stresses these responsibilities carried did not abate for Francisco when he returned from his Temporary Total Disability; he occupied the same position without change of responsibilities until his death on May 5, 2001. Thus, Francisco had continuous exposure to prolonged emotional stress that would qualify his peptic ulcer – a stress-driven ailment – as a compensable cause of death.

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[15] CA *rollo*, pp. 21-26.

[16] Under ECC Resolution No. 432 dated July 20, 1977, the following diseases are deemed compensable:

(a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation clearly precipitated by the **unusual strain be reason of the nature of his work**.

(b) The **strain of work that brings about an acute attack must be of sufficient severity** and must be followed within twenty-four hours by the clinical signs of a cardiac insult to constitute causal relationship.

(c) If a person who was apparently asymptomatic before subjecting himself 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 causal relationship. [emphasis supplied]

[17] *Supra* note 4.

In arriving at this conclusion, we stress that in determining the compensability of an illness, we do not require that the employment be the sole factor in the growth, development, or acceleration of a claimant's illness to entitle him to the benefits provided for. It is enough that his employment contributed, even if only in a small degree, to the development of the disease.[18] In the recent case of *GSIS v. Vicencio,* we said:[19]

> It is well-settled that the degree of proof required under P.D. No. 626 is merely substantial evidence, which means, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." **What the law requires is a reasonable work-connection and not a direct causal relation**. It is enough that the hypothesis on which the workman's claim is based is probable. Medical opinion to the contrary can be disregarded especially where there is some basis in the facts for inferring a work-connection. **Probability, not certainty, is the touchstone. It is not required that the employment be the sole factor in the growth, development or acceleration of a claimant's illness to entitle him to the benefits provided for. It is enough that his employment contributed, even if to a small degree, to the development of the disease.** [Emphasis supplied.]

In this case, the chain of causation that led to the peptic ulcer is too obvious to be disregarded. The pressures of Francisco's work – constant, continuing and consistent at his level of responsibility – inevitably manifested their physical effects on Francisco's health and body; the initial and most obvious were the hypertension and coronary artery disease that the GSIS itself recognized. Less obvious, but nevertheless arising from the same pressures and stresses, were the silent killers, like peptic ulcer, that might not have attracted Francisco's attention to the point of driving him to seek immediate and active medical intervention. Ultimately, when the ulcer-producing stresses did not end, his ulcer bled profusely, affecting his heart and causing its arrest. In this manner, Francisco died. That his widow

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[18] *La O v. Employees' Compensation Commission*, 186 Phil. 535 (1980), citing *Manila Railroad Co. v. Workmen's Compensation Commission*, 120 Phil. 944 (1964).

[19] *Supra* note 10.

should now be granted benefits for Francisco's death is a conclusion we cannot avoid and is, in fact, one that we should gladly make as a matter of law and social justice.

Purpose of P.D. 626

Understandably, the GSIS may accuse us of leniency in the grant of compensation benefits in light of the jurisprudential trends in this area of law. Our leniency, however, is not due to our individual predilections or liberal leanings; it proceeds mainly from the character of P.D. 626 as a social legislation whose primordial purpose is to provide meaningful protection to the working class against the hazards of disability, illness, and other contingencies resulting in loss of income. In employee compensation, persons charged by law to carry out the Constitution's social justice objectives should adopt a liberal attitude in deciding compensability claims and should not hesitate to grant compensability where a reasonable measure of work-connection can be inferred. Only this kind of interpretation can give meaning and substance to the law's compassionate spirit as expressed in Article 4 of the Labor Code – that all doubts in the implementation and interpretation of the provisions of the Labor Code, including their implementing rules and regulations, should be resolved in favor of labor.[20] When the implementors fail to reach up to these standards, this Court, as guardian of the Constitution, necessarily has to take up the slack and order what we must, to ensure that the constitutional objectives are achieved. This is simply what we are doing in this case.

Acting on this same role, we remind the GSIS that when it is called upon to determine the compensability of an employee's disease or death, the present state of the State Insurance Fund cannot be an excuse to avoid the payment of compensation. If the State Insurance Fund lacks the financial capacity, it is not the responsibility of the insured civil servant, but rather of the State to fill in the deficiency and ensure the solvency of the State Insurance Fund. This is the clear mandate of Article 184 of the Labor Code, which reads:

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[20] *Id.*

Article 184. *Government guarantee.* – The Republic of the Philippines guarantees the benefits prescribed under this Title, and accepts general responsibility for the solvency of the State Insurance Fund. In case of deficiency, the same shall be covered by supplemental appropriations from the national government.

In *Biscarra v. Republic*, we explicitly said:[21]

The fear that this humane, liberal and progressive view will swamp the Government with claims for continuing medical, hospital and surgical services and as a consequence unduly drain the National Treasury, is no argument against it; **because the Republic of the Philippines as a welfare State, in providing for the social justice guarantee in our Constitution, assumes such risk.** This assumption of such a noble responsibility is, as heretofore stated, only just and equitable since the employees to be benefited thereby precisely became permanently injured or sick while invariably devoting the greater portion of their lives to the service of our country and people. **Human beings constitute the most valuable natural resources of the nation and therefore should merit the highest solicitude and the greatest protection from the State to relieve them from unbearable agony**. They have a right to entertain the hope that during the few remaining years of their life some dedicated institution or gifted individual may produce a remedy or cure to relieve them from the painful or crippling or debilitating or humiliating effects of their injury or ailment, to fully and completely rehabilitate them and develop their "mental, vocational and social potential," so that they will remain useful and productive citizens. [Emphasis supplied]

The GSIS, therefore, cannot use the excuse of the State Insurance Fund's present lack of capital to refuse paying income benefits to the respondent, whose husband devoted 27 years of his life to government service and whose death was caused by an ailment aggravated by the emotional stresses and pressures of his work.

WHEREFORE, premises considered, we hereby *DENY* the petition for lack of merit. No costs.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Del Castillo, and *Abad, JJ.,* concur.

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[21] 184 Phil. 209, 239-240 (1980).

THIRD DIVISION

[G.R. No. 159788. December 23, 2009]

SOTERO ROY LEONERO, RODOLFO LIM, ISIDORO A. PADILLA, JR., AMY ROSE FISMA, and NORMA CABUYO, *petitioners, vs.* **SPOUSES MARCELINO B. BARBA and FORTUNA MARCOS-BARBA, represented by IMELDA N. FORONDO, and REGISTER OF DEEDS OF QUEZON CITY,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT ON THE PLEADINGS; A CASE OF; ELUCIDATED.— It is not correct to say that petitioners were deprived of their day in court when the RTC dismissed the complaint even before conducting trial on the merits. As held in *Luzon Development Bank v. Conquilla*, the court, *motu proprio*, may render judgment on the pleadings based on the parties' admissions in their pleadings and even without introduction of evidence, if and when these amply establish that there is insufficiency of factual basis for the action. In this case, petitioners admit that they are mere possessors of the parcels of land in question and have been ordered by the MeTC to vacate the same. The gist of their claim in the action for quieting of title with preliminary injunction is that the MeTC Decision in the ejectment case against them should not be implemented, because respondents' TCTs are spurious, having emanated from OCT No. 614, which has been declared null and void in a Partial Decision rendered in Civil Case No. Q-35672. Petitioners' main prayer is for the nullification of respondents' TCTs. From such allegations, it is already clear that petitioners' action cannot succeed. Firstly, Section 48 of the Property Registration Decree provides that a certificate of title cannot be subject to collateral attack and can only be altered, modified or cancelled in a direct proceeding in accordance with law. In *Foster-Gallego v. Galang*, the Court held that the issue of whether a title was procured by falsification or fraud should be raised in an action expressly instituted for the purpose, not in an action for quieting of title. Again, in *Vda. de Gualberto v. Go*, the Court held

that the validity of a certificate of title cannot be assailed in an action for quieting of title; an action for annulment of title is the more appropriate remedy to seek the cancellation of a certificate of title. Hence, herein petitioners' action for quieting of title is a mere collateral attack against respondents' TCT Nos. 59721, 59725, 59726 and 59727, and is proscribed by the law. Secondly, as early as 2001 in *Pinlac v. Court of Appeals*, the Court categorically struck down the Partial Decision issued in Civil Case No. Q-35672, upon which herein petitioners base their claim that respondents' TCTs are spurious. The Court ruled that said Partial Decision was null and void. Thus, in *Cañete v. Genuino Ice Company, Inc.*, the Court emphasized that: ***First***, their initial claim that OCT 614 – of which all the other subject titles are derivatives – is null and void, has been proven wrong. As held in Pinlac and other cases, OCT 614 did legally exist and was previously issued in the name of the Philippine Government in 1910 under the provisions of Act 496. ***Second***, the *Ad Hoc* Committee of the then Ministry of Natural Resources, which was specifically tasked to investigate the historical background of the Piedad Estate, found that as early as the period prior to the Second World War, ***all*** lots in the Piedad Estate had already been disposed of. ***Third***, the Piedad Estate has been placed under the Torrens system of land registration, which means that all lots therein are titled.

APPEARANCES OF COUNSEL

Isidro L. Padilla for petitioners.
Tomas F. Dulay for private respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) dated July 31, 2002 denying petitioner's

[1] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Elvi John S. Asuncion and Edgardo F. Sundiam, concurring; *rollo,* pp. 113-119.

appeal, and its Resolution[2] dated September 8, 2003 denying the motion for reconsideration, be reversed and set aside.

The undisputed facts, as gathered from the records, are as follows.

Petitioners filed a complaint against respondents for Quieting of Title and Preliminary Injunction before the Regional Trial Court (RTC) of Quezon City, Branch 216, docketed as Q-94-20097, praying that Transfer Certificates of Title (TCT) Nos. 59721, 59725, 59726 and 59727, in the name of respondents, be declared null and void for having emanated from Original Certificate of Title (OCT) No. 614. Petitioners alleged that said OCT No. 614 had been declared void in a Partial Decision on Defaulted Private Respondents in Civil Case No. Q-35672.

Respondents filed their Answer, maintaining that TCT Nos. 59721, 59725, 59726 and 59727, all in their names, were all genuine titles duly issued by the Register of Deeds of Quezon City and correctly plotted by the Land Registration Authority. They further argued that the Partial Decision in Civil Case No. Q- 35672 could not possibly have any effect on them, as they were not parties to said case. It was also pointed out that petitioners, as defendants in a separate ejectment case filed against them by respondents, had been ordered by the Metropolitan Trial Court (MeTC), Branch 36 to vacate the subject lots. A Writ of Execution had been issued on April 6, 1994 to implement the order to vacate.

On May 6, 1994, the RTC issued an Order[3] directing the parties to submit memoranda, "after which, the case shall be deemed submitted for resolution whether or not they have filed their respective memoranda."

Thereafter, on July 7, 1994, the RTC issued an Order[4] denying the prayer for a writ of preliminary injunction and also dismissing

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[2] *Id.* at 69.

[3] Records, p. 50.

[4] *Id.* at 68.

the principal action for quieting of title. Petitioners moved for reconsideration of said Order and moved for leave to amend the complaint. In an Order dated July 29, 1994, the RTC denied the motion for reconsideration and, consequently, no longer acted on the motion for leave to amend the complaint.

Aggrieved by the foregoing Orders of the RTC, petitioner appealed to the CA. In the assailed CA Decision dated July 31, 2002, the dismissal of petitioners' complaint was affirmed. The CA ruled that the RTC committed no error in dismissing petitioners' complaint even before conducting trial on the merits, because the Partial Decision in Civil Case No. Q-35672 could not have any legal effect on herein respondents, as they were not parties to the aforementioned action. Petitioners' motion for reconsideration of the said CA Decision was denied *per* Resolution dated September 8, 2003.

Hence, this petition where the main issue is whether the CA erred in affirming the RTC's dismissal of the complaint for quieting of title despite the lack of trial on the merits, hence, allegedly depriving petitioners of the opportunity to prove their allegations that respondents' aforementioned TCTs were null and void.

The petition is doomed to fail.

It is not correct to say that petitioners were deprived of their day in court when the RTC dismissed the complaint even before conducting trial on the merits. As held in *Luzon Development Bank v. Conquilla*,[5] the court, *motu proprio*, may render judgment on the pleadings based on the parties' admissions in their pleadings and even without introduction of evidence, if and when these amply establish that there is insufficiency of factual basis for the action.[6]

In this case, petitioners admit that they are mere possessors of the parcels of land in question and have been ordered by the MeTC to vacate the same. The gist of their claim in the action

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[5] G.R. No. 163338, September 21, 2005, 470 SCRA 533.

[6] *Id.* at 547-549.

for quieting of title with preliminary injunction is that the MeTC Decision in the ejectment case against them should not be implemented, because respondents' TCTs are spurious, having emanated from OCT No. 614, which has been declared null and void in a Partial Decision rendered in Civil Case No. Q-35672. Petitioners' main prayer is for the nullification of respondents' TCTs.

From such allegations, it is already clear that petitioners' action cannot succeed. Firstly, Section 48 of the Property Registration Decree provides that a certificate of title cannot be subject to collateral attack and can only be altered, modified or cancelled in a direct proceeding in accordance with law. In *Foster-Gallego v. Galang*,[7] the Court held that the issue of whether a title was procured by falsification or fraud should be raised in an action expressly instituted for the purpose, not in an action for quieting of title.[8] Again, in *Vda. de Gualberto v. Go*,[9] the Court held that the validity of a certificate of title cannot be assailed in an action for quieting of title; an action for annulment of title is the more appropriate remedy to seek the cancellation of a certificate of title.[10] Hence, herein petitioners' action for quieting of title is a mere collateral attack against respondents' TCT Nos. 59721, 59725, 59726 and 59727, and is proscribed by the law.

Secondly, as early as 2001 in *Pinlac v. Court of Appeals*,[11] the Court categorically struck down the Partial Decision issued in Civil Case No. Q-35672, upon which herein petitioners base their claim that respondents' TCTs are spurious. The Court ruled that said Partial Decision was null and void. Thus, in *Cañete v. Genuino Ice Company, Inc.*,[12] the Court emphasized that:

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[7] G.R. No. 130228, July 27, 2004, 435 SCRA 275.

[8] *Id.* at 292.

[9] G.R. No. 139843, July 21, 2005, 463 SCRA 671.

[10] *Id.* at 677-678.

[11] G.R. No. 91486, January 19, 2001, 349 SCRA 635.

[12] G.R. No. 154080, January 22, 2008, 542 SCRA 206.

First, their initial claim that OCT 614 – of which all the other subject titles are derivatives – is null and void, has been proven wrong. As held in Pinlac and other cases, OCT 614 did legally exist and was previously issued in the name of the Philippine Government in 1910 under the provisions of Act 496.

Second, the *Ad Hoc* Committee of the then Ministry of Natural Resources, which was specifically tasked to investigate the historical background of the Piedad Estate, found that as early as the period prior to the Second World War, ***all*** lots in the Piedad Estate had already been disposed of.

Third, the Piedad Estate has been placed under the Torrens system of land registration, which means that all lots therein are titled.[13]

Clearly, petitioners' complaint is unfounded and the RTC acted properly in dismissing the same for petitioners' failure to establish the factual basis for it.

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

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Del Castillo,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 159792. December 23, 2009]

BARANGAY SANGALANG, represented by its Chairman DANTE C. MARCELLANA, *petitioner, vs.* **BARANGAY MAGUIHAN, represented by its Chairman ARNULFO VILLAREZ,** *respondent.*

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[13] *Id.* at 218-219.

[*] Additional member per Special Order No. 805 dated December 4, 2009.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FAILURE TO PAY DOCKET FEES DOES NOT AUTOMATICALLY RESULT IN THE DISMISSAL OF AN APPEAL; EXPLAINED.—** Anent the issue of docket fees, this Court, in *Yambao v. Court* of *Appeals*, declared: x x x Considering the importance and purpose of the remedy of appeal, an essential part of our judicial system, courts are well-advised to proceed with caution so as not to deprive a party of the right to appeal, but rather, ensure that every party-litigant has the "amplest opportunity for the proper and just disposition of his cause, freed from constraints of technicalities." In line with this policy, we have held that, in appealed cases, the failure to pay the appellate docket fee does not automatically result in the dismissal of the appeal x x x A reading of the records of the case shows that it was only in his Supplemental Motion for Reconsideration to the RTC Decision that petitioner first raised the issue of non-payment of docket fees. Respondent, for his part, filed with the RTC an Opposition and Comment explaining his failure to file the corresponding docket fees, thus: 1. That as regards the claim of appellee that the docket fee has not been paid by the appellant the same is correct. But the appellant who appealed the case by himself and being a layman was not aware that a docket fee should be paid in case perfection of an appeal and no one from the court's personnel reminds (sic) him of this requirement. But in order not to sacrifice the ends of justice, the appellant is willing to pay the docket fee and other lawful charges necessary for the perfection of an appeal. The Order denying petitioner's motion for reconsideration was silent as to the issue of the non-payment of docket fees; however, this Court deems that the RTC must have accepted the explanation given by respondent, otherwise, said court would have dismissed the appeal and reconsidered its decision. The failure to pay docket fees does not automatically result in the dismissal of an appeal, it being discretionary on the part of the appellate court to give it due course or not. This Court will then not interfere with matters addressed to the sound discretion of the RTC in the absence of proof that the exercise of such discretion was tainted with bias or prejudice, or made without due circumspection of the attendant circumstances of the case.

2. ID.; ID.; ID.; PETITION FOR REVIEW UNDER RULE 42 OF THE RULES OF COURT; PROPER REMEDY WHEN THE REGIONAL TRIAL COURT TRIED THE CASE IN THE EXERCISE OF ITS APPELLATE JURISDICTION; ELUCIDATED.— After an examination of relevant laws pertinent to herein petition, this Court finds that the CA was correct in holding that petitioner had availed itself of the wrong remedy. As correctly observed by the CA, under Section 118 of the Local Government Code, the jurisdictional responsibility for settlement of boundary disputes between and among local government units is to be lodged before the proper *Sangguniang Panlungsod* or *Sangguniang Bayan* concerned, if it involves two or more *barangays* in the same city or municipality. Under Section 118(e) of the same Code, if there is a failure of amicable settlement, the dispute shall be formally tried by the *sanggunian* concerned and shall decide the same within (60) days from the date of the certification referred to. Section 119 of the Local Government Code also provides that the decision of the *sanggunian* concerned may be appealed to the RTC having jurisdiction over the area in dispute, within the time and manner prescribed by the Rules of Court. In the case at bar, it is clear that when the case was appealed to the RTC, the latter took cognizance of the case in the exercise of its appellate jurisdiction, not its original jurisdiction. Hence, any further appeal from the RTC Decision must conform to the provisions of the Rules of Court dealing with said matter. On this score, Section 2, Rule 41 of the Rules of Court provides: Sec. 2. *Modes of appeal*. (a) *Ordinary appeal*. – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner. (b) **Petition for review**. - **The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42**. Based on the foregoing, it is apparent that petitioner has availed itself

of the wrong remedy. Since the RTC tried the case in the exercise of its appellate jurisdiction, petitioner should have filed a petition for review under Rule 42 of the Rules of Court, instead of an ordinary appeal under Rule 41. The law is clear in this respect.

3. ID.; ID.; ID.; ID.; LIBERAL CONSTRUCTION OF THE RULES OF COURT; APPLIED IN CASE AT BAR.— In any case, as in the past, this Court has recognized the emerging trend towards a liberal construction of the Rules of Court. In *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corporation*, this Court stated: Courts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process. In numerous cases, this Court has allowed liberal construction of the rules when to do so would serve the demands of substantial justice and equity. x x x Thus, notwithstanding petitioner's wrong mode of appeal, the CA should not have so easily dismissed the petition, considering that the parties involved are local government units and that what is involved is the determination of their respective territorial jurisdictions. In the same vein, the CA's strict reliance on the requirements under Section 13 of Rule 44 of the 1997 Rules of Procedure relating to subject index and page references in an appellant's brief is, to stress, putting a premium on technicalities. While the purpose of Section 13, Rule 44, is to present to the appellate court in the most helpful light, the factual and legal antecedents of a case on appeal, said rule should not be strictly applied considering that petitioner's brief before the CA contained only 9 pages, the records of the case consisted only of a few documents and pleadings, and there was no testimonial evidence.

4. POLITICAL LAW; LOCAL GOVERNMENT CODE OF 1991; IMPLEMENTING RULES AND REGULATIONS; PROCEDURES GOVERNING BOUNDARY DISPUTES; DOCUMENTS TO BE ATTACHED TO PETITION; ENUMERATED; NOT SATISFIED IN CASE AT BAR.— Article 17, Rule III of the Rules and Regulations Implementing the Local Government Code of 1991, outlines the procedures governing boundary disputes, including the documents that should be attached to the petition, to wit: Art. 17. *Procedures for Settling Boundary Disputes*. – The following procedures

shall govern the settlement of boundary disputes: x x x (c) Documents attached to petition – The petition shall be accompanied by: 1. Duly authenticated copy of the law or statute creating the LGU or any other document showing proof of creation of the LGU; 2. Provincial, city, municipal, or *barangay* map, as the case may be, duly certified by the LMB. 3. Technical description of the boundaries of the LGUs concerned; 4. Written certification of the provincial, city, or municipal assessor, as the case may be, as to territorial jurisdiction over the disputed area according to records in custody; 5. Written declarations or sworn statements of the people residing in the disputed area; and 6. Such other documents or information as may be required by the *sanggunian* hearing the dispute. The RTC observed that neither of the parties satisfied the requirement that all the enumerated documents must be attached to the petition. Hence, like the RTC, this Court is left with no other option but to select which between the documents presented by the parties carries greater weight in proving its claim. The documents presented by petitioner were sourced from the tax assessor's office, whereas the documents presented by respondent were sourced from the land management bureau. The answer is very apparent and needs little discussion.

5. ID.; ID.; ID.; ID.; ID.; CADASTRAL MAP APPROVED BY THE DIRECTOR OF LANDS GIVEN MORE CREDENCE THAN THE DOCUMENTS SOURCED FROM THE TAX ASSESSOR'S OFFICE; DISCUSSED.— To this Court's mind, the presence of the cadastral map, which was approved by the Director of Lands, should be given more weight than the documents sourced by petitioner from the assessor's office. Said map was approved on March 17, 1986, which was approximately 10 years before the controversy in hand developed. Hence, the same should be controlling in the absence of proof that such document is invalid or inaccurate. As a matter of fact, notwithstanding the hearing committee's recommendation to rule in favor of petitioner, the committee itself stated in its report that the cadastral map submitted by respondent was authentic. Moreover, in ruling against petitioner, the RTC also gave greater weight to the documents submitted by respondent, thus: x x x This Court is mindful of the fact and takes judicial notice that the Land Management Bureau is manned by geodetic engineers with sufficient expertise and is the cognizant agency

of government charged with the responsibility of matters respecting surveys of land. This Court likewise takes into consideration that the duty of the provincial and municipal assessors are primarily assessments of taxes. This Court shares the view of the RTC. It is undisputed that the Land Management Bureau is the principal government agency tasked with the survey of lands, and thus, more weight should be given to the documents relating to its official tasks which are presumed to be done in the ordinary course of business. Between a geodetic engineer and a tax assessor, the conclusion is inevitable that it is the former's certification as to the location of properties in dispute that is controlling, absent any finding of abuse of discretion. As correctly observed by respondent and the RTC, the duty of provincial and municipal assessors is primarily the assessment of taxes and not the survey of lands.

6. **ID.; ID.; DETERMINATION AS TO WHETHER THE PROPERTIES IN DISPUTE ARE WITHIN A CERTAIN JURISDICTION IS NOT A DECISION TO BE MADE BY THE POPULACE; RATIONALE.—** x x x [P]etitioner alludes to a petition/resolution allegedly of persons residing in the properties in dispute to the effect they are under the jurisdiction of petitioner. On this note, this Court agrees with the observation of the RTC that the determination as to whether the properties in dispute are within a certain jurisdiction is not a decision to be made by the populace, to wit: x x x In simple language, the population follows the territory and not vice versa. It is the determination of the ambit and sphere of the land area as culled in the approved *barangay* map that determines the jurisdiction of the *barangay* and not the decision of the populace. To allow the latter will open endless litigation concerning disputes of jurisdiction.

APPEARANCES OF COUNSEL

Pedro N. Belmi for petitioner.

DECISION

PERALTA, *J*.:

Before this Court is a Petition for Review[1] on *certiorari*, under Rule 45 of the Rules of Court, seeking to set aside the October 17, 2002 Decision[2] and August 25, 2003 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 70021.

The facts of the case:

The controversy has its roots in a *barangay* jurisdiction dispute between petitioner Barangay Sangalang and respondent Barangay Maguihan, both situated in Lemery, Batangas. Specifically, the properties involved in the controversy are those covered by Tax Declaration Nos. 038-00315, 038-00316, and 038-00317. Petitioner claims the lots to be within their territorial jurisdiction, whereas respondent maintains that they are within their territorial boundary.

The case was lodged before the *Sangguniang Bayan*, which referred it to a hearing committee. In turn, the committee formed rendered a report[4] to the effect that the properties in dispute belonged to petitioner. The recommendation was subsequently affirmed in Resolution No. 75-96[5] passed on November 14, 1996 by the *Sangguniang Bayan* of Lemery, Batangas, the pertinent portion of which reads:

Resolved, as it hereby resolves to recognize as it hereby recognizes the old boundaries of Barangay Maguihan and Sangalang, specifically the areas which are the subject of a *barangay* dispute

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[1] *Rollo*, pp. 8-34.

[2] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Remedios A. Salazar-Fernando and Regalado E. Maambong, concurring, *id.* at 36-41.

[3] *Id.* at 44-45.

[4] *Rollo*, pp. 46-47.

[5] *Id.* at 48-49.

covered by TD Nos. 038-00315, 038-00316 and 038-00317 are within the territorial jurisdiction of Barangay Sangalang.[6]

Respondent appealed the decision to the Regional Trial Court (RTC) pursuant to Section 119[7] of the Local Government Code, and the same was docketed as Barangay Jurisdiction Dispute No. 1.

On April 27, 2000, the RTC rendered a Decision[8] ruling in favor of respondent, the dispositive portion of which states:

> WHEREFORE, Resolution No. 75-96, Series of 1996 of the Sangguniang Bayan of Lemery, Batangas is hereby reversed and set aside and that Lot Nos. 4469 and 6650, covered by and embraced in Tax Declaration Nos. 038-00315, 038-00316, and 038-00317 of the Municipal Assessor of Lemery, Batangas, are hereby adjudged and declared as within the territorial jurisdiction of appellant Barangay Maguihan and, consequently, the Municipal Assessor of Lemery, Batangas and the Provincial Assessor of the Province of Batangas are hereby ordered to make the necessary corrections in its records implemental of this decision.
>
> SO ORDERED.[9]

Petitioner filed a Motion for Reconsideration,[10] which was, however, denied by the RTC in an Order[11] dated December 20, 2000.

Aggrieved, petitioner then filed a Notice of Appeal.[12] Later, petitioner filed an Amended Notice of Appeal.

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[6] *Id.*

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

[8] *Rollo*, pp. 58-60.

[9] *Id.* at 60.

[10] *Id.* at 61-64.

[11] *Id.* at 65-66.

[12] *Id.* at 67.

On October 17, 2002, the CA rendered a Decision[13] dismissing the appeal, the dispositive portion of which reads:

IN VIEW OF ALL THE FOREGOING, the present appeal is ordered DISMISSED. No cost.

SO ORDERED.[14]

In dismissing the appeal, the CA ruled that petitioner had availed itself of the wrong remedy in filing a notice of appeal instead of filing a petition for review under Rule 42 of the Rules of Court. The pertinent portions of said decision is hereunder reproduced, to wit:

Given the procedural mandates, the Decision of the Regional Trial Court of Lemery, Batangas, dated April 27, 2000, was rendered by the Regional Trial Court in the exercise of its appellate jurisdiction. Appropriately, under Section 22 of Batas Pambansa Blg. 129, decisions of the Regional Trial Court in the exercise of its appellate jurisdiction, shall be appealable to the Court of Appeals by way of petitions for review under Rule 42 of the 1997 Rules of Civil Procedure.[15]

The CA also ruled that if said appeal were to be considered as an ordinary appeal under Rule 41, it still should be dismissed, because the submitted appellant's brief failed to contain a subject index and page references to the records requirement in its Statement of Facts and Case and Argument, as provided for in Section 13 of Rule 44 of the 1997 Rules of Procedure.[16]

Petitioner filed a Motion for Reconsideration, which was, however, denied by the CA in a Resolution dated August 25, 2003.

Hence, herein petition, with petitioner raising the following assignment of errors, to wit:

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[13] *Supra* note 2.

[14] *Rollo,* p. 41.

[15] *Id.* at 39-40.

[16] *Id.* at 40.

A.

THE COURT *A QUO* COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING THE APPEAL OF PETITIONER SOLELY BASED ON THE RIGID AND STRICT APPLICATION OF TECHNICALITIES OVERRIDING SUBSTANTIAL JUSTICE, THAT IS, THE MERIT OF THE PETITIONER'S APPEAL, IN UTTER VIOLATION OF EXISTING AND WELL SETTLED NUMEROUS DECISIONS OF THIS HONORABLE SUPREME COURT.

B.

THE DECISION, ANNEX "I", AND THE ORDER, ANNEX "K", RENDERED BY THE REGIONAL TRIAL COURT OF BATANGAS, BRANCH V, LEMERY, BATANGAS, IN CIVIL CASE BOUNDARY JURISDICTIONAL DISPUTE NO. 01, REVERSING AND SETTING ASIDE THE APPEALED RESOLUTION NO. 75-96, SERIES OF 1996, OF THE SANGGUNIANG BAYAN OF LEMERY, BATANGAS, ARE NULL AND VOID BECAUSE RESPONDENT MAGUIHAN HAS NOT PERFECTED ITS APPEAL AND BY REASON THEREOF, THE TRIAL COURT HAS NOT ACQUIRED APPELLATE JURISDICTION.

C.

THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN SUBSTITUTING ITS OWN JUDGMENT OVER AND ABOVE THE JUDGMENT OF THE SANGGUNIANG BAYAN OF LEMERY, BATANGAS, WHICH IS SUPPORTED BY SUBSTANTIAL EVIDENCE LIKEWISE IN DISREGARD OF THE EXISTING AND WELL SETTLED DECISIONS OF THIS HONORABLE SUPREME COURT.[17]

At the outset, this Court shall first address the procedural issues raised by petitioner.

This Court is bewildered by petitioner's posture to tailor-fit the rules of court to its own convenience. The first and second assigned errors involve a question of the propriety of a strict

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

application of the rules. It seems, however, that petitioner has taken a divergent stand on the said matter depending, on whether the same would be favorable to his cause. As to his first assigned error, petitioner faults the CA for having strictly applied the rules of court notwithstanding his choice of the wrong remedy; yet, on the other hand, as to his second assigned error, petitioner faults the RTC for not having strictly applied the rules of court to respondent's alleged failure to pay the corresponding docket fees.

Anent the issue of docket fees, this Court, in *Yambao v. Court of Appeals*,[18] declared:

> x x x Considering the importance and purpose of the remedy of appeal, an essential part of our judicial system, courts are well-advised to proceed with caution so as not to deprive a party of the right to appeal, but rather, ensure that every party-litigant has the "amplest opportunity for the proper and just disposition of his cause, freed from constraints of technicalities." In line with this policy, we have held that, in appealed cases, the failure to pay the appellate docket fee does not automatically result in the dismissal of the appeal x x x

A reading of the records of the case shows that it was only in his Supplemental Motion for Reconsideration[19] to the RTC Decision that petitioner first raised the issue of non-payment of docket fees. Respondent, for his part, filed with the RTC an Opposition and Comment[20] explaining his failure to file the corresponding docket fees, thus:

> 1. That as regards the claim of appellee that the docket fee has not been paid by the appellant the same is correct. But the appellant who appealed the case by himself and being a layman was not aware that a docket fee should be paid in case perfection of an appeal and no one from the court's personnel reminds (sic) him of this requirement. But in order not to sacrifice the ends of justice, the appellant is willing to pay the docket fee and other lawful charges necessary for the perfection of an appeal.[21]

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[18] *Yambao v. Court of Appeals*, 399 Phil. 712, 718-719 (2000).

[19] Records, Vol. 2.

[20] Records, Vol. 1, pp. 5-6.

[21] *Id.* at 5.

The Order denying petitioner's motion for reconsideration was silent as to the issue of the non-payment of docket fees; however, this Court deems that the RTC must have accepted the explanation given by respondent, otherwise, said court would have dismissed the appeal and reconsidered its decision. The failure to pay docket fees does not automatically result in the dismissal of an appeal, it being discretionary on the part of the appellate court to give it due course or not.[22] This Court will then not interfere with matters addressed to the sound discretion of the RTC in the absence of proof that the exercise of such discretion was tainted with bias or prejudice, or made without due circumspection of the attendant circumstances of the case.[23]

In any case, the more pressing issue is whether or not this Court should even entertain petitioner's appeal.

By filing a Notice of Appeal assailing the RTC Decision, petitioner has availed itself of the remedy provided for under Rule 41 of the Rules of Court, which provides for the ordinary mode of appeal. The CA, however, considered petitioner's choice to be the wrong remedy and, forthwith, dismissed the petition.

After an examination of relevant laws pertinent to herein petition, this Court finds that the CA was correct in holding that petitioner had availed itself of the wrong remedy.

As correctly observed by the CA, under Section 118 of the Local Government Code, the jurisdictional responsibility for settlement of boundary disputes between and among local government units is to be lodged before the proper *Sangguniang Panlungsod* or *Sangguniang Bayan* concerned, if it involves two or more *barangays* in the same city or municipality. Under Section 118(e) of the same Code, if there is a failure of amicable settlement, the dispute shall be formally tried by the *sanggunian* concerned and shall decide the same within (60) days from the date of the certification referred to.[24]

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[22] *Supra* note 18.

[23] See *Spouses Buenaflor v. Court of Appeals*, 400 Phil. 395 (2000).

[24] *Rollo*, p. 39.

Section 119 of the Local Government Code also provides that the decision of the *sanggunian* concerned may be appealed to the RTC having jurisdiction over the area in dispute, within the time and manner prescribed by the Rules of Court.

In the case at bar, it is clear that when the case was appealed to the RTC, the latter took cognizance of the case in the exercise of its appellate jurisdiction, not its original jurisdiction. Hence, any further appeal from the RTC Decision must conform to the provisions of the Rules of Court dealing with said matter. On this score, Section 2, Rule 41 of the Rules of Court provides:

Sec. 2. *Modes of appeal*.

(a) *Ordinary appeal*. – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) **Petition for review**. - **The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by <u>petition for review in accordance with Rule 42</u>**.[25]

Based on the foregoing, it is apparent that petitioner has availed itself of the wrong remedy. Since the RTC tried the case in the exercise of its appellate jurisdiction, petitioner should have filed a petition for review under Rule 42 of the Rules of Court, instead of an ordinary appeal under Rule 41. The law is clear in this respect.

In any case, as in the past, this Court has recognized the emerging trend towards a liberal construction of the Rules of Court. In *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corporation*,[26] this Court stated:

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[25] Emphasis and underscoring supplied.

[26] G.R. No. 168115, June 8, 2007, 524 SCRA 333.

Courts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process. In numerous cases, this Court has allowed liberal construction of the rules when to do so would serve the demands of substantial justice and equity. In *Aguam v. Court of Appeals*, the Court explained:

> The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[27]

Thus, notwithstanding petitioner's wrong mode of appeal, the CA should not have so easily dismissed the petition, considering that the parties involved are local government units

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[27] *Ong Lim Sing Jr. v. FEB Leasing and Finance Corporation*, *supra*, at 343-344.

and that what is involved is the determination of their respective territorial jurisdictions. In the same vein, the CA's strict reliance on the requirements under Section 13 of Rule 44 of the 1997 Rules of Procedure relating to subject index and page references in an appellant's brief is, to stress, putting a premium on technicalities. While the purpose of Section 13, Rule 44, is to present to the appellate court in the most helpful light, the factual and legal antecedents of a case on appeal,[28] said rule should not be strictly applied considering that petitioner's brief before the CA contained only 9 pages, the records of the case consisted only of a few documents and pleadings, and there was no testimonial evidence.

Moving on to the substantive merits of the case, what it basically involves is adjudication as to which *barangay* the lots in dispute belong. Ideally, herein petition should be remanded to the CA, as the same inherently involves a question of fact. However, since this case has been pending for almost 13 years now, this Court deems it best to once and for all settle the controversy.

Petitioner presents the following documents to prove its claim:

1. Copy of a certification from the Office of the Provincial Assessor stating that the area covered by Tax Declaration Nos. 038-00315, 038-00316 and 038-00317 are all within the territorial jurisdiction of Barangay Sangalang, Lemery, Batangas;[29]

2. Copies of Tax Declaration Nos. 038-00315, 038-00316 and 038-00317;[30] and

3. Old Map of Barangay Sangalang.[31]

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[28] *De Liano v. Court of Appeals*, G.R. No. 142316, November 22, 2001, 370 SCRA 349, 361.

[29] Records, p. 15.

[30] *Id.* at 17-19.

[31] *Id.* at 20.

Respondent, for its part, presents the following documents:

1. Certified copy of the cadastral map of the Lemery Cadastre, which was approved on March 17, 1983 by the Director of Lands, Department of Environment and Natural Resources;[32] and

2. Certification of the Community Environment and Natural Resources Office, Department of Environment and Natural Resources dated September 9, 1997.[33]

Article 17, Rule III of the Rules and Regulations Implementing the Local Government Code of 1991, outlines the procedures governing boundary disputes, including the documents that should be attached to the petition, to wit:

> Art. 17. *Procedures for Settling Boundary Disputes*. – The following procedures shall govern the settlement of boundary disputes:
>
> x x x x x x x x x
>
> (c) Documents attached to petition – The petition shall be accompanied by:
>
> 1. Duly authenticated copy of the law or statute creating the LGU or any other document showing proof of creation of the LGU;
>
> 2. Provincial, city, municipal, or *barangay* map, as the case may be, duly certified by the LMB.
>
> 3. Technical description of the boundaries of the LGUs concerned;

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[32] *Id.* at 40.

[33] *Id.* at 41.

TO WHOM IT MAY CONCERN:

I hereby certify that the true location of Lot No. 6649 and Lot No. 6650 is in the territorial jurisdiction of Barangay Maguihan, Lemery Batangas based on Cadastral Map. No. 4 with a latitude of 13-52-45 and longitude of 120-54-30 duly approved by the Regional Director of Land on March 17, 1986.

(Sgd.) Edelberto T. Cadiz
DENR Geodetic Engineer I

4. Written certification of the provincial, city, or municipal assessor, as the case may be, as to territorial jurisdiction over the disputed area according to records in custody;

5. Written declarations or sworn statements of the people residing in the disputed area; and

6. Such other documents or information as may be required by the *sanggunian* hearing the dispute.

The RTC observed that neither of the parties satisfied the requirement that all the enumerated documents must be attached to the petition. Hence, like the RTC, this Court is left with no other option but to select which between the documents presented by the parties carries greater weight in proving its claim. The documents presented by petitioner were sourced from the tax assessor's office, whereas the documents presented by respondent were sourced from the land management bureau. The answer is very apparent and needs little discussion.

To this Court's mind, the presence of the cadastral map, which was approved by the Director of Lands, should be given more weight than the documents sourced by petitioner from the assessor's office. Said map was approved on March 17, 1986, which was approximately 10 years before the controversy in hand developed. Hence, the same should be controlling in the absence of proof that such document is invalid or inaccurate. As a matter of fact, notwithstanding the hearing committee's recommendation to rule in favor of petitioner, the committee itself stated in its report that the cadastral map submitted by respondent was authentic.[34]

Moreover, in ruling against petitioner, the RTC also gave greater weight to the documents submitted by respondent, thus:

x x x This Court is mindful of the fact and takes judicial notice that the Land Management Bureau is manned by geodetic engineers with sufficient expertise and is the cognizant agency of government charged

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[34] *Rollo*, p. 46. "x x x *Sa pagdalo niya ay daladala ang isang mapa na galing daw sa* CENRO/LMB *na sinabi niyang opisyal daw at* authenticated. ***Ang komite ay walang* question *sa* authenticity *ng mapa***, x x x.

with the responsibility of matters respecting surveys of land. This Court likewise takes into consideration that the duty of the provincial and municipal assessors are primarily assessments of taxes.[35]

This Court shares the view of the RTC. It is undisputed that the Land Management Bureau is the principal government agency tasked with the survey of lands, and thus, more weight should be given to the documents relating to its official tasks which are presumed to be done in the ordinary course of business. Between a geodetic engineer and a tax assessor, the conclusion is inevitable that it is the former's certification as to the location of properties in dispute that is controlling, absent any finding of abuse of discretion. As correctly observed by respondent and the RTC, the duty of provincial and municipal assessors is primarily the assessment of taxes and not the survey of lands.

Lastly, petitioner alludes to a petition/resolution allegedly of persons residing in the properties in dispute to the effect they are under the jurisdiction of petitioner. On this note, this Court agrees with the observation of the RTC that the determination as to whether the properties in dispute are within a certain jurisdiction is not a decision to be made by the populace, to wit:

x x x In simple language, the population follows the territory and not vice versa. It is the determination of the ambit and sphere of the land area as culled in the approved *barangay* map that determines the jurisdiction of the *barangay* and not the decision of the populace. To allow the latter will open endless litigation concerning disputes of jurisdiction.[36]

In sum, this Court does not belittle the documents presented by petitioner or the duties of the provincial and municipal assessors; however, since the documents presented by respondent are sourced from the very agency primarily tasked with the survey of lands, more credence must be given to the same in the absence of proof that would cast doubt on the contents thereof.

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[35] *Rollo*, p. 60.

[36] *Id.* at 66.

WHEREFORE, premises considered, the petition is *PARTLY GRANTED*. The October 17, 2002 Decision and August 25, 2003 Resolution of the Court of Appeals in CA-G.R. CV No. 70021 are hereby *REVERSED* and *SET ASIDE*. The April 27, 2000 Decision and December 20, 2000 Order of the Regional Trial Court, Lemery, Batangas, in Barangay Jurisdiction Dispute No. 1, are hereby *AFFIRMED*.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Del Castillo,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 161424. December 23, 2009]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **IGNACIO LEONOR and CATALINO RAZON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT WHEN AFFIRMED BY THE COURT OF APPEALS ARE FINAL AND CONCLUSIVE ON THE SUPREME COURT.— As a rule, the findings of fact of the trial court when affirmed by the CA are final and conclusive on, and cannot be reviewed on appeal by, this Court as long as they are borne out by the records or are based on substantial evidence. The Court is not a trier of facts, its jurisdiction being limited to reviewing only errors of law that may have been committed by the lower courts. But to appease any doubt on the correctness of the assailed ruling, we have carefully perused the records and, nonetheless, arrived at the same conclusion.

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[*] Additional member per Special Order No. 805 dated December 4, 2009.

2. **CIVIL LAW; LAND TITLES AND DEEDS; LAND REVERSION PROCEEDINGS; BURDEN OF PROOF RESTS ON THE PETITIONER TO PROVE THAT THE PROPERTY IS FORESHORE LAND OR THAT THE PATENTS WERE OBTAINED THROUGH FRAUD OR MISREPRESENTATION.—** At the outset, petitioner argues that the burden to prove that the lands in question are alienable and disposable is upon respondents. The argument is out of line. This case is not a land registration proceeding but involves reversion of lands already registered in the names of respondents. At this stage, it would be reasonable to presume that respondents had established that the properties are alienable and disposable considering that they have already succeeded in obtaining free patents and OCTs over the properties. In this reversion proceeding, premised on the claim that the property is foreshore land or that the patents were obtained through fraud or misrepresentation, the burden is now upon petitioner to prove such allegations.

3. **ID.; ID.; ID.; ID.; THE LAND'S PROXIMITY ALONE TO THE WATERS DOES NOT NECESSARILY MAKE IT A FORESHORE LAND.—** x x x [T]he land's proximity alone to the waters alone does not necessarily make it a foreshore land. It must be shown that the land is "between high and low water and left dry by the flux and reflux of the tides" or " between the high and low water marks," which is "alternatively wet and dry according to the flow of the tide."

4. **ID.; ID.; ID.; ID.; FRAUD AND MISREPRESENTATION ARE NEVER PRESUMED, BUT MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE; CASE AT BAR.—** We likewise agree with the CA that petitioner was not able to establish that fraud or misrepresentation attended the application for free patents. In the same way that petitioner has the burden of proving that Lot No. 8617 is a foreshore land, petitioner, as the party alleging that fraud and misrepresentation vitiated the application for free patents, also bears the burden of proof. Fraud and misrepresentation are never presumed, but must be proved by clear and convincing evidence; mere preponderance of evidence is not even adequate. To show that there was fraud, petitioner insists that the three lots do not appear in the cadastral map of Barangay Nonong Castro, which allegedly indicates that they were not cadastrally

surveyed. This is manifestly untrue as the said cadastral map of Lemery Cadastre, Cad. 511, Case 22, clearly includes and indicates the locations of Lot Nos. 8617, 9398 and 9675. Petitioner also cites discrepancies in the description of Lot No. 9398 in the free patent application and in the technical description in OCT No. P-1127. If true, such discrepancies would not necessarily imply that respondents employed fraud or misrepresentation in obtaining the free patent. After all, there was no proof that the lot referred to in the free patent application was different from the lot described in OCT No. P-1127.

5. **ID.; ID.; PUBLIC LAND ACT; FREE PATENT APPLICATION; NOT VIOLATED BY THE MERE OMISSION OF INFORMATION, THOUGH ESSENTIAL, FROM THE PATENT APPLICATION; *IPSO FACTO* CANCELLATION OF THE PATENT, NOT PROPER.—** x x x [P]etitioner points out that in the free patent application for Lot No. 8617, respondent Ignacio Leonor did not indicate the names of his predecessors-in-interest and the date when he began his possession and cultivation of the lot. Petitioner contends that this was in violation of Section 91 of the Public Land Act and, as such, resulted in the *ipso facto* cancellation of the free patent. The mere omission of an information from the patent application, though essential, does not, per se, cause the *ipso facto* cancellation of the patent. It must be shown that the information withheld would have resulted in the disapproval of the free patent application had it been disclosed. The names of the predecessors-in-interest are obviously required to be indicated in the application form in order to show that the applicant has complied with the occupation and cultivation requirement under the law. In this case, petitioner had no evidence showing that respondents had not complied with the occupation and cultivation requirement under the law. Considering this, we are ill-equipped to pronounce the *ipso facto* cancellation of free patents.

6. **ID.; ID.; ID.; ID.; LIST OF CLAIMANTS; CANNOT BE TAKEN AS EVIDENCE THAT THE LOTS THAT WERE NOT INCLUDED THEREIN WERE NOT CADASTRALLY SURVEYED OR THAT ONLY THE CLAIMANTS NAMED THEREIN HAD RIGHTS OVER THAT PARTICULAR LOT;**

ELUCIDATED.— x x x The list also does not include Lot No. 9675, which petitioner claims is an indication that the lot was not cadastrally surveyed. Again, we are not convinced. Undoubtedly, the list of claimants is evidence that the lots enumerated therein were cadastrally surveyed, and that the name indicated after each lot number was that of the claimant of the lot at the time of the survey. But despite Atty. Apuhin's testimony, the list cannot be given weight particularly with respect to lots not included therein. In other words, the list cannot be taken as evidence that lots that were not included in the list were not cadastrally surveyed or that only the claimants named therein had rights over that particular lot. This is only reasonable considering that it is not even known, for sure, when the list was made, how it was prepared, and how often it was updated. Atty. Apuhin's testimony on the preparation of the list and on there being no other list for other lots in Barangay Nonong Castro is not worthy of credence. He admitted during trial that he was not privy to the preparation of the list. Apparently, he was also not the actual custodian of the list since a certain Florencio V. Carreon, Chief, Records Unit, certified the copy of the list. x x x

7. **ID.; ID.; ID.; ID.; ID.; ID.; ARGUMENT OF PETITIONER THAT THE NAMES OF THE PREDECESSORS OF ONE OF THE RESPONDENTS ARE FICTITIOUS PERSONS, AS THEIR NAMES DO NOT APPEAR IN THE LIST OF CLAIMANTS, HAS NO MERIT; EXPLAINED.—** With regard to Lot No. 9398, petitioner argues that the names of the predecessors of Ignacio Leonor — Vicente de Roxas, Moises and Ricardo Peren — listed in the application form for the free patent are fictitious persons, as their names do not appear in the List of Claimants. x x x We also do not believe that Moises and Ricardo Peren and Vicente de Roxas are fictitious persons. From the investigation conducted by Atty. Apuhin, he learned that Moises Peren executed a Waiver of Real Rights on June 16, 1986 in favor of Ignacio Leonor. It also appears from the records that these persons were respondents in a case for *accion reivindicatoria* and quieting of title filed by Luisa Ilagan.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Feliciano S. Landicho for respondents.

DECISION

NACHURA, *J.*:

This is a petition for review on *certiorari* of the Court of Appeals (CA) Decision[1] dated December 19, 2003. The assailed decision adjudged the cancellation of the free patents and original certificates of title (OCTs) over two of the five lots in question in favor of petitioner.

The antecedents of the case are as follows:

On December 16, 1991, petitioner Republic of the Philippines, represented by the Regional Executive Director, Department of Environment and Natural Resources (DENR), Region IV, through the Office of the Solicitor General, filed separate complaints for Cancellation of Free Patent and OCT and Reversion against respondents Ignacio Leonor and Catalino Razon. The complaints involved the following properties:

1. In Civil Case No. 55-91: Free Patent No. (IV-3A)-2182, covered by OCT No. P-1676 in the name of Ignacio Leonor, over Lot No. 10108, Cad. 511, Lemery Cadastre with an area of 722 square meters;
2. In Civil Case No. 56-91: Free Patent No. (IV-3A)-2181, covered by OCT No. P-1675 in the name of Ignacio Leonor, over Lot No. 8617, Cad. 511, Lemery Cadastre with an area of 706 square meters;
3. In Civil Case No. 57-91: Free Patent No. (IV-3A)-2180, covered by OCT No. P-1674 in the name of Catalino Razon, over Lot No.10109, Cad. 511, Lemery Cadastre, with an area of 722 square meters;
4. In Civil Case No. 58-91: Free Patent No. (IV-3A)-1891, covered by OCT No. P-1127 in the name of Ignacio Leonor, over Lot No. 9398, Cad. 511, Lemery Cadastre with an area of 2,066 square meters;

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Eubulo G. Verzola and Edgardo F. Sundiam, concurring; *rollo,* pp. 35-46.

5. In Civil Case No. 59-91: Free Patent No. (IV-3A)-1892, covered by OCT No. P-1128 in the name of Catalino Razon, over Lot No. 9675, Cad. 511, Lemery Cadastre with an area of 1,944 square meters.[2]

In Civil Case Nos. 55-91,[3] 56-91[4] and 57-91,[5] the complaints averred that, in an investigation conducted by DENR-Region IV, it was ascertained that Lot Nos. 10108, 8617 and 10109 were part of the non-disposable foreshore land and did not appear in the cadastral map or in the cadastral records as having been officially surveyed by the DENR. These defects allegedly constituted fraud which, in effect, *ipso facto* cancelled the free patents and the corresponding OCTs.

In contrast, the complaints in Civil Case Nos. 58-91[6] and 59-91[7] alleged that, on the basis of a protest filed by Luisa Ilagan *Vda. de* Agoncillo who claimed to be in possession of Lot Nos. 9398 and 9675 since time immemorial, an investigation was conducted by the DENR wherein it was discovered that (1) although the said lots appeared in the cadastral map, they were not cadastrally surveyed or approved cadastral lots as evidenced by the Alphabetical and Numerical List of Claimants; (2) the lots were verified to be part of the early survey conducted on June 22, 1977 and identified as Lot No. 6192 of Cadastre 511, Lemery Cadastre, subsequently covered by Plan SWO-4A-000306-D in the name of Luisa Ilagan; and (3) Lot Nos. 9398 and 9675 were conveyed to respondents, respectively, through an "Affidavit of Relinquishment of Rights" executed on November 27, 1986 by a certain Anacleto Serwelas who had no right whatsoever over the land. The complaints further averred that serious discrepancies existed among the technical descriptions appearing in the certificates of title, the cadastral

[2] *Id.* at 36-37.

[3] *Id.* at 56-60.

[4] *Id.* at 77-80.

[5] *Id.* at 96-100.

[6] *Id.* at 117-122.

[7] *Id.* at 139-144.

map and the transfer of rights. These defects, according to the complaint, also constituted fraud which, in effect, *ipso facto* cancelled the said patents and the corresponding OCTs.

On February 10, 1992, respondents filed their separate answers[8] uniformly stating as follows: (1) the free patents were issued in accordance with existing law and procedure; (2) the subject lots were surveyed by Geodetic Engineer Alexander Jacob of the Bureau of Lands and inspected and certified to be alienable and disposable by the Land Inspector of the Bureau of Lands; (3) the right of action for the cancellation of the same had already prescribed since more than one year had already lapsed since the free patents were issued; (4) they had been in continuous, exclusive and notorious possession and occupation of the lots for more than 30 years and they had developed them into a beach resort, with valuable facilities; and (5) the subject lots were not investigated by the DENR-Region IV and there was no resolution issued by the said office to that effect.

Luisa Ilagan was allowed to intervene in Civil Case Nos. 58-91 and 59-91. She claimed that Lot Nos. 9398 and 9675 were part of the parcel of land that she owned, designated as Lot No. 6192, Cad-511-D of the Lemery Cadastre and covered by Tax Declaration No. 0527; that this parcel of land was surveyed on June 22, 1977 and Plan SWO-4A-000306-D was approved on April 18, 1980; that she had been in peaceful possession of the subject land for more than 60 years but, because of old age, she failed to visit and supervise the land; that Anacleto Serwelas was her tenant who took advantage of her absence and succeeded in selling the western portion of the subject land in favor of respondents, without her knowledge and consent; and that in 1987, she learned of respondents' applications for free patent and of the issuance of the OCTs in their names; hence, she filed a formal protest with the DENR asking for an investigation.[9]

In answer to these allegations, respondents averred that Luisa Ilagan had already sold her properties to her tenants, and that

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[8] *Id.* at 161-189.

[9] *Id.* at 191-200.

Plan SWO-4A-000304 in her name was rejected by the Bureau of Lands as shown in the Cadastral Map of Lemery Cadastre, Cad. 511, Case 22.[10] Luisa Ilagan replied that the rejection of Plan SWO-4A-000304 was null and void for lack of notice. She insisted that respondents had no right over the subject lots since they acquired them from Anacleto Serwelas, who was not the owner of the properties.

On June 14, 2000, the Regional Trial Court rendered a decision in favor of respondents, thus:

> WHEREFORE, for insufficiency of evidence presented by the plaintiff Republic of the Philippines and the Intervenor, to prove that fraud was committed to acquire the title of the land in dispute, all the above five entitled cases are hereby ordered DISMISSED for lack of merit.
>
> IT IS SO ORDERED.[11]

The heirs of Luisa Ilagan and the petitioner filed separate appeals with the CA.

On February 11, 2002, the CA partially granted petitioner's prayers. It declared that two of the five lots—Lot Nos. 10108 and 10109—are foreshore lands. The CA noted that (a) serious discrepancies exist between the cadastral map and the technical description in the OCTs covering these two lots; (b) the said lots do not appear in the cadastral map; (c) Atty. Raymundo L. Apuhin, petitioner's witness, testified that the said lots were not surveyed and approved by the DENR; and (d) they do not appear to be covered by corresponding tax declarations. Based on the foregoing, the CA concluded that these two lots are foreshore lands. Consequently, it ordered the cancellation of Free Patent No. (IV-3A)-2182 and OCT No. P-1676 over Lot No. 10108 and Free Patent No. (IV-3A)-2180 and OCT No. P-1674 over Lot No. 10109. As for Lot Nos. 8617, 9398 and 9675, the CA sustained the trial court's finding that there was no sufficient evidence to prove that they are foreshore lands or part of Luisa Ilagan's property. The dispositive portion of the decision reads:

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[10] *Id.* at 202-203, 218-219.

[11] *Id.* at 419-420.

WHEREFORE, premises considered, the assailed decision dated June 14, 2000 of the RTC, Branch 5, Lemery, Batangas in Civil Cases Nos. 55-91 to 59-91 is hereby AFFIRMED with MODIFICATION. Free Patent No. (IV-3A)-2182 with the corresponding OCT No. P-1676 in the name of Ignacio Leonor over Lot No. 10108, and Free Patent No. (IV-3A)-2180 with the corresponding OCT No. P-1674, in the name of Catalino Razon over Lot [No.] 10109 are hereby ordered CANCELLED from the Registry of Deeds of Batangas.

The rest of the decision stands.

SO ORDERED.[12]

This petition for review on *certiorari* seeks the reversion of Lot Nos. 8617, 9398 and 9675 to petitioner. On this score, petitioner ascribes the following error to the appellate court:

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW WHEN IT SUSTAINED THE VALIDITY OF THE THREE SUBJECT FREE PATENTS AND TITLES ALBEIT THEY PERTAIN TO INALIENABLE FORESHORE LANDS AND DESPITE THE FRAUDULENT ENTRIES IN RESPONDENTS' FREE PATENT APPLICATIONS.[13]

Petitioner argues that the lands are inalienable foreshore lands. It points out that the five lots comprise the whole Leonor Beach Resort and that when the technical descriptions of the subject lots were plotted on the cadastral map of Barangay Nonong Castro, the lots were identified as foreshore lands, which are not capable of appropriation.[14] Petitioner adds that the burden is on respondents to prove that the lands that have been registered in their names are alienable and disposable.[15]

Petitioner further contends that, assuming that the subject lands are not foreshore lands, the free patents should nonetheless be cancelled, because respondents committed fraud and made misrepresentations in their free patent applications in that (a)

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[12] *Id.* at 45-46.

[13] *Id.* at 20.

[14] *Id.* at 22-23.

[15] *Id.* at 24-A.

they declared that the subject lots were cadastrally surveyed when, in truth, they do not appear in the approved Cadastral Plan of Lemery, Batangas, Cad. 511, Case 22; (b) respondent Ignacio Leonor declared that he acquired Lot No. 9398 from Moises and Ricardo Peren and Vicente de Roxas, whose names do not however appear on the lists of claimants for Barangay Nonong Castro, Case 22, Lemery Cadastre, indicating that they are fictitious persons; (c) respondent Ignacio Leonor failed to enter the names of his predecessors-in-interest as to Lot No. 8617, as required in the free patent application; (d) serious discrepancies were noted in the description of Lot No. 9398 in the application for free patent and in the technical description in OCT No. P-1127; and (e) Lot No. 9675 does not appear in the lists of claimants.[16]

Incidentally, it should be pointed out that, other than Lot Nos. 10108 and 10109, only Lot No. 8617 was alleged in the complaint (Civil Case No. 59-91) to be part of the indisposable foreshore land. In fact, there is no piece of evidence pointing to Lot Nos. 9398 and 9675 as being foreshore lands. Petitioner seeks the cancellation of the free patents over Lot Nos. 9398 and 9675 solely on the ground that they were procured through fraud and misrepresentation.

The Court finds that the petition has no merit.

As a rule, the findings of fact of the trial court when affirmed by the CA are final and conclusive on, and cannot be reviewed on appeal by, this Court as long as they are borne out by the records or are based on substantial evidence. The Court is not a trier of facts, its jurisdiction being limited to reviewing only errors of law that may have been committed by the lower courts.[17] But to appease any doubt on the correctness of the assailed ruling, we have carefully perused the records and, nonetheless, arrived at the same conclusion.

To be sure, petitioner was not able to adequately establish that Lot No. 8617 is a foreshore land or that the free patents

[16] *Id.* at 25-27.

[17] *Prudential Bank v. Lim,* G.R. No. 136371, November 11, 2005, 474 SCRA 485, 491.

covering Lot Nos. 8617, 9398 and 9675 were procured through fraud or misrepresentation.

At the outset, petitioner argues that the burden to prove that the lands in question are alienable and disposable is upon respondents. The argument is out of line. This case is not a land registration proceeding but involves reversion of lands already registered in the names of respondents. At this stage, it would be reasonable to presume that respondents had established that the properties are alienable and disposable considering that they have already succeeded in obtaining free patents and OCTs over the properties. In this reversion proceeding, premised on the claim that the property is foreshore land or that the patents were obtained through fraud or misrepresentation, the burden is now upon petitioner to prove such allegations.

With regard to Lot No. 8617, the records reveal that the only piece of evidence alluding to this lot being foreshore land is the testimony of Atty. Apuhin of the DENR-Region IV, which is quoted as follows:

Q- And what did you find in relation to the Free Patent No. (IV-3A) 2180 insofar as that plotting made by the Legal Division of the DENR is concerned?
A- In my request, I found out that x x x Lot No. 8617 is a foreshore lot.

Q- How about the survey record, what did you find insofar as Lot No. 8617 is concerned?
A- In verification with the Survey Division, Lot No. 8617 is definitely a part of [the] foreshore lot as shown in the approved cadastral map of Lemery.

Q- By the way, when you speak of foreshore lot, what do you mean?
A- It is an area covered by the flow of tide in its highest equational tide which is 20 meters from the highest equational tide.

Q- If it is a foreshore land, can it be the subject of Free Patent application?
A- No, sir.

x x x x x x x x x

Q- After conducting the necessary investigation insofar as Lot 8617 is concerned, what is your conclusion?

A- After conducting the necessary investigation insofar as Lot 8617 is concerned, Lot 8617 is a foreshore lot.

Q- If it is a foreshore lot, what is your conclusion?
A- A foreshore lot cannot be the subject of acquisition [of] Free Patent.

Q- If it cannot be the subject of acquisition, what is the effect on the application for Free Patent of x x Lot No. 8617?
A- The application for x x x Free Patent should not have been approved.[18]

Certainly, Atty. Apuhin's testimony fails to convince us. The interview markedly lacks details as to how he conducted an investigation to determine whether Lot No. 8617 is foreshore land or an explanation as to how he arrived at his conclusion. Although it was stated in the records that Atty. Apuhin conducted an ocular inspection, his only finding on the basis of this inspection was that the lots had already been developed as a beach resort. In his direct testimony, he vaguely stated that the lot is foreshore land as shown in the cadastral map. We have examined the said cadastral map of Barangay Nonong Castro, Lemery, Batangas but we noticed that it does not indicate, in any way, that Lot No. 8617 is foreshore land. What is obvious in the said map is that the lot is close to the waters of Balayan Bay. However, the land's proximity alone to the waters alone does not necessarily make it a foreshore land.[19] It must be shown that the land is "between high and low water and left dry by the flux and reflux of the tides" or "between the high and low water marks," which is "alternatively wet and dry according to the flow of the tide."[20]

We likewise agree with the CA that petitioner was not able to establish that fraud or misrepresentation attended the application for free patents. In the same way that petitioner has the burden of proving that Lot No. 8617 is a foreshore land,

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[18] TSN, May 2, 1995, pp. 6-8.

[19] See *Republic of the Phils. v. Alagad,* 251 Phil. 406 (1989).

[20] *Republic of the Phils. v. Court of Appeals,* 476 Phil. 693, 701 (2004).

petitioner, as the party alleging that fraud and misrepresentation vitiated the application for free patents, also bears the burden of proof.[21] Fraud and misrepresentation are never presumed, but must be proved by clear and convincing evidence; mere preponderance of evidence is not even adequate.[22]

To show that there was fraud, petitioner insists that the three lots do not appear in the cadastral map of Barangay Nonong Castro, which allegedly indicates that they were not cadastrally surveyed. This is manifestly untrue as the said cadastral map of Lemery Cadastre, Cad. 511, Case 22, clearly includes and indicates the locations of Lot Nos. 8617, 9398 and 9675.

Petitioner also cites discrepancies in the description of Lot No. 9398 in the free patent application and in the technical description in OCT No. P-1127. If true, such discrepancies would not necessarily imply that respondents employed fraud or misrepresentation in obtaining the free patent. After all, there was no proof that the lot referred to in the free patent application was different from the lot described in OCT No. P-1127.

Further, petitioner points out that in the free patent application for Lot No. 8617, respondent Ignacio Leonor did not indicate the names of his predecessors-in-interest and the date when he began his possession and cultivation of the lot. Petitioner contends that this was in violation of Section 91[23] of the Public Land Act and, as such, resulted in the *ipso facto* cancellation of the free patent.

The mere omission of an information from the patent application, though essential, does not, per se, cause the *ipso*

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[21] *Spouses Morandarte v. Court of Appeals,* 479 Phil. 870 (2004).

[22] *Id.*

[23] Sec. 91 of the Public Land Act provides:

The statements made in the application shall be considered as essential conditions and parts of any concession, title, or permit issued on the basis of such application, and any false statement therein or omission of facts altering, changing, or modifying the considerations of the facts set forth in such statements, and any subsequent modification, alteration, or change of the material facts set forth in the application shall *ipso facto* produce the cancellation of the concession, title, or permit granted.

facto cancellation of the patent. It must be shown that the information withheld would have resulted in the disapproval of the free patent application had it been disclosed. The names of the predecessors-in-interest are obviously required to be indicated in the application form in order to show that the applicant has complied with the occupation and cultivation requirement under the law. In this case, petitioner had no evidence showing that respondents had not complied with the occupation and cultivation requirement under the law. Considering this, we are ill-equipped to pronounce the *ipso facto* cancellation of free patents.

With regard to Lot No. 9398, petitioner argues that the names of the predecessors of Ignacio Leonor — Vicente de Roxas, Moises and Ricardo Peren — listed in the application form for the free patent are fictitious persons, as their names do not appear in the List of Claimants. The list also does not include Lot No. 9675, which petitioner claims is an indication that the lot was not cadastrally surveyed.

Again, we are not convinced. Undoubtedly, the list of claimants is evidence that the lots enumerated therein were cadastrally surveyed, and that the name indicated after each lot number was that of the claimant of the lot at the time of the survey. But despite Atty. Apuhin's testimony, the list cannot be given weight particularly with respect to lots not included therein. In other words, the list cannot be taken as evidence that lots that were not included in the list were not cadastrally surveyed or that only the claimants named therein had rights over that particular lot. This is only reasonable considering that it is not even known, for sure, when the list was made, how it was prepared, and how often it was updated.

Atty. Apuhin's testimony on the preparation of the list and on there being no other list for other lots in Barangay Nonong Castro is not worthy of credence. He admitted during trial that he was not privy to the preparation of the list. Apparently, he was also not the actual custodian of the list since a certain Florencio V. Carreon, Chief, Records Unit, certified the copy of the list. Atty. Apuhin's ignorance on this matter is made more apparent by the following testimony:

Q- You were a privy in the preparation of the list?
A- I am not.

Q- Since you were not a privy to the preparation of the list[,] you must have inquired how often was the list prepared[.] The list given to you was the list on the approved Cadastral Survey?
A- Case No. 22.

Court:

Q- The question of the Court is that, constantly this list is revised because of the approval of certain claimants in relation to the approved survey?
A- Yes, sir.

Q- As you inquired, what was the date when this list shown to you alphabetically was approved?
A- It was approved on March 12, 1987.

Q- Because the alphabetical list is based on that?
A- Yes, sir.

x x x x x x x x x

Q- Do you know, based on record when the cadastral survey was implemented, that cadastral survey which was approved on March 12, 1987?
A- I did not see.

Q- This list of claimants, they are listed while the cadastral survey is being done?
A- Yes, sir.

Q- Based on the approved survey plan?
A- Yes, sir.

Q- It would appear at the time of the survey?
A- Yes, sir.

Q- The survey plan is approved later on?
A- Yes, sir.

Q- On your own knowledge based on the investigation, was there any list subsequent to March 12, 1987 released by the DENR?
A- None, sir.

Q- But you look[ed] at this application on your investigation?

A- Yes, sir.

Q- And you affirm that this was the last list of claimants alphabetically done in relation to [Barangay] Nonong Castro?

A- Yes, sir.

Fiscal:

Q- Aside from this list of claimants, has there been other list of claimants, prior list?

A- I have no knowledge.[24]

We also do not believe that Moises and Ricardo Peren and Vicente de Roxas are fictitious persons. From the investigation conducted by Atty. Apuhin, he learned that Moises Peren executed a Waiver of Real Rights on June 16, 1986 in favor of Ignacio Leonor.[25] It also appears from the records that these persons were respondents in a case for *accion reivindicatoria* and quieting of title filed by Luisa Ilagan.[26]

From the foregoing, the dearth of petitioner's evidence is glaring. DENR-Region IV did not conduct a thorough investigation of the alleged irregularities imputed to respondents in obtaining the free patents. There was not even a written report on the investigation submitted to the court. In view of this, we are constrained to sustain the findings of both the trial court and the appellate court and to deny the petition.

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals Decision dated December 19, 2003 is *AFFIRMED*.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Del Castillo,*[*] *JJ.,* concur.

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[24] TSN, November 24, 1993, pp. 5-6.

[25] TSN, November 18, 1993, p. 14.

[26] Exhibit 26, Folder of Exhibits.

[*] Additional member per Special Order No. 805 dated December 4, 2009.

FIRST DIVISION

[G.R. No. 170476. December 23, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICARDO GRANDE,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; GUIDING PRINCIPLES IN THE REVIEW OF RAPE CASES.—** This Court enumerated in *People v. San Antonio, Jr.* the guiding principles in the review of rape cases, to wit: x x x *First*, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction. *Second*, the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense. *Third*, unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal. *Fourth*, an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; and *Fifth*, in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution.

2. **CRIMINAL LAW; CRIMES AGAINST CHASTITY; RAPE; ARTICLE 335 OF THE REVISED PENAL CODE; GOVERNING LAW AT THE TIME OF THE COMMISSION OF THE CRIME; ELEMENTS.—** Article 335 of the Revised Penal Code, the governing law at the time of the commission of the crime, provides when and how rape is committed, *viz.*: Art. 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. Thus, for conviction in the crime of rape as alleged in the Information, the following elements

must be proved beyond reasonable doubt: *(1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished through the use of force or intimidation.*

3. REMEDIAL LAW; EVIDENCE; SWEETHEART DEFENSE; NOT ESTABLISHED WITH CONVINCING EVIDENCE; EXPLAINED.— Accused-appellant's invocation of the *sweetheart theory* fails to inspire belief for dire lack of convincing proof. In *People v. San Antonio, Jr.,* the Court held: The "sweetheart defense" is a much-abused defense that rashly derides the intelligence of the Court and sorely tests its patience. Being an affirmative defense, it must be established with convincing evidence – by some documentary and/or other evidence like mementos, love letters, notes, pictures and the like. Likewise, the "sweetheart theory" appellant proffers is effectively an admission of carnal knowledge of the victim and consequently places on him the burden of proving the supposed relationship by substantial evidence. To be worthy of judicial acceptance, such a defense should be supported by documentary, testimonial or other evidence. x x x Other than his self-serving assertions, no other evidence was proffered by accused-appellant to establish the existence of a romantic relationship between him and the victim. Thus, the RTC correctly disregarded the defense raised by the accused-appellant that an amorous relationship exists between him and AAA when it held as follows: x x x [T]he accused's allegation of an amorous relationship with the private complainant is unworthy of credence. It must be noted that [AAA] was a girl of fifteen and a barrio lass, while accused [was] in his twenties at the time of the incident. Other than [accused's] self-serving testimony, no other evidence, like love letters, mementos or pictures were presented to prove his alleged relationship with [AAA]. x x x Neither was there any corroborative testimony supporting this alleged voluntary amorous liaison. In fact, [AAA] never mentioned that they were even friends. x x x This is not even a case of consenting adults for the victim was only fifteen years old at the time she was raped by the accused. Moreover, there was no evidence whatsoever of any romantic relationship between them. The total absence of corroborative evidence to support the defense of accused-appellant is highlighted by his failure to present as his witnesses any of AAA's classmates whom he claimed knew of their relationship. Hence, the CA,

like the RTC, correctly found accused-appellant's sweetheart theory self-serving which *deserved neither probative weight nor value.*

4. **ID.; ID.; ID.; A WEAK DEFENSE, THE PRESENCE OF WHICH DOES NOT AUTOMATICALLY NEGATE THE COMMISSION OF RAPE.—** In any event, this Court has held often enough that love is not a license for because *a man does not have the unbridled license to subject his beloved to his carnal desires*. *People v. Napudo* ruled that: x x x the *sweetheart defense* is considered an uncommonly weak defense because its presence does not automatically negate the commission of rape. *The gravamen of the crime is sexual congress of a man with a woman without her consent*. Hence, notwithstanding the existence of a romantic relationship, a woman cannot be forced to engage in sexual intercourse against her will.

5. **ID.; ID.; CREDIBILITY OF WITNESSES; TRIAL COURT'S OBSERVATIONS AND CONCLUSIONS DESERVE GREAT RESPECT AND ARE OFTEN ACCORDED FINALITY; RATIONALE.—** AAA's testimony bears all the hallmarks of truth which cannot be defeated by accused-appellant's bare denial. Thus, this Court cannot but concur with the RTC's conclusion as to the credibility of AAA's testimony, which the CA also upheld. Time and again, we have held that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the result of the case. This is as it should be for the following reasons, which we quote: x x x The trial judge enjoys the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" – all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were

overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they are lying. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.

6. ID.; ID.; ID.; TESTIMONY OF A YOUNG VICTIM IN A RAPE CASE IS ACCORDED GREAT WEIGHT.— x x x [T]he testimony of a young victim in a rape case is accorded great weight, as explained in *People v. San Antonio, Jr.*: x x x it is settled that no woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. Testimonies of child-victims are given full faith and credit, since when a girl says she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity. It is also an accepted doctrine that in the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence.

7. CRIMINAL LAW; CRIMES AGAINST CHASTITY; RAPE; ARTICLE 335 OF THE REVISED PENAL CODE; PENALTY.— x x x [W]e find that the evidence adduced by the prosecution constituted proof beyond reasonable doubt to convict the accused-appellant of the crime of simple rape which, under Article 335 of the Revised Penal Code, is punishable by the single indivisible penalty of *reclusion perpetua*. Under Article 63 of the same law, it is provided that in all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

8. CIVIL LAW; DAMAGES; MORAL DAMAGES AND CIVIL INDEMNITY ARE CORRECTLY AWARDED IN CASE AT BAR.— In simple rape, the Court awards ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages to the rape victim. As the award of moral damages is separate and distinct from the civil indemnity awarded to rape victims, moral damages

cannot take the place of civil indemnity, which is actually in the nature of actual or compensatory damages, and is mandatory upon the finding of the fact of rape. Hence, the CA correctly awarded ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages to the victim.

9. ID.; ID.; EXEMPLARY DAMAGES; AWARD THEREOF IS PROPER WHEN CRIME WAS COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTANCES AS IN CASE AT BAR.— The CA, however, failed to award exemplary damages in this case. Under Article 2230 of the New Civil Code, in criminal offenses, exemplary damages as part of civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Here, the aggravating circumstances of dwelling and nighttime were alleged in the Information as having attended the commission of the crime of rape. However, while the circumstance of dwelling was proven as it was shown that the rape was committed inside the boarding house where the victim was staying, the circumstance of nighttime was not since there was no sufficient showing that the accused-appellant purposely waited until late in the night before consummating his carnal desire for the victim. In view thereof, the amount of ₱25,000.00 must additionally be awarded to the victim by way of exemplary damages.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J*.:

Under review is the **Decision**[1] **dated August 18, 2005** of the Court of Appeals (CA) in *CA-G.R. CR.-HC No. 00587* finding accused-appellant **Ricardo Grande *alias* "Ricardo Sayno"** guilty beyond reasonable doubt of the crime of Rape and sentencing

[1] Penned by Associate Justice Rosmari D. Carandang with Associate Justices Remedios A. Salazar-Fernando and Monina Arevalo-Zenarosa, concurring; *rollo*, pp. 3-11.

him to suffer the penalty of *reclusion perpetua* and to pay the victim the amounts of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages. The said CA decision affirmed the January 8, 2001 decision of the Regional Trial Court (RTC), Branch 38, Daet, Camarines Norte, with modification since the RTC only awarded ₱50,000.00 as damages to the victim.

The Information[2] dated November 6, 1997, filed with the RTC, charges the accused-appellant with the crime of Rape. The accusatory portion of the Information reads:

> That on or about 11:00 in the evening of August 21, 1997, at Purok 1-A, Brgy. San Roque, Mercedes, Camarines Norte, and within the jurisdiction of this Honorable Court, the above-named accused motivated by bestial lust, and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously, had carnal knowledge on one [AAA], a minor, 15 years of age, against her will, to her damage and prejudice.
>
> That the crime was committed with the aggravating circumstance of nocturnity and that it was committed in the dwelling of the offended party, the latter not having given provocation thereon.

When arraigned, accused-appellant pleaded not guilty to the charge. During the trial, the prosecution presented the testimonies of the victim herself, AAA; a neighbor, Anthony Valencia; and Dr. Marcelito B. Abas, the medico-legal officer. The testimony of AAA's mother was dispensed with considering that the defense admitted the purpose for which said testimony was being offered.[3] For the same reason, the testimony of radio reporter Ric Palacio as to the latter's interview with AAA was likewise dispensed with.[4] The defense, on the other hand, presented only the accused-appellant. The gist of the divergent positions of the parties on the antecedents of this case is quoted from the CA decision, as follows:[5]

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

[3] TSN, October 12, 1998, p. 3.

[4] TSN, January 20, 1999, pp. 2-3.

[5] *Rollo*, pp. 4-6.

In August 1997, fifteen year old student [AAA] was renting a room in a boarding house at Purok 1-A, Barangay San Roque, Mercedes, Camarines Norte. In the night of 21 August 1997, [AAA] was roused from her sleep by accused-appellant who was on top of her and in the act of removing her shirt. Accused-appellant who was already naked from the waist down, pressed on [AAA] keeping the latter's hands crossed on her chest and lowered her loose garter shorts and panty down to her knees. He then inserted his penis inside [AAA]'s private part and made pumping motions causing unbearable pain to the poor teenager. All this time, [AAA] pushed her attacker away but her efforts proved futile for accused-appellant was quite heavy for the fifteen year old. Accused-appellant's push and pull motion lasted for about five minutes. After satisfying his lust and before leaving, accused-appellant talking slowly threatened [AAA] not to report what happened or he would kill her and the latter's parents. After that and while still hurting from the pain in her private part, [AAA] fixed her disheveled self and retreated to one side of her room crying. That night she couldn't bring herself to sleep. Still shaken, [AAA] stayed in her room the next morning. At 10:00 o'clock the following morning, [AAA]'s mother arrived. She wasted no time and reported the incident to her mother. Accompanied by their neighbor *Tiang Azon*, [AAA] went to Bombo Radio the next day to request for assistance. On 24 August 1997, [AAA] and her mother went to the police. Assisted by her mother, [AAA] executed a sworn statement narrating the incident. The following day, they went to the Camarines Norte Provincial Hospital for medical examination. The Medico-Legal Officer, Dr. Marcelito Abas, conducted the medical examination and made the following findings:

"GENITAL EXAMINATION:
= Healed hymenal laceration at 3-7-9-12 o'clock;
= Vagina admits one (1) finger easily"

For his defense, 25-year old accused-appellant claimed that he and [AAA] were lovers. According to him, [AAA] was introduced to him by a cousin of the former sometime in June 1996. Thereafter, accused-appellant courted her for two days before winning her heart. Then, he left for Sariaya, Quezon for a year. When he returned to Camarines Norte, he courted [AAA] again. Again, [AAA] "answered" him. Thereafter, accused-appellant would frequent the boarding house of [AAA] every afternoon. Sometimes, he would go there at night. Still according to accused-appellant, they had gone out on dates and had sexual intercourse with [AAA] before the complained incident.

On that fateful night of 21 August 1997, accused-appellant admitted that he was at the boarding house of [AAA] with two of the latter's classmates. Shortly thereafter, the classmates asked permission to leave and accused-appellant was left in the boarding house with [AAA]. Accused-appellant claimed that they subsequently had sex.

In a decision[6] dated January 8, 2001, the RTC found the accused-appellant guilty beyond reasonable doubt of the crime of rape as it brushed aside as unworthy of credence the latter's allegation regarding the existence of an amorous relationship between him and the victim. Dispositively, the decision states:

WHEREFORE, premises considered, having found the accused Ricardo Grande alias "Ricardo Sayno" guilty beyond reasonable doubt for the crime of Rape, he is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and to pay the offended party the amount of ₱50,000.00, as damages.

SO ORDERED.

The case was directly elevated to this Court for automatic review. However, in a Resolution[7] dated December 6, 2004, and pursuant to our ruling in *People v. Mateo,*[8] the case was transferred to the CA.

In its **Decision dated August 18, 2005,** the CA affirmed the decision dated January 8, 2001 of the RTC but granted an additional monetary award in the amount of ₱50,000.00 to the victim. In full, the dispositive portion of the decision reads:

WHEREFORE, the decision of the Regional Trial Court, Branch 38, Daet, Camarines Norte, Criminal Case No. 9165 is hereby AFFIRMED. Accused-appellant Ricardo Grande *alias* "Ricardo Sayno" is found guilty beyond reasonable doubt of the crime of simple rape and is sentenced to *reclusion perpetua*. Accused-appellant is ordered to pay the victim, [AAA], ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

SO ORDERED.

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[6] CA *rollo,* pp. 16-20.

[7] *Id.* at 96.

[8] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

The case was elevated to this Court by the CA for further review.

In a Resolution[9] dated February 20, 2006, the Court required the parties to file their respective supplemental briefs. In their respective Manifestations,[10] the parties waived the filing of supplemental briefs and instead adopted their respective briefs filed before the CA.

Accused-appellant contends that the trial court committed errors: 1) in completely ignoring the sweetheart theory interposed by the accused-appellant; and 2) in finding him guilty beyond reasonable doubt of the crime of rape which the plaintiff-appellee refuted.

We sustain the conviction of accused-appellant.

A rape charge is a serious matter with pernicious consequences both for the appellant and the complainant; hence, utmost care must be taken in the review of a decision involving conviction of rape.[11]

This Court enumerated in *People v. San Antonio, Jr.*[12] the guiding principles in the review of rape cases, to wit:

> x x x *First*, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction. *Second*, the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense. *Third*, unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal. *Fourth*, an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; and *Fifth*, in view of the intrinsic nature of the crime of rape where only

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[9] *Rollo*, p. 12.

[10] *Id.* at 13-14 and 15-16.

[11] *People v. San Antonio, Jr.,* G.R. No. 176633, September 5, 2007, 532 SCRA 411, 424.

[12] *Id.* at 424-425.

two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution.

With the aforementioned principles in mind, we shall now resolve the case before us.

Article 335 of the Revised Penal Code, the governing law at the time of the commission of the crime,[13] provides when and how rape is committed, *viz.*:

> Art. 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.

Thus, for conviction in the crime of rape as alleged in the Information, the following elements must be proved beyond reasonable doubt: *(1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished through the use of force or intimidation.*[14]

Accused-appellant does not deny the sexual intercourse between him and AAA that took place on August 21, 1997, the precise date mentioned in the Information. However, as to the second element of the crime, accused-appellant asserts an exculpatory claim that it was consensual sex because he and AAA were sweethearts.

Accused-appellant's invocation of the *sweetheart theory* fails to inspire belief for dire lack of convincing proof.

In *People v. San Antonio, Jr.,*[15] the Court held:

> The "sweetheart defense" is a much-abused defense that rashly derides the intelligence of the Court and sorely tests its patience. Being an affirmative defense, it must be established with convincing

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[13] Republic Act No. 8353 or the Anti-Rape Law of 1997 took effect on October 22, 1997.

[14] *People v. Baldo*, G.R. No. 175238, February 24, 2009.

[15] *Supra* note 11.

evidence – by some documentary and/or other evidence like mementos, love letters, notes, pictures and the like. Likewise, the "sweetheart theory" appellant proffers is effectively an admission of carnal knowledge of the victim and consequently places on him the burden of proving the supposed relationship by substantial evidence. To be worthy of judicial acceptance, such a defense should be supported by documentary, testimonial or other evidence. x x x

Other than his self-serving assertions, no other evidence was proffered by accused-appellant to establish the existence of a romantic relationship between him and the victim. Thus, the RTC correctly disregarded the defense raised by the accused-appellant that an amorous relationship exists between him and AAA when it held as follows:[16]

x x x [T]he accused's allegation of an amorous relationship with the private complainant is unworthy of credence. It must be noted that [AAA] was a girl of fifteen and a barrio lass, while accused [was] in his twenties at the time of the incident. Other than [accused's] self-serving testimony, no other evidence, like love letters, mementos or pictures were presented to prove his alleged relationship with [AAA]. x x x Neither was there any corroborative testimony supporting this alleged voluntary amorous liaison. In fact, [AAA] never mentioned that they were even friends. x x x This is not even a case of consenting adults for the victim was only fifteen years old at the time she was raped by the accused. Moreover, there was no evidence whatsoever of any romantic relationship between them.

The total absence of corroborative evidence to support the defense of accused-appellant is highlighted by his failure to present as his witnesses any of AAA's classmates whom he claimed knew of their relationship. Hence, the CA, like the RTC, correctly found accused-appellant's sweetheart theory self-serving which *deserved neither probative weight nor value.*[17]

The bare claim of accused-appellant fails in the face of AAA's emphatic and unwavering testimony denying any romantic relationship with the accused-appellant, to wit:

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[16] CA *rollo*, p. 19.

[17] *Rollo*, p. 9.

[Direct Examination]

FISCAL FERRER:

Q - Prior to August 21, 1997, was there an occasion that you were able to see this Ricardo Grande *alias* Ricardo Sayno in the vicinity of your boarding house in Mercedes?

WITNESS:

A - Yes, Sir.

FISCAL FERRER:

Q - And how often do you see him?
A - Every time he pass (sic) by the house, Sir
Q - At the time that you always see him, do you know that his name is Ricardo Grande before the incident?
A - No, Sir.
Q - Is Ricardo Grande, the accused here, a suitor of yours?
A - No, Sir.

FISCAL FERRER:

Q - Do you have any relationship with the accused Ricardo Grande?

WITNESS:

A - None, Sir.[18]

[Cross-Examination]

Q - Could you now tell this Honorable Court if you had a relation with the accused?
A - We have no relation, sir.
Q - How long have you known the accused?
A - When I transferred to the boarding house.

ATTY. BUQUE:

Q - But you know this accused has an *alias* Ricardo Sayno, am I correct?
A - No Sir, only from Information.
Q - Did he court you?
A - No, Sir.

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[18] TSN, August 5, 1998, pp. 28-29.

Q - Did you court him?
A - No, sir.[19]

In any event, this Court has held often enough that love is not a license for because *a man does not have the unbridled license to subject his beloved to his carnal desires*.[20] *People v. Napudo*[21] ruled that:

> x x x the *sweetheart defense* is considered an uncommonly weak defense because its presence does not automatically negate the commission of rape. *The gravamen of the crime is sexual congress of a man with a woman without her consent*. Hence, notwithstanding the existence of a romantic relationship, a woman cannot be forced to engage in sexual intercourse against her will. (Emphasis supplied)

AAA clearly and positively identified the accused-appellant as her attacker and, in a straightforward manner, consistently described how the latter succeeded by the use of force and intimidation in having sexual intercourse with her against her will, *viz.*:

[Direct testimony]:

Q - What time did you sleep in your boarding house on August 21, 1997?
A - 8:00 o'clock in the evening.
Q - What time did you wake up?
A - 11:00 o'clock in the evening.
Q - Why did you wake up at 11:00 o'clock in the evening?

WITNESS:

A - I was awakened because I noticed that somebody was on top of me and removing my T-shirt.

FISCAL FERRER:

Q - Did you recognize this person who was on top of you when you woke up?
A - I recognized him because it was bright that night and I recognized his face.

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[19] TSN, August 21, 1998, pp. 12-13.

[20] *Supra* note 14.

[21] G.R. No. 168448, October 8, 2008, 568 SCRA 213, 224-225.

Q - And you were able to see his face and you were able to recognize him?
A - Yes, sir.
Q - And if that person whom you saw on top of you when you woke up on August 21, 1997 in the evening is here in Court, will you be able to recognize him?
A - Yes, sir.
Q - Please point him out if he is inside the courtroom
A - That man. (Witness touched the shoulder of the accused who gave his name as Ricardo Grande).

FISCAL FERRER:

Q - And you are very sure that this is the person who was on top of you on August 21, 1997 at 11:00 o'clock in the evening whom you identified as Ricardo Grande *alias* Ricardo Sayno?

WITNESS:

A - Yes, sir.

FISCAL FERRER:

Q - You said that you were awakened because somebody was on top of you, will you describe before this Honorable Court the position of that somebody who was on top of you?
A - While I was lying on that evening of August 21, 1997, I noticed somebody was on top of me and was trying to remove my T-shirt. I was pushing him and he pressed on my breast that I could hardly breath.

FISCAL FERRER:

Q - What else did the accused do while he was on top of you?

WITNESS:

A - He was forcibly trying to remove my T-shirt and he tried to insert his penis into my vagina.

x x x x x x x x x

FISCAL FERRER:

Q - By the way Miss Witness, when you noticed that the accused was already on top of you half-naked waist down, what did you do if any?

WITNESS:

A - I was struggling and pushing him.

FISCAL FERRER:

Q - Were you able to push him away from you?
A - No, Sir, because he was heavy.
Q - Were you able to shout for help?
A - No, Sir, because I was afraid.
Q - And you said that he was trying to insert his penis into your vagina, is that correct?
A - Yes, Sir.
Q - Did (sic) the accused able to insert his penis into your vagina?
A - Yes, sir.
Q - How did the accused able to (sic) insert his penis into your vagina?
A - I noticed that he was making a push and pull movement of his buttocks.
Q - When you said that he was making a push and pull movement, where was his penis already?
A - Inside my vagina.
Q - And what did you feel when the penis of the accused was inside your vagina or what did you feel when the penis of the accused entered your vagina?
A - It was painful.
Q - How painful was it?
A - It was very painful and I could hardly bear it.
Q - What did you feel when the accused was pumping his penis into your vagina on (sic) push and pull movement?
A - I became weak and afraid.
Q - Why were you afraid?
A - Because he might kill me, Sir while he was doing that.

x x x x x x x x x

Q - Did you desist his (sic) abuses made by the accused?
A - Yes, Sir.
Q - In what way or in what manner?
A - I was just pushing him, Sir.
Q - Were you able to push him away?
A - No, sir, because he was heavy.[22]

[22] TSN, August 5, 1998, pp. 8-11 and 12-15.

[Cross-Examination]

ATTY. BUQUE:

Q - In your sworn statement during the preliminary investigation and during your investigation at the Mercedes Police Station you are consistent that the accused was not armed on that night of August 21?

WITNESS:

A - He was not armed.

x x x x x x x x x

ATTY. BUQUE:

Q - Ms. Witness, the fact that the accused Ricardo Grande was not armed (sic) you did not put up a struggle?

x x x x x x x x x

WITNESS:

A - I put up a fight, sir.

ATTY. BUQUE:

Q - What kind of fight was that?
A - I was pushing him.
Q - And you did not push him because as per your testimony he was too heavy?

FISCAL FERRER:

We will object to that. She pushed him but she was not able to completely free herself from the accused because the accused while on top of her was too heavy.

x x x x x x x x x

ATTY. BUQUE:

Q - But you were successful in freeing yourself from him?

WITNESS:

A - Yes, Sir.
Q - Did you try to punch him or scratch his face?

A - No, Sir, because my hands were crossed on top of my breast and he was lying on my arm.[23]

Significantly, the testimony of AAA was corroborated by the medical findings of the medico-legal officer, Dr. Marcelito Abas, to wit:[24]

"GENITAL EXAMINATION:
= Healed hymenal laceration at 3-7-9-12 o'clock;
= Vagina admits one (1) finger easily"

AAA's testimony bears all the hallmarks of truth which cannot be defeated by accused-appellant's bare denial. Thus, this Court cannot but concur with the RTC's conclusion as to the credibility of AAA's testimony, which the CA also upheld.

Time and again, we have held that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the result of the case.[25] This is as it should be for the following reasons, which we quote:

x x x The trial judge enjoys the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" – all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect

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[23] TSN, August 21, 1998, pp. 6-9.

[24] Records, p. 4; TSN, January 21, 1998, p. 4.

[25] *Supra* note 11 at 430.

if they are lying. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[26]

Moreover, the testimony of a young victim in a rape case is accorded great weight, as explained in *People v. San Antonio, Jr.*:[27]

> x x x it is settled that no woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. Testimonies of child-victims are given full faith and credit, since when a girl says she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity. It is also an accepted doctrine that in the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence.

With the foregoing, we find that the evidence adduced by the prosecution constituted proof beyond reasonable doubt to convict the accused-appellant of the crime of simple rape which, under Article 335 of the Revised Penal Code, is punishable by the single indivisible penalty of *reclusion perpetua*. Under Article 63 of the same law, it is provided that in all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In simple rape, the Court awards ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages to the rape victim.[28] As the award of moral damages is separate and distinct from the civil indemnity awarded to rape victims, moral damages cannot take the place of civil indemnity, which is actually in the nature of actual or compensatory damages, and is mandatory upon the finding of the fact of rape.[29] Hence, the CA correctly awarded

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[26] *Id.* at 430-431.

[27] *Id.* at 431.

[28] *Id.* at 433.

[29] *Id.*

₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages to the victim.

The CA, however, failed to award exemplary damages in this case. Under Article 2230 of the New Civil Code, in criminal offenses, exemplary damages as part of civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Here, the aggravating circumstances of dwelling and nighttime were alleged in the Information as having attended the commission of the crime of rape. However, while the circumstance of dwelling was proven as it was shown that the rape was committed inside the boarding house where the victim was staying, the circumstance of nighttime was not since there was no sufficient showing that the accused-appellant purposely waited until late in the night before consummating his carnal desire for the victim. In view thereof, the amount of ₱25,000.00 must additionally be awarded to the victim by way of exemplary damages.[30]

WHEREFORE, the Decision dated August 18, 2005 of the Court of Appeals in *CA-G.R. CR.-HC No. 00587* is *AFFIRMED* with *MODIFICATION*. Appellant Ricardo Grande is guilty beyond reasonable doubt of simple rape and hereby sentenced to suffer the penalty of *reclusion perpetua*. He is likewise sentenced to pay the victim the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[30] See *People v. Mangompit, Jr.*, G.R. Nos. 139962-66, March 7, 2001, 353 SCRA 833, 853.

THIRD DIVISION

[G.R. No. 175115. December 23, 2009]

LILY O. ORBASE, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN and ADORACION MENDOZA-BOLOS,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; REPUBLIC ACT NO. 6770; OFFICE OF THE OMBUDSMAN; GRANTED WITH THE POWER TO PROSECUTE OFFENSES COMMITTED BY PUBLIC OFFICERS AND EMPLOYEES; JURISDICTION TO TAKE COGNIZANCE OF THE ACTION AGAINST PETITIONER IN CASE AT BAR IS PROPER.—** R.A. No. 6770 provides for the functional and structural organization of the Office of the Ombudsman. In passing R.A. No. 6770, Congress deliberately endowed the Ombudsman with the power to prosecute offenses committed by public officers and employees to make him a more active and effective agent of the people in ensuring accountability in public office. Thus, Section 21 thereof provides: SEC. 21. *Officials Subject to Disciplinary Authority; Exceptions.* **The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government** and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary. At the time of the filing of the case against petitioner, she was the Assistant Director of the National Library; as such, as an appointive employee of the government, the jurisdiction of the Office of the Ombudsman to take cognizance of the action against the petitioner was beyond contestation.

2. **ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; ADMINISTRATIVE CODE OF 1987; GROUNDS FOR DISCIPLINARY ACTION; DISHONEST**

CONDUCT PRIOR TO ENTERING THE SERVICE; A CASE OF.— x x x [P]etitioner's claim that the Ombudsman does not have jurisdiction over the action, since the act complained of was committed before her entering government service, cannot be sustained. Section 46 (18), Title I, Book V of the Administrative Code of 1987 provides: SEC. 46. *Discipline: General Provisions*. – x x x (b) The following shall be grounds for disciplinary action: x x x (18) Disgraceful, immoral or **dishonest conduct prior to entering the service**. From the foregoing, even if the dishonest act was committed by the employee prior to entering government service, such act is still a ground for disciplinary action. It is noteworthy that the subject of the administrative case against petitioner was her act of supplying false information in her bio-data regarding her qualifications when she was applying for the position of Assistant Director of the National Library. In her bio-data, petitioner made it appear that she was a consultant of the National Library "from March-December 1993 and February 1994 to present." This false misrepresentation was one of the main factors why the then Secretary of Education, Culture and Sports, Ricardo T. Gloria, recommended petitioner to then President Fidel V. Ramos for appointment to the position of Assistant Director of the National Library. Secretary Gloria heavily relied on this misrepresentation of petitioner as shown in his sworn affidavit. This misrepresentation was made by petitioner for the purpose of giving herself undue advantage over other qualified applicants, thus, ensuring her appointment to the position of Assistant Director. Were it not for this act of supplying false information, the then Secretary Gloria would not have recommended petitioner for appointment.

3. **ID.; CONSTITUTIONAL LAW; REPUBLIC ACT NO. 6670; SECTION 20 (5) THEREOF, CONSTRUED; PETITIONER'S CLAIM OF PRESCRIPTION HAS NO BASIS.—** x x x [T]here is also no basis in petitioner's claim of prescription. Petitioner insists that Section 20 (5) of R.A. No. 6770 proscribes the investigation of any administrative act or omission if the complaint was filed one year after the occurrence of the act or omission complained of. The provision reads: SEC. 20. *Exceptions.* – The Office of the Ombudsman **may** not conduct the necessary investigation of any administrative act or omission complained of if it believes that: x x x (5) The complaint was

filed after one year from the occurrence of the act or omission complained of. In *Office of the Ombudsman v. De Sahagun*, the Court held that the period stated in Section 20 (5) of R.A. No. 6770 does not refer to the prescription of the offense, but to the discretion given to the Office of the Ombudsman on whether it would investigate a particular administrative offense. The use of the word "may" in the provision is construed as permissive and operating to confer discretion. Where the words of a statute are clear, plain and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation. It is, therefore, discretionary upon the Ombudsman whether or not to conduct an investigation of a complaint filed before it even if it was filed one year after the occurrence of the act or omission complained of. Thus, while the complaint herein was filed three years after the occurrence of the act imputed to petitioner, it was within the authority of the Office of the Ombudsman to act, to proceed with and conduct an investigation of the subject complaint.

4. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; ADMINISTRATIVE CODE OF 1987; AUTHORITY TO DISCIPLINE EMPLOYEES; BASIS; CASE AT BAR.— x x x [C]ontrary to petitioner's contention, respondent Bolos, who was then the Director of the National Library, had the personality to file the complaint against her in the exercise of the former's authority to discipline employees under her office. Section 30, Chapter VI, Book IV of Executive Order No. 292, or the Administrative Code of 1987, is clear on this matter, to wit: SEC 30. *Authority to Appoint and Discipline*. – The head of bureau or office shall appoint personnel to all positions in his bureau or office, in accordance with law. In the case of the line bureau or office, the head shall also appoint the second level personnel of the regional offices, unless such power has been delegated. He shall have the *authority to discipline employees in accordance with the Civil Service Law*.

5. ID.; ID.; ID.; ADMINISTRATIVE DUE PROCESS; ESSENCE; PROPERLY OBSERVED IN CASE AT BAR.— Anent petitioner's contention that she was denied due process, this too is devoid of merit. The CA correctly concluded that petitioner's right to due process was not violated. Due process,

as a constitutional precept, does not always, and in all situations, require a trial-type proceeding. Litigants may be heard through pleadings, written explanations, position papers, memoranda or oral arguments. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, filing charges against the person and giving reasonable opportunity to the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard; or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Petitioner actively participated in the proceedings before the Office of the Ombudsman. She was given every opportunity to submit various pleadings and documents in support of her claim, which she, in fact, did through her counter-affidavit and documentary evidence, manifestation and motion, memorandum on appeal, *etc*. In her Manifestation and Motion, petitioner moved and submitted the case for resolution based on the arguments and evidentiary records that were submitted before the Ombudsman. These were all duly acted upon by the Ombudsman. Petitioner was given all the opportunity to present her side. Due process was, therefore, properly observed.

6. ID.; ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GRAVE OFFENSES; DISHONESTY; SUBSTANTIALLY ESTABLISHED IN CASE AT BAR.— A perusal of the pleading and documentary evidence that were submitted reveals that the charge of dishonesty was substantially established. In administrative cases, substantial evidence is required to support any findings. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming. As aptly found by the CA: In the case at bar, petitioner was accused and found guilty of dishonesty through her act of submitting a bio-data which "enhanced" her qualifications by attaching the phrase "to present" to her work experience as a consultant to the National Library thereby making it appear that she still held

the same position when she applied for the position of Assistant Director in 1996. She, however, insists that she cannot be held liable for such act on account of the findings of the Administrative Adjudication Bureau (AAB) that the said bio-data was unsigned while her "application letter x x x made no mention about the said consultancy service." It bears to note that the subject bio-data is not extant on the records of this case. Instead, the Court noted that the copy attached herein bore the initials and signature of petitioner dated January 7, 1996. On the other hand, the Affidavit of her brother, Bradford O. Orbase, cannot be considered in petitioner's favor for being self-serving in view of their relationship to each other and because it was submitted only on reconsideration before the Office of the Chief Legal Counsel. Moreover, the presentation of the Affidavit of then DECS Undersecretary Nachura cannot sway judgment as it was also submitted only on appeal and is merely corroborative of the matters stated in Bradford's affidavit. Since these evidence were not presented during the AAB proceedings then, the Office of the Chief Legal Counsel cannot be faulted for disregarding the same and relying on the affidavit of then DECS Secretary Gloria which categorically declared that he recommended petitioner for appointment as Assistant Director "because I was made to believe by Ms. Orbase herself that she was then the "present" Consultant in the National Library." "Dishonesty is defined as intentionally making false statement in any material fact, practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion." By indicating in her bio-data that she was an incumbent consultant in support of her application, petitioner prejudiced the other equally qualified applicants to the same position. x x x. Based on the foregoing, this Court finds no reversible error committed by the Office of the Ombudsman in holding that substantial evidence exists to support the conclusion that petitioner is guilty of dishonesty as charged.

7. ID.; ID.; ID.; ID.; ID.; ID.; DEFINED; PENALTY.— Dishonesty has been defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. Based on the foregoing, this misleading act of petitioner clearly

constitutes dishonesty. Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty is classified as a grave offense punishable by dismissal even for the first offense. Thus, as provided by law, no other penalty is imposable against the petitioner but dismissal.

8. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES ARE GENERALLY ACCORDED RESPECT AND FINALITY BY THE SUPREME COURT.—** The settled rule is that factual findings of quasi-judicial bodies, when adopted and confirmed by the CA, and if supported by substantial evidence, are accorded respect and even finality by this Court. After evaluating the totality of evidence on record, this Court finds no reason to disturb the findings of the Office of the Ombudsman and the CA.

APPEARANCES OF COUNSEL

Benedicto D. Buenaventura for petitioner.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated August 11, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 57158, and the Resolution[2] dated October 23, 2006, denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

Respondent Adoracion Mendoza-Bolos, then Director of the National Library, filed a complaint against petitioner Lily O. Orbase, Assistant Director of the same Office, before the Evaluation and Preliminary Investigation Bureau (EPIB), Office of the Ombudsman, for violation of Republic Act No. 3019, or

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[1] Penned by Associate Justice Estela M. Perlas-Bernabe, with Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid, concurring; *rollo*, pp. 41-49.

[2] *Id.* at 51.

the Anti-Graft and Corrupt Practices Act, as amended, docketed as OMB-ADM-0-99-0198.[3]

The case stemmed from the alleged misrepresentation and/or dishonesty committed by the petitioner when she declared in her bio-data, which was attached to her application for the position of Assistant Director of the National Library dated January 9, 1996, that she was a consultant of the National Library *"from March-December 1993 and February 1994 to present"* when in fact petitioner merely held the said position for the period covering March 1, 1993 to December 31, 1994.[4]

In her Counter-Affidavit[5] dated January 7, 1999, petitioner denied having committed any misrepresentation, asserting that the bio-data presented in evidence was what she submitted in support of her then application for the position of Director of the National Archives sometime in 1994. She claimed that the said bio-data was inadvertently attached to the subject application. Petitioner asserted further that she was hired not only on the basis of her consultancy position with the National Library, but for her other qualifications as well. She also controverted the authenticity of the bio-data that was attached to the complaint, since it did not bear her initial or signature.[6]

On May 21, 1999, the EPIB issued a Resolution[7] dismissing the criminal aspect of the case, but recommended that the administrative aspect thereof be referred to the Administrative Adjudication Bureau (AAB), Office of the Ombudsman, for the conduct of the proper administrative proceedings against petitioner. The case was docketed as OMB-ADM-0-99-0517 for Dishonesty and Grave Misconduct.

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[3] CA *rollo*, p. 27.

[4] *Rollo*, p. 9.

[5] Records, pp. 32-33.

[6] *Id.* at 32-33.

[7] *Rollo*, pp. 63-67.

In compliance with the directive of the Office of the Ombudsman, petitioner filed a Manifestation and Motion[8] dated August 19, 1999, adopting all the arguments embodied in her Counter-Affidavit, as well as all the documentary evidence that were already submitted in OMB-0-99-0198. Petitioner also moved to submit the administrative case for resolution based on the evidence on record.

On September 6, 1999, Graft Investigation Officer I Marlyn M. Reyes found petitioner not guilty of the offense charged and ordered that the complaint be dismissed for lack of merit.[9]

However, upon review, the Office of Legal Affairs, Office of the Ombudsman, in its Memorandum[10] dated October 21, 1999, vacated the earlier decision. It found petitioner guilty of dishonesty and, consequently, dismissed her from government service. The dispositive portion of said Memorandum reads:

> WHEREFORE, in view of the foregoing considerations, it is respectfully recommended that the AAB Decision dated September 6, 1999 be **disapproved** and that respondent is found guilty of **Dishonesty** and **dismissed** from service with all the accessory penalties.[11]

Petitioner filed a Memorandum of Appeal[12] and Supplemental Appeal and/or Reconsideration.[13] She also filed a Motion for Re-Assignment and to Conduct Preliminary Conference and Hearing,[14] but they were denied in the Memorandum[15] dated January 5, 2000.

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[8] CA *rollo*, pp. 106-107.

[9] *Id.* at 101-104.

[10] *Id.* at 97-100.

[11] *Id.* at 100.

[12] *Id.* at 37-40.

[13] *Id.* at 41-47.

[14] *Id.* at 55-56.

[15] Records, pp. 216-219.

Aggrieved, petitioner sought recourse before the CA in CA-G.R. SP No. 57158, arguing that:

1. THE HONORABLE OFFICE OF THE OMBUDSMAN, THROUGH ITS OFFICE OF THE CHIEF LEGAL COUNSEL, ERRED IN HOLDING THAT IT HAD THE REQUISITE JURISDICTION TO ACT ON THE COMPLAINT AGAINST THE PETITIONER. IT IS MOST RESPECTFULLY SUBMITTED THAT THERE WAS CLEAR ERROR IN NOT HOLDING THAT PETITIONER WAS NOT WITHIN THE SCOPE OF APPLICABILITY OF RA 6770.

2. THE HONORABLE OFFICE OF THE OMBUDSMAN ERRED IN HOLDING THAT SUBSTANTIAL EVIDENCE EXISTS TO SUPPORT THE FINDINGS OF DISHONESTY AND IGNORING OTHER EVIDENCE ON RECORD NEGATING SUCH EVIDENCE.

3. THE HONORABLE OFFICE OF THE OMBUDSMAN ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION AND IN FAILING TO GIVE DUE COURSE TO PETITIONER'S REQUEST FOR RE-ASSIGNMENT AND THE CONDUCT OF A PRELIMINARY CONFERENCE AND FORMAL INVESTIGATION.

4. THE HONORABLE OFFICE OF THE OMBUDSMAN ERRED IN IMPOSING THE PENALTY OF DISMISSAL FOR THE ALLEGED OFFENSE OF DISHONESTY. IT IS RESPECTFULLY SUBMITTED THAT SUCH PENALTY WAS TOO HARSH AND DISPROPORTIONATE AS TO BE ARBITRARY AND OPPRESSIVE.[16]

On August 11, 2006, the CA rendered a Decision[17] denying the petition, the decretal portion of which reads:

WHEREFORE, premises considered, the instant petition is DENIED. The assailed Memoranda dated October 21, 1999 and January 5, 2000 of the Office of the Ombudsman in OMB-ADM-0-99-0517 are AFFIRMED.

SO ORDERED.

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[16] *Rollo*, pp. 10-11.

[17] *Id.* at 8-16.

In denying the petition, the CA ratiocinated that the Office of the Ombudsman has concurrent jurisdiction over administrative complaints involving public officers and employees; thus, petitioner's contention that the Office of the Ombudsman had no jurisdiction over the subject complaint cannot be upheld. Also, the CA opined that dishonesty, in order to warrant dismissal, need not be committed in the course of the performance of duty by the person charged. Moreover, the appellate court held that contrary to petitioner's claim, the fact that the complaint was filed three years after the misrepresentation was made cannot bar an investigation or inquiry by the Office of the Ombudsman into the questioned act. Finally, there was no denial of due process, since petitioner was given an opportunity to be heard and, in fact, participated in the proceedings before the Office of the Ombudsman.[18]

Petitioner filed a Motion for Reconsideration,[19] but it was denied in a Resolution[20] dated October 23, 2006.

Hence, the petition assigning the following errors:

I. WHETHER OR NOT THE OMBUD[S]MAN AND THE COURT OF APPEALS GRAVELY ABUSE[D] ITS DISCRETION IN NOT HOLDING THAT PETITIONER'S SUBMISSION OF AN INACCURATE BIO-DATA UPON HER APPLICATION FOR THE POSITION OF ASSISTANT DIRECTOR OF THE NATIONAL LIBRARY IS AN ACT OUTSIDE OF THE JURISDICTION OF THE OMBUDSMAN;

II. WHETHER OR NOT THE OMBUDSMAN AND THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN NOT RULING THAT THE COMPLAINT SUFFERS TECHNICAL FLAWS IN THAT IT WAS FILED BEYOND THE ONE YEAR PERIOD, AND BY A PERSON WHO HAD NO INTEREST IN THE COMPLAINT;

III. WHETHER OR NOT THE OMBU[D]SMAN AND THE COURT OF APPEALS GRAVELY ABUSE[D] ITS DISCRETION IN

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[18] *Id.* at 11-14.

[19] *CA rollo,* pp. 248-260.

[20] *Id.* at 306.

HOLDING THAT PRELIMINARY CONFERENCE MAY BE DISPENSED WITH, CONTRARY TO THE EXPRESS PROVISION OF ADMINISTRATIVE ORDER NO. 07 OR THE RULES OF THE OMBUDSMAN AND THAT A FORMAL HEARING IS INDISPENSABLE IN THIS CASE;

IV. WHETHER OR NOT THE OMBUDSMAN AND THE COURT OF APPEALS GRAVELY ABUSE[D] ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT THERE IS SUFFICIENT EVIDENCE TO HOLD PETITIONER GUILTY OF THE OFFENSES OF DISHONESTY AND FALSIFICATION.[21]

Petitioner argues that the CA erred when it ruled that the Office of the Ombudsman has jurisdiction over the administrative case despite the fact that the act complained of was committed before her entry into government service.

Petitioner insists that the administrative case should have been dismissed in the first instance. She contends that the case was barred by prescription as provided in Section 20 (5) of Republic Act (R.A.) No. 6770, since the case was filed three years after the alleged act was committed. Additionally, petitioner assails the personality of the then Director of the National Library, Adoracion Mendoza-Bolos, to file the administrative case against her arguing that she has no personal interest in the subject matter of the complaint. Petitioner also maintains that there was a denial of her right to due process when the Office of the Ombudsman did not conduct a preliminary conference and formal investigation in the administrative case. Finally, petitioner contends that the evidence on record is not sufficient to prove the charge of dishonesty against her.

The petition is bereft of merit.

R.A. No. 6770 provides for the functional and structural organization of the Office of the Ombudsman. In passing R.A. No. 6770, Congress deliberately endowed the Ombudsman with the power to prosecute offenses committed by public officers and employees to make him a more active and effective agent

[21] *Rollo*, p. 23.

of the people in ensuring accountability in public office.[22] Thus, Section 21 thereof provides:

SEC. 21. *Officials Subject to Disciplinary Authority; Exceptions.* **The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government** and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.[23]

At the time of the filing of the case against petitioner, she was the Assistant Director of the National Library; as such, as an appointive employee of the government, the jurisdiction of the Office of the Ombudsman to take cognizance of the action against the petitioner was beyond contestation.

Moreover, petitioner's claim that the Ombudsman does not have jurisdiction over the action, since the act complained of was committed before her entering government service, cannot be sustained. Section 46 (18), Title I, Book V of the Administrative Code of 1987 provides:

SEC. 46. *Discipline: General Provisions.* – x x x

(b) The following shall be grounds for disciplinary action:

x x x x x x x x x

(18) Disgraceful, immoral or **dishonest conduct prior to entering the service**.[24]

From the foregoing, even if the dishonest act was committed by the employee prior to entering government service, such act is still a ground for disciplinary action.

It is noteworthy that the subject of the administrative case against petitioner was her act of supplying false information in

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[22] *Estarija v. Ranada*, G.R. No. 159314, June 26, 2006, 492 SCRA 652, 670.

[23] Emphasis ours.

[24] Emphasis ours.

her bio-data regarding her qualifications when she was applying for the position of Assistant Director of the National Library. In her bio-data, petitioner made it appear that she was a consultant of the National Library "from March-December 1993 and February 1994 to present." This false misrepresentation was one of the main factors why the then Secretary of Education, Culture and Sports, Ricardo T. Gloria, recommended petitioner to then President Fidel V. Ramos for appointment to the position of Assistant Director of the National Library. Secretary Gloria heavily relied on this misrepresentation of petitioner as shown in his sworn affidavit.[25] This misrepresentation was made by petitioner for the purpose of giving herself undue advantage over other qualified applicants, thus, ensuring her appointment to the position of Assistant Director. Were it not for this act of supplying false information, the then Secretary Gloria would not have recommended petitioner for appointment. As aptly found by the Office of Legal Affairs, Office of the Ombudsman, to wit:

> The disputed bio-data of respondent clearly indicates that she was the *"Consultant of the National Library from March-December 1993 and February 1994 – to present."* Her bio-data containing the said information was apparently relied upon by the then Secretary of Education, Culture and Sports Ricardo T. Gloria as the latter's recommendation letter to then Pres. Fidel V. Ramos stated that *"Miss Orbase is presently a Consultant in the National Library. x x x Enclosed is Miss Orbase's bio-data and other related documents for reference."* Then Secretary Gloria's reliance upon the said bio-data was bolstered by Secretary Gloria's Affidavit dated March 4, 1999 (Record, p. 23) stating that *"I recommended Ms. Orbase for appointment and she was, in fact, thereafter appointed as Assistant Director in the National Library because I was made to believe by Ms. Orbase herself that she was then the 'present' Consultant in the National Library."* However, respondent Orbase's misrepresentation was belied by the Certification dated February 3, 1999 issued by Arnulfo R. Lim, Administrative Officer V of the National Library.[26]

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[25] Records, p. 23.

[26] CA *rollo*, pp. 20-21.

Likewise, there is also no basis in petitioner's claim of prescription. Petitioner insists that Section 20 (5) of R.A. No. 6770 proscribes the investigation of any administrative act or omission if the complaint was filed one year after the occurrence of the act or omission complained of. The provision reads:

SEC. 20. *Exceptions.* – The Office of the Ombudsman **may** not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

x x x x x x x x x

(5) The complaint was filed after one year from the occurrence of the act or omission complained of.[27]

In *Office of the Ombudsman v. De Sahagun*,[28] the Court held that the period stated in Section 20 (5) of R.A. No. 6770 does not refer to the prescription of the offense, but to the discretion given to the Office of the Ombudsman on whether it would investigate a particular administrative offense. The use of the word "may" in the provision is construed as permissive and operating to confer discretion. Where the words of a statute are clear, plain and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation.

It is, therefore, discretionary upon the Ombudsman whether or not to conduct an investigation of a complaint filed before it even if it was filed one year after the occurrence of the act or omission complained of. Thus, while the complaint herein was filed three years after the occurrence of the act imputed to petitioner, it was within the authority of the Office of the Ombudsman to act, to proceed with and conduct an investigation of the subject complaint.

Additionally, contrary to petitioner's contention, respondent Bolos, who was then the Director of the National Library, had the personality to file the complaint against her in the exercise of the former's authority to discipline employees under her office.

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[27] Emphasis ours.

[28] G.R. No. 167982, August 13, 2008, 562 SCRA 122, 128-129, citing *Melchor v. Gironella*, 414 Phil. 590 (2001).

Section 30, Chapter VI, Book IV of Executive Order No. 292, or the Administrative Code of 1987, is clear on this matter, to wit:

> SEC. 30. *Authority to Appoint and Discipline*. – The head of bureau or office shall appoint personnel to all positions in his bureau or office, in accordance with law. In the case of the line bureau or office, the head shall also appoint the second level personnel of the regional offices, unless such power has been delegated. He shall have the *authority to discipline employees in accordance with the Civil Service Law*.[29]

Anent petitioner's contention that she was denied due process, this too is devoid of merit. The CA correctly concluded that petitioner's right to due process was not violated. Due process, as a constitutional precept, does not always, and in all situations, require a trial-type proceeding. Litigants may be heard through pleadings, written explanations, position papers, memoranda or oral arguments.[30] Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, filing charges against the person and giving reasonable opportunity to the person so charged to answer the accusations against him constitute the minimum requirements of due process.[31] The essence of due process is simply to be heard; or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[32]

Petitioner actively participated in the proceedings before the Office of the Ombudsman. She was given every opportunity to submit various pleadings and documents in support of her claim, which she, in fact, did through her counter-affidavit and documentary evidence, manifestation and motion, memorandum

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[29] Emphasis supplied.

[30] *Libres v. National Labor Relations Commission*, 367 Phil. 181, 190 (1999).

[31] *Ledesma v. Court of Appeals*, G.R. No. 166780, December 27, 2007, 541 SCRA 444, 452.

[32] *Libres v. National Labor Relations Commission, supra* note 30.

on appeal, *etc.* In her Manifestation and Motion,[33] petitioner moved and submitted the case for resolution based on the arguments and evidentiary records that were submitted before the Ombudsman. These were all duly acted upon by the Ombudsman. Petitioner was given all the opportunity to present her side. Due process was, therefore, properly observed.

Finally, the issue of whether or not there was substantial proof to establish the charge of dishonesty against the petitioner.

A perusal of the pleading and documentary evidence that were submitted reveals that the charge of dishonesty was substantially established. In administrative cases, substantial evidence is required to support any findings. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming.[34] As aptly found by the CA:

> In the case at bar, petitioner was accused and found guilty of dishonesty through her act of submitting a bio-data which "enhanced" her qualifications by attaching the phrase "to present" to her work experience as a consultant to the National Library thereby making it appear that she still held the same position when she applied for the position of Assistant Director in 1996. She, however, insists that she cannot be held liable for such act on account of the findings of the Administrative Adjudication Bureau (AAB) that the said bio-data was unsigned while her "application letter x x x made no mention about the said consultancy service." It bears to note that the subject bio-data is not extant on the records of this case. Instead, the Court noted that the copy attached herein bore the initials and signature of petitioner dated January 7, 1996. On the other hand, the Affidavit of her brother, Bradford O. Orbase, cannot be considered in petitioner's favor for being self-serving in view of their relationship to each other and because it was submitted only on reconsideration before the Office of the Chief Legal Counsel. Moreover, the presentation of the Affidavit

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[33] CA *rollo,* pp. 106-107.

[34] *Office of the Ombudsman v. Fernando J. Beltran*, G.R. No. 168039, June 5, 2009.

of then DECS Undersecretary Nachura cannot sway judgment as it was also submitted only on appeal and is merely corroborative of the matters stated in Bradford's affidavit. Since these evidence were not presented during the AAB proceedings then, the Office of the Chief Legal Counsel cannot be faulted for disregarding the same and relying on the affidavit of then DECS Secretary Gloria which categorically declared that he recommended petitioner for appointment as Assistant Director "because I was made to believe by Ms. Orbase herself that she was then the "present" Consultant in the National Library." "Dishonesty is defined as intentionally making false statement in any material fact, practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion." By indicating in her bio-data that she was an incumbent consultant in support of her application, petitioner prejudiced the other equally qualified applicants to the same position. x x x.

Based on the foregoing, this Court finds no reversible error committed by the Office of the Ombudsman in holding that substantial evidence exists to support the conclusion that petitioner is guilty of dishonesty as charged.[35]

Dishonesty has been defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[36] Based on the foregoing, this misleading act of petitioner clearly constitutes dishonesty. Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty is classified as a grave offense punishable by dismissal even for the first offense. Thus, as provided by law, no other penalty is imposable against the petitioner but dismissal.

The settled rule is that factual findings of quasi-judicial bodies, when adopted and confirmed by the CA, and if supported by substantial evidence, are accorded respect and even finality by this Court.[37] After evaluating the totality of evidence on record,

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[35] *Rollo*, pp. 12-16.

[36] *Ampong v. Civil Service Commission, CSC-Regional Office No. 11*, G.R. No. 167916, August 26, 2008, 563 SCRA 293, 307.

[37] *Binay v. Odeña,* G.R. No. 163683, June 8, 2007, 524 SCRA 248, 256-257.

this Court finds no reason to disturb the findings of the Office of the Ombudsman and the CA.

WHEREFORE, premises considered, the petition is *DENIED*. The Decision dated August 11, 2006 and the Resolution dated October 23, 2006, of the Court of Appeals in CA G.R. SP No. 57158, are *AFFIRMED*.

SO ORDERED.

Carpio,[*] *Corona (Chairperson), Velasco, Jr.,* and *Del Castillo,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 175466. December 23, 2009]

BANK OF THE PHILIPPINE ISLANDS as successor-in-interest of FAR EAST BANK AND TRUST COMPANY, *petitioner, vs.* **SMP, INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; CONTRACT OF SALE DISTINGUISHED FROM CONTRACT TO SELL.—** A distinction between a contract to sell and a contract of sale is helpful in order to determine the true intention of the parties. In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; while in a contract to sell, ownership is, by agreement, reserved for the vendor and is not to pass to the vendee until full payment of the purchase price. In a contract of sale, non-payment of the price is a negative resolutory condition. In a contract to sell, full payment is a positive suspensive condition. In a contract of sale, the vendor loses and cannot recover ownership of the thing sold until and unless the

[*] Additional member per Raffle dated December 14, 2009.

[**] Additional member per Special Order No. 805 dated December 4, 2009.

contract of sale is itself resolved and set aside. In a contract to sell, the title remains with the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract. In a contract to sell, the payment of the purchase price is a positive suspensive condition, the failure of which is not a breach, casual or serious, but a situation which prevents the obligation of the vendor to convey title from acquiring an obligatory force.

2. ID.; ID.; CONTRACT TO SELL; A CASE OF.— In the instant case, ownership of the general purpose polystyrene products was retained by SMP, Incorporated (SMP) until after the checks given as payment by Clothespak Manufacturing Philippines (Clothespak) cleared. This was evidenced by a provisional receipt issued by SMP to Clothespak. The agreement between SMP and Clothespak involved a contract to sell defined under Article 1478 of the Civil Code.

3. ID.; ID.; ID.; STIPULATIONS IN THE CONTRACT FOR THE RESERVATION OF OWNERSHIP OF A THING UNTIL FULL PAYMENT OF THE PURCHASE PRICE AND FOR THE LOSS OR DESTRUCTION OF THE THING WOULD BE ON ACCOUNT OF THE BUYER ARE VALID AND CAN EXIST IN CONJUNCTION WITH THE OTHER.— x x x [T]he stipulation that the loss or destruction of the products during transit is on the account of Clothespak, as buyer of the products, is of no moment. This does not alter the nature of the contract as a contract to sell. The free on board stipulation on the contract can coexist with the contract to sell. Otherwise stated, the provisions or stipulations in the contract — for the reservation of the ownership of a thing until full payment of the purchase price and for the loss or destruction of the thing would be on account of the buyer — are valid and can exist in conjunction with the other.

4. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; BEST EVIDENCE RULE; DEFINED; RECEIPT PRESENTED BY RESPONDENT IS DEEMED AS AN ORIGINAL; BASIS.— In order to discredit the claim of ownership by SMP, petitioner questions the admissibility of the receipt presented by the former, wherein the ownership was reserved for the buyer until after full payment of the purchase price. Petitioner claims that the same was inadmissible in evidence and was in contravention

of the best evidence rule. We beg to disagree. The best evidence rule is the rule which requires the highest grade of evidence obtainable to prove a disputed fact. Although there are certain recognized exceptions when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself. However, in the instant case, contrary to petitioner's contention, the receipt presented by SMP is deemed as an original, considering that the triplicate copy of the provisional receipt was executed at the same time as the other copies of the same receipt involving the same transaction. Section 4, Rule 130 of the Rules of Court provides: Sec. 4. *Original of document*. — (a) The original of the document is one the contents of which are the subject of inquiry. (b) When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals. (c) When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals.

APPEARANCES OF COUNSEL

Benedicto Verzosa Felipe & Burkley for petitioner.
Ernesto G. Gasis for respondent.

R E S O L U T I O N

NACHURA, *J*.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated August 16, 2006 and the Resolution[2] dated November 15, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 86055.

The facts of the case, as culled by the CA from the Decision[3] dated June 6, 2005 of the Regional Trial Court (RTC), Branch 92,

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[1] Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Bienvenido L. Reyes and Jose C. Reyes, Jr., concurring; *rollo*, pp. 24-33.

[2] *Id.* at 35-37.

[3] Penned by Presiding Judge Samuel H. Gaerlan; records, Vol. II, pp. 572- 575.

Quezon City, in Civil Case No. Q-97-30372, entitled "*SMP, Inc. v. Far East Bank and Trust Company, et al.*," are as follows:

Sometime in January 1995, Maria Teresa Michaela Ong, as Sales Executive of SMP, Inc. undertook the acceptance and servicing of a purchase order of CLOTHESPAK MANUFACTURING PHILS. (Clothespak) for 4,000 bags or sacks of General purpose (GPS) polystyrene products. The ordered products were delivered, for which delivery receipts were issued. The total selling price of the products amounted to U.S. $118,500.00. As payment, Clothespak issued postdated checks in favor of plaintiff SMP and delivered the same to Maria Teresa Michaela Ong. When the same were deposited by SMP Inc. on their maturity dates, the drawee bank dishonored and returned said checks for the reason "Account Closed."

In the meantime, a case was filed by herein defendant Far East Bank and Trust Company against Clothespak for a recovery of sum of money with prayer for issuance of preliminary attachment. The Pasig Court granted and issued the writ dated March 14, 1995 in favor of the plaintiff bank. Real and personal properties of the defendants were levied and attached.

Thereafter, on March 28, 1995, SMP, Inc. filed an Affidavit of Third Party Claim in that Civil Case No. 65006, claiming ownership of the 4,000 bags of General Purpose (GPS) polystyrene products taken at Clothespak factory worth ₱3,096,405.00. With the filing by Far East Bank of the indemnity bond, the goods claimed were not released and the Pasig Court directed SMP, Inc. to ventilate its claim of ownership in a vindicatory action under Section 17, Rule 39 of the Revised Rules of Court. Meanwhile, Far East Bank obtained a favorable judgment against Clothespak. It has become final and executory which led to the implementation and enforcement of said decision against Clothespak's properties inclusive of the goods earlier attached. Hence, the instant case is filed by SMP, Inc. to recover from the attaching bank the value of the goods it claims ownership and for damages.

SMP, Inc. alleges that there was wrongful attachment of the goods for ownership of the same was never transferred to Clothespak. The former anchors its claim of ownership over the goods by virtue of the Provisional Receipt No. 4476 issued by Sales Executive Maria Teresa Michaela Ong to Clothespak with the words, *"Materials belong to SMP Inc. until your checks clear."* She testified during the trial that the above words were in her own handwriting. The said receipt was allegedly issued to Alex Tan of Clothespak after the checks,

payment for the goods, were issued to her. It is asserted that despite receipt by Clothespak of the goods, ownership remained with SMP, Inc. until the postdated checks it issued were cleared.

Defendant bank, however, claims that the said provisional receipt was falsified to negate the terms of the Sales Invoices. The phrase, *"materials belong to SMP, Inc. until your checks clear,"* was only an insertion of plaintiff's representative in her own handwriting. It did not bear the conformity of Clothespak. Further, defendant bank assails the admissibility of the receipt for it is a mere triplicate copy; the original and duplicate copies were not presented in court, in violation of the Best Evidence Rule. Neither was there secondary evidence presented to conform to the rule.

Defendant asserted that the buyer Clothespak had already acquired ownership over the goods at the time of attachment. As the delivery receipts clearly showed that the goods had already been delivered and received by the buyer subject to the terms and conditions of the sales invoices where it was provided that the sales is (sic) "F.O.B." with the loss and/or damage to the goods in transit being for the buyer's account. As provided by law, the ownership of the thing is acquired by the vendee from the moment of delivery in any of the ways therein specified or in any manner signifying an agreement that the possession is transferred to the vendee, and the thing sold is considered delivered when placed in the control and possession of the said vendee.

The main issue presented is whether at the time of the attachment, plaintiff still owned the goods levied upon, or ownership thereof had already passed to Clothespak Manufacturing. After carefully studying the different contentions of both parties and the pieces of evidence they have submitted, the Courts (sic) finds in favor of the plaintiff.[4]

The dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against defendant Far East Bank and Trust Company (now Bank of the Philippine Islands), ordering the latter to pay the former the sum of Two Million Nine Hundred Sixty Three Thousand Forty One Pesos and Fifty Three Centavos (₱2,963,041.53) as actual damages, plus costs of suit.

SO ORDERED.[5]

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[4] *Id.* at 573- 574.

[5] *Id.* at 575.

On appeal, the CA affirmed *in toto* the RTC decision in a Decision[6] dated August 16, 2006. Petitioner filed a motion for reconsideration but the CA denied the same in a Resolution[7] dated November 15, 2006.

Hence, this petition.

Petitioner submitted this sole issue for resolution:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THERE WAS A WRONGFUL ATTACHMENT THUS AFFIRMING THE DECISION OF THE COURT *A QUO* THAT THE GOODS ATTACHED WERE STILL OWNED BY SMP, INC., NOT [BY] CLOTHESPAK, WHEN THEY WERE ATTACHED.[8]

We find the petition bereft of merit.

A distinction between a contract to sell and a contract of sale is helpful in order to determine the true intention of the parties. In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; while in a contract to sell, ownership is, by agreement, reserved for the vendor and is not to pass to the vendee until full payment of the purchase price.[9] In a contract of sale, non-payment of the price is a negative resolutory condition. In a contract to sell, full payment is a positive suspensive condition. In a contract of sale, the vendor loses and cannot recover ownership of the thing sold until and unless the contract of sale is itself resolved and set aside. In a contract to sell, the title remains with the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract.[10] In a contract to sell, the payment of the purchase price is a positive suspensive condition, the failure of which is not a breach, casual

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[6] *Supra* note 1.

[7] *Supra* note 2.

[8] *Rollo*, p. 12.

[9] *Rivera v. del Rosario*, 464 Phil. 783 (2004).

[10] *Spouses Dijamco v. Court of Appeals*, 483 Phil. 203 (2004).

or serious, but a situation which prevents the obligation of the vendor to convey title from acquiring an obligatory force.[11]

In the instant case, ownership of the general purpose polystyrene products was retained by SMP, Incorporated (SMP) until after the checks given as payment by Clothespak Manufacturing Philippines (Clothespak) cleared. This was evidenced by a provisional receipt issued by SMP to Clothespak. The agreement between SMP and Clothespak involved a contract to sell defined under Article 1478 of the Civil Code.

On the other hand, the stipulation that the loss or destruction of the products during transit is on the account of Clothespak, as buyer of the products, is of no moment. This does not alter the nature of the contract as a contract to sell. The free on board stipulation on the contract can coexist with the contract to sell. Otherwise stated, the provisions or stipulations in the contract — for the reservation of the ownership of a thing until full payment of the purchase price and for the loss or destruction of the thing would be on account of the buyer — are valid and can exist in conjunction with the other.

In order to discredit the claim of ownership by SMP, petitioner questions the admissibility of the receipt presented by the former, wherein the ownership was reserved for the buyer until after full payment of the purchase price. Petitioner claims that the same was inadmissible in evidence and was in contravention of the best evidence rule. We beg to disagree.

The best evidence rule is the rule which requires the highest grade of evidence obtainable to prove a disputed fact. Although there are certain recognized exceptions when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself.[12]

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[11] *Rivera v. del Rosario*, *supra* note 9.

[12] Rules of Court, Section 3, Rule 130, Sec. 3 reads:

Sec. 3. *Original document must be produced*; *exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

However, in the instant case, contrary to petitioner's contention, the receipt presented by SMP is deemed as an original, considering that the triplicate copy of the provisional receipt was executed at the same time as the other copies of the same receipt involving the same transaction. Section 4, Rule 130 of the Rules of Court provides:

Sec. 4. *Original of document.* —

(a) The original of the document is one the contents of which are the subject of inquiry.

(b) When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals.

(c) When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals.

WHEREFORE, in view of the foregoing, the instant petition is *DENIED* for lack of merit. The Decision dated August 16, 2006 and the Resolution dated November 15, 2006 of the Court of Appeals in CA-G.R. CV No. 86055 are hereby *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Del Castillo,*[*] *JJ.,* concur.

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

[*] Additional member per Special Order No. 805 dated December 4, 2009.

SECOND DIVISION

[G.R. No. 177664. December 23, 2009]

CRC AGRICULTURAL TRADING and ROLANDO B. CATINDIG, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and ROBERTO OBIAS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS; PRESENT IN CASE AT BAR.— The elements to determine the existence of an employment relationship are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct. The most important element is the employer's control of the employee's conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish it. All the four elements are present in this case. *First*, the petitioners engaged the services of the respondent in 1995. *Second*, the petitioners paid the respondent a daily wage of ₱175.00, with allowances ranging from ₱140.00 to ₱200.00 per day. The fact the respondent was paid under a "no work no pay" scheme, assuming this claim to be true, is not significant. The "no work no pay" scheme is merely a method of computing compensation, not a basis for determining the existence or absence of employer-employee relationship. *Third*, the petitioners' power to dismiss the respondent was inherent in the fact that they engaged the services of the respondent as a driver. *Finally*, a careful review of the record shows that the respondent performed his work as driver under the petitioners' supervision and control. Petitioners determined how, where, and when the respondent performed his task. They, in fact, requested the respondent to live inside their compound so he (respondent) could be readily available when the petitioners needed his services. Undoubtedly, the petitioners exercised control over the means and methods by which the respondent accomplished

his work as a driver. We conclude from all these that an employer-employee relationship existed between the petitioners and respondent.

2. **ID.; ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TERMINATION BY EMPLOYER; JUST CAUSES; NEGLECT OF DUTY; ABANDONMENT OF WORK; ELEMENTS; ABSENT IN CASE AT BAR.—** In a dismissal situation, the burden of proof lies with the employer to show that the dismissal was for a just cause. In the present case, the petitioners claim that there was no illegal dismissal, since the respondent abandoned his job. The petitioners point out that the respondent freely quit his work as a driver when he was suspected of forging vehicle parts receipts. Abandonment of work, or the deliberate and unjustified refusal of an employee to resume his employment, is a just cause for the termination of employment under paragraph (b) of Article 282 of the Labor Code, since it constitutes neglect of duty. The jurisprudential rule is that abandonment is a matter of intention that cannot be lightly presumed from equivocal acts. To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intent, manifested through overt acts, to sever the employer-employee relationship. The employer bears the burden of showing a deliberate and unjustified refusal by the employee to resume his employment without any intention of returning. In the present case, the petitioners did not adduce any proof to show that the respondent clearly and unequivocally intended to abandon his job or to sever the employer-employee relationship. Moreover, the respondent's filing of the complaint for illegal dismissal on June 22, 2004 strongly speaks against the petitioners' charge of abandonment; it is illogical for an employee to abandon his employment and, thereafter, file a complaint for illegal dismissal. As we held in *Samarca v. Arc-Men Industries, Inc.*: Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. **Clearly, the operative act is still the employee's ultimate act of putting an end to his employment.**

3. **ID.; ID.; ID.; ID.; ID.; CONSTRUCTIVE DISMISSAL; DEFINED; TEST; A CASE OF.—** Case law defines

constructive dismissal as a cessation of work because continued employment has been rendered impossible, unreasonable, or unlikely, as when there is a demotion in rank or diminution in pay or both or **when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee**. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but is made to appear as if it were not. In fact, the employee who is constructively dismissed might have been allowed to keep coming to work. Constructive dismissal is therefore a *dismissal in disguise.* The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer. In the present case, the petitioners ceased verbally communicating with the respondent and giving him work assignment after suspecting that he had forged purchase receipts. Under this situation, the respondent was forced to leave the petitioners' compound with his family and to transfer to a nearby place. Thus, the respondent's act of leaving the petitioners' premises was in reality not his choice but a situation the petitioners created.

4. **ID.; ID.; ID.; ID.; ID.; DUE PROCESS IN JUST CAUSES; NOT COMPLIED WITH IN CASE AT BAR.—** The long established jurisprudence holds that to justify the dismissal of an employee for a just cause, the employer must furnish the worker with two written notices. The first is the notice to apprise the employee of the particular acts or omissions for which his dismissal is sought. This may be loosely considered as the charge against the employee. The second is the notice informing the employee of the employer's decision to dismiss him. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, and ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires. The requirement of notice is not a mere technicality, but a requirement of due process to which every employee is entitled. The petitioners clearly failed to comply with the two-notice requirement. Nothing in the records shows that the petitioners ever sent the respondent a written notice informing him of the ground for which his

dismissal was sought. It does not also appear that the petitioners held a hearing where the respondent was given the opportunity to answer the charges of abandonment. Neither did the petitioners send a written notice to the respondent informing the latter that his service had been terminated and the reasons for the termination of employment. Under these facts, the respondent's dismissal was illegal.

5. **ID.; ID.; ID.; ID.; SECURITY OF TENURE; REMEDIES IN ILLEGAL DISMISSAL CASES; CASE AT BAR.—** The respondent's illegal dismissal carries the legal consequence defined under Article 279 of the Labor Code: the illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. Where reinstatement is no longer viable as an option, backwages shall be computed from the time of the illegal termination up to the finality of the decision. Separation pay equivalent to one month salary for every year of service should likewise be awarded as an alternative in case reinstatement in not possible. In the present case, reinstatement is no longer feasible because of the strained relations between the petitioners and the respondent. Time and again, this Court has recognized that strained relations between the employer and employee is an exception to the rule requiring actual reinstatement for illegally dismissed employees for the practical reason that the already existing antagonism will only fester and deteriorate, and will only worsen with possible adverse effects on the parties, if we shall compel reinstatement; thus, the use of a viable substitute that protects the interests of both parties while ensuring that the law is respected. In this case, the antagonism between the parties cannot be doubted, evidenced by the petitioners' refusal to talk to the respondent after their suspicion of fraudulent misrepresentation was aroused, and by the respondent's own decision to leave the petitioners' compound together with his family. Under these undisputed facts, a peaceful working relationship between them is no longer possible and reinstatement is not to the best interest of the parties. The payment of separation pay is the better alternative

as it liberates the respondent from what could be a highly hostile work environment, while releasing the petitioners from the grossly unpalatable obligation of maintaining in their employ a worker they could no longer trust. The respondent having been compelled to litigate in order to seek redress, the CA correctly affirmed the labor arbiter's grant of attorney's fees equivalent to 10% of the total monetary award.

APPEARANCES OF COUNSEL

Santos V. Pampolina, Jr. for petitioners.
Banzuela & Associates for private respondent.

D E C I S I O N

BRION, *J.*:

Before this Court is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (*CA*) dated February 20, 2007 and its related Resolution dated April 30, 2007[2] in CA-G.R. SP No. 95924. The assailed decision reversed and set aside the August 15, 2006 Resolution[3] of the National Labor Relations Commission (*NLRC*), and reinstated the Labor Arbiter's April 15, 2005 Decision[4] finding respondent Roberto Obias (*respondent*) illegally dismissed from his employment.

ANTECEDENT FACTS

The present petition traces its roots to the complaint[5] for illegal dismissal filed by the respondent against petitioners

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[1] Penned by Associate Justice Jose Catral Mendoza, and concurred in by Associate Justice Remedios A. Salazar-Fernando and Associate Justice Ramon M. Bato, Jr.; *rollo*, pp. 64-74.

[2] *Id.* at 82.

[3] *Id.* at 30-36.

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

[5] *Id.* at 20.

CRC Agricultural Trading and its owner, Rolando B. Catindig (collectively, *petitioners*), before the Labor Arbiter on June 22, 2004.

In his *Sinumpaang Salaysay*,[6] the respondent alleged that the petitioners employed him as a driver sometime in 1985. The respondent worked for the petitioners until he met an accident in 1989, after which the petitioners no longer allowed him to work. After six years, or in February 1995, the petitioners again hired the respondent as a driver and offered him to stay inside the company's premises. The petitioners gave him a ₱3,000.00 loan to help him build a hut for his family.

Sometime in March 2003, the petitioners ordered respondent to have the alternator of one of its vehicles repaired. The respondent brought the vehicle to a repair shop and subsequently gave the petitioners two receipts issued by the repair shop. The latter suspected that the receipts were falsified and stopped talking to him and giving him work assignments. The petitioners, however, still paid him ₱700.00 and ₱500.00 on April 15 and 30, 2004, respectively, but no longer gave him any salary after that. As a result, the respondent and his family moved out of the petitioners' compound and relocated to a nearby place. The respondent claimed that the petitioners paid him a daily wage of ₱175.00, but did not give him service incentive leave, holiday pay, rest day pay, and overtime pay. He also alleged that the petitioners did not send him a notice of termination.

In opposing the complaint, the petitioners claimed that the respondent was a seasonal driver; his work was irregular and was not fixed. The petitioners paid the respondent ₱175.00 daily, but under a "no work no pay" basis. The petitioners also gave him a daily allowance of ₱140.00 to ₱200.00. In April 2003, the respondent worked only for 15 days for which he was paid the agreed wages. The petitioners maintained that they did not anymore engage the respondent's services after April 2003, as they had already lost trust and confidence in him after discovering that he had forged receipts for the vehicle

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[6] *Id.* at 23-24.

parts he bought for them. Since then, the respondent had been working as a driver for different jeepney operators.[7]

The Labor Arbiter Ruling

Labor Arbiter Rennell Joseph R. Dela Cruz, in his decision of April 15, 2005, ruled in the respondent's favor declaring that he had been illegally dismissed. The labor arbiter held that as a regular employee, the respondent's services could only be terminated after the observance of due process. The labor arbiter likewise disregarded the petitioners' charge of abandonment against the respondent. He thus decreed:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents CRC AGRICULTURAL TRADING and ROLANDO CATINDIG to pay complainant jointly and severally the following:

Separation Pay	-	₱ 64,740.00
Backwages		
Basic pay	-	₱146,491.80
13th month pay	-	12,207.65
SIL	-	2,347.63
Salary Differential	-	47,944.00
Unpaid SIL	-	3,467.00
		₱277,198.08
10% attorney's fees	-	27,719.80
GRAND TOTAL	-	₱304,917.80

SO ORDERED.[8]

The NLRC Ruling

The petitioners and the respondent both appealed the labor arbiter's decision to the NLRC. The petitioners specifically questioned the ruling that the respondent was illegally dismissed.

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[7] *Id.* at 21-22.

[8] *Id.* at 29.

The respondent, for his part, maintained that the labor arbiter erred when he ordered the payment of separation pay in lieu of reinstatement.

The NLRC, in its resolution of August 15, 2006,[9] modified the labor arbiter's decision. The NLRC ruled that the respondent was not illegally dismissed and deleted the labor arbiter's award of backwages and attorney's fees. The NLRC reasoned out that it was respondent himself who decided to move his family out of the petitioners' lot; hence, no illegal dismissal occurred. Moreover, the respondent could not claim wages for the days he did not work, as he was employed by the petitioners under a "no work no pay" scheme.

The CA Decision

The petitioners filed on August 30, 2006 a petition for *certiorari* with the CA alleging that the NLRC erred in awarding the respondent separation pay and salary differentials. They argued that an employee who had abandoned his work, like the respondent, is no different from one who voluntarily resigned; both are not entitled to separation pay and to salary differentials. The petitioners added that since they had already four regular drivers, the respondent's job was already unnecessary and redundant. They further argued that they could not be compelled to retain the services of a dishonest employee.

The CA, in its decision dated February 20, 2007, reversed and set aside the NLRC resolution dated August 15, 2006, and reinstated the labor arbiter's April 15, 2005 decision.

The CA disregarded the petitioners' charge of abandonment against the respondent for their failure to show that there was deliberate and unjustified refusal on the part of the respondent to resume his employment. The CA also ruled that the respondent's filing of a complaint for illegal dismissal manifested his desire to return to his job, thus negating the petitioners' charge of abandonment. Even assuming that there had been abandonment, the petitioners denied the respondent due process when they

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[9] *Supra* note 3.

did not serve him with two written notices, *i.e.*, (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) a subsequent notice which advises the employee of the employer's decision to dismiss him. Thus, the respondent is entitled to full backwages without deduction of earnings derived elsewhere from the time his compensation was withheld from him, up to the time of his actual reinstatement. The CA added that reinstatement would no longer be beneficial to both the petitioners and respondent, as the relationship between them had already been strained.

Petitioners moved to reconsider the decision, but the CA denied the motion for lack of merit in its Resolution dated April 30, 2007.

In the present petition, the petitioners alleged that the CA erred when it awarded the respondent separation pay, backwages, salary differentials, and attorney's fees. They reiterated their view that an abandoning employee like respondent is not entitled to separation benefits because he is no different from one who voluntarily resigns.

THE COURT'S RULING

We do not find the petition meritorious.

The existence of an employer-employee relationship

A paramount issue that needs to be resolved before we rule on the main issue of illegal dismissal is whether there existed an employer-employee relationship between the petitioners and the respondent. This determination has been rendered imperative by the petitioners' denial of the existence of employer-employee relationship on the reasoning that they only called on the respondent when needed.

The elements to determine the existence of an employment relationship are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct. The most important element is the employer's control of the employee's conduct, not only as to the result of the work to be

done, but also as to the means and methods to accomplish it. All the four elements are present in this case.[10]

First, the petitioners engaged the services of the respondent in 1995. *Second*, the petitioners paid the respondent a daily wage of ₱175.00, with allowances ranging from ₱140.00 to ₱200.00 per day. The fact the respondent was paid under a "no work no pay" scheme, assuming this claim to be true, is not significant. The "no work no pay" scheme is merely a method of computing compensation, not a basis for determining the existence or absence of employer-employee relationship. *Third*, the petitioners' power to dismiss the respondent was inherent in the fact that they engaged the services of the respondent as a driver. *Finally*, a careful review of the record shows that the respondent performed his work as driver under the petitioners' supervision and control. Petitioners determined how, where, and when the respondent performed his task. They, in fact, requested the respondent to live inside their compound so he (respondent) could be readily available when the petitioners needed his services. Undoubtedly, the petitioners exercised control over the means and methods by which the respondent accomplished his work as a driver.

We conclude from all these that an employer-employee relationship existed between the petitioners and respondent.

The respondent did not abandon his job

In a dismissal situation, the burden of proof lies with the employer to show that the dismissal was for a just cause. In the present case, the petitioners claim that there was no illegal dismissal, since the respondent abandoned his job. The petitioners point out that the respondent freely quit his work as a driver when he was suspected of forging vehicle parts receipts.

Abandonment of work, or the deliberate and unjustified refusal of an employee to resume his employment, is a just cause for the termination of employment under paragraph (b)

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[10] See *Chavez v. National Labor Relations Commission*, 489 Phil. 444 (2005).

of Article 282 of the Labor Code, since it constitutes neglect of duty.[11] The jurisprudential rule is that abandonment is a matter of intention that cannot be lightly presumed from equivocal acts. To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intent, manifested through overt acts, to sever the employer-employee relationship. The employer bears the burden of showing a deliberate and unjustified refusal by the employee to resume his employment without any intention of returning.[12]

In the present case, the petitioners did not adduce any proof to show that the respondent clearly and unequivocally intended to abandon his job or to sever the employer-employee relationship. Moreover, the respondent's filing of the complaint for illegal dismissal on June 22, 2004 strongly speaks against the petitioners' charge of abandonment; it is illogical for an employee to abandon his employment and, thereafter, file a complaint for illegal dismissal. As we held in *Samarca v. Arc-Men Industries, Inc.*:[13]

> Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. **Clearly, the operative act is still the employee's ultimate act of putting an end to his employment.** [Emphasis in the original]

Respondent was constructively dismissed

Case law defines constructive dismissal as a cessation of work because continued employment has been rendered impossible, unreasonable, or unlikely, as when there is a demotion in rank or diminution in pay or both or **when a clear**

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[11] See *Victory Liner, Inc. v. Race*, G.R. No. 164820, March 28, 2007, 519 SCRA 356, 373.

[12] *Pentagon Steel Corporation v. Court of Appeals*, G.R. No. 174141, June 26, 2009.

[13] 459 Phil. 506, 516 (2003).

discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.[14]

The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but is made to appear as if it were not. In fact, the employee who is constructively dismissed might have been allowed to keep coming to work. Constructive dismissal is therefore a *dismissal in disguise.* The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.[15]

In the present case, the petitioners ceased verbally communicating with the respondent and giving him work assignment after suspecting that he had forged purchase receipts. Under this situation, the respondent was forced to leave the petitioners' compound with his family and to transfer to a nearby place. Thus, the respondent's act of leaving the petitioners' premises was in reality not his choice but a situation the petitioners created.

The Due Process Requirement

Even assuming that a valid ground to dismiss the respondent exists, the petitioners failed to comply with the twin requirements of notice and hearing under the Labor Code.

The long established jurisprudence holds that to justify the dismissal of an employee for a just cause, the employer must furnish the worker with two written notices. The first is the notice to apprise the employee of the particular acts or omissions for which his dismissal is sought. This may be loosely considered as the charge against the employee. The second is the notice informing the employee of the employer's decision to dismiss him. This decision, however, must come only after the employee

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[14] *La Rosa v. Ambassador Hotel*, G.R. No. 177059, March 13, 2009; *Segue v. Triumph International (Phils.), Inc.*, G.R. No. 164804, January 30, 2009, 577 SCRA 323, 333.

[15] *Uniwide Sales Warehouse Club v. National Labor Relations Commission*, G.R. No. 154503, February 29, 2008, 547 SCRA 220, 236.

is given a reasonable period from receipt of the first notice within which to answer the charge, and ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires. The requirement of notice is not a mere technicality, but a requirement of due process to which every employee is entitled.

The petitioners clearly failed to comply with the two-notice requirement. Nothing in the records shows that the petitioners ever sent the respondent a written notice informing him of the ground for which his dismissal was sought. It does not also appear that the petitioners held a hearing where the respondent was given the opportunity to answer the charges of abandonment. Neither did the petitioners send a written notice to the respondent informing the latter that his service had been terminated and the reasons for the termination of employment. Under these facts, the respondent's dismissal was illegal.[16]

Backwages, Separation Pay, and Attorney's Fees

The respondent's illegal dismissal carries the legal consequence defined under Article 279 of the Labor Code: the illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. Where reinstatement is no longer viable as an option, backwages shall be computed from the time of the illegal termination up to the finality of the decision.[17] Separation pay equivalent to one month salary for every year of service should likewise be awarded as an alternative in case reinstatement is not possible.[18]

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[16] *Mendoza v. National Labor Relations Commission*, 350 Phil. 486 (1998).

[17] See *RBC Cable Master System v. Baluyot*, G.R. No. 172670, January 20, 2009, 576 SCRA 668, 679.

[18] See *Mt. Carmel College v. Resuena*, G.R. No. 173076, October 10, 2007, 535 SCRA 518, 541.

In the present case, reinstatement is no longer feasible because of the strained relations between the petitioners and the respondent. Time and again, this Court has recognized that strained relations between the employer and employee is an exception to the rule requiring actual reinstatement for illegally dismissed employees for the practical reason that the already existing antagonism will only fester and deteriorate, and will only worsen with possible adverse effects on the parties, if we shall compel reinstatement; thus, the use of a viable substitute that protects the interests of both parties while ensuring that the law is respected.

In this case, the antagonism between the parties cannot be doubted, evidenced by the petitioners' refusal to talk to the respondent after their suspicion of fraudulent misrepresentation was aroused, and by the respondent's own decision to leave the petitioners' compound together with his family. Under these undisputed facts, a peaceful working relationship between them is no longer possible and reinstatement is not to the best interest of the parties. The payment of separation pay is the better alternative as it liberates the respondent from what could be a highly hostile work environment, while releasing the petitioners from the grossly unpalatable obligation of maintaining in their employ a worker they could no longer trust.

The respondent having been compelled to litigate in order to seek redress, the CA correctly affirmed the labor arbiter's grant of attorney's fees equivalent to 10% of the total monetary award.[19]

The records of this case, however, are incomplete for purposes of computing the exact monetary award due to the respondent. Thus, it is necessary to remand this case to the Labor Arbiter for the sole purpose of computing the proper monetary award.

WHEREFORE, premises considered, we hereby *DENY* the petition. The Decision of the Court of Appeals dated February 20, 2007 and its Resolution dated April 30, 2007 in CA-G.R. SP No. 95924 are *AFFIRMED* and the case is *REMANDED* to the Labor Arbiter for the sole purpose of computing the full backwages,

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[19] *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507.

inclusive of allowances and other benefits of respondent Roberto Obias, computed from the date of his dismissal up to the finality of the decision, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service, computed from the time of his engagement up to the finality of this decision.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Del Castillo, and *Abad, JJ.,* concur.

FIRST DIVISION

[G.R. No. 179328. December 23, 2009]

RIZALINA P. POSITOS, *petitioner, vs.* **JACOB M. CHUA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; NOT THE PROPER REMEDY IN CASE AT BAR; BASIS.—** At the outset, petitioner's present availment of a petition for review on *certiorari* under Rule 45 is doomed. Section 1, Rule 41 of the Rules of Court provides that the remedy of appeal is not available from an order dismissing an action without prejudice. Sec. 1. *Subject of appeal*. – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable. **No appeal may be taken from**: x x x (h) **An order dismissing an action without prejudice.** In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

2. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT; ALLEGATIONS IN CASE AT BAR ARE NOT CONSTITUTIVE OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— Since the present petition prays for the modification of the appellate court's decision, this Court cannot treat it as one for *certiorari,* petitioner's allegations therein not being constitutive of grave abuse of discretion amounting to lack or excess of jurisdiction.

3. ID.; CIVIL PROCEDURE; ACTIONS; DISMISSAL OF ACTIONS; LACK OF CAUSE OF ACTION; A CASE OF.— x x x [R]espondent's complaint was dismissed for failure to comply with the conciliation process. Non-compliance affected the sufficiency of his cause of action and rendered the complaint susceptible, as in fact it resulted to dismissal on the ground of prematurity.

4. ID.; ID.; ID.; ID.; DISMISSAL WITHOUT PREJUDICE; DOES NOT OPERATE AS A JUDGMENT ON THE MERITS.— A dismissal *without prejudice* does not operate as a judgment on the merits, for there is no unequivocal determination of the rights and obligations of the parties with respect to the cause of action and subject matter thereof.

5. ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW CAN BE RAISED THEREIN; PETITIONER'S CLAIM OF DISPOSSESSION IS A QUESTION OF FACT.— x x x [P]etitioner's claim of dispossession during the pendency of her appeal, which claim is disputed by respondent, is a question of fact which is not a proper subject for this Court to decide, the general rule being that only questions of law can be raised before it. Petitioner has not, however, presented convincing circumstances to take her case out from the general rule.

APPEARANCES OF COUNSEL

Rodolfo B. Ta-Asan, Jr. for petitioner.

Villanueva Zeta Bata and Evangelio Law Offices for respondent.

DECISION

CARPIO MORALES, *J.*:

From the Decision of July 13, 2004[1] of the Court of Appeals *reversing* that of the Davao City Regional Trial Court (RTC), Branch 10 dismissing without prejudice the complaint for unlawful detainer filed by Jacob Chua (respondent), Rizalina Positos (petitioner) filed the present petition for review on *certiorari*.

The following undisputed facts spawned the filing of the complaint by respondent against petitioner.

Petitioner had since 1980 been occupying a portion of a parcel of land covered by Transfer Certificate of Title No. T-231686[2] situated in Leon Garcia St., Davao City. The land was likewise occupied by members of the Sto. Tomas de Villanueva Settlers Association (the Association), of which petitioner was a member. On December 26, 1994, the registered owner of the land, Ansuico, Inc., transferred its rights and interests thereover to respondent.

The Association thereupon filed a complaint against respondent for prohibitory injunction before the RTC of Davao City. A compromise agreement was thereafter forged and approved by the trial court wherein the Association agreed to vacate the premises provided respondent extends financial assistance to its members.

Petitioner refused to abide by the compromise agreement, however, prompting respondent to send her a demand letter to vacate the premises within fifteen (15) days from receipt thereof.

The conflict was referred for conciliation before the *Lupon* following Republic Act No. 7160 (R.A. 7160), "*The Local Government Code*." Respondent did not appear during the

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[1] Penned by Associate Justice Mariflor P. Punzalan-Castillo with the concurrence of Associate Justices Sesinando E. Villon and Rodrigo F. Lim, Jr.

[2] In respondent's complaint, the TCT number was indicated as "T-53124." This was later on rectified by respondent during pre-trial and the correction was reflected in the position paper submitted.

proceedings but sent a representative on his behalf. No settlement having been reached, respondent filed a complaint against petitioner for Unlawful Detainer with prayer for damages and attorney's fees before the Municipal Trial Court in Cities (MTCC), Davao City.

In her Answer to the complaint, petitioner alleged that the failure of respondent to appear personally during the proceedings is equivalent to non-compliance with R.A. 7160 to thus render the complaint dismissible; that respondent did not tolerate her occupancy; and that the complaint must be dismissed for failure to state a cause of action.

During the preliminary conference before the MTCC, the parties stipulated on respondent's failure to personally appear during conciliation, the due existence of the Certificate to File Action issued by the *barangay* captain, and the lack of lessor-lessee relationship between the parties.[3]

By Decision of January 26, 1998, the MTCC rendered judgment in favor of respondent, disposing as follows:

> ACCORDINGLY, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter:
>
> 1. To vacate the premises in question and turn over the possession thereof to the plaintiff;
> 2. To pay the plaintiff the sum of ₱10,000.00 a month as a reasonable rental of the premises starting January 25, 1997 until the defendant shall have vacated the same;
> 3. To pay the plaintiff the sum of ₱10,000.00 as attorney's fees and ₱1,000.00 as litigation expenses; and
> 4. To pay the costs of suit.
>
> Defendant's counterclaim is hereby DENIED for lack of merit.
>
> SO ORDERED.[4]

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[3] *Rollo*, "*Pre-Trial Order from the Municipal Trial Courts in Cities, Branch 1, Davao City,*" pp. 36-37.

[4] *Id*. at 38-47, 47.

Petitioner appealed to the RTC of Davao City. As she did not file a supersedeas bond to stay the execution of its decision, the MTCC, upon motion of respondent, issued a Writ of Execution, drawing petitioner to file a Petition for *Certiorari* and Prohibition with Prayer for Injunctive Relief before the Davao City RTC.[5]

By Order of October 28, 1998,[6] then RTC Executive Judge Jesus V. Quitain issued a temporary restraining order (TRO) to stay the execution of the MTCC decision.

Meanwhile, Branch 8 of the Davao City RTC, acting on petitioner's appeal, affirmed the MTCC decision by Decision of March 2, 1999,[7] it holding that since respondent was duly represented in the conciliation proceedings by an attorney-in-fact, the Local Government Code was substantially complied with.

Petitioner elevated the case to the Court of Appeals which issued the challenged Decision dismissing without prejudice respondent's complaint for unlawful detainer on the ground of lack of cause of action, he having failed to comply with the *barangay* conciliation procedure.

Petitioner filed a motion for reconsideration of the appellate court's decision, alleging that during the pendency of the appeal she was dispossessed from the premises, hence, she prayed that she be restored thereto. The appellate court, noting that respondent's complaint was dismissed without prejudice, petitioner's cause of action should be ventilated in a separate action. It thus denied petitioner's motion for reconsideration. Hence, the present petition for review on *certiorari*.

In the main, petitioner argues that to compel her to file a separate action for restoration to the premises runs contrary to the avowed intent of the Rules of Court to promote just, speedy and inexpensive disposition of every action and proceeding. And she cites Section 3, Rule 2 of the Rules which provides that a party may not institute more than one suit for a single cause of action.

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[5] Respondent's "Comment" before this Court, *id.* at 64-69, 65.

[6] *Id.* at 75.

[7] Records, pp. 313-323.

Further, petitioner argues that since it is not disputed that she was in physical possession of the premises when the complaint for unlawful detainer was filed, her possession must be respected until the case is decided on the merits.

At the outset, petitioner's present availment of a petition for review on *certiorari* under Rule 45 is doomed.

Section 1, Rule 41 of the Rules of Court provides that the remedy of appeal is not available from an order dismissing an action without prejudice.[8]

> Sec. 1. *Subject of appeal*. – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> **No appeal may be taken from**: x x x
>
> (h) **An order dismissing an action without prejudice.**
>
> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (italics in the original, emphasis and underscoring supplied)

Since the present petition prays for the modification of the appellate court's decision, this Court cannot treat it as one for *certiorari*, petitioner's allegations therein not being constitutive of grave abuse of discretion amounting to lack or excess of jurisdiction.

Procedural *faux pas* aside, the petition just the same fails.

As reflected above, respondent's complaint was dismissed for failure to comply with the conciliation process. Non-compliance affected the sufficiency of his cause of action and rendered the complaint susceptible, as in fact it resulted to dismissal on the ground of prematurity.

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[8] *Philippine Export and Foreign Loan Guarantee Corporation v. Philippine Infrastructures, Inc.*, G.R. No. 120384, January 13, 2004, 419 SCRA 6.

A dismissal *without prejudice* does not operate as a judgment on the merits, for there is no unequivocal determination of the rights and obligations of the parties with respect to the cause of action and subject matter thereof.

En passant, petitioner's claim of dispossession during the pendency of her appeal, which claim is disputed by respondent, is a question of fact which is not a proper subject for this Court to decide, the general rule being that only questions of law can be raised before it. Petitioner has not, however, presented convincing circumstances to take her case out from the general rule.[9]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 179946. December 23, 2009]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **QUIRINO CABRAL *y* VALENCIA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AS A RULE, TRIAL COURT'S OBSERVATIONS AND CONCLUSIONS DESERVE GREAT RESPECT AND ARE ACCORDED FINALITY.— The rule

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[9] *Natividad v. Movie and Television Review and Classification Board (MTRCB)*, 540 SCRA 124, 135.

is well-settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. We find no reason to deviate from the general rule under the circumstances of this case.

2. **ID.; ID.; ID.; IMPUTATION OF ILL-MOTIVE WITHOUT CORROBORATION DESERVES SCANT CONSIDERATION.** — x x x [T]he testimony of the complainant on the elements constituting the crime of rape as committed on three separate occasions through force and intimidation was clear, categorical, and positive. In the absence of corroboration, the ill-motive imputed by the accused-appellant against his wife and against the victim deserves scant consideration.

3. **CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; CLOSE PHYSICAL PROXIMITY OF OTHER RELATIVES AT THE SCENE OF THE RAPE DOES NOT NEGATE THE COMMISSION OF THE CRIME.—** x x x [T]he close physical proximity of other relatives at the scene of the rape does not negate the commission of the crime. In *People v. Cura,* we emphasized that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. Lust is no respecter of time and place; neither is it deterred by age nor relationship.

4. **REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; NOT MERITORIOUS DEFENSES IN CASE AT BAR.—** x x x [T]he accused-appellant's defenses of denial and alibi lack merit. His denial lacked corroboration. His alibi, on the other hand, did not foreclose the commission of the rapes. His alibi was in fact directly contradicted by the complainant who unequivocally and positively identified him as the one who sexually molested her on the three occasions charged.

5. **CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; QUALIFYING CIRCUMSTANCES OF RELATIONSHIP AND MINORITY; PROVEN IN CASE AT BAR.—** The qualifying circumstances of relationship and minority between the complainant and the accused-appellant had adequately been proven by the complainant's presented Birth Certificate showing May 16, 1985 as her birth date and the name of the accused-appellant as the father. Also, the letters written by the accused-appellant showed his admission as the father of the complainant. The accused-appellant failed to deny during the trial the fact of their father-daughter relationship.

6. **ID.; REPUBLIC ACT NO. 9346 (AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES); DEATH PENALTY WAS CORRECTLY REDUCED TO *RECLUSION PERPETUA* FOR EACH COUNT OF RAPE.—** The CA correctly reduced the death penalty to *reclusion perpetua* for each count of rape pursuant to Section 3 of Republic Act No. 9346. The same section, however, imposes the condition that the accused cannot be eligible for parole.

7. **CIVIL LAW; DAMAGES; AWARD OF CIVIL LIABILITY; MODIFICATION THEREOF IS IN ORDER.—** x x x A modification of the civil liability awarded is in order, pursuant to the ruling in *People v. Mariano*. For the commission of qualified rape, the accused-appellant is liable to pay the complainant ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱30,000.00 as exemplary damages in each case.

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*.:

This is an appeal from the decision[1] of the Court of Appeals (*CA*) affirming with modification the decision of the Regional Trial Court[2] (*RTC*) finding Quirino Cabral *y* Valencia (*accused-appellant*) guilty beyond reasonable doubt of three (3) counts of qualified rape committed against his minor daughter (*complainant*).

The Antecedents

The accused-appellant was charged with five (5) counts of rape committed within the period December 1995 to November 21, 1998 against the complainant who was only 10 to 13 years old at the time. The rape incidents all happened under the following circumstances: (a) the rapes were committed in the family dwelling between 12:00 a.m. and 2:00 a.m. when the complainant was sleeping with her siblings; (b) the size of the family dwelling was three meters by four meters; (c) the complainant's mother was not around; (d) the accused-appellant poked a *balisong* at the complainant's neck in three instances to compel her to submit to the sexual assaults; and (e) the accused-appellant also threatened to kill the complainant and the rest of the family members in case of disclosure.

The complainant related that in these incidents, she would be awakened in the middle of her sleep with the accused-appellant touching and stroking her thighs. The accused-appellant would undress her, and, after also undressing himself, would insert his organ into her organ. The complainant also related that she would cry and kick the accused-appellant during the sexual act.

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[1] Dated June 13, 2007 in CA-G.R. CR-H.C. No. 02052; penned by CA Associate Justice Josefina Guevara-Salonga, and concurred in by Associate Justice Vicente Q. Roxas (dismissed) and Associate Justice Ramon R. Garcia; CA *rollo,* pp. 107-121.

[2] Dated March 7, 2005 in Crim. Case Nos. 15-99 to 19-99; penned by Judge Etiquio L. Quitain; *id.* at 33-46.

The accused-appellant denied the charges against him and claimed that it was impossible for him to commit the rapes, considering that his work schedules as a tricycle driver and as a fisherman compelled him to work at nighttime. The accused-appellant imputed ill-motive on his wife and the complainant. He claimed that the complainant begrudged him for disciplining her; his wife wanted to replace him with another man.

The RTC Ruling

The RTC acquitted the accused-appellant of one (1) count of rape, but convicted him of the four (4) counts charged, and imposed the penalty of death – the penalty qualified rape carries. The trial court relied on the complainant's testimony which it described as "innocent," "straightforward," and an "unflinching narration on how she was molested." The RTC also ruled that the age of the complainant rendered it highly improbable for her to fabricate stories of her defloration.

The RTC rejected the accused-appellant's alibi for his failure to show that it was physically impossible for him to have committed the rapes. The RTC also rejected the claim that the small size of their dwelling rendered the commission of the rapes impossible; it recognized that lust is no respecter of time and place. Finally, the RTC noted that the accused-appellant's plea for forgiveness from his wife indicated his guilt.

The CA Ruling

The CA on appeal affirmed the RTC's findings. The CA, however, acquitted the accused-appellant of one (1) count of rape for lack of evidence showing penile penetration. The dispositive portion of the CA decision decreed:

> WHEREFORE, the foregoing considered, the assailed Decision in Criminal Cases Nos. 15-99, 16-99 and 17-99 are hereby AFFIRMED with the MODIFICATION that the accused-appellant's sentence is REDUCED to *reclusion perpetua*. Accused-appellant is further ordered to pay private complainant in Criminal Case Nos. 15-99, 16-99 and 17-99 ₱50,000.00 for moral damages, ₱75,000.00 for civil indemnity and ₱20,000.00 for exemplary damages in each criminal case.

For insufficiency of evidence and for failure of the prosecution to prove his guilt beyond reasonable doubt, accused-appellant is hereby ACQUITTED in Criminal Case No. 18-99.

Costs against the accused-appellant.

SO ORDERED.[3]

The Issue

The lone issue raised on appeal is the failure of the courts to appreciate the doubtful testimony of the complainant, considering her failure to shout for help and the improbability that the rapes could have been committed in a 3 x 4-meter house in the presence of other people.

The Court's Ruling

We affirm the accused-appellant's conviction after due consideration of the records and the evidence.

The rule is well-settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case.[4] We find no reason to deviate from the general rule under the circumstances of this case.

First, the testimony of the complainant on the elements constituting the crime of rape as committed on three separate occasions through force and intimidation was clear, categorical, and positive. In the absence of corroboration, the ill-motive imputed by the accused-appellant against his wife and against the victim deserves scant consideration.

We also take into account the seriousness of the present charges of incestuous rapes committed by a father against his

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[3] *Id.* at 120-121.

[4] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 696-697.

daughter. No woman in her right mind, especially a young girl, would fabricate charges of this nature and severity.

Second, the physical evidence showing old lacerations on the complainant's hymen corroborates her testimony that she had been sexually assaulted.

Third, the failure of the complainant to shout for help during the rapes is explained by the *balisong* the accused-appellant poked at the complainant's neck. The evidence also shows that the accused-appellant instilled fear on his daughter through the threat to kill her and the rest of the family members if she did not submit to his demands.

Fourth, the close physical proximity of other relatives at the scene of the rape does not negate the commission of the crime. In *People v. Cura,*[5] we emphasized that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping.[6] It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed.[7] Lust is no respecter of time and place;[8] neither is it deterred by age nor relationship.[9]

Fifth, the accused-appellant's defenses of denial and alibi lack merit. His denial lacked corroboration. His alibi, on the other hand, did not foreclose the commission of the rapes. His alibi was in fact directly contradicted by the complainant who unequivocally and positively identified him as the one who sexually molested her on the three occasions charged.

The qualifying circumstances of relationship and minority between the complainant and the accused-appellant had adequately been proven by the complainant's presented Birth

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[5] 310 Phil. 237 (1995).

[6] *Id.* at 247.

[7] *Id.*

[8] *Id.*

[9] *People v. De Guzman*, 423 Phil. 313, 317 (2001).

Certificate showing May 16, 1985 as her birth date and the name of the accused-appellant as the father.[10] Also, the letters written by the accused-appellant showed his admission as the father of the complainant.[11] The accused-appellant failed to deny during the trial the fact of their father-daughter relationship.[12]

The CA correctly reduced the death penalty to *reclusion perpetua* for each count of rape pursuant to Section 3[13] of Republic Act No. 9346.[14] The same section, however, imposes the condition that the accused cannot be eligible for parole. A modification of the civil liability awarded is in order, pursuant to the ruling in *People v. Mariano*.[15] For the commission of qualified rape, the accused-appellant is liable to pay the complainant ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱30,000.00 as exemplary damages in each case.

WHEREFORE, premises considered, the decision dated June 13, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 02052 finding accused-appellant Quirino Cabral *y* Valencia guilty beyond reasonable doubt of three (3) counts of qualified rape is *AFFIRMED* with the *MODIFICATION* in that he is sentenced to *reclusion perpetua* per count of rape without eligibility for parole. Accused-appellant Quirino Cabral *y* Valencia is also ordered to pay the complainant (1) ₱75,000.00 as civil indemnity; (2) ₱75,000.00 as moral damages; and (3) ₱30,000.00 as exemplary damages in each count of the rapes.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Del Castillo, and *Abad, JJ.,* concur.

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[10] Records, p. 141; *People v. Canoy*, 459 Phil. 933, 946 (2003).

[11] *Id.* at 145-155.

[12] *People v. Malibiran*, G.R. No. 173471, March 17, 2009.

[13] Section 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[14] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[15] G.R. No. 168693, June 19, 2009.

THIRD DIVISION

[G.R. No. 180439. December 23, 2009]

RESORT HOTELS CORPORATION, RODOLFO M. CUENCA and CUENCA INVESTMENT CORPORATION, *petitioners, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES and SM INVESTMENT CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PREPONDERANCE OF EVIDENCE IN CIVIL CASES.— Section 1 of Rule 131 of the Rules of Court, in relation to Section 1 of Rule 133, unequivocally provides: **SECTION 1.** *Burden of proof.* – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. **SECTION 1**. *Preponderance of evidence*, *how determined.* – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

2. ID.; ID.; ID.; BURDEN OF PROOF THAT FORECLOSURE PROCEEDINGS WERE NOT VALIDLY CONDUCTED UNDER ACT NO. 3135 LIES WITH MORTGAGOR-PARTY LITIGANT CLAIMING SUCH; CASE AT BAR.— Petitioners are adamant, however, that it was incumbent upon respondents to prove their denial of petitioners' claims; *i.e.,* foreclosure

proceedings were validly conducted consistent with Act No. 3135. We disagree. *Ei incumbit probatio qui dicit, non qui negat* (he who asserts, not he who denies, must prove). The burden of proof that foreclosure proceedings on the subject properties were not validly conducted lies with mortgagor-party litigant claiming such. We have consistently applied the ancient rule that if a plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner facts on which he bases his claim, the defendant is under no obligation to prove his exception or defense.

3. ID.; ID.; DOCUMENTS; ADMISSIBILITY; PERSON WHO PREPARED DOCUMENT MUST BE PRESENTED IN COURT AND SUBJECTED TO CROSS-EXAMINATION; CASE AT BAR.— On the actual amount of RHC's obligation to DBP, we find it proper to reinstate the RTC's holding thereon, *i.e.,* the loan obligation is fixed at ₱114,005,404.02 from the date of the RTC judgment with 12% interest per annum until fully paid. We cannot subscribe to the CA's computation of RHC's indebtedness to DBP which was pegged at ₱612,476,182.08, inclusive of interest. The CA set aside the RTC's holding thereon and based its finding on the Statement of Total Claim prepared by DBP. These documents show that RHC's deficiency balance as of August 31, 2002, after deducting the total purchase price of the subject properties and the insurance proceeds plus the corresponding interest computed at 21% per annum from 1984 to August 21, 2002, is ₱612,476,182.08. However, as correctly pointed out by petitioners, these documents are inadmissible and constitute hearsay evidence because the persons who prepared the documents were not presented in court and subjected to cross-examination.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioners.

Gregorio M. Batiller, Jr. for SM Investments Corporation.

Office of the Government Corporate Counsel for Development Bank of the Philippines.

DECISION

NACHURA, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision[1] in CA-G.R. CV No. 81363, which reversed and set aside the Decision of the Regional Trial Court (RTC), Branch 134, Makati City, in Civil Case Nos. 6342, 269-R, TG-799 and 9497.[2]

The long and arduous facts, as found by the CA, follow:

> [Petitioner] Resort Hotel[s] Corporation (RHC for brevity), a corporation duly organized and existing in accordance with Philippine laws, was the previous owner and operator of several hotels located outside Metro Manila; namely Baguio Pines Hotel in Baguio City, Taal Vista Lodge Hotel in Tagaytay City, and Hotel Mindanao in Cagayan de Oro City. Among RHC's stockholders were [petitioners] Cuenca Investment Corporation and Rodolfo Cuenca, who was the erstwhile President and Chairman of the Board of Directors of the said Corporation. On the other hand, [respondent] Development Bank of the Philippines (DBP), a government financial institution, was RHC's major creditor that eventually foreclosed the disputed hotels upon the latter's default. [Respondent] SM Investment Corporation (SMIC) was the subsequent owner of Taal Vista Lodge Hotel and Baguio Pines Hotel.
>
> It appears that from 1969 up to 1981, RHC obtained from DBP several loans, aggregating approximately ₱157 million, for the purpose of expanding hotel capacities, operations and services nationwide. To secure the payment of these loans, RHC executed real estate mortgages in favor of DBP covering the following properties of RHC: a) two (2) parcels of land situated in Baguio City, covered by Transfer Certificate of Title (TCT) No. T-15880 and Original Certificate of Title No. P-1316, which included Baguio Pines Hotel x x x; b) six (6) parcels of land located in Tagaytay City, covered by TCT Nos. T-8085, T-10801, T-10802, T-10803, T-10804 and T-10805, which included Taal Vista Lodge Hotel x x x; and c)

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[1] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Jose L. Sabio, Jr. and Arturo G. Tayag, concurring; *rollo,* pp. 8-48.

[2] Penned by Pairing Judge Rebecca R. Mariano; *rollo,* pp. 694-703.

two (2) parcels of land situated in Cagayan de Oro, covered by TCT Nos. T-34777 and T-34778, which included Hotel Mindanao x x x. Likewise, RHC executed chattel mortgages additionally securing the loans with all the personal properties located inside its head office in Makati.

When the loans became due and demandable, RHC failed to pay. Sometime in the early '80S, RHC proposed to DBP that part of its obligations be converted into equity inasmuch as it was experiencing financial difficulties. DBP subsequently acceded. With the approval of the Board of Directors of RHC, which was then headed by its Chairman, Rodolfo Cuenca, DBP obtained shareholdings, equivalent to 55% of RHC's total stockholders' equity, in exchange for the reduction of RHC's obligation to DBP by [as] much as ₱47 million. As a result of the debt-to-equity conversion, DBP acquired two (2) board seats in the eleven-member Board of Directors of RHC.

As of January 10, 1984, RHC's outstanding obligation was pegged at ₱114,005,404.02 while its total arrearages was ₱56,134,819.52 which was about 49% of its total outstanding obligation. Consequently, DBP applied for the extrajudicial foreclosure of the real estate and chattel mortgages pursuant to Presidential Decree No. 385, also known as "*The Law on Mandatory Foreclosure*," mandating government financial institutions to foreclose mandatorily loans with arrearages amounting to at least 20% of the total outstanding obligation.

Intending to block the impending foreclosure of the mortgaged personal properties, RHC filed on February 6, 1984 a Complaint x x x against DBP and the Sheriff of Rizal or Makati before Branch 148 of Regional Trial Court (RTC) of Makati, docketed therein as Civil Case No. 6342. With respect to the mortgaged real properties, RHC filed similar Complaints before Branch 7 of RTC of Baguio City x x x, Branch 18 of RTC of Tagaytay City x x x, and Branch 18 of RTC of Misamis Oriental x x x, docketed as therein Civil Case Nos. 269-R, TG-799 and 9497, respectively. In Civil Case Nos. 6342 and 269-R, RHC specifically prayed for the issuance of restraining orders or preliminary injunctive writs to stop or enjoin the Sheriffs from conducting foreclosure proceedings.

By the Orders dated March 6, 1984 and March 21, 1984, the applications for restraining orders or preliminary injunctive writ were denied by the RTC of Makati x x x and Baguio City, respectively. Unsatisfied therewith, RHC filed separate petitions for *certiorari*, docketed as AC-G.R. Nos. SP-02939 and SP-03103 assailing the

Orders of the lower courts with the then Intermediate Appellate Court. On both occasions, the then Intermediate Appellate Court sustained the Orders of denial of the two (2) lower court x x x.

As there were no restraining orders or injunctive writs whatsoever issued by the lower courts, the foreclosure sale of the mortgaged properties went through as scheduled. The auction sale of the mortgaged chattels was conducted on May 28, 1984 by the Sheriff of Makati. As regards the mortgaged real properties, the auction sale of those located in Cagayan de Oro was conducted on February 27, 1984 by the Office of the Provincial Sheriff of Misamis Oriental, while the auction sale of those located in Baguio City was held on March 22, 1984 by the Office of the City and Provincial Sheriff of Baguio City. With respect to those located in Tagaytay City, the auction sale was conducted on June 11, 1984 by the Office of the Provincial Sheriff.

In all the foreclosure sales, DBP emerged and was declared the highest and winning bidder. With regard to the foreclosed chattels, DBP posted a bid price of ₱117,500.00 x x x. With regard to the foreclosed real properties, DBP bought the Cagayan de Oro properties for ₱7,440,565.00, the Baguio City properties for ₱32,158,515.00, and the Tagaytay City properties for ₱26,450,560.00. Subsequently, three (3) Certificates of Sale were issued to evidence sale of the mortgaged real properties to DBP x x x.

Meanwhile, on October 23, 1984, Baguio Pines Hotel was gutted by fire. A total sum of about ₱64,566,000.00 representing fire insurance proceeds was collected by DBP and applied to the obligation of RHC x x x. Thereafter, the one-year statutory period of redemption expired without RHC exercising the right of redemption. Consequently, title[s] to the foreclosed properties were consolidated in the name of DBP.

By Resolution dated April 16, 1985 issued by the Supreme Court *en banc*, Civil Case Nos. 269-R, 9497 and TG-799 were consolidated with Civil Case No. 6342 which was then pending before Branch 148 of the RTC of Makati. Later on, the four (4) consolidated cases were transferred to Branch 134 of the same court.

On April 23, 1985, RHC filed the first Amended and Supplemental Complaint x x x pleading new and additional causes of action and enabling Rodolfo Cuenca to join the suit as co-plaintiff.

On May 26,1988, DBP sold the Baguio City properties to SMIC x x x. Likewise on July 11, 1988, DBP sold the Tagaytay City properties, which included the Taal Vista Lodge Hotel, to Tagaytay and Taal Management Corporation (TTMC) x x x, which in turn sold the same to SMIC for ₱38,000,000.00 x x x.

On June 23, 1992, RHC and Rodolfo Cuenca filed their Second Amended and Supplemental Complaint x x x enabling Rodolfo Cuenca and CIC to prosecute the action as a derivative stockholder's suit in behalf of RHC. On April 7, 1995, RHC, Rodolfo Cuenca and CIC x x x filed their Third Amended and Supplemental Complaint x x x impleading additional defendants; namely, SMIC in Civil Case No. 269-R, TTMC in Civil Case No. TG-799.

On February 5, 1996, [petitioners] filed their Fourth Amended Complaint x x x asserting nine (9) causes of action against DBP, SMIC and the Sheriffs responsible for the foreclosure proceedings, with TTMC being dropped as defendant. In their first cause of action, which was to declare the obligation extinguished, they alleged, *inter alia*, that DBP had no right to foreclose the mortgages since RHC's obligation to DBP had been extinguished by confusion or merger which occurred when shareholdings in RHC were acquired by DBP in accordance with debt-to-equity conversion agreement. In their second cause of action, which was to restructure the obligation, they asserted, *inter alia*, that assuming RHC's obligation to DBP had not been extinguished, RHC was entitled to loan restructuring at the very least. In their third cause of action, which was to ascertain and fix the amount of obligation, they insisted that DBP had no right to foreclose the mortgages as the amount of the outstanding obligation had not yet been liquidated or ascertained. In their fourth cause of action, which was to annul the mortgages, the plaintiffs-appellees claimed that DBP had no right to foreclose the mortgages considering that DBP was in fact and in effect lending to itself to accompany and carry into effect the Government's purpose and policy, and that some of the mortgages sought to be foreclosed were not registered. In their fifth cause of action, which was to annul the foreclosure sales, they insisted, *inter alia*, that the required posting and publication of notices of extrajudicial foreclosures had not been complied with, and there was gross inadequacy in the purchase prices of the foreclosed properties. In their sixth cause of action, which was to declare the Baguio Pines Hotel effectively redeemed and the amount of refund due, they alleged that DBP acquired Baguio Pines Hotel at the foreclosure sale for ₱32,158,515.00. While Baguio

Pines Hotel was in the possession of DBP, it was destroyed by fire. However, DBP collected the insurance proceeds despite the fact that they were more than the amount of the purchase price. In their seventh cause of action, they alleged that in the event that judgment was not rendered declaring the Baguio Pines Hotel redeemed, RHC's total obligation to DBP should be declared to be fully satisfied and DBP should be ordered to refund the difference between the insurance proceeds and the correct outstanding obligation of RHC to DBP. In their eighth cause of action, which was to declare Rodolfo Cuenca released or discharged from his joint and several undertaking, they asseverated, *inter alia*, that any joint and several undertaking of Rodolfo Cuenca to answer for the obligation of RHC to DBP should be reformed on the ground of mistake, fraud, inequitable conduct or accident since it was merely a formality to ensure the payment of RHC's obligations. Finally, in their ninth cause of action, the plaintiffs-appellees alleged that they were entitled to exemplary damages and attorney's fees.

In its Answer thereto, DBP maintained that the [petitioners] had no cause of action considering that: a) there was no confusion or merger because the equity of the original stockholders was unimpaired, and control of the said corporation remained with the original stockholders; b) restructuring was not a matter of right for one party, but could arise only from the mutual agreement of the parties, restructuring in effect a novation of the loan contract; c) the obligations of RHC had been properly computed, and the computation already took into account the debt-to-equity conversion; d) DBP was an entity distinct and separate from RHC, and therefore, could not have possibly lent to itself; e) non-registration of mortgages did not render them invalid as between the parties; f) all requirements of the law regarding foreclosure were complied with; g) the insurance proceeds collected by DBP were credited to the account of RHC, but the said proceeds were still insufficient to discharge the obligation; h) the proceeds from the foreclosure sales did not even amount to one-half of the total obligations of RHC; i) Rodolfo Cuenca's undertaking to be bound jointly and severally liable with RHC was not a mere formality but a contract defining his obligation in case RHC failed to pay; j) there was no legal ground to discharge Rodolfo Cuenca from his obligation; and k) DBP was not liable for any damages since it was RHC, Rodolfo Cuenca and CIC that had acted in bad faith x x x.

For its part, SMIC filed its Answer to Fourth Amended Complaint x x x averring that a) RHC, Rodolfo Cuenca and CIC had no cause of action against it; b) the RTC had no jurisdiction over the nature of the action or suit, it involving an intra-corporate; and c) it was a buyer in good faith in connection with its acquisition of Taal Vista Lodge Hotel and Baguio Pines Hotel.

On March 27, 1998, RHC, [CIC and Cuenca] filed their Fifth Amended Complaint x x x deleting the ninth cause of action praying for the payment of exemplary damages and attorney's fees. On February 15, 2000, they made a Manifestation x x x that they were withdrawing their Fifth Amended Complaint. With the withdrawal of the said Complaint, the RTC conducted the pre-trial of the consolidated cases on the basis of the Fourth Amended and Supplemental Complaint x x x.

On March 13, 2000, [petitioners] filed a Motion to Drop as Defendants x x x on the ground that the Sheriffs of Rizal or Makati, Baguio City, Cavite and Misamis Oriental were not indispensable to resolution of the consolidated cases. There being no objection interposed by DBP and SMIC, the RTC, in its Order dated May 17, 2000 x x x dropped the said Sheriffs as defendants in the consolidated cases.

Thereafter, trial of the consolidated cases ensued.

During the hearing, [petitioners] presented as witnesses Bayani Santos, the Senior Manager of DBP, Roberto Cuenca and his father, Rodolfo Cuenca. Their testimonies were aptly summarized by the RTC, thus:

> Bayani Santos, senior manager of defendant DBP testified that he has been employed therein since November 14, 1974. His functions include the handling of special accounts or non-performing accounts of the bank. He said that he brought with him notices of foreclosure for the Hotel Mindanao on February 27, 1984[,] for the Pines Hotel on March 22, 1984 and for Taal Vista Lodge on June 11, 1984. When asked about proofs of posting and publication, witness Santos showed a Xerox copy of affidavit of publication for the extrajudicial sale of Tagaytay property. Witness Santos likewise presented letters dated March 2 and May 23, 1984 addressed to plaintiff RHC about the auction sale of the Tagaytay and Baguio properties on March 22, 27 and June 11, 1984. He explained

that there were two (2) dates set for auction of the Baguio properties because the first date was postponed. About the total loan obligation of plaintiff RHC, witness Santos merely pointed to the application for foreclosure of the real estate and chattel mortgages dated January 11, 1984. He concluded that there was no document pertaining to any restructuring agreement.

Witness Roberto Cuenca, son of Rodolfo Cuenca, the President and Chairman of plaintiff RHC, testified that he served the company as Vice President for operations and then Executive Vice President. He declared that his functions included the management of operations of the three (3) hotels of plaintiff RHC. He revealed that their business started sometime in 1960 and Cuenca Investment Corporation is a family corporation which owned shares in plaintiff RHC. He admitted that defendant DBP was their principal creditor particularly in the capital improvement of Pines Hotel, that their loans with defendant DBP were secured by real estate and chattel mortgages including the three (3) hotels and the personal properties found in the Makati Head office, that in 1984 defendant DBP foreclosed all the mortgaged properties for a claim of Php114,005,404.02 and that thereafter, assumed control of the management of the hotels. He likewise intimated that contrary to the claim of defendant DBP, plaintiff RHC's books of account indicated merely a loan balance of Php84,000,000.00 with accounts receivables from their clients of about Php20-23 million. Hence, plaintiff RHC filed the cases before the court having jurisdiction over the mortgaged properties, fro (sic) injunction and declaratory judgment that defendant DBP was without right to foreclose the mortgages. He disclosed that despite of the applications for injunction pending before the trial courts, defendant DBP proceeded with the foreclosure of the mortgages without complying with the legal requirements of notice, posting and publication. He likewise disclosed that in October 1984, Pines Hotel was gutted by fire while in the hands of defendant DBP. Resultantly, defendant DBP collected the insurance proceeds of the hotel amount to Php50 million. When asked about the condition of the hotels, witness stated that in 1988, Pines Hotel and Vista Lodge were sold to defendant SMIC.

On cross-examination, witness Roberto Cuenca recounted that sometime in 1980 and 1982, there were conversion of

> the loans to equity of defendant DBP considering the default in the payment of the loan obligations.
>
> On redirect-examination, witness Cuenca admitted that since plaintiff RHC was in default in paying its obligations, he negotiated for three (3) options with defendant DBP which are the conversion of equity, loan restructuring and loan with *dacion en pago.*
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> x x x x x x x x x
>
> Witness Rodolfo Cuenca's testimonies merely corroborated the testimonies of witness Roberto Cuenca. x x x

Upon the other hand, [respondents] proffered in evidence the testimonies of Lourdes Frangue, the Administrative Officer of DBP, Dolores Santos, the Chief of the Transaction Processing and Retail Division, and Atty. Epitacio Borcelis, the corporate secretary of SMIC, which were narrated by the RTC in this wise:

> Witness Lourdes Frangue, Administrative Officer of DBP testified that she was employed by DBP on May 4, 1982 and was assigned to the Litigation and Foreclosure Group in 1984. She recounted that her duties include attending to foreclosure records and documents and that she encountered the records of RHC when she undertook the foreclosure proceedings in 1984. She presented the certificates of sales of the foreclosed properties particularly the Cagayan de Oro properties dated February 27, 1984, the Baguio properties dated March 22, 1984 and the Tagaytay properties dated June 11, 1984. Witness Frangue revealed that [in] the foreclosure of the mortgaged properties of RHC, DBP acquired the same being the highest bidder in the auction sales and then titles were subsequently consolidated in the name [of] DBP.
>
> On cross-examination, Witness Frangue denied any personal knowledge about the loan obligations of RHC stating that a different department handled the document of the subject loans.
>
> Witness Dolores Santos, Chief of the Transaction Processing and Retail Division of DBP testified that she was with the bank since 1982 as a Senior Clerk of the Security and Transport Department. She revealed that she was promoted as a supervisor, she recounted that she handled the past due accounts and acquired assets of the bank and its records, as a custodian.

She declared that she only knew about the accounts of RHC on August 8, 1992 on the Statement of Accounts.

On cross-examination, witness Santos likewise denied any personal knowledge of the loans of RHC.

x x x x x x x x x

Atty. Epitacio Borcelis, corporate secretary of SMIC and lawyer-in-charge of the acquisition of real estate properties of SMIC testified that his duties include the keeping of all the corporate records, representing the company in the acquisition of properties like the Pines Hotel and the Taal Vista Lodge. When asked about notice of *lis pendens*, witness admitted having knowledge of the annotation in the title of Baguio Pines Hotel but denied as to the Taal Vista Property. Likewise, witness denied that SMIC bought RHC's properties from DBP alleging that it bought the properties from Tagaytay Taal Management Corporation (TTMC for short). Witness brought up the court case between Robinsons and DBP. However, when the witness was confronted about the deeds of sale between DBP and TTMC and TTMC and SMIC, with the material dates stated therein where the supposed first sale that took place between DBP and TTMC was dated June 11, 1988, witness Borcelis explained that it was because there was [an] agreement between SMIC and TTMC that the full payment by TTMC of the purchase price of the properties will be taken from SMIC. When asked about the stated agreement, witness presented no document pertaining to it. x x x

In the Decision dated February 13, 2004, the RTC nullified the foreclosure sale of the disputed real and personal properties, and at the same time, discharged Rodolfo Cuenca from personal liability for lack of evidence. The RTC also found that SMIC acted in bad faith when it purchased the Taal Vista Lodge Hotel from TTMC, and Baguio Pines Hotel from DBP.[3]

The RTC disposed of the case, to wit:

WHEREFORE, premises considered, judgment is hereby rendered in favor of [petitioners] and against [respondents] DBP and SMIC as follows[:]

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[3] *Rollo*, pp. 10-23.

(1) The loan obligations of [petitioner] RHC to [respondent] DBP is hereby fixed at Php 114,005,404.02 from the date of this judgment with 12% interest per annum until fully paid;

(2) The foreclosure of the real estate and chattel mortgages executed by [petitioner] RHC in favor of [respondent] DBP are declared void and without effect;

(3) The auction sales of the subject mortgaged properties of [petitioner] RHC are likewise declared void;

(4) The fire insurance proceeds of the Pines Hotel which was collected by [respondent] DBP shall be deducted from the total loan obligations of [petitioner] RHC with the corresponding 12% interest per annum from the time it was received until this judgment;

(5) [Respondent] SMIC is declared buyer in bad faith and bound by this judgment; and

(6) [Petitioner] Cuenca is discharged from the obligations of [petitioner] RHC with [respondent] DBP.

The counterclaims of [respondents] DBP and SMIC are denied for lack of merit.[4]

Aggrieved, respondents questioned the RTC decision before the CA. As previously adverted to, the CA reversed and set aside the RTC decision, thus:

WHEREFORE, the Decision dated February 13, 2004 of Branch 134 of the Regional Trial Court of Makati City is hereby REVERSED and SET ASIDE. A new one is hereby entered DISMISSING Civil Case Nos. 6342, 269-R, TG-799 and 9497 and ORDERING RHC and Rodolfo Cuenca to pay, jointly and severally, DBP the amount of ₱612,476,182.08, inclusive of interest, representing deficiency balance as of August 31, 2002.[5]

Hence, the instant appeal taking exception to the appellate court's disposition and positing the following issues:

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[4] *Id.* at 702-703.

[5] *Id.* at 48.

1. [WHETHER] THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE TESTIMONIES OF RODOLFO CUENCA AND ROBERTO CUENCA WERE NOT SUFFICIENT TO SUCCESSFULLY CHALLENGE THE VALIDITY OF THE FORECLOSURE PROCEEDINGS.

2. [WHETHER] THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE FORECLOSURE PROCEEDINGS ARE VALID BASED ON THE CERTIFICATE OF SALE PREPARED BY THE SHERIFFS WHO CONDUCTED THE FORECLOSURE SALES.

3. [WHETHER] THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT PETITIONERS COULD NOT USE THE FIRE INSURANCE PROCEEDS TO REDEEM THE BAGUIO PINES HOTEL PROPERTY.

4. [WHETHER] THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN FIXING PETITIONERS' OBLIGATION TO RESPONDENT DBP AT ₱612,476,182.08 INSTEAD OF ₱114,005,404.02.

5. [WHETHER] THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING PETITIONER RODOLFO CUENCA SOLIDARILY LIABLE WITH PETITIONER RHC.[6]

In all, petitioners persist in the correctness of the RTC's disposition that: (1) the extrajudicial foreclosure and the subsequent sale of the mortgaged properties are null and void for non-compliance with the notice, posting and publication requirements provided in Act No. 3135;[7] (2) the loan obligation of petitioners to DBP is fixed at ₱114,005,404.02; and (3) petitioner Cuenca is discharged from the obligations of petitioner RHC to respondent DBP for lack of evidence pointing to his personal liability therefor.

The petition is partly meritorious.

We are in complete accord with the appellate court's ruling that the dearth of evidence presented by petitioners inevitably

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[6] *Id.* at 73-74.

[7] Entitled "Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages."

failed to establish their claim that DBP did not comply with the statutory requirements on the extrajudicial foreclosure of mortgages. As plaintiffs before the trial court, petitioners rested the burden to prove by a preponderance of evidence the numerous causes of action they brought against herein respondents.

Section 1 of Rule 131 of the Rules of Court, in relation to Section 1 of Rule 133, unequivocally provides:

SECTION 1. *Burden of proof.* – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

SECTION 1. *Preponderance of evidence, how determined.* – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Petitioners are adamant, however, that it was incumbent upon respondents to prove their denial of petitioners' claims; *i.e.,* foreclosure proceedings were validly conducted consistent with Act No. 3135.

We disagree. *Ei incumbit probatio qui dicit, non qui negat* (he who asserts, not he who denies, must prove).[8] The burden of proof that foreclosure proceedings on the subject properties were not validly conducted lies with mortgagor-party litigant claiming such. We have consistently applied the ancient rule that if a plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner facts on

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[8] *Homeowners Savings and Loan Bank v. Dailo*, G.R. No. 153802, March 11, 2005, 453 SCRA 283, 292.

which he bases his claim, the defendant is under no obligation to prove his exception or defense.[9]

On this score, we find no error in the disquisition of the CA, to wit:

> We rule that the testimonies of Rodolfo and Roberto Cuenca were not sufficient to successfully challenge the validity of the foreclosure proceedings. We agree with the [respondents] that the testimonies of Rodolfo and Roberto Cuenca with respect to the absence of posting and publication of notices of foreclosure sale, consisting in the words "I don't believe," "I don't remember," "I don't think" and "if I recall," without being supported by any convincing and substantial evidence, were not sufficient to prove lack of compliance on the part of DBP with the requirements of notice, posting and publication prescribed in Act No. 3135. It must be emphasized that the allegation of Rodolfo and Roberto Cuenca that they, as officers of RHC, failed to receive notices of the foreclosure sale could not successfully defeat the validity of the foreclosure proceedings. As held by the Supreme Court in *Philippine National Bank v. Nepomuceno Productions, Inc*., x x x personal notice to the mortgagor is not necessary for the validity of the foreclosure proceedings, thus:
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> > "The principal object of a notice of sale in a foreclosure of mortgage is not so much to notify the mortgagor as to inform the public generally of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. Notices are given to secure bidders and prevent a sacrifice of the property. Clearly, the statutory requirements of posting and publication are mandated, not for the mortgagor's benefit, but for the public or third persons. In fact, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not even necessary, unless stipulated."
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> Likewise, the [petitioners] could not impugn the validity of the foreclosure proceedings by the mere fact that both Rodolfo and Roberto Cuenca could not recall whether DBP applied for writs of possession and posted bond thereto during the redemption period as mandated by Section 7 of Act No. 3135. In a civil case, the burden of proof is on the plaintiff to establish his case through a

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[9] *Castilex Industrial Corporation v. Vasquez, Jr.*, 378 Phil. 1009 (1999).

preponderance of evidence. If he claims a right granted or created by law, he must prove his claim by competent evidence. He must rely on the strength of his own evidence and not on the weakness of that of his opponent x x x. In the instant case, We find that the testimonies of Rodolfo and Roberto Cuenca on the matter could not be considered as competent evidence to prove that DBP took possession of the disputed properties in blatant violation of Section 7 of Act No. 3135. Their testimonies were at best self-serving and devoid of corroboration as they did not bother to support the same with any documentary evidence.

We hasten to add that DBP did not merely rely on the weakness of the evidence of [petitioners] in resisting the latter's claim. DBP presented in court three (3) Certificates covering the sale of the disputed properties to bolster its assertion that it complied with the statutory requirements under Section 3 of Act 3135. These Certificates of Sale, prepared by Sheriffs that conducted the foreclosure proceedings, clearly reveal that DBP followed the mandate of Section 3 of Act 3135 when it foreclosed the disputed properties x x x.[10]

We likewise agree with the CA's holding that RHC cannot use the fire insurance proceeds of the Baguio Pines Hotel to redeem the said property. The appellate court, citing *Development Bank of the Philippines v. West Negros College, Inc.*,[11] correctly ruled that petitioners must pay respondent DBP the entire obligation of RHC, and not merely the purchase price of the said hotel.

Nonetheless, on the actual amount of RHC's obligation to DBP, we find it proper to reinstate the RTC's holding thereon, *i.e.*, the loan obligation is fixed at ₱114,005,404.02 from the date of the RTC judgment with 12% interest per annum until fully paid.

We cannot subscribe to the CA's computation of RHC's indebtedness to DBP which was pegged at ₱612,476,182.08, inclusive of interest. The CA set aside the RTC's holding thereon and based its finding on the Statement of Total Claim prepared by DBP. These documents show that RHC's deficiency balance

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[10] *Rollo*, pp. 32-34.

[11] G.R. No. 152359, October 28, 2002, 391 SCRA 330 (2002).

as of August 31, 2002, after deducting the total purchase price of the subject properties and the insurance proceeds plus the corresponding interest computed at 21% per annum from 1984 to August 21, 2002, is ₱612,476,182.08. However, as correctly pointed out by petitioners, these documents are inadmissible and constitute hearsay evidence because the persons who prepared the documents were not presented in court and subjected to cross-examination.[12]

At this point, we cite with favor the RTC's holding:

> After a careful scrutiny of the records of the case, the court finds that the balance loan obligation of [petitioner] RHC with [respondent] DBP was PHP114,005,404.02 as of January 11, 1984 as stated in the application for foreclosure submitted by the parties to the court. Said amount was the basis of the protest of [petitioner] RHC in filing its complaints for injunction and declaratory relief principally relying on the principle of merger of rights or ownership of [respondent] DBP of shareholdings of [petitioner] RHC.
>
> With the admission of witness Roberto Cuenca himself that the conversion of the loan obligations to equity took place sometime in 1980 and 1982, the filing of the complaints by [petitioner] RHC starting on February 6, 1984 protesting the claims of the [respondent] DBP in its application for foreclosure of the mortgages dated January 11, 1984 and relying on the aforesaid conversion of the loans, the instances of burning of the Pines Hotel sometime in October 1984 under the administration of [respondent] DBP which was duly noted by the Supreme Court in G.R. No. 68788, the foreclosure of all mortgaged real estate and chattel properties of [petitioner] RHC that started on February 27, 1984 or nearly one (1) month from the application of the foreclosures of [respondent] DBP, the subsequent take over by [respondent] DBP of the management of the assets of [petitioner] RHC and the sales therefrom while the cases of the protest of [petitioner] RHC were pending, in the absence of any other competent proof of proper accounting involving the loans of [petitioner] RHC, the court deems it proper and just to fix the loan obligations of [petitioner] RHC at Php114,005,404.02.[13]

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[12] *See* RULES OF COURT, Rule 130, Sec. 36.

[13] *Rollo*, pp. 700-701.

Lastly, on the issue of petitioner Cuenca's joint and solidary liability for RHC's loan obligation to DBP, we sustain the RTC's succinct holding discharging Cuenca therefrom without evidence showing his undertaking to be personally and solidarily liable for the loan obligations of RHC to DBP.

WHEREFORE, premises considered, the petition is *GRANTED IN PART*. The Court of Appeals decision in CA-G.R. CV No. 81363 is *AFFIRMED* with the *MODIFICATION* that the following disposition of the Regional Trial Court in Civil Case Nos. 6342, 269-R, TG-799 and 9497 is *REINSTATED*, to wit:

1. The loan obligations of petitioner Resort Hotels Corporation to respondent Development Bank of the Philippines is fixed at ₱114,005,404.02 from the date of the RTC judgment with 12% interest per annum until fully paid;

2. The fire insurance proceeds for the Baguio Pines Hotel which was collected by respondent Development Bank of the Philippines shall be deducted from the total loan obligations of petitioner Resort Hotels Corporation with the corresponding 12% interest per annum from the time it was received until this judgment;

3. Petitioner Rodolfo Cuenca is discharged from the obligations of petitioner Resort Hotels Corporation to respondent Development Bank of the Philippines.

No pronouncement as to costs.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Del Castillo,*[*] *JJ.,* concur.

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[*] Additional member per Special Order No. 805 dated December 4, 2009.

THIRD DIVISION

[G.R. No. 182336. December 23, 2009]

ELVIRA O. ONG, *petitioner, vs.* **JOSE CASIM GENIO,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; OFFICE OF THE SOLICITOR GENERAL; FUNCTION TO REPRESENT THE GOVERNMENT IN ALL CRIMINAL PROCEEDINGS IN THE SUPREME COURT AND COURT OF APPEALS.—** Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987 states that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers. Likewise, the Solicitor General shall represent the Government in this Court and the CA in all criminal proceedings, x x x This doctrine is laid down in our ruling in *Heirs of Federico C. Delgado and Annalisa Pesico v. Luisito Q. Gonzalez and Antonio T. Buenaflor*, *Cariño v. de Castro*, *Mobilia Products, Inc. v. Umezawa*, *Narciso v. Sta. Romana-Cruz*, *Perez v. Hagonoy Rural Bank, Inc.*, and *People v. Santiago*, where we held that only the OSG can bring or defend actions on behalf of the Republic or represent the People or the State in criminal proceedings pending in this Court and the CA.

2. **ID.; ID.; ID.; ID.; EXCEPTION; WHEN OFFENDED PARTY MAY PURSUE CRIMINAL ACTION IN HIS OWN BEHALF WITHOUT THE SOLICITOR GENERAL'S PARTICIPATION; CASE AT BAR.—** While there may be rare occasions when the offended party may be allowed to pursue the criminal action on his own behalf, as when there is a denial of due process, this exceptional circumstance does not obtain in the instant case. Before the CA, the OSG itself opined that the petition therein was fatally defective for having been filed without the OSG's participation. Before this Court, petitioner failed to advance any justification or excuse why she failed to seek the assistance of the OSG when she sought

relief from the CA, other than the personal belief that the OSG was burdened with so many cases. Thus, we find no reversible error to disturb the CA's ruling.

3. **ID.; ID.; ID.; ID.; WHERE ACCUSED IS ACQUITTED, THE OFFENDED PARTY MAY APPEAL THE CIVIL ASPECT OF THE CASE IN HIS OWN BEHALF.—** In *Rodriguez v. Gadiane*, we held: It is well-settled that in criminal cases where the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability. **Thus, in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution.** If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not take such appeal. **However, the said offended party or complainant may appeal the civil aspect despite the acquittal of the accused.**

4. **REMEDIAL LAW; CRIMINAL PROCEDURE; FILING OF INFORMATION; OPTIONS AVAILABLE TO A REGIONAL TRIAL COURT JUDGE.—** Pursuant to Section 6(a), Rule 112 of the Revised Rules on Criminal Procedure, the RTC judge, upon the filing of an Information, has the following options: (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) if he or she finds probable cause, issue a warrant of arrest; and (3) in case of doubt as to the existence of probable cause, order the prosecutor to present additional evidence within five days from notice, the issue to be resolved by the court within thirty days from the filing of the information.

APPEARANCES OF COUNSEL

Nolasco & Associates Law Offices for petitioner.
Siguion Reyna Montecillo & Ongsiako for respondent.

RESOLUTION

NACHURA, *J*.:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Resolution[2] dated January 7, 2008.

Petitioner Elvira O. Ong (petitioner) filed a criminal complaint against respondent Jose Casim Genio (respondent) for Robbery which was dismissed by the City Prosecutor of Makati City. However, pursuant to the Resolutions dated September 15, 2006[3] and October 30, 2006[4] of the Department of Justice, respondent was charged with the crime of Robbery in an Information[5] which reads:

> That in or about and sometime the month of January, 2003, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously take, divest and carry away kitchen and canteen equipment as well as her personal things valued at Php 700,000.00, belonging to complainant, ELVIRA O. ONG, to the damage and prejudice of the said owner in the aforementioned amount of Php 700,000.00.
>
> CONTRARY TO LAW.

On November 21, 2006, respondent filed a Motion to Dismiss the Case for Lack of Probable Cause Pursuant to Sec. 6(a),[6] Rule 112 of the Rules of Court and, in View of Compelling Grounds for the Dismissal of the Case to Hold in Abeyance the

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[1] *Rollo*, pp. 3-20.

[2] Particularly docketed as CA-G.R. SP No. 100311, penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Bienvenido L. Reyes and Apolinario D. Bruselas, Jr., concurring; *id.* at 23-24.

[3] CA *rollo*, pp. 18-20.

[4] *Id.* at 21-22.

[5] *Id.* at 23.

[6] The parties and the RTC cited this section as Section 5, when in fact all of them were referring to Section 6 of Rule 112 of the Rules.

Issuance of the Warrant of Arrest[7] (Motion to Dismiss). Petitioner filed an Opposition[8] dated December 11, 2006 to respondent's Motion to Dismiss.

In its Order[9] of December 15, 2006, the Regional Trial Court (RTC) of Makati City, Branch 56, dismissed the case because the other elements of the crime of Robbery, specifically the elements of intent to gain, and either violence against or intimidation of any person or force upon things, were not specifically alleged in the Information filed against respondent.

Despite the dismissal of the case, respondent filed a Partial Motion for Reconsideration[10] dated January 2, 2007, reiterating that the Information should be dismissed in its entirety for lack of probable cause. Petitioner filed her Opposition[11] to this motion on February 15, 2007.

In its Order[12] dated February 12, 2007, the RTC granted respondent's Partial Motion for Reconsideration and dismissed the case for lack of probable cause pursuant to Section 6(a), Rule 112 of the Revised Rules on Criminal Procedure. The RTC held that the evidence on record failed to establish probable cause to charge respondent with the crime of Robbery.

On March 6, 2007, petitioner filed her Motion for Reconsideration,[13] claiming that the RTC erred in relying on Section 6(a), Rule 112 of the Revised Rules on Criminal Procedure, since the said provision relates to the issuance of a warrant of arrest, and it does not cover the determination of probable cause for the filing of the Information against respondent, which is executive in nature, a power primarily vested in the Public Prosecutor.

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[7] *Id.* at 24-36.

[8] CA *rollo*, pp. 37-41.

[9] Issued by Judge Reynaldo M. Laigo; *id.* at 43-44.

[10] CA *rollo*, pp. 45-63.

[11] *Id.* at 64-66.

[12] *Id.* at 14-15.

[13] *Id.* at 67-72.

In its Order[14] dated June 1, 2007, the RTC denied petitioner's Motion for Reconsideration, holding that the aforementioned provision authorizes the RTC to evaluate not only the resolution of the prosecutor who conducted the preliminary investigation and eventually filed the Information in court, but also the evidence upon which the resolution was based. In the event that the evidence on record clearly fails to establish probable cause, the RTC may dismiss the case.

Aggrieved, petitioner filed a Petition for *Certiorari* and *Mandamus*[15] before the CA on August 28, 2007. Respondent filed a Motion to Dismiss[16] the petition, raising the issue of lack of personality of petitioner to appeal the dismissal of the criminal case, because the authority to do so lies exclusively with the State as represented by the Office of the Solicitor General (OSG). In its Resolution[17] dated September 10, 2007, the CA observed that the People of the Philippines was impleaded as petitioner without showing, however, the OSG's participation. Thus, the CA ordered petitioner to furnish the OSG with a copy of the Petition, and the latter to comment thereon.

On October 22, 2007, the OSG filed its Comment,[18] taking the stand of respondent that only the Solicitor General can bring or defend actions on behalf of the People of the Philippines filed before the CA or the Supreme Court. The OSG submitted that, for being fatally defective, the said Petition should be dismissed insofar as the criminal aspect was concerned, without prejudice to the right of petitioner to pursue the civil aspect of the case.

On January 7, 2008, the CA rendered its Resolution,[19] dismissing the case without prejudice to the filing of a petition on the civil aspect thereof on the basis of the arguments raised

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

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

[16] *Id.* at 81-89.

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

[18] *Id.* at 116-120.

[19] *Id.* at 122-123.

by both respondent and the OSG. Undaunted, petitioner filed a Motion for Reconsideration[20] which the CA denied in its Resolution[21] dated March 27, 2008.

Hence this Petition raising the following issues:

A.

WHETHER THE PETITIONER AS THE PRIVATE OFFENDED PARTY IN A CRIMINAL CASE HAS NO PERSONALITY TO ELEVATE THE CASE TO THE COURT OF APPEALS WITHOUT THE COMFORMITY OF THE OFFICE OF THE SOLICITOR GENERAL EVEN BEFORE THE ACCUSED IS ARRAIGNED

B.

WHETHER THE REGIONAL TRIAL COURT HAS AUTHORITY TO DISMISS THE INFORMATION ON THE GROUND OF LACK OF PROBABLE CAUSE CONTRARY TO THE FINDINGS OF THE SECRETARY OF THE DEPARTMENT OF JUSTICE

C.

WHETHER THE REGIONAL TRIAL COURT HAS THE AUTHORITY TO DISMISS THE INFORMATION ON THE GROUND OF LACK OF PROBABLE CAUSE WHEN IT HAS PREVIOUSLY CONCLUDED THAT THE SAME INFORMATION IS DEFECTIVE[.][22]

The instant Petition is bereft of merit.

Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987 states that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers. Likewise, the Solicitor General shall represent the Government in this Court and the CA in all criminal proceedings, thus:

SEC. 35. *Powers and Functions.* — The Office of the Solicitor General shall represent the Government of the Philippines,

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[20] *Id.* at 124-127.

[21] *Id.* at 138-139.

[22] *Supra* note 1, at 6.

its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

This doctrine is laid down in our ruling in *Heirs of Federico C. Delgado and Annalisa Pesico v. Luisito Q. Gonzalez and Antonio T. Buenaflor*,[23] *Cariño v. de Castro*,[24] *Mobilia Products, Inc. v. Umezawa*,[25] *Narciso v. Sta. Romana-Cruz*,[26] *Perez v. Hagonoy Rural Bank, Inc.*,[27] and *People v. Santiago*,[28] where we held that only the OSG can bring or defend actions on behalf of the Republic or represent the People or the State in criminal proceedings pending in this Court and the CA.

While there may be rare occasions when the offended party may be allowed to pursue the criminal action on his own behalf,[29] as when there is a denial of due process, this exceptional circumstance does not obtain in the instant case.

Before the CA, the OSG itself opined that the petition therein was fatally defective for having been filed without the OSG's

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[23] G.R. No. 184337, August 7, 2009.

[24] G.R. No. 176084, April 30, 2008, 553 SCRA 688.

[25] G.R. Nos. 149357 and 149403, March 4, 2005, 452 SCRA 736.

[26] G.R. No. 134504, March 17, 2000, 328 SCRA 505.

[27] G.R. No. 126210, March 9, 2000, 327 SCRA 588.

[28] G.R. No. 80778, June 20, 1989, 174 SCRA 143.

[29] *Merciales v. Court of Appeals,* 429 Phil. 70 (2002).

participation. Before this Court, petitioner failed to advance any justification or excuse why she failed to seek the assistance of the OSG when she sought relief from the CA, other than the personal belief that the OSG was burdened with so many cases. Thus, we find no reversible error to disturb the CA's ruling.

Petitioner, however, is not without any recourse. In *Rodriguez v. Gadiane*,[30] we held:

> It is well-settled that in criminal cases where the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability. **Thus, in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution.** If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not take such appeal. **However, the said offended party or complainant may appeal the civil aspect despite the acquittal of the accused.**
>
> In a special civil action for *certiorari* filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. **The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in name of said complainant.**[31]

On this ground alone, the instant Petition fails. Even on the issue of the RTC's dismissal of the case, the Petition ought to be denied.

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[30] G.R. No. 152903, July 17, 2006, 495 SCRA 368, 374, citing *People v. Santiago, id.*

[31] Emphasis supplied.

Section 6(a), Rule 112 of the Revised Rules on Criminal Procedure clearly provides:

> SEC. 6. *When warrant of arrest may issue*. — (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. **He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause.** If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.[32]

Pursuant to the aforementioned provision, the RTC judge, upon the filing of an Information, has the following options: (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) if he or she finds probable cause, issue a warrant of arrest; and (3) in case of doubt as to the existence of probable cause, order the prosecutor to present additional evidence within five days from notice, the issue to be resolved by the court within thirty days from the filing of the information.[33]

It bears stressing that the judge is required to personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause.[34] This, the RTC judge clearly complied with in this case.

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[32] Emphasis supplied.

[33] *In Re: Mino v. Navarro*, A.M. No. MTJ-06-1645, August 28, 2007, 531 SCRA 271, 279.

[34] *Concerned Citizen of Maddela v. Dela Torre-Yadao*, A.M. No. RTJ-01-1639, November 29, 2002, 393 SCRA 217, 223.

WHEREFORE, the Petition is *DENIED*. The Resolution of the Court of Appeals dated January 7, 2008 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Del Castillo,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 183297. December 23, 2009]

NATIONAL POWER CORPORATION, *petitioner, vs.* **OMAR G. MARUHOM, ELIAS G. MARUHOM, BUCAY G. MARUHOM, MAMOD G. MARUHOM, FAROUK G. MARUHOM, HIDJARA G. MARUHOM, ROCANIA G. MARUHOM, POTRISAM G. MARUHOM, LUMBA G. MARUHOM, SINAB G. MARUHOM, ACMAD G. MARUHOM, SOLAYMAN G. MARUHOM, MOHAMAD M. IBRAHIM, CAIRORONESA M. IBRAHIM, and LUCMAN IBRAHIM, represented by his heirs ADORA B. IBRAHIM, NASSER B. IBRAHIM, JAMALODIN B. IBRAHIM, RAJID NABBEL B. IBRAHIM, AMEER B. IBRAHIM and SARAH AIZAH B. IBRAHIM,**[**] *respondents.*

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[*] Additional member per Special Order No. 805 dated December 4, 2009.

[**] The present petition impleaded Hon. Amer Ibrahim, Presiding Judge of the Regional Trial Court of Lanao del Sur, Branch 9, Marawi City; Atty. Cairoding P. Maruhom, Clerk of Court VI; and Acmad C. Aliponto, Sheriff IV, RTC-Branch 9, Marawi City, Lanao del Sur. However, Section 4, Rule 45 of the Revised Rules of Court provides that the petition shall not implead the lower courts and judges thereof as petitioners or respondents. Hence, the deletion of Hon. Ibrahim, Atty. Maruhom and Aliponto from the title.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; WRIT OF EXECUTION MUST CONFORM STRICTLY TO THE DISPOSITIVE PORTION OF THE DECISION SOUGHT TO BE EXECUTED.—** It is a fundamental legal axiom that a writ of execution must conform strictly to the dispositive portion of the decision sought to be executed. A writ of execution may not vary from, or go beyond, the terms of the judgment it seeks to enforce. When a writ of execution does not conform strictly to a decision's dispositive portion, it is null and void. Admittedly, the tenor of the dispositive portion of the August 7, 1996 RTC decision, as modified by the CA and affirmed by this Court, did not order the transfer of ownership upon payment of the adjudged compensation. Neither did such condition appear in the text of the RTC decision, and of this Court's Decision in G.R. No. 168732. x x x Clearly, the writ of execution issued by the RTC and affirmed by the CA does not vary, but is, in fact, consistent with the final decision in this case. The assailed writ is, therefore, valid.

2. **ID.; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; EXPROPRIATION; NOT LIMITED TO THE ACQUISITION OF REAL PROPERTY WITH A CORRESPONDING TRANSFER OF TITLE OR POSSESSION; ACQUISITION OF EASEMENT OF RIGHT OF WAY AMOUNTED TO EXPROPRIATION; CASE AT BAR.—** Indeed, expropriation is not limited to the acquisition of real property with a corresponding transfer of title or possession. The right-of-way easement resulting in a restriction or limitation on property rights over the land traversed by transmission lines also falls within the ambit of the term *expropriation*. As we explained in *Camarines Norte Electric Cooperative, Inc. v. Court of Appeals:* The acquisition of an easement of a right-of-way falls within the purview of the power of eminent domain. Such conclusion finds support in easements of right-of-way where the Supreme Court sustained the award of just compensation for private property condemned for public use. It is, therefore, clear that NPC's acquisition of an easement of right-of-way on the lands of respondents amounted to expropriation of the portions of the latter's property for which they are entitled to a reasonable and just compensation. In *Camarines Norte*

Electric Cooperative, Inc. v. Court of Appeals and *National Power Corporation v. Manubay Agro-Industrial Development Corporation,* this Court sustained the award of just compensation equivalent to the fair and full value of the property even if petitioners only sought the continuation of the exercise of their right-of-way easement and not the ownership over the land. There is simply no basis for NPC to claim that the payment of fair market value without the concomitant transfer of title constitutes an unjust enrichment.

3. **ID.; ID.; ID.; JUST COMPENSATION; THE MEASURE IS THE OWNER'S LOSS.—** The term *just compensation* had been defined as the full and fair equivalent of the property taken from its owner by the expropriator. 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* and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample.

4. **ID.; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT PRESENT IN CASE AT BAR.—** In fine, the issuance by the RTC of a writ of execution and the notice of garnishment to satisfy the judgment in favor of respondents could not be considered grave abuse of discretion. The term *grave abuse of discretion*, in its juridical sense, connotes capricious, despotic, oppressive, or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse must be of such degree as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and capricious manner by reason of passion and hostility. The word *capricious*, usually used in tandem with the term *arbitrary*, conveys the notion of willful and unreasoning action. Thus, when seeking the corrective hand of *certiorari,* a clear showing of caprice and arbitrariness in the exercise of discretion is imperative. In this case, NPC utterly failed to demonstrate caprice or arbitrariness on the part of the RTC in granting respondent's motion for execution. Accordingly, the CA committed no reversible error in dismissing NPC's petition for *certiorari.*

5. **ID.; ID.; JUDGMENT; ONCE A JUDGMENT HAS BECOME FINAL, THE WINNING PARTY SHOULD NOT BE DEPRIVED OF ITS EXECUTION.—** It is almost trite to say that execution is the fruit and the end of the suit and is the

life of the law. A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party. Litigation must end sometime and somewhere. An effective and efficient administration of justice requires that once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must, therefore, guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Pete Quirino-Quadra for respondents.

D E C I S I O N

NACHURA, *J*.:

Petitioner National Power Corporation (NPC) filed this Petition for Review on *Certiorari*, seeking to nullify the May 30, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 02065-MIN, affirming the Order dated November 13, 2007 issued by Hon. Amer R. Ibrahim, which granted respondents' motion for issuance of a writ of execution.

The antecedents.

Lucman G. Ibrahim and his co-heirs Omar G. Maruhom, Elias G. Maruhom, Bucay G. Maruhom, Mamod G. Maruhom, Farouk G. Maruhom, Hidjara G. Maruhom, Rocania G. Maruhom, Potrisam G. Maruhom, Lumba G. Maruhom, Sinab G. Maruhom, Acmad G. Maruhom, Solayman G. Maruhom, Mohamad M. Ibrahim and Cairoronesa M. Ibrahim (respondents) are owners of a 70,000-square meter lot in Saduc, Marawi City. Sometime in 1978, NPC, without respondents' knowledge and consent, took possession of the subterranean area of the land and constructed therein underground tunnels. The tunnels were

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[1] Penned by Associate Justice Romulo V. Borja, with Associate Justices Mario N. Lopez and Elihu A. Ybañez, concurring; *rollo*, pp. 37-51.

used by NPC in siphoning the water of Lake Lanao and in the operation of NPC's Agus II, III, IV, V, VI, and VII projects located in Saguiran, Lanao del Sur; Nangca and Balo-i in Lanao del Norte; and Ditucalan and Fuentes in Iligan City. Respondents only discovered the existence of the tunnels sometime in July 1992. Thus, on October 7, 1992, respondents demanded that NPC pay damages and vacate the subterranean portion of the land, but the demand was not heeded.

Hence, on November 23, 1994, respondents instituted an action for recovery of possession of land and damages against NPC with the Regional Trial Court (RTC) of Lanao del Sur, docketed as Civil Case No. 1298-94.

After trial, the RTC rendered a decision,[2] the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. Denying [respondents'] prayer for [NPC] to dismantle the underground tunnels constructed beneath the lands of [respondents] in Lots 1, 2, and 3 of Survey Plan FP (VII-5) 2278;

2. Ordering [NPC] to pay to [respondents] the fair market value of said 70,000 square meters of land covering Lots 1, 2, and 3 as described in Survey Plan FP (VII-5) 2278 less the area of 21,995 square meters at ₱1,000.00 per square meter or a total of ₱48,005,000.00 for the remaining unpaid portion of 48,005 square meters; with 6% interest per annum from the filing of this case until paid;

3. Ordering [NPC] to pay [respondents] a reasonable monthly rental of ₱0.68 per square meter of the total area of 48,005 square meters effective from its occupancy of the foregoing area in 1978 or a total of ₱7,050,974.40.

4. Ordering [NPC] to pay [respondents] the sum of ₱200,000.00 as moral damages; and

5. Ordering [NPC] to pay the further sum of ₱200,000.00 as attorney's fees and the costs.

SO ORDERED.[3]

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[2] *Rollo,* pp. 89-99.

[3] *Id.* at 98-99.

Respondents then filed an Urgent Motion for Execution of Judgment Pending Appeal. On the other hand, NPC filed a Notice of Appeal. Thereafter, it filed a vigorous opposition to the motion for execution of judgment pending appeal with a motion for reconsideration of the RTC decision.

On August 26, 1996, NPC withdrew its Notice of Appeal to give way to the hearing of its motion for reconsideration. On August 28, 1996, the RTC issued an Order granting execution pending appeal and denying NPC's motion for reconsideration. The Decision of the RTC was executed pending appeal and the funds of NPC were garnished by respondents.

On October 4, 1996, Lucman Ibrahim and respondents Omar G. Maruhom, Elias G. Maruhom, Bucay G. Maruhom, Mamod G. Maruhom, Farouk G. Maruhom, Hidjara G. Maruhom, Potrisam G. Maruhom and Lumba G. Maruhom filed a Petition for Relief from Judgment,[4] asserting as follows:

1. They did not file a motion to reconsider or appeal the decision within the reglementary period of fifteen (15) days from receipt of judgment because they believed in good faith that the decision was for damages and rentals and attorney's fees only as prayed for in the complaint;

2. It was only on August 26, 1996 that they learned that the amounts awarded to the respondents represented not only rentals, damages and attorney's fees but the greatest portion of which was payment of just compensation which, in effect, would make the petitioner NPC the owner of the parcels of land involved in the case;

3. When they learned of the nature of the judgment, the period of appeal had already expired;

4. They were prevented by fraud, mistake, accident, or excusable negligence from taking legal steps to protect and preserve their rights over their parcels of land insofar as the part of the decision decreeing just compensation for respondents' properties;

5. They would never have agreed to the alienation of their property in favor of anybody, considering the fact that the parcels of land involved in this case were among the valuable properties they

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[4] *Id.* at 182-186.

inherited from their dear father and they would rather see their land crumble to dust than sell it to anybody.[5]

After due proceedings, the RTC granted the petition and rendered a modified judgment dated September 8, 1997, thus:

WHEREFORE, a modified judgment is hereby rendered:

1. Reducing the judgment award of [respondents] for the fair market value of ₱48,005,000.00 by [₱]9,526,000.00 or for a difference [of] ₱38,479,000.00 and by the further sum of ₱33,603,500.00 subject of the execution pending appeal leaving a difference of [₱]4,878,500.00 which may be the subject of execution upon the finality of this modified judgment with 6% interest per annum from the filing of the case until paid.

2. Awarding the sum of ₱1,476,911.00 to herein [respondents] Omar G. Maruhom, Elias G. Maruhom, Bucay G. Maruhom, Mahmod G. Maruhom, Farouk G. Maruhom, Hidjara G. Maruhom, Portrisam G. Maruhom and Lumba G. Maruhom as reasonable rental deductible from the awarded sum of ₱7,050,974.40 pertaining to [respondents].

3. Ordering [NPC] embodied in the August 7, 1996 decision to pay [respondents] the sum of ₱200,000.00 as moral damages; and further sum of ₱200,000.00 as attorney's fees and costs.

SO ORDERED.[6]

Lucman Ibrahim and NPC then filed their separate appeals with the CA, docketed as CA-G.R. CV No. 57792. On June 8, 2005, the CA rendered a Decision,[7] setting aside the modified judgment and reinstating the original Decision, amending it further by deleting the award of moral damages and reducing the amount of rentals and attorney's fees, thus:

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[5] *Id.* at 183-184.

[6] *Id.* at 124-125.

[7] Penned by Associate Justice Myrna Dimaranan-Vidal, with Associate Justices Teresita Dy-Liacco Flores and Edgardo A. Camello, concurring; *id.* at 100-119.

WHEREFORE, premises considered, herein Appeals are hereby partially GRANTED, the Modified Judgment is ordered SET ASIDE and rendered of no force and effect and the original Decision of the court *a quo* dated 7 August 1996 is hereby RESTORED with the MODIFICATION that the award of moral damages is DELETED and the amounts of rentals and attorney's fees are REDUCED to ₱6,887,757.40 and ₱50,000.00, respectively. In this connection, the Clerk of Court of RTC Lanao del Sur is hereby directed to reassess and determine the additional filing fee that should be paid by Plaintiff-Appellant IBRAHIM taking into consideration the total amount of damages sought in the complaint *vis-à-vis* the actual amount of damages awarded by this Court. Such additional filing fee shall constitute as a lien on the judgment.

SO ORDERED.[8]

The above decision was affirmed by this Court on June 29, 2007 in G.R. No. 168732, *viz.*:

WHEREFORE, the petition is DENIED and the Decision of the Court of Appeals in C.A.-G.R. CV No. 57792 dated June 8, 2005 is AFFIRMED.

No costs.

SO ORDERED.[9]

NPC moved for reconsideration of the Decision, but this Court denied it on August 29, 2007.

To satisfy the judgment, respondents filed with the RTC a motion for execution of its August 7, 1996 decision, as modified by the CA. On November 13, 2007, the RTC granted the motion, and issued the corresponding writ of execution. Subsequently, a notice of garnishment was issued upon NPC's depositary bank.

NPC then filed a Petition for *Certiorari* (with Urgent Prayer for the Immediate Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) with the CA, docketed as CA-G.R. SP No. 02065-MIN. It argued that the RTC gravely

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[8] *Id.* at 118-119.

[9] *Rollo,* p. 138.

abused its discretion when it granted the motion for execution without ordering respondents to transfer their title in favor of NPC. By allowing the payment of just compensation for a parcel of land without the concomitant right of NPC to get title thereto, the RTC clearly varied the terms of the judgment in G.R. No. 168732, justifying the issuance of a writ of *certiorari*. NPC also prayed for the issuance of a temporary restraining order (TRO) to enjoin the implementation of the writ of execution and notice of garnishment. On November 29, 2007, the CA granted NPC's prayer and issued a TRO, enjoining the implementation of the writ of execution and the notice of garnishment.

On May 30, 2008, the CA rendered the now assailed Decision,[10] dismissing NPC's petition for *certiorari*. Rejecting NPC's argument, the CA declared that this Court's Decision in G.R. No. 168732 intended NPC to pay the full value of the property as compensation without ordering the transfer of respondents' title to the land. According to the CA, in a plethora of cases involving lands traversed by NPC's transmission lines, it had been consistently ruled that an easement is compensable by the full value of the property despite the fact that NPC was only after a right-of-way easement, if by such easement it perpetually or indefinitely deprives the land owner of his proprietary rights by imposing restrictions on the use of the property. The CA, therefore, ordered NPC to pay its admitted obligation to respondents amounting to ₱36,219,887.20.[11]

NPC is now before us faulting the CA for dismissing the former's petition for *certiorari*. It also prayed for a TRO to enjoin respondents and all persons acting under their authority from implementing the May 30, 2008 Decision of the CA. In its July 9, 2008 Resolution,[12] this Court granted NPC's prayer, and issued a TRO enjoining the execution of the assailed CA Decision.

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[10] *Supra* note 1.

[11] *Rollo,* pp. 147, 151.

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

In the main, NPC insists that the payment of just compensation for the land carries with it the correlative right to obtain title or ownership of the land taken. It stresses that this Court's Decision in G.R. No. 168732 is replete with pronouncements that the just compensation awarded to respondents corresponds to compensation for the entire land and not just for an easement or a burden on the property, thereby necessitating a transfer of title and ownership to NPC upon satisfaction of judgment. NPC added that by granting respondents' motion for execution, and consequently issuing the writ of execution and notice of garnishment, the RTC and the CA allowed respondents to retain title to the property even after the payment of full compensation. This, according to NPC, was a clear case of unjust enrichment.

The petition lacks merit.

It is a fundamental legal axiom that a writ of execution must conform strictly to the dispositive portion of the decision sought to be executed. A writ of execution may not vary from, or go beyond, the terms of the judgment it seeks to enforce. When a writ of execution does not conform strictly to a decision's dispositive portion, it is null and void.[13]

Admittedly, the tenor of the dispositive portion of the August 7, 1996 RTC decision, as modified by the CA and affirmed by this Court, did not order the transfer of ownership upon payment of the adjudged compensation. Neither did such condition appear in the text of the RTC decision, and of this Court's Decision in G.R. No. 168732.

As aptly pointed out by the CA in its assailed Decision:

> [NPC], by its selective quotations from the Decision in G.R. No. 168732, would have Us suppose that the High Court, in decreeing that [NPC] pay the full value of the property as just compensation, implied that [NPC] was entitled to the entire land, including the surface area and not just the subterranean portion. No such inference can be drawn from [the] reading of the entirety of the High Court's

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[13] *Development Bank of the Phils. v. Union Bank of the Phils.*, 464 Phil. 161 (2004).

Decision. On the contrary, a perusal of the subject Decision yields to this Court the unmistakable sense that the High Court intended [NPC] to pay the full value of the subject property as just compensation *without* ordering the transfer o[f] respondents' title to the land. This is patent from the following language of the High Court as quoted by [NPC] itself:

> In disregarding this procedure and failing to recognize respondents' ownership of the sub-terrain portion, petitioner took a risk and exposed itself to greater liability with the passage of time. It must be emphasized that the acquisition of the easement is not without expense. The underground tunnels impose limitations on respondents' use of the property for an indefinite period and deprive them of its ordinary use. Based upon the foregoing, respondents are clearly entitled to the payment of just compensation. *Notwithstanding the fact that [NPC] only occupies the sub-terrain portion, it is liable to pay not merely an easement but rather the full compensation for land. This is so because in this case, the nature of the easement practically deprives the owners of its normal beneficial use*. Respondents, as the owners of the property thus expropriated, are entitled to a just compensation which should be neither more nor less, whenever it is possible to make the assessment, than the money equivalent of said property.[14]

Clearly, the writ of execution issued by the RTC and affirmed by the CA does not vary, but is, in fact, consistent with the final decision in this case. The assailed writ is, therefore, valid.

Indeed, expropriation is not limited to the acquisition of real property with a corresponding transfer of title or possession. The right-of-way easement resulting in a restriction or limitation on property rights over the land traversed by transmission lines also falls within the ambit of the term *expropriation*.[15]

As we explained in *Camarines Norte Electric Cooperative, Inc. v. Court of Appeals*:[16]

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[14] *Rollo*, pp. 47-48.

[15] *National Power Corporation v. San Pedro*, G.R. No. 170945, September 26, 2006, 503 SCRA 333, 353.

[16] G.R. No. 109338, November 20, 2000, 345 SCRA 85.

The acquisition of an easement of a right-of-way falls within the purview of the power of eminent domain. Such conclusion finds support in easements of right-of-way where the Supreme Court sustained the award of just compensation for private property condemned for public use. The Supreme Court, in *Republic v. PLDT* thus held that:

"Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right-of-way."

However, a simple right-of-way easement transmits no rights, except the easement. Vines Realty retains full ownership and it is not totally deprived of the use of the land. It can continue doing what it wants to do with the land, except those that would result in contact with the wires.

The acquisition of this easement, nevertheless, is not *gratis*. Considering the nature and effect of the installation power lines, the limitations on the use of the land for an indefinite period deprives private respondents of its ordinary use. For these reasons, Vines Realty is entitled to payment of just compensation, which must be neither more nor less than the money equivalent of the property.[17]

It is, therefore, clear that NPC's acquisition of an easement of right-of-way on the lands of respondents amounted to expropriation of the portions of the latter's property for which they are entitled to a reasonable and just compensation.

The term *just compensation* had been defined as the full and fair equivalent of the property taken from its owner by the expropriator. 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* and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample.[18]

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[17] *Id.* at 94-95.

[18] *National Power Corporation v. Vda. de Capin*, G.R. No. 175176, October 17, 2008, 569 SCRA 648, 667.

In *Camarines Norte Electric Cooperative, Inc. v. Court of Appeals*[19] and *National Power Corporation v. Manubay Agro-Industrial Development Corporation*,[20] this Court sustained the award of just compensation equivalent to the fair and full value of the property even if petitioners only sought the continuation of the exercise of their right-of-way easement and not the ownership over the land. There is simply no basis for NPC to claim that the payment of fair market value without the concomitant transfer of title constitutes an unjust enrichment.

In fine, the issuance by the RTC of a writ of execution and the notice of garnishment to satisfy the judgment in favor of respondents could not be considered grave abuse of discretion. The term *grave abuse of discretion*, in its juridical sense, connotes capricious, despotic, oppressive, or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse must be of such degree as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and capricious manner by reason of passion and hostility. The word *capricious*, usually used in tandem with the term *arbitrary*, conveys the notion of willful and unreasoning action. Thus, when seeking the corrective hand of *certiorari*, a clear showing of caprice and arbitrariness in the exercise of discretion is imperative.[21] In this case, NPC utterly failed to demonstrate caprice or arbitrariness on the part of the RTC in granting respondents' motion for execution. Accordingly, the CA committed no reversible error in dismissing NPC's petition for *certiorari*.

It is almost trite to say that execution is the fruit and the end of the suit and is the life of the law. A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party. Litigation must end sometime and somewhere. An effective and efficient administration of justice requires that once a judgment

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[19] *Supra* note 16.

[20] G.R. No. 150936, August 18, 2004, 437 SCRA 60, 67.

[21] *Torres v. Abundo, Sr.,* G.R. No. 174263, January 24, 2007, 512 SCRA 556, 568-569.

has become final, the winning party be not deprived of the fruits of the verdict. Courts must, therefore, guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.[22] We, therefore, write *finis* to this litigation.

WHEREFORE, the petition is *DENIED*. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 02065-MIN is *AFFIRMED*. The temporary restraining order issued by this Court on July 9, 2008 is *LIFTED*.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Del Castillo,*[***] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 183233. December 23, 2009]

VIRGILIO G. ANABE, *petitioner, vs.* **ASIAN CONSTRUCTION (ASIAKONSTRUKT), ZENAIDA P. ANGELES and N.O. GARCIA,** *respondents.*

SYLLABUS

1. LABOR LAW AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETRENCHMENT, DEFINED.— Retrenchment is the termination of employment initiated by the employer through no fault of and without prejudice to the employees. It is resorted to during periods of business recession, industrial

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[22] *La Campana Development Corporation v. Development Bank of the Philippines*, G.R. No. 146157, February 13, 2009.

[***] Additional member per Special Order No. 805 dated December 4, 2009.

depression, or seasonal fluctuations or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery or of automation. It is a management prerogative resorted to, to avoid or minimize business losses, and is recognized by Article 283 of the Labor Code, as amended, *viz*: Art. 283. *Closure of establishment and reduction of personnel*.––The employer may also terminate the employment of any employee due to x x x retrenchment **to prevent losses** or the closing or cessation of operations of the establishment x x x by serving a written notice on the worker and the [DOLE] at least one month before the intended date thereof. x x x In case of retrenchment to prevent losses, the separation pay shall be equivalent to one (1) month pay or at least one-half month pay for every year of service whichever is higher. x x x

2. **ID.; ID.; ID.; ID.; ELEMENTS THAT MUST BE PRESENT TO EFFECT A VALID RETRENCHMENT.—** To effect a valid retrenchment, the following elements must be present: (1) the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, and real, or only if expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) the employer serves written notice both to the employee/s concerned and the Department of Labor and Employment at least a month before the intended date of retrenchment; (3) the employer pays the retrenched employee separation pay in an amount prescribed by the Code; (4) the employer exercises its prerogative to retrench in good faith; and (5) the employer uses fair and reasonable criteria in ascertaining who would be retrenched or retained.

3. **ID.; ID.; ID.; ID.; ID.; FINANCIAL LOSSES MUST BE SUPPORTED BY SUFFICIENT AND CONVINCING EVIDENCE; CASE AT BAR.—** The losses must be *supported by sufficient and convincing evidence*, the normal method of discharging which is the submission of financial statements duly audited by independent external auditors. In the present case, Asiakonstrukt failed to submit its audited financial statements within the two years that the case was pending before the Labor Arbiter. It submitted them only after it received the adverse judgment of the Labor Arbiter. Indubitably, the

NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases. There is, however, a caveat to this policy. The delay in the submission of evidence should be clearly explained and should adequately prove the employer's allegation of the cause for termination. In the present case, Asiakonstrukt proffered no explanation behind the belated submission. And the financial statements it submitted covered the period 1998-2000. Further, note that the audited financial statement covering the period 1998-2000 was prepared in April 2001, which begs the question of how the management knew at such date of the company's huge losses to justify petitioner's retrenchment in 1999. Furthermore, from the certification issued by the Securities and Exchange Commission (SEC), it would appear that Asiakonstrukt failed to submit its financial statements to the SEC, as required under the law, for the period 1998-2000 and 2003-2005, thereby lending credence to petitioner's theory that the financial statements submitted on appeal may have been fabricated. Indeed, Asiakonstrukt could have easily submitted its audited financial statements during the pendency of the proceedings at the labor arbiter's level, especially considering that it was in late 2001 that the case was decided.

4. **ID.; ID.; ID.; ID.; MONETARY CLAIMS; PRESCRIPTION OF ACTIONS IN LABOR CASES; CASE AT BAR.—** In labor cases, the special law on prescription is Article 291 of the Labor Code which provides: Article 291. Money Claims. – All money claims arising from employer-employee relations accruing during the effectivity of this Code **shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be barred forever**. The Labor Code has no specific provision on when a monetary claim accrues. Thus, again the general law on prescription applies. Article 1150 of the Civil Code provides that – Article 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted **from the day they may be brought**. *The day the action may be brought* is the day a claim started as a legal possibility.

APPEARANCES OF COUNSEL

Benedictine Law Center for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Virgilio G. Anabe (petitioner) was hired by respondent Asian Construction (Asiakonstrukt) as radio technician/operator on April 15, 1993. By notice dated September 8, 1999, he was advised that his services would be, as he was in fact, terminated effective October 8, 1999 on the ground of retrenchment. Petitioner thus filed on February 10, 2000 a complaint[1] for illegal dismissal and illegal deduction and payment of overtime pay, premium pay, holiday pay, service incentive leave pay, and 13th month pay.

Asiakonstrukt, attributing petitioner's retrenchment to sudden business reversal in the construction industry, averred, however, that petitioner's money claims have been offset against his outstanding accountabilities.

By Decision[2] of June 29, 2001, the Labor Arbiter, finding that Asiakonstrukt failed to submit financial statements to prove losses, ruled that petitioner was not validly dismissed. Thus he disposed:

> WHEREFORE, premises considered, judgment is hereby rendered finding the respondents liable for illegal dismissal and consequently ordered to reinstate complainant to his former position or its equivalent without loss of seniority rights and other privileges, with full backwages and benefits from date of dismissal up to actual date of reinstatement which is in the amount of ₱136,277.14 as of this month. Respondent[s] are likewise ordered to pay complainant his 13th month pay in the amount of ₱4,259.64 and illegal deductions in the amount of ₱164,960.24 and overtime pay in the amount of ₱6.11 [underpayment of overtime pay as computed by the Computation and Examination Unit of the NLRC]. Respondents are further ordered to pay complainant ten percent (10%) of the total award as attorney's fees.

On appeal, the National Labor Relations Commission (NLRC), taking into consideration the certified true copies of the Audited Financial Statements from 1998 to 2000 submitted by

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[1] NLRC records I, p. 1.

[2] *Rollo*, pp. 85-99. Penned by Labor Arbiter Aliman Mangandog.

Asiakonstrukt, partly granted the appeal by Resolution[3] of March 10, 2004. It modified the Labor Arbiter's Decision by holding that petitioner was not illegally dismissed. While it affirmed the award of the 13th month pay, overtime pay and attorney's fees, it ordered the payment to petitioner of ₱19,170 as separation pay.

Moreover, the NLRC reduced the reimbursable amount of illegal deductions from ₱164,960.24 to ₱88,000.00, ratiocinating that petitioner is only entitled to money claims from 1997-1999, the claims prior thereto having already prescribed.

Petitioner's motion for reconsideration was denied by Order[4] dated August 31, 2005, hence, he appealed to the Court of Appeals, assailing the consideration by the NLRC of the Audited Financial Statements which were submitted only on appeal.

By Decision[5] of December 26, 2007, the appellate court held that there was no grave abuse of discretion on the part of the NLRC when it considered the financial statements as they "already form part of the records on appeal."

Citing *Clarion Printing House, Inc. v. NLRC,*[6] the appellate court noted that the NLRC is not precluded from receiving evidence on appeal as technical rules of procedure are not binding in labor cases. And it affirmed the ruling of the NLRC that petitioner is only entitled to the illegal deductions for the period 1997-1999 in the amount of ₱88,000.00, as the prescriptive period for money claims is only three years from the time the cause of action accrues.

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[3] CA *rollo*, pp. 19-24. Penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Roy V. Señeres.

[4] *Id.* at 26-30. Penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Benedicto Ernesto R. Bitonio, Jr. and Commissioner Perlita B. Velasco.

[5] *Id.* at 829-838. Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Martin S. Villarama, Jr. (now Associate Justice of this Court) and Noel G. Tijam.

[6] G.R. No. 148372, June 27, 2005, 461 SCRA 272.

Petitioner's motion for reconsideration having been denied by Resolution[7] of April 2, 2008, he filed the present petition, maintaining that he was illegally dismissed as Asiakonstrukt failed to prove that it was suffering business losses to warrant a valid retrenchment of its employees; and Asiakonstrukt belatedly submitted financial statements were not shown to be newly found evidence and unavailable during the proceedings before the Labor Arbiter to thus cast doubts as to their veracity.

The petition is *partly* meritorious.

Retrenchment is the termination of employment initiated by the employer through no fault of and without prejudice to the employees, it is resorted to during periods of business recession, industrial depression, or seasonal fluctuations or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery or of automation. It is a management prerogative resorted to, to avoid or minimize business losses,[8] and is recognized by Article 283 of the Labor Code, as amended, *viz*:

> Art. 283. *Closure of establishment and reduction of personnel*.—The employer may also terminate the employment of any employee due to x x x retrenchment **to prevent losses** or the closing or cessation of operations of the establishment x x x by serving a written notice on the worker and the [DOLE] at least one month before the intended date thereof. x x x In case of retrenchment to prevent losses, the separation pay shall be equivalent to one (1) month pay or at least one-half month pay for every year of service whichever is higher. x x x (Emphasis ours.)

To effect a valid retrenchment, the following elements must be present: (1) the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, and real, or only

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[7] CA *rollo*, p. 1034. Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Martin S. Villarama, Jr. (now Associate Justice of this Court) and Noel G. Tijam.

[8] *Mobilia Products, Inc. v. Demecilio,* G.R. No. 170669, February 4, 2009.

if expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) the employer serves written notice both to the employee/s concerned and the Department of Labor and Employment at least a month before the intended date of retrenchment; (3) the employer pays the retrenched employee separation pay in an amount prescribed by the Code; (4) the employer exercises its prerogative to retrench in good faith; and (5) the employer uses fair and reasonable criteria in ascertaining who would be retrenched or retained.[9]

The losses must be *supported by sufficient and convincing evidence*,[10] the normal method of discharging which is the submission of financial statements duly audited by independent external auditors.[11]

In the present case, Asiakonstrukt failed to submit its audited financial statements within the two years that the case was pending before the Labor Arbiter. It submitted them only after it received the adverse judgment of the Labor Arbiter.

Indubitably, the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases. There is, however, a caveat to this policy. The delay in the submission of evidence should be clearly explained and should adequately prove the employer's allegation of the cause for termination.[12] In the present case, Asiakonstrukt proffered no explanation behind the belated submission. And the financial statements[13] it submitted covered the period 1998-2000. Further, note that the audited financial statement[14] covering the period

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[9] Vide *Asian Alcohol Corporation v. NLRC*, G.R. No. 131108, March 25, 1999, 305 SCRA 416, 428.

[10] *Guerrero v. National Labor Relations Commission*, G.R. No. 119842, August 30, 1996, 261 SCRA 301, 305.

[11] Vide *F.F. Marine Corporation v. National Labor Relations Commission, Second Division*, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 168.

[12] Vide *AG & P United Rank & File Association v. NLRC,* 332 Phil. 937 (1996).

[13] NLRC records II, pp. 78-94.

[14] *Id.* at 79-94.

1998-2000 was prepared in April 2001, which begs the question of how the management knew at such date of the company's huge losses to justify petitioner's retrenchment in 1999.

Furthermore, from the certification[15] issued by the Securities and Exchange Commission (SEC), it would appear that Asiakonstrukt failed to submit its financial statements to the SEC, as required under the law, for the period 1998-2000 and 2003-2005, thereby lending credence to petitioner's theory that the financial statements submitted on appeal may have been fabricated. Indeed, Asiakonstrukt could have easily submitted its audited financial statements during the pendency of the proceedings at the labor arbiter's level, especially considering that it was in late 2001 that the case was decided.

For failure then of Asiakonstrukt to clearly and satisfactorily substantiate its financial losses,[16] the dismissal of petitioner on account of retrenchment is unjustified. Petitioner is thus entitled to the twin reliefs of payment of backwages and other benefits from the time of his dismissal up to the finality of this Court's Decision, and reinstatement without loss of seniority rights or, in lieu thereof, payment of separation pay.

On the reduction of petitioner's money claims on account of prescription, under Article 1139 of the Civil Code, actions prescribe by the mere lapse of the time prescribed by law. That law may either be the Civil Code or special laws as specifically mandated by Article 1148. In labor cases, the special law on prescription is Article 291 of the Labor Code which provides:

> Article 291. Money Claims. – All money claims arising from employer-employee relations accruing during the effectivity of this Code **shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be barred forever**. (emphasis supplied)

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[15] Vide certification dated September 8, 2005, CA *rollo*, pp. 849-850; certification dated January 14, 2008, CA *rollo*, p. 1028.

[16] Vide *AG & P United Rank & File Association v. NLRC,* 332 Phil. 937 (1996).

The Labor Code has no specific provision on when a monetary claim accrues. Thus, again the general law on prescription applies. Article 1150 of the Civil Code provides that –

Article 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted **from the day they may be brought**. (emphasis supplied)

The day the action may be brought is the day a claim started as a legal possibility.[17] In the present case, the day came when petitioner learned of Asiakonstrukt's deduction from his salary of the amount of advances he had received but had, by his claim, been settled, the same having been reflected in his payslips, hence, it is assumed that he learned of it at the time he received his monthly paychecks.

As thus correctly ruled by both the NLRC and the appellate court, only those illegal deductions made from 1997 to 1999 when he was dismissed can be claimed, he having filed his complaint only in February 2000. Per his own computation and as properly adopted by the NLRC in its assailed Resolution dated March 10, 2004, petitioner is thus entitled to reimbursement of ₱88,000.00.

WHEREFORE, the petition is *GRANTED*. The Court of Appeals Decision dated December 26, 2007 and Resolution dated April 2, 2008 are *SET ASIDE*. The Decision of the Labor Arbiter dated June 29, 2001 is *REINSTATED*, with the *MODIFICATION* that petitioner, Virgilio G. Anabe, is entitled to ₱88,000.00 representing reimbursement of the illegal deductions from his salary.

The case is *REMANDED* to the National Labor Relations Commission which is *DIRECTED* to recompute *WITH DISPATCH* the monetary awards due petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Velasco, Jr.,[*] *Leonardo-de Castro,* and *Bersamin, JJ.,* concur.

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[17] Paras, *CIVIL CODE OF THE PHILIPPINES*, 14th Ed., Vol. IV, p. 60.

[*] Additional Member per Raffle dated December 14, 2009.

FIRST DIVISION

[G.R. No. 183335. December 23, 2009]

JUANITO TABIGUE, ALEX BIBAT, JECHRIS DASALLA, ANTONIO TANGON, ROLANDO PEDRIGAL, DANTE MAUL, ALFREDO IDUL, EDGAR RAMOS, RODERICK JAVIER, NOEL PONAYO, ROMEL ORAPA, REY JONE, ALMA PATAY, JERIC BANDIGAN, DANILO JAYME, ELENITA S. BELLEZA, JOSEPHINE COTANDA, RENE DEL MUNDO, PONCIANO ROBUCA, and MARLON MADICLUM, *petitioners, vs.* **INTERNATIONAL COPRA EXPORT CORPORATION (INTERCO),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEAL UNDER RULE 43 OF THE RULES OF COURT; DISMISSAL OF PETITION PROPER FOR FAILURE TO PAY THE DOCKET AND OTHER LAWFUL FEES; EXCEPTION; CASE AT BAR.— Section 7 of Rule 43 of the Rules of Court provides that [t]he failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition **shall be sufficient ground for the dismissal thereof**. Petitioners claim that they had completed the payment of the appellate docket fee and other legal fees when they filed their motion for reconsideration before the Court of Appeals. While the Court has, in the interest of justice, given due course to appeals despite the belated payment of those fees, petitioners have not proffered any reason to call for a relaxation of the above-quoted rule. On this score alone, the dismissal by the appellate court of petitioners' petition is in order. x x x Under Section 9 (3) of the Judiciary Reorganization Act of 1980, the Court of Appeals exercises exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and *quasi-judicial* agencies, instrumentalities, boards or commissions. x x x

2. ID.; ID.; APPLICABLE TO PETITIONS FILED WITH THE COURT OF APPEALS QUESTIONING JUDGMENTS OF QUASI-JUDICIAL AGENCIES EXERCISING QUASI-JUDICIAL FUNCTIONS; QUASI-JUDICIAL FUNCTION, DEFINED.— Rule 43 of the Rules of Court under which petitioners filed their petition before the Court of Appeals applies to awards, judgments, final orders or resolutions of or authorized by any *quasi-judicial* agency in the exercise of its *quasi-judicial functions*. A[n agency] is said to be exercising judicial function where [it] has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties. Quasi-judicial function is a term which applies to the action, discretion, *etc.* of public administrative officers or bodies, who are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature.

3. ID.; ID.; ID.; THE NATIONAL CONCILIATION AND MEDIATION BOARD (NCMB) IS NOT CONSIDERED A QUASI-JUDICIAL AGENCY; DISMISSAL OF APPEAL, PROPER.— Petitioners assailed the NCMB Director's decision via Petition for Review before the Court of Appeals which dismissed it by Resolution of October 24, 2007. x x x Given NCMB's following functions, as enumerated in Section 22 of Executive Order No. 126 (the Reorganization Act of the Ministry of Labor and Employment), *viz*: (a) Formulate policies, programs, standards, procedures, manuals of operation and guidelines pertaining to effective mediation and conciliation of labor disputes; (b) Perform preventive mediation and conciliation functions; (c) Coordinate and maintain linkages with other sectors or institutions, and other government authorities concerned with matters relative to the prevention and settlement of labor disputes; (d) Formulate policies, plans, programs, standards, procedures, manuals of operation and guidelines pertaining to the promotion of cooperative and non-adversarial schemes, grievance handling, voluntary arbitration and other voluntary modes of dispute settlement; (e) Administer the voluntary arbitration program; maintain/update a list of voluntary arbitrations; compile arbitration awards and decisions; (f) Provide counseling and preventive mediation assistance

particularly in the administration of collective agreements; (g) Monitor and exercise technical supervision over the Board programs being implemented in the regional offices; and (h) Perform such other functions as may be provided by law or assigned by the Minister, it can not be considered a quasi-judicial agency.

4. **LABOR LAW AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; ONLY DISPUTES INVOLVING UNION AND COMPANY MAY BE REFERRED TO THE GRIEVANCE MACHINERY OR VOLUNTARY ARBITRATORS; EXCLUSIVENESS OF THE REPRESENTATIVE RULE OF THE LABOR UNION; CASE AT BAR.—** Petitioners have not, however, been duly authorized to represent the union. *Apropos* is this Court's pronouncement in *Atlas Farms, Inc. v. National Labor Relations Commission, viz*: x x x Pursuant to Article 260 of the Labor Code, the parties to a CBA shall name or designate their respective representatives to the grievance machinery and if the grievance is unsettled in that level, it shall automatically be referred to the voluntary arbitrators designated in advance by parties to a CBA. Consequently **only disputes involving the union and the company** shall be referred to the grievance machinery or voluntary arbitrators. Clutching at straws, petitioners invoke the first paragraph of Article 255 of the Labor Code which states: Art. 255. The labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining. However, an individual employee or group of employees shall have the right at any time to present grievances to their **employer.** x x x To petitioners, the immediately quoted provision "is meant to be an exception to the exclusiveness of the representative role of the labor organization/union." This Court is not persuaded. The right of any employee or group of employees to, at any time, present grievances to the employer does not imply the right to submit the same to voluntary arbitration.

APPEARANCES OF COUNSEL

Pito & Ladaga Law Offices for petitioners.

Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner Juanito Tabigue and his 19 co-petitioners, all employees of respondent International Copra Export Corporation (INTERCO), filed a Notice of Preventive Mediation with the Department of Labor and Employment – National Conciliation and Mediation Board (NCMB), Regional Branch No. XI, Davao City against respondent, for *violation of Collective Bargaining Agreement (CBA) and failure to sit on the grievance conference/ meeting*.[1]

As the parties failed to reach a settlement before the NCMB, petitioners requested to elevate the case to voluntary arbitration. The NCMB thus set a date for the parties to agree on a Voluntary Arbitrator.

Before the parties could finally meet, respondent presented before the NCMB a letter[2] of Genaro Tan (Tan), president of the INTERCO Employees/Laborers' Union (the union) of which petitioners are members, addressed to respondent's plant manager Engr. Paterno C. Tangente (Tangente), stating that petitioners "are not duly authorized by [the] board or the officers to represent the union, [hence] . . . all actions, representations or agreements made by these people with the management will not be honored or recognized by the union." Respondent thus moved to dismiss petitioners' complaint for lack of jurisdiction.[3]

Petitioners soon sent union president Tan and respondent's plant manager Tangente a Notice to Arbitrate, citing the "Revised Guidelines" in the Conduct of Voluntary Arbitration Procedure *vis a vis* Section 3, Article XII of the CBA, furnishing the NCMB with a copy[4] thereof, which notice respondent opposed.[5]

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[1] *Rollo*, pp. 51-52.

[2] *Id.* at 60.

[3] *Id.* at 62-71.

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

[5] NCMB records. (Note: the NCMB records are not paginated)

The parties having failed to arrive at a settlement,[6] NCMB Director Teodorico O. Yosores wrote petitioner Alex Bibat and respondent's plant manager Tangente of the lack of willingness of both parties to submit to voluntary arbitration, which willingness is a pre-requisite to submit the case thereto; and that under the CBA forged by the parties, the union is an indispensable party to a voluntary arbitration but that since Tan informed respondent that the union had not authorized petitioners to represent it, it would be absurd to bring the case to voluntary arbitration.

The NCMB Director thus concluded that "the demand of [petitioners] to submit the issues . . . to voluntary arbitration CAN NOT BE GRANTED." He thus advised petitioners to avail of the compulsory arbitration process to enforce their rights.[7]

On petitioners' Motion for Reconsideration,[8] the NCMB Director, by letter of April 11, 2007 to petitioners' counsel, stated that the NCMB "has no rule-making power to decide on issues [as it] only facilitates settlement among the parties to . . . labor disputes."

Petitioners thus assailed the NCMB Director's decision via Petition for Review before the Court of Appeals[9] which dismissed it by Resolution[10] of October 24, 2007 in this wise:

x x x x x x x x x

Considering that NCMB is **not** a quasi-judicial agency exercising quasi-judicial functions but merely a conciliatory body for the purpose of facilitating settlement of disputes between parties, its decisions or that of its authorized officer cannot be appealed either through a petition for review under Rule 43 or under Rule 65 of the Revised Rules of Court.

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[6] *Id.* Vide *rollo*, p. 99.

[7] *Id.* at 100.

[8] *Id.* at 101-107.

[9] CA *rollo*, pp. 2-24.

[10] Penned by Court of Appeals Associate Justice Rodrigo F. Lim, Jr. with the concurrence of Associate Justices Teresita Dy-Liaco Flores and Michael Elbinias; *id.* at 85-86.

Further perusal of the petition reveals the following infirmities:

1. Payment of the docket fees and other legal fees is short by One Thousand Pesos (Php 1,000.00);

2. Copy of the assailed "Decision" of the Regional Director of the National Conciliation and Mediation Board has not been properly certified as the name and designation of the certifying officer thereto are not indicated; and

3. Not all of the petitioners named in the petition signed the verification and non-forum shopping.[11] (emphasis and underscoring supplied)

Their Motion for Reconsideration[12] having been denied,[13] petitioners filed the present Petition for Review on *Certiorari*,[14] raising the following arguments:

THIS PARTICULAR CASE XXX FALLS SQUARELY WITHIN THE PURVIEW OF SECTION 6, RULE IV, IN RELATION TO PARAGRAPH 3, SUB-PARAGRAPH 3.2, SECTION 4, RULE IV, ALL OF THE REVISED PROCEDURAL GUIDELINES IN THE CONDUCT OF VOLUNTARY ARBITRATION PROCEEDINGS.[15]

THE NCMB, WHEN EXERCISING ADJUDICATIVE POWERS, ACTS AS A QUASI-JUDICIAL AGENCY.[16]

FINAL JUDGMENTS, DECISIONS, RESOLUTIONS, ORDERS, OR AWARDS OF REGIONAL TRIAL COURTS AND **QUASI-JUDICIAL BOARDS**, LIKE THE NCMB, COMMISSIONS, AGENCIES, INSTRUMENTALITIES, ARE **APPEALABLE** BY PETITION FOR REVIEW TO THE **COURT OF APPEALS**.[17] (emphasis in the original)

LABOR CASES, AS A GENERAL RULE, ARE NEVER RESOLVED ON THE BASIS OF TECHNICALITY ESPECIALLY SO WHEN

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[11] *Id.*, unnumbered page between pp. 85 and 86.

[12] *Id.* at 94-103.

[13] *Id.* at 151-152.

[14] *Rollo*, pp. 14-33.

[15] *Id.* at 24.

[16] *Id.* at 26.

[17] *Id.* at 28.

SUBSTANTIAL RIGHTS OF EMPLOYEES ARE AFFECTED.[18] (emphasis and underscoring supplied)

The petition fails.

Section 7 of Rule 43 of the Rules of Court provides that

> [t]he failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition **shall be sufficient ground for the dismissal thereof**. (underscoring and emphasis supplied)

Petitioners claim that they had completed the payment of the appellate docket fee and other legal fees when they filed their motion for reconsideration before the Court of Appeals.[19] While the Court has, in the interest of justice, given due course to appeals despite the belated payment of those fees,[20] petitioners have not proffered any reason to call for a relaxation of the above-quoted rule. On this score alone, the dismissal by the appellate court of petitioners' petition is in order.

But even if the above-quoted rule were relaxed, the appellate court's dismissal would just the same be sustained. Under Section 9 (3) of the Judiciary Reorganization Act of 1980,[21] the Court of Appeals exercises exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and *quasi-judicial* agencies, instrumentalities, boards or commissions.

Rule 43 of the Rules of Court under which petitioners filed their petition before the Court of Appeals[22] applies to awards,

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[18] *Id.* at 29.

[19] *Id.* at 29, 48.

[20] Vide *C.W. Tan Mfg. v. National Labor Relations Commission*, G.R. No. 79596, February 10, 1989, 170 SCRA 240, 244.

[21] Batas Pambansa Blg. 129.

[22] Vide CA *rollo*, p. 2.

judgments, final orders or resolutions of or authorized by any *quasi-judicial* agency in the exercise of its *quasi-judicial functions*.[23]

> A[n agency] is said to be exercising judicial function where [it] has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties. Quasi-judicial function is a term which applies to the action, discretion, *etc.* of public administrative officers or bodies, who are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature.[24] (underscoring supplied)

Given NCMB's following functions, as enumerated in Section 22 of Executive Order No. 126 (the Reorganization Act of the Ministry of Labor and Employment), *viz*:

(a) Formulate policies, programs, standards, procedures, manuals of operation and guidelines pertaining to effective mediation and conciliation of labor disputes;

(b) Perform preventive mediation and conciliation functions;

(c) Coordinate and maintain linkages with other sectors or institutions, and other government authorities concerned with matters relative to the prevention and settlement of labor disputes;

(d) Formulate policies, plans, programs, standards, procedures, manuals of operation and guidelines pertaining to the promotion of cooperative and non-adversarial schemes, grievance handling, voluntary arbitration and other voluntary modes of dispute settlement;

(e) Administer the voluntary arbitration program; maintain/ update a list of voluntary arbitrations; compile arbitration awards and decisions;

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[23] RULES OF COURT, Rule 43, Section 1 (italics supplied).

[24] *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission,* G.R. No. 144322, February 6, 2007, 514 SCRA 346.

(f) Provide counseling and preventive mediation assistance particularly in the administration of collective agreements;

(g) Monitor and exercise technical supervision over the Board programs being implemented in the regional offices; and

(h) Perform such other functions as may be provided by law or assigned by the Minister,

it can not be considered a quasi-judicial agency.

Respecting petitioners' thesis that unsettled grievances should be referred to voluntary arbitration as called for in the CBA, the same does not lie. The pertinent portion of the CBA reads:

> In case of any dispute arising from the interpretation or implementation of this Agreement or any matter affecting the relations of Labor and Management, the UNION and the COMPANY agree to exhaust all possibilities of conciliation through the grievance machinery. The committee shall resolve all problems submitted to it within fifteen (15) days after the problems ha[ve] been discussed by the members. If the dispute or grievance cannot be settled by the Committee, or if the committee failed to act on the matter within the period of fifteen (15) days herein stipulated, the UNION and the COMPANY agree to submit the issue to Voluntary Arbitration. Selection of the arbitrator shall be made within seven (7) days from the date of notification by the aggrieved party. The Arbitrator shall be selected by lottery from four (4) qualified individuals nominated by in equal numbers by both parties taken from the list of Arbitrators prepared by the National Conciliation and Mediation Board (NCMB). If the Company and the Union representatives within ten (10) days fail to agree on the Arbitrator, the NCMB shall name the Arbitrator. The decision of the Arbitrator shall be final and binding upon the parties. However, the Arbitrator shall not have the authority to change any provisions of the Agreement. The cost of arbitration shall be borne equally by the parties.[25] (capitalization in the original, underscoring supplied)

Petitioners have not, however, been duly authorized to represent the union. *Apropos* is this Court's pronouncement in *Atlas Farms, Inc. v. National Labor Relations Commission,*[26] *viz*:

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[25] *Rollo*, pp. 96-97.

[26] 440 Phil. 620 (2002).

x x x Pursuant to Article 260 of the Labor Code, the parties to a CBA shall name or designate their respective representatives to the grievance machinery and if the grievance is unsettled in that level, it shall automatically be referred to the voluntary arbitrators designated in advance by parties to a CBA. Consequently **only disputes involving the union and the company** shall be referred to the grievance machinery or voluntary arbitrators.[27] (emphasis and underscoring supplied)

Clutching at straws, petitioners invoke the first paragraph of Article 255 of the Labor Code which states:

Art. 255. The labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining. However, an individual employee or group of employees shall have the right at any time to present grievances to their **employer**.

x x x (emphasis and underscoring supplied)

To petitioners, the immediately quoted provision "is meant to be an exception to the exclusiveness of the representative role of the labor organization/union."[28]

This Court is not persuaded. The right of any employee or group of employees to, at any time, present grievances to the employer does not imply the right to submit the same to voluntary arbitration.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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

[28] *Rollo*, p. 200.

EN BANC

[G.R. No. 184836. December 23, 2009]

SIMON B. ALDOVINO, JR., DANILO B. FALLER and FERDINAND N. TALABONG, *petitioners, vs.* **COMMISSION ON ELECTIONS and WILFREDO F. ASILO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; ELECTIVE LOCAL OFFICIALS; TERM OF OFFICE; THREE-TERM LIMIT RULE UNDER SEC. 8. ART. X OF THE CONSTITUTION.—** Section 8, Article X of the Constitution states: Section 8. The term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. Section 43 (b) of RA 7160 practically repeats the constitutional provision, and any difference in wording does not assume any significance in this case. As worded, the constitutional provision fixes the term of a local elective office and *limits an elective official's stay in office to no more than three consecutive terms*. This is the **first branch** of the rule embodied in Section 8, Article X.

2. **ID.; ID.; ID.; ID.; ID.; PERIOD OF TIME DURING WHICH AN OFFICIAL HAS TITLE TO OFFICE AND CAN SERVE.—** Significantly, this provision refers to a "term" *as a period of time – three years –* during which an official has title to office and can serve. *Appari v. Court of Appeals*, a Resolution promulgated on November 28, 2007, succinctly discusses what a "term" connotes, as follows: **The word "term" in a legal sense means a fixed and definite period of time which the law describes that an officer may hold an office.** According to Mechem, the term of office is the period during which an office may be held. Upon expiration of the officer's term, unless he is authorized by law to holdover,

his rights, duties and authority as a public officer must *ipso facto* cease. x x x The "limitation" under this first branch of the provision is expressed in the **negative** – "no such official shall serve for more than three consecutive terms." This formulation – *no more than three consecutive terms* – is a clear command suggesting the existence of an inflexible rule. While it gives no exact indication of what to "serve. . . three consecutive terms" exactly connotes, the meaning is clear – reference is to *the term*, *not to the service* that a public official may render. In other words, the limitation refers to the term.

3. ID.; ID.; ID.; ID.; ID.; ID.; VOLUNTARY RENUNCIATION OF OFFICE; NOT AN INTERRUPTION IN THE CONTINUITY OF SERVICE FOR A FULL TERM.— The **second branch** relates to the provision's express initiative to prevent any circumvention of the limitation through voluntary severance of ties with the public office; it expressly states that *voluntary renunciation of office* "shall not be considered as an interruption in the continuity of his service for the full term for which he was elected." This declaration complements the *term limitation* mandated by the first branch.

4. ID.; ID.; ID.; ID.; ID.; ID.; "INTERRUPTION" OF A TERM INVOLVES INVOLUNTARY LOSS OF TITLE TO OFFICE.— Based on law and Jurisprudence, we conclude that the "interruption" of a term exempting an elective official from the three-term limit rule is one that involves *no less than the involuntary loss of title to office.* The elective official must have involuntarily left his office for a length of time, however short, for an effective interruption to occur. This has to be the case if the thrust of Section 8, Article X and its strict intent are to be faithfully served, *i.e.,* to limit an elective official's continuous stay in office to no more than three consecutive terms, using "voluntary renunciation" as an example and standard of what does not constitute an interruption. Thus, based on this standard, loss of office *by operation of law,* being involuntary, is an effective interruption of service within a term, as we held in *Montebon.* On the other hand, temporary inability or disqualification to exercise the functions of an elective post, even if involuntary, should not be considered an effective interruption of a term because it does not involve the loss of title to office or at least an effective break from holding office; the office holder, while retaining title, is simply barred from

exercising the functions of his office for a reason provided by law. An interruption occurs when the term is broken because the office holder lost the right to hold on to his office, and cannot be equated with the failure to render service. The latter occurs during an office holder's term when he retains title to the office but cannot exercise his functions for reasons established by law. Of course, the term "failure to serve" cannot be used once the right to office is lost; without the right to hold office or to serve, then no service can be rendered so that none is really lost.

5. **ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS; PREVENTIVE SUSPENSION; WHEN IMPOSED.—** Preventive suspension – whether under the Local Government Code, the Anti-Graft and Corrupt Practices Act, or the Ombudsman Act – is an *interim remedial measure to address the situation of an official who have been charged administratively or criminally, where the evidence preliminarily indicates the likelihood of or potential for eventual guilt or liability.* Preventive suspension is imposed under the *Local Government Code* "when the evidence of guilt is strong and given the gravity of the offense, there is a possibility that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence." Under the *Anti-Graft and Corrupt Practices Act,* it is imposed after a valid information (that requires a finding of probable cause) has been filed in court, while under the *Ombudsman Act*, it is imposed when, in the judgment of the Ombudsman, the evidence of guilt is strong; and (a) the charge involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; or (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

6. **ID.; ID.; ID.; ID.; NO POSITION IS VACATED WHEN A PUBLIC OFFICIAL IS PREVENTIVELY SUSPENDED.—** Notably in all cases of preventive suspension, the suspended official is barred from performing the functions of his office and does not receive salary in the meanwhile, but does not vacate and lose title to his office; loss of office is a consequence that only results upon an eventual finding of guilt or liability. Preventive suspension is a remedial measure that operates

under closely-controlled conditions and *gives a premium to the protection of the service rather than to the interests of the individual office holder*. Even then, protection of the service goes only as far as a *temporary prohibition* on the *exercise* of the functions of the official's office; the official is reinstated to the *exercise of his position* as soon as the preventive suspension is lifted. Thus, while a temporary incapacity in the exercise of power results, no position is vacated when a public official is preventively suspended.

7. **ID.; CONSTITUTIONAL LAW; ELECTIVE LOCAL OFFICIALS; TERM OF OFFICE; THREE-TERM LIMIT RULE UNDER SEC. 8, ART. X OF THE CONSTITUTION; PREVENTIVE SUSPENSION; NOT AN INTERRUPTION OF TERM THAT ALLOWS AN ELECTIVE OFFICIAL'S STAY IN OFFICE BEYOND THREE TERMS.—** Strict adherence to the intent of the three-term limit rule demands that preventive suspension should not be considered an interruption that allows an elective official's stay in office beyond three terms. A preventive suspension cannot simply be a term interruption because the suspended official continues to stay in office although he is barred from exercising the functions and prerogatives of the office within the suspension period. *The best indicator of the suspended official's continuity in office is the* ***absence of a permanent replacement*** *and the* ***lack of the authority to appoint one*** *since no vacancy exists.*

8. **ID.; ID.; ID.; ID.; ID.; PREVENTIVE SUSPENSION IS, BY NATURE, THE EXACT OPPOSITE OF VOLUNTARY RENUNCIATION.—** Preventive suspension, because it is imposed by operation of law, does not involve a voluntary act on the part of the suspended official, except in the indirect sense that he may have voluntarily committed the act that became the basis of the charge against him. From this perspective, preventive suspension does not have the element of voluntariness that voluntary renunciation embodies. Neither does it contain the element of renunciation or loss of title to office as it merely involves the temporary incapacity to perform the service that an elective office demands. Thus viewed, preventive suspension is – by its very nature – the exact opposite of voluntary renunciation; it is involuntary and temporary, and involves only the actual delivery of service, not the title to the office. The

easy conclusion therefore is that they are, by nature, different and non-comparable.

LEONARDO-DE CASTRO, *J.*, concurring opinion:

1. POLITICAL LAW; CONSTITUTIONAL LAW; ELECTIVE LOCAL OFFICIALS; TERM OF OFFICE; "RENUNCIATION" *VIS-À-VIS* "PREVENTIVE SUSPENSION"; EFFECTS ON THE CONTINUITY OF THE TERM OF OFFICE.— There is an inherent difference between "renunciation" and "preventive suspension" even if the former is involuntary. The former connotes an act of abandonment or giving up of a position by a public officer which would result in the termination of his service, whereas the latter means that a public officer is prevented by legal compulsion, not by his own volition, from discharging the functions and duties of his office, but without being removed or separated from his office. The term of office of a preventively suspended public officer subsists because preventive suspension does not create a vacancy in his office. As Justice Brion puts it, he does not become a private citizen while he is under preventive suspension. The continuity of the term of the suspended official during the period of his preventive suspension, whether rendered administrative or court proceedings, is recognized by law and jurisprudence, such that a public officer who is acquitted of the charges against him, is entitled to receive the salaries and benefits which he failed to receive during the period of his preventive suspension (Section 64, Local Government Code of 1991, Republic Act (R.A.) No. 7160; Section 13, R.A. 3019, as amended; *Tan v. Department of Public Works and Highways,* G.R. No. 143289, Nov. 11, 2004, 442 SCRA 192, 202).

2. ID.; ID.; ID.; ID.; VOLUNTARY RENUNCIATION OF OFFICE UNDER SEC. 8, ART. X OF THE CONSTITUTION; AKIN TO COMMISSION OF A CRIME OR ADMINISTRATIVE INFRACTION, WHICH IS A GROUND FOR REMOVAL FROM OFFICE.— Here, it is not the preventive suspension but his having committed a wrongdoing, which gave ground for his removal from office or for forfeiture of the remainder of his term which can be considered as voluntary renunciation of his office. The commission of a crime or an administrative infraction which is a ground for the removal from office of a public officer is akin to his "voluntary renunciation" of his office.

He may be deemed, by his willful wrongdoing, which betrayed public trust, to have thereby voluntarily renounced his office under the provision of Section 8, Article X of the Constitution.

ABAD, *J.*, separate concurring opinion:

1. **POLITICAL LAW; CONSTITUTIONAL LAW; ELECTIVE LOCAL OFFICIALS; TERM OF OFFICE; THREE-TERM LIMIT RULE UNDER SEC. 8, ART. X OF THE CONSTITUTION; RENUNCIATION OF OFFICE, ELUCIDATED.—** Actually, what creates the mischief is the statement in the second part of Section 8 (Article X of the Constitution) that "voluntary renunciation" of office shall not be considered an interruption in the continuity of his service for the full term for which the local official was elected. The dissenting opinion infers from this that "any service short of full service of three consecutive terms, save for voluntary renunciation of office, does not bar an elective local official from running again for the same local government post." In other words, elected politicians whose services are cut in the course of any term by "involuntary renunciation" are eligible for a fourth term. Relying on its above inference, the dissenting opinion claims that preventive suspension is, by default, an "involuntary renunciation" of an elective official's term of office since he does not choose to be preventively suspended. Preventive suspension cuts into the full term of the elected official and gives him justification for seeking a fourth term. But, there is in reality no such thing as "involuntary" renunciation. Renunciation is essentially "formal or voluntary." It is the act, says Webster, "of renouncing; a giving up formally or voluntarily, often at a sacrifice, of a right, claim, title, *etc*." If the dissenting opinion insists on using the term "involuntary renunciation," it could only mean "coerced" renunciation, *i.e.,* renunciation forced on the elected official. With this meaning, any politician can simply arrange for someone to make him sign a resignation paper at gun point. This will justify his running for a fourth term. But, surely, the law cannot be mocked in this way.

2. **ID.; ID.; ID.; ID.; ID.; ID.; "VOLUNTARY RENUNCIATION"; "REMOVAL FROM OFFICE," OPPOSITE THEREOF.—** "Voluntary renunciation," the term that the law uses simply means resignation from or abandonment of office. The elected official who voluntarily resigns or abandons his duties freely

renounces the powers, rights, and privileges of his position. The opposite of "voluntary renunciation" in this context would be "removal from office," a sanction imposed by some duly authorized person or body, not an initiative of or a choice freely made by the elected official.

3. **ID.; ID.; ID.; ID.; ID.; "REMOVAL FROM OFFICE"; NOT A TEST TO DETERMINE INTERRUPTION OF SERVICE TO WARRANT EXCEPTION TO THE THREE-TERM LIMIT RULE.—** Should "removal from office" be the test, therefore, for determining interruption of service that will warrant an exception to the three-term limit rule? Apparently not, since an elected official could be removed from office through recall (a judgment by the electorates that he is unfit to continue serving in office), criminal conviction by final judgment, and administrative dismissal. Surely, the Constitution could not have intended to reward those removed in this way with the opportunity to skip the three-year bar.

4. **ID.; ID.; ID.; ID.; ID.; ID.; INTERRUPTION IN CONTINUITY OF SERVICE THAT DOES NOT AMOUNT TO "REMOVAL" IS BY OPERATION OF LAW.—** The only interruption in the continuity of service of an elected official that does not amount to removal is termination of his service by operation of law. This is exemplified in the case of *Montebon v. COMELEC*, where this Court deemed the highest-ranking councilor's third term as such "involuntarily" interrupted when he succeeded as vice mayor by operation of law upon the latter's retirement. This Court considered the ranking councilor eligible to run again as councilor for the succeeding term.

5. **ID.; ID.; ID.; ID.; ID.; WHEN AN ELECTED OFFICIAL IS SUSPENDED, HE MUST BE CONSIDERED AS HAVING SERVED A FULL TERM DURING THE PERIOD OF SUSPENSION.—** The dissenting opinion's position would create a rule that will allow Asilo, who lost thirty-seven days of service because of that suspension, a right to be re-elected to a fourth consecutive term of one thousand ninety-five days (365 days x 3). x x x But such interpretation of the law wounds its very spirit for, in effect, it would reward the elected official for his misconduct. Fr. Joaquin G. Bernas, S.J., a recognized constitutionalist, is also not swayed by it. He points out that when an elected official is suspended, he shortens neither his

term nor his tenure. He is still seen as the rightful holder of the office and, therefore, must be considered as having served a full term during the period of suspension.

CARPIO, *J.*, dissenting opinion:

1. **POLITICAL LAW; CONSTITUTIONAL LAW; ELECTIVE LOCAL OFFICIALS; TERM OF OFFICE.—** Section 8, Article X of the Constitution, the application of which is at issue in the present case, reads: The term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as **an interruption in the continuity of his service for the full term for which he was elected.** The first sentence prescribes that the term limit of elective local officials shall not be more than "three consecutive terms." The second sentence states that **voluntary renunciation** of office does not interrupt the continuity of service for the full term of an elective local official. While the first sentence limits an elective local official's term of office to a maximum of "three consecutive terms," the second sentence prescribes that each of the three consecutive terms must be served for the **"full term"** for the three term limit rule to apply. Any break "in the continuity of his service for the full term" due to voluntary renunciation will not prevent the application of the three-term limit rule. The Constitution has provisions for term limits of the Legislative and the Executive which are similarly worded to term limits of elective local officials. Section 8 of Article X of the Constitution, quoted above, is repeated in Section 43(b) of the Local Government Code. Section 43(b) reads: *Term of Office*.— x x x (b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as **an interruption in the continuity of service for the full term for which the elective official concerned was elected.**

2. **ID.; ID.; ID.; ID.; ANY INVOLUNTARY ACT DEPRIVING AN ELECTIVE LOCAL OFFICIAL OF HIS OFFICE CONSTITUTES AN INTERRUPTION IN THE CONTINUITY OF SERVICE FOR THE FULL TERM FOR WHICH HE**

WAS ELECTED.— The clear implication is that any break in the continuity of his service due to involuntary renunciation or severance from office prevents the application of the three-term limit rule. Thus, it cannot be disputed that **any involuntary act** depriving an elective local official of his office constitutes an interruption in the continuity of service for the full term for which he was elected. **The "three consecutive terms"may be broken by "an interruption in the continuity of service for the full term for which he was elected, "provided such interruption is involuntary.** Once there is "**an interruption"** in the continuity of service of any of his three consecutive terms, there results a break in his continuity of service, unless the interruption is caused by voluntary renunciation. **In short, a plain reading of Section 8, Article X of the Constitution clearly provides that with the exception of voluntary renunciation, "an interruption in the continuity of [an elective official's] service for the full term for which he was elected" constitutes a break in the continuity of his service for purposes of determining whether he has fully served "three consecutive terms."**

3. ID.; ID.; ID.; ID.; THREE-TERM LIMIT RULE.— The three-term limit rule was borne out of the awareness of the members of the Constitutional Commission of the **possibility of excessive accumulation power as a result of "continuous service and frequent re-elections."** The members of the Constitutional Commission sought to balance the preservation of the people's freedom of choice and the prevention of the monopolization of political power. They chose between two proposals, that of Commissioner Edmundo Garcia, who proposed to prohibit reelection after serving three consecutive terms or nine years; and that of commissioner Christian Monsod, who proposed that elected officials be merely barred from running for the same position in the immediately succeeding election following the expiration of the third consecutive term.

4. ID.; ID.; ID.; ID.; ID.; THE COURT STATES WHAT IS SERVICE FOR A FULL TERM IN *ONG V. ALEGRE*.— The definition of "full service of three consecutive terms" is linked to the concepts of "interruption of service" and "voluntary renunciation." In *Ong v. Alegre*, we stated that service for a full term in contemplation of the three-term rule consists of

proclamation as winner by the Board of Canvassers, coupled by assumption of office and continuous exercise of the functions thereof from start to finish of the term. There is no interruption or break in the continuity of service when the elected official is never unseated during the term in question of never ceases discharging his duties and responsibilities for the entire period covering his term.

5. **ID.; ID.; ID.; ID.; ID.; IF VOLUNTARY RENUNCIATION IS NOT CONSIDERED A BREAK IN THE CONTINUITY, THEN THE CONVERSE SHOULD BE TRUE.—** An elective local official is not barred from running again for the same local government post unless two conditions concur: one, that the official has been elected to the same local government post for three consecutive terms, and two, that he has fully served three consecutive terms. **Any service short of full service of three consecutive terms, save for voluntary renunciation of the office, does not bar an elective local official from running again for the same local government post.** If voluntary renunciation is not considered a break in the continuity of service, then the converse should be true: involuntary renunciation should be considered a break in the continuity of service. **And there can be no more illustrative case of involuntary renunciation from service than removal from office by suspension or dismissal.**

6. **ID.; ID.; ID.; ID.; ID.; PREVENTIVE SUSPENSION CAN CUT AN ELECTIVE OFFICIAL'S TERM OF OFFICE TO LESS THAN A YEAR.—** Preventive suspension has a limited duration: not more than 60 days for a single offense or not more than 90 days in a year for offenses that fulfill certain conditions under the Local Government Code; and not more than 6 months under the Ombudsman Act of 1989. A 60-day suspension cuts into 1/13 of a term; a 90-day suspension into 1/12 of a term; and a 6-month suspension into 1/6 of a term. Preventive suspension can be imposed consecutively for different offenses filed separately, although under the Local Government Code, an elective official cannot be preventively suspended for more than 90 days within a single year "on the same ground or grounds existing and known at the time of the first suspension." If the grounds for suspension are different, then an elective official can be suspended for more than 90 days in a single year. **Thus,**

under the Local Government Code, preventive suspension can cut an elective official's term of office to less than a year. Under the Ombudsman Act, however, the Ombudsman can preventively suspend an elective official more than once in the same year during the elective official's term of office, regardless of the grounds for suspension, provided that the cases are filed separately. **Such cumulative preventive suspension can also cut the term of office of an elective official to less than a year.**

7. ID.; ID.; ID.; ID.; ID.; ID.; THIS WILL SUBJECT ELECTIVE LOCAL OFFICIALS TO HARASSMENT THROUGH SUCCESSIVE SUSPENSIONS.—This will subject elective local officials to harassment through successive suspensions. If we follow the majority opinion, an elective local official who is successively preventively suspended will still be deemed to have completed his term. The disciplining authority may suspend any elective local official who is not aligned with the desires of the ruling party and keep him suspended by filing different cases until his term is over. Several Metro Manila mayors faced graft charges before the Office of the Ombudsman prior to the 2007 elections. Consider the data in the following table:

Mayor	City / Municipality	Number of Charges Filed	Suspended or Dismissed
Lito Atienza	Manila	12	No
James Fresnedi	Muntinlupa	14	No
Enrico Echiverri	Caloocan	16	No
Lourdes Fernando	Marikina	14	No
Florencio Bernabe	Parañaque	8	No
Sigfrido Tinga	Taguig	5	No
Sherwin Gatchalian	Valenzuela	4	No
Vicente Eusebio	Pasig	4	No
Imelda Aguilar	Las Piñas	2	No
Jejomar Binay	Makati	4	Yes
Wenceslao Trinidad	Pasay	7	Yes

Preventive suspension is often resorted to prior to the elections. The DILG suspended Makati Mayor Jejomar Binay, Vice Mayor Ernesto Mercado and 16 councilors on 17 October 2006 pending the outcome of a graft case filed against them by former Makati Vice Mayor Roberto Brillante in August 2006 for allegedly hiring ghost employees. Mayor Binay received yet another suspension order a few days before the 2007 elections. The suspension order, based on a complaint by former Councilor Oscar Ibay for alleged unremitted withholding taxes, was served at 11:30 p.m. on 4 May 2007. The Ombudsman issued both suspension and dismissal orders on the eve of the 2007 election period.

8. ID.; ID.; ID.; ID.; ID.; ID.; PREVENTIVE SUSPENSION CAN BE USED AS A TOOL TO FRUSTRATE THE WILL OF THE PEOPLE.— Preventive suspension can be used as a tool to frustrate the will of the people, and there is no effective counter-check for this abuse. The elective local official who is under preventive suspension shall not receive any salary or compensation during his suspension. Preventive suspension, however, has effects which go beyond the financial and even beyond the person of the suspended elective official. The electorate is deprived of the services of the person they elected. An elective official, elected by popular vote, is directly responsible to the community that elected him. The official has a definite term of office fixed by law which is relatively of short duration. Suspension and removal from office definitely affects and shortens this term of office. ***When an elective official is suspended or removed, the people are deprived of the services of the man they had elected. Implicit in the right of suffrage is that the people are entitled to the services of the elective official of their choice.*** An elective local official may have two months left in his term but can be preventively suspended for three months. ***This preventive suspension cuts short his term and he cannot go back to assume office, effectively resulting in loss of title to his office.***

9. ID.; ID.; ID.; ID.; ID.; A REST PERIOD DURING WHICH A LOCAL OFFICIAL STEPS DOWN FROM OFFICE AND BECOMES A PRIVATE CITIZEN IS NOT A NECESSARY ELEMENT OF INVOLUNTARY INTERRUPTION OF SERVICE OF TERM OF OFFICE.—A rest period during which a local official steps down from office and becomes

a private citizen is **not** a necessary element of involuntary interruption of service of term of office. In *Montebon v. Commission on Elections*, service of a term as councilor was involuntarily interrupted when, by operation of law, the highest ranking municipal councilor succeeded as vice mayor. We ruled in Montebon that the highest ranking municipal councilor's assumption of office as vice mayor was an **involuntary** interruption of his term of office as councilor. **There was no interim rest period in *Montebon* because the elective official concerned did not become a private citizen at any time**. In *Montebon,* even without an interim rest period as a private citizen, the elective officer concerned was considered not to have fully served his three consecutive terms and, thus, was eligible to run for the immediately succeeding term after his third term of office.

10. ID.; ID.; ID.; ID.; ID.; NEITHER IS LOSS OF TITLE TO THE OFFICE A NECESSARY ELEMENT OF INVOLUNTARY INTERRUPTION OF SERVICE OF "THREE CONSECUTIVE TERMS."— Most importantly, neither is loss of title to the office a necessary element of involuntary interruption of service of "three consecutive terms." An elected officer who is preventively suspended is forbidden from rendering service to the people who elected him. Loss of title to the office is, therefore, irrelevant as the elective local official is already emasculated and left with an empty shell of a title. One may have the title of a Mayor but cannot perform the duties of a Mayor. Preventive suspension frustrates the will of the people. The proposed additional requirement of loss of title to the office emphasizes only the formality of the elected office and ignores the substance of rendering service to the electorate. And what did the Constitutional Commission say about the three-term limit? "[T]hose who have **served** a period of nine years are barred from running for the same position." Aside from *Borja*, this Court, in the cases of *Lonzanida v. Commission on Elections*, *Ong v. Alegre*, *Rivera v. COMELEC*, *Adormeo v. Commission on Elections*, *Socrates v. Commission on Elections* and *Latasa v. Commission on Elections*, stressed that it is service rather than title to the office which determines the definition of "full service of three consecutive terms." In *Lonzanida*, compliance with the writ of execution issued by the COMELEC was considered an

involuntary severance from office. In *Ong* as well as in *Rivera*, assumption of office for the full term despite a contrary COMELEC ruling constituted one full term service in the context of the three-term limit rule. Both *Adormeo* and *Socrates* ruled that service of a recall term is a full term for purposes of counting the consecutiveness of an elective official's terms in office because "term limits must be strictly construed to give the fullest effect to the sovereign will of the people." In *Latasa*, service rendered to the same inhabitants in the same territorial jurisdiction, and not service rendered to a different local government unit, was a deciding factor against the petition.

11. **ID.; ID.; ID.; ID.; ID.; AN ELECTIVE LOCAL OFFICIAL'S PREVENTIVE SUSPENSION MAY BE CONSIDERED A VOLUNTARY RENUNCIATION OF OFFICE ONLY UPON CONVICTION BY FINAL JUDGMENT OF THE OFFICIAL FOR THE OFFENSE FOR WHICH HE WAS PREVENTIVELY SUSPENDED.—** Fr. Joaquin G. Bernas, a noted constitutionalist, was cited to support the opinion that a preventively suspended elected official should not be allowed to tack to his term of office the period of service lost by reason of preventive suspension. Fr. Bernas stated that "[t]o reward [the suspended elected official] with another full term would seem to reward wrong-doing." However, Fr. Bernas was not only quoted out of context but it was also conveniently forgotten that an accused is innocent until proven guilty. This is the reason why an elective local official's preventive suspension may be considered, for purposes of the application of the three-term limit rule, a voluntary renunciation of office only upon conviction by final judgment of the official for the offense for which he was preventively suspended. Let us suppose that *X*, like Asilo, was elected for three terms to the same office and was preventively suspended during his third term. Because preventive suspension is, by default, an involuntary renunciation of office, *X* is given a fresh three-term limit and can file a certificate of candidacy for the fourth consecutive term. The interruption caused by his preventive suspension cut *X*'s service of his third term. *X* gets reelected for a fourth term. However, mile *X* is serving his "fourth" term, there is a final judgment convicting *X* for the offense for which he was preventively suspended. The final judgment converts *X*'s prior preventive suspension from involuntary to voluntary renunciation. The

presumption of *X's* innocence has been overturned, and *X's* preventive suspension was the consequence of *X's* voluntary act of committing an offense. *X* should now be removed from office because he was disqualified from running a fourth time. The effect of disqualification from being a candidate should not be equated with that of commission of a crime by an elective local official during his term. The uncertainty in the qualifications of a candidate exists in all disqualification cases, and is par for the course during elections. As applied in the present case, the effect of *X's* conviction by final judgment retroacts to the time *X* filed his certificate of candidacy and disqualifies *X* from running for office for the fourth term because of *X's* voluntary renunciation.

12. **ID.; ID.; ID.; ID.; ID.; ID.; UPON FINALITY OF THE JUDGMENT, THE DISQUALIFICATION ATTACHES.—** The effect of a final judgment against a person in a criminal or administrative case is laid down in Section 40 of the Local Government Code, which provides: Section 40. *Disqualification.*— The following persons are disqualified from running for any elective local position: (a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence; (b) Those removed from office as a result of an administrative case; x x x. The finality of the judgment results in the disqualification of a person from running for any elective local office. The local official cannot be disqualified prior to the finality of the judgment on the sole ground that he has been charged with a criminal or administrative case. However, upon finality of the judgment, the disqualification attaches and the elective local official cannot claim that he has not fully completed his "three consecutive terms." There is no escaping from disqualification if an elective local official is found guilty in a final judgment. Thus, ultimately, a guilty elective local official cannot profit from his own wrongdoing.

APPEARANCES OF COUNSEL

Talabong & Talabong Law Office for petitioners.
The Solicitor General for public respondent.
German M. Fabro III for private respondent.

D E C I S I O N

BRION, *J*.:

Is the **preventive suspension** of an elected public official an interruption of his term of office for purposes of the three-term limit rule under Section 8, Article X of the Constitution and Section 43(b) of Republic Act No. 7160 (*RA 7160,* or the Local Government Code)?

The respondent Commission on Elections (*COMELEC*) ruled that preventive suspension is an effective interruption because it renders the suspended public official unable to provide complete service for the full term; thus, such term should not be counted for the purpose of the three-term limit rule.

The present petition[1] seeks to annul and set aside this COMELEC ruling for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

THE ANTECEDENTS

The respondent Wilfredo F. Asilo (*Asilo*) was elected councilor of Lucena City for three consecutive terms: for the 1998-2001, 2001-2004, and 2004-2007 terms, respectively. In September 2005 or during his 2004-2007 term of office, the Sandiganbayan preventively suspended him for 90 days in relation with a criminal case he then faced. *This Court, however, subsequently lifted the Sandiganbayan's suspension order; hence, he resumed performing the functions of his office and finished his term.*

In the 2007 election, Asilo filed his certificate of candidacy for the same position. The petitioners Simon B. Aldovino, Jr., Danilo B. Faller, and Ferdinand N. Talabong (*the petitioners*) sought to deny due course to Asilo's certificate of candidacy or to cancel it on the ground that he had been elected and had served for three terms; his candidacy for a fourth term therefore violated the three-term limit rule under Section 8, Article X of the Constitution and Section 43(b) of RA 7160.

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[1] Filed under Rule 64, in relation with Rule 65 of the Rules of Court.

The COMELEC's Second Division ruled against the petitioners and in Asilo's favour in its Resolution of November 28, 2007. It reasoned out that the three-term limit rule did not apply, as Asilo failed to render complete service for the 2004-2007 term because of the suspension the Sandiganbayan had ordered.

The COMELEC *en banc* refused to reconsider the Second Division's ruling in its October 7, 2008 Resolution; hence, the PRESENT PETITION raising the following ISSUES:

1. **Whether preventive suspension of an elected local official is an interruption of the three-term limit rule; and**
2. **Whether preventive suspension is considered involuntary renunciation as contemplated in Section 43(b) of RA 7160**

Thus presented, the case raises the direct issue of whether Asilo's preventive suspension constituted an interruption that allowed him to run for a 4th term.

THE COURT'S RULING

We find the petition meritorious.

General Considerations

The present case is not the first before this Court on the three-term limit provision of the Constitution, but is the first on the effect of preventive suspension on the continuity of an elective official's term. To be sure, preventive suspension, as an interruption in the term of an elective public official, has been mentioned as an example in *Borja v. Commission on Elections.*[2] *Doctrinally*, however, *Borja is not a controlling ruling; it did not deal with preventive suspension, but with the application of the three-term rule on the term that an elective official acquired by succession.*

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[2] 329 Phil. 409 (1996).

a. The Three-term Limit Rule: The Constitutional Provision Analyzed

Section 8, Article X of the Constitution states:

> Section 8. The term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

Section 43 (b) of RA 7160 practically repeats the constitutional provision, and any difference in wording does not assume any significance in this case.

As worded, the constitutional provision fixes the term of a local elective office and *limits an elective official's stay in office to no more than three consecutive terms*. This is the **first branch** of the rule embodied in Section 8, Article X.

Significantly, this provision refers to a "term" *as a period of time – three years* – during which an official has title to office and can serve. *Appari v. Court of Appeals*,[3] a Resolution promulgated on November 28, 2007, succinctly discusses what a "term" connotes, as follows:

> **The word "term" in a legal sense means a fixed and definite period of time which the law describes that an officer may hold an office.** According to Mechem, the term of office is the period during which an office may be held. Upon expiration of the officer's term, unless he is authorized by law to holdover, his rights, duties and authority as a public officer must *ipso facto* cease. In the law of public officers, the most and natural frequent method by which a public officer ceases to be such is by the expiration of the terms for which he was elected or appointed. [Emphasis supplied].

A later case, *Gaminde v. Commission on Audit*,[4] reiterated that "[T]he term means the time during which the officer may

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[3] G.R. No. L-30057, January 31, 1984, 127 SCRA 231, 240.

[4] 401 Phil. 77, 88 (2000).

claim to hold office as of right, and fixes the interval after which the several incumbents shall succeed one another."

The "limitation" under this first branch of the provision is expressed in the **negative** – "no such official shall serve for more than three consecutive terms." This formulation – *no more than three consecutive terms* – is a clear command suggesting the existence of an inflexible rule. While it gives no exact indication of what to "serve. . . three consecutive terms" exactly connotes, the meaning is clear – reference is to *the term, not to the service* that a public official may render. In other words, the limitation refers to the term.

The **second branch** relates to the provision's express initiative to prevent any circumvention of the limitation through voluntary severance of ties with the public office; it expressly states that *voluntary renunciation of office* "shall not be considered as an interruption in the continuity of his service for the full term for which he was elected." This declaration complements the *term limitation* mandated by the first branch.

A notable feature of the second branch is that it does not *textually* state that voluntary renunciation is the *only* actual interruption of service that does not affect "continuity of service for a full term" for purposes of the three-term limit rule. It is a pure declaratory statement of what does not serve as an interruption of service for a full term, but the phrase "voluntary renunciation," by itself, is not without significance in determining constitutional intent.

The word "renunciation" carries the dictionary meaning of abandonment. To renounce is to *give up, abandon, decline, or resign*.[5] It is an act that emanates from its author, as contrasted to an act that operates from the outside. Read with the definition of a "term" in mind, renunciation, as mentioned under the second branch of the constitutional provision, cannot but mean *an act that results in cutting short the term, i.e., the loss of title to office*. The descriptive word "voluntary" linked together with "renunciation" signifies an act of surrender based on the

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[5] Webster's *Third New International Dictionary* (1993), p. 1922.

surrenderee's own freely exercised will; in other words, a loss of title to office by conscious choice. In the context of the three-term limit rule, such loss of title is not considered an interruption because it is presumed to be purposely sought to avoid the application of the term limitation.

The following exchanges in the deliberations of the Constitutional Commission on the term "voluntary renunciation" shed further light on the extent of the term "voluntary renunciation":

MR. MAAMBONG. Could I address the clarificatory question to the Committee? This term "voluntary renunciation" does not appear in Section 3 [of Article VI]; it also appears in Section 6 [of Article VI].

MR. DAVIDE. Yes.

MR. MAAMBONG. It is also a recurring phrase all over the Constitution. Could the Committee please enlighten us exactly what "voluntary renunciation" mean? Is this akin to abandonment?

MR. DAVIDE. Abandonment is voluntary. In other words, he cannot circumvent the restriction by merely resigning at any given time on the second term.

MR. MAAMBONG. Is the Committee saying that the term "voluntary renunciation" is more general than abandonment and resignation?

MR. DAVIDE. It is more general, more embracing.[6]

From this exchange and Commissioner Davide's expansive interpretation of the term "voluntary renunciation," the framers' intent apparently was *to close all gaps that an elective official may seize to defeat the three-term limit rule,* in the way that voluntary renunciation has been rendered unavailable as a mode of defeating the three-term limit rule. Harking back to the text of the constitutional provision, we note further that Commissioner Davide's view is consistent with the negative formulation of the first branch of the provision and the inflexible interpretation that it suggests.

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[6] II RECORD, Constitutional Commission 591 (August 1, 1986).

This examination of the wording of the constitutional provision and of the circumstances surrounding its formulation impresses upon us the clear intent to make term limitation a high priority constitutional objective whose terms must be strictly construed and which cannot be defeated by, nor sacrificed for, values of less than equal constitutional worth. We view preventive suspension *vis-à-vis* term limitation with this firm mindset.

b. Relevant Jurisprudence on the Three-term Limit Rule

Other than the above-cited materials, jurisprudence best gives us a lead into the concepts within the provision's contemplation, particularly on the "interruption in the continuity of service for the full term" that it speaks of.

Lonzanida v. Commission on Elections[7] presented the question of whether the disqualification on the basis of the three-term limit applies if the election of the public official (to be strictly accurate, the proclamation as winner of the public official) for his supposedly third term had been declared invalid in a final and executory judgment. We ruled that the two requisites for the application of the disqualification (*viz.*, 1. that the official concerned has been elected for three consecutive terms in the same local government post; and 2. that he has fully served three consecutive terms) were not present. In so ruling, we said:

> The clear intent of the framers of the constitution to bar any attempt to circumvent the three-term limit by a voluntary renunciation of office and at the same time respect the people's choice and grant their elected official full service of a term is evident in this provision. Voluntary renunciation of a term does not cancel the renounced term in the computation of the three term limit; *conversely, **involuntary severance from office** for any length of time short of the full term provided by law amounts to an interruption of continuity of service. The petitioner vacated his post a few months before the next mayoral elections, not by voluntary renunciation but in compliance with the legal process of writ of execution issued by the COMELEC to that effect. Such involuntary severance from office is an*

[7] G.R. No. 135150, July 28, 1999, 311 SCRA 602.

interruption of continuity of service and thus, the petitioner did not fully serve the 1995-1998 mayoral term. [Emphasis supplied]

Our intended meaning under this ruling is clear: it is severance from office, or to be exact, loss of title, that renders the three-term limit rule inapplicable.

Ong v. Alegre[8] and *Rivera v. COMELEC,*[9] like *Lonzanida*, also involved the issue of whether there had been a completed term for purposes of the three-term limit disqualification. These cases, however, presented an interesting twist, as their final judgments in the electoral contest came after the term of the contested office had expired so that the elective officials in these cases were never effectively unseated.

Despite the ruling that Ong was never entitled to the office (and thus was never validly elected), the Court concluded that there was nevertheless an election and service for a full term in contemplation of the three-term rule based on the following premises: (1) the final decision that the third-termer lost the election was without practical and legal use and value, having been promulgated after the term of the contested office had expired; and (2) the official assumed and continuously exercised the functions of the office from the start to the end of the term. The Court noted in *Ong* the absurdity and the deleterious effect of a contrary view – that the official (referring to the winner in the election protest) would, under the three-term rule, be considered to have served a term by virtue of a veritably meaningless electoral protest ruling, when another actually served the term pursuant to a proclamation made in due course after an election. This factual variation led the Court to rule differently from *Lonzanida*.

In the same vein, the Court in *Rivera* rejected the theory that the official who finally lost the election contest was merely a "caretaker of the office" or a mere "*de facto* officer." The Court obeserved that Section 8, Article X of the Constitution is

[8] G.R. No. 163295, January 23, 2006, 479 SCRA 473.

[9] G.R. No. 167591, May 9, 2007, 523 SCRA 41.

violated and its purpose defeated when an official fully served in the same position for three consecutive terms. Whether as "caretaker" or "*de facto*" officer, he exercised the powers and enjoyed the perquisites of the office that enabled him "to stay on indefinitely."

Ong and *Rivera* are important rulings for purposes of the three-term limitation because of what they directly imply. Although the election requisite was not actually present, the Court still gave full effect to the three-term limitation because of the constitutional intent to strictly limit elective officials to service for three terms. *By so ruling, the Court signalled how zealously it guards the three-term limit rule*. Effectively, these cases teach us to strictly interpret the term limitation rule in favor of limitation rather than its exception.

Adormeo v. Commission on Elections[10] dealt with the effect of recall on the three-term limit disqualification. The case presented the question of whether the disqualification applies if the official lost in the regular election for the supposed third term, but was elected in a recall election covering that term. The Court upheld the COMELEC's ruling that the official was not elected for three (3) consecutive terms. *The Court reasoned out that for nearly two years, the official was a private citizen; hence, the continuity of his mayorship was disrupted by his defeat in the election for the third term.*

Socrates v. Commission on Elections[11] also tackled recall *vis-à-vis* the three-term limit disqualification. Edward Hagedorn served three full terms as mayor. As he was disqualified to run for a fourth term, he did not participate in the election that immediately followed his third term. In this election, the petitioner Victorino Dennis M. Socrates was elected mayor. Less than 1 ½ years after Mayor Socrates assumed the functions of the office, recall proceedings were initiated against him, leading to the call for a recall election. Hagedorn filed his certificate of candidacy

[10] 426 Phil. 472 (2002).

[11] 440 Phil. 106 (2002).

for mayor in the recall election, but Socrates sought his disqualification on the ground that he (Hagedorn) had fully served three terms prior to the recall election and was therefore disqualified to run because of the three-term limit rule. We decided in Hagedorn's favor, ruling that:

> After three consecutive terms, an elective local official cannot seek ***immediate reelection*** for a fourth term. The prohibited election refers to the next regular election for the same office following the end of the third consecutive term. Any ***subsequent election***, like a recall election, is no longer covered by the prohibition for two reasons. **First, a subsequent election like a recall election is no longer an immediate reelection after three consecutive terms. Second, the intervening period constitutes an involuntary interruption in the continuity of service.**
>
> When the framers of the Constitution debated on the term limit of elective local officials, the question asked was whether there would be no further election after three terms, or whether there would be "***no immediate reelection***" after three terms.
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> Clearly, what the Constitution prohibits is an ***immediate reelection*** for a fourth term following three consecutive terms. The Constitution, however, does not prohibit a subsequent reelection for a fourth term as long as the reelection is not immediately after the end of the third consecutive term. A recall election mid-way in the term following the third consecutive term is a subsequent election but not an immediate reelection after the third term.
>
> Neither does the Constitution prohibit one barred from seeking immediate reelection to run in any other subsequent election involving the same term of office. What the Constitution prohibits is a ***consecutive*** fourth term.[12]

Latasa v. Commission on Elections[13] presented the novel question of whether a *municipal mayor* who had fully served for three consecutive terms could run as *city mayor* in light of the intervening conversion of the municipality into a city. During

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[12] *Id.* at 125-127.

[13] G.R. No. 154829, December 10, 2003, 417 SCRA 601.

the third term, the municipality was converted into a city; the cityhood charter provided that the elective officials of the municipality shall, in a holdover capacity, continue to exercise their powers and functions until elections were held for the new city officials. The Court ruled that the conversion of the municipality into a city did not convert the office of the municipal mayor into a local government post different from the office of the city mayor – the territorial jurisdiction of the city was the same as that of the municipality; the inhabitants were the same group of voters who elected the municipal mayor for 3 consecutive terms; and they were the same inhabitants over whom the municipal mayor held power and authority as their chief executive for nine years. The Court said:

> **This Court reiterates that the framers of the Constitution specifically included an exception to the people's freedom to choose those who will govern them in order to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office**. To allow petitioner Latasa to vie for the position of city mayor after having served for three consecutive terms as a municipal mayor would obviously defeat the very intent of the framers when they wrote this exception. Should he be allowed another three consecutive terms as mayor of the City of Digos, petitioner would then be possibly holding office as chief executive over the same territorial jurisdiction and inhabitants for a total of eighteen *consecutive* years. This is the very scenario sought to be avoided by the Constitution, if not abhorred by it.[14]

Latasa instructively highlights, after a review of *Lonzanida, Adormeo* and *Socrates*, that no three-term limit violation results if a rest period or break in the service between terms or tenure in a given elective post intervened. In *Lonzanida*, the petitioner was a private citizen with no title to any elective office for a few months before the next mayoral elections. Similarly, in *Adormeo* and *Socrates*, the private respondents lived as private citizens for two years and fifteen months, respectively. *Thus, these cases establish that the law contemplates a complete*

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[14] *Id.* at 312-313.

break from office during which the local elective official steps down and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit.

Seemingly differing from these results is the case of *Montebon v. Commission on Elections,*[15] where the highest-ranking municipal councilor succeeded to the position of vice-mayor by operation of law. The question posed when he subsequently ran for councilor was whether his assumption as vice-mayor was an interruption of his term as councilor that would place him outside the operation of the three-term limit rule. We ruled that an interruption had intervened so that he could again run as councilor. This result seemingly deviates from the results in the cases heretofore discussed since the elective official continued to hold public office and did not become a private citizen during the interim. The common thread that identifies *Montebon* with the rest, however, is that the elective official ***vacated*** *the office of councilor and assumed the higher post of vice-mayor by operation of law.* Thus, for a time he ceased to be councilor – an interruption that effectively placed him outside the ambit of the three-term limit rule.

c. Conclusion Based on Law and Jurisprudence

From all the above, we conclude that the "interruption" of a term exempting an elective official from the three-term limit rule is one that involves *no less than the involuntary loss of title to office.* The elective official must have involuntarily left his office for a length of time, however short, for an effective interruption to occur. This has to be the case if the thrust of Section 8, Article X and its strict intent are to be faithfully served, *i.e.,* to limit an elective official's continuous stay in office to no more than three consecutive terms, using "voluntary renunciation" as an example and standard of what does not constitute an interruption.

Thus, based on this standard, loss of office *by operation of law*, being involuntary, is an effective interruption of service

[15] G.R. No. 180444, April 9, 2008, 551 SCRA 50.

within a term, as we held in *Montebon*. On the other hand, temporary inability or disqualification to exercise the functions of an elective post, even if involuntary, should not be considered an effective interruption of a term because it does not involve the loss of title to office or at least an effective break from holding office; the office holder, while retaining title, is simply barred from exercising the functions of his office for a reason provided by law.

An interruption occurs when the term is broken because the office holder lost the right to hold on to his office, and cannot be equated with the failure to render service. The latter occurs during an office holder's term when he retains title to the office but cannot exercise his functions for reasons established by law. Of course, the term "failure to serve" cannot be used once the right to office is lost; without the right to hold office or to serve, then no service can be rendered so that none is really lost.

To put it differently although at the risk of repetition, Section 8, Article X – both by structure and substance – fixes an elective official's term of office and limits his stay in office to three consecutive terms as an inflexible rule that is stressed, no less, by citing voluntary renunciation as an example of a circumvention. The provision should be read in the context of *interruption of term*, not in the context of interrupting the *full continuity of the exercise of the powers* of the elective position. The "voluntary renunciation" it speaks of refers only to the elective official's voluntary relinquishment of office and loss of title to this office. It does not speak of the temporary "cessation of the exercise of power or authority" that may occur for various reasons, with preventive suspension being only one of them. To quote *Latasa v. Comelec*:[16]

> Indeed, [T]he *law contemplates a rest period during which the local elective official steps down from office and ceases to exercise power or authority* over the inhabitants of the territorial jurisdiction of a particular local government unit. [Emphasis supplied].

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[16] *Supra* note 12.

Preventive Suspension and the Three-Term Limit Rule

a. Nature of Preventive Suspension

Preventive suspension – whether under the Local Government Code,[17] the Anti-Graft and Corrupt Practices Act,[18] or the Ombudsman Act[19] – is an *interim remedial measure to address the situation of an official who have been charged administratively or criminally, where the evidence preliminarily indicates the likelihood of or potential for eventual guilt or liability.*

Preventive suspension is imposed under the *Local Government Code* "when the evidence of guilt is strong and given the gravity of the offense, there is a possibility that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence." Under the *Anti-Graft and Corrupt Practices Act*, it is imposed after a valid information (that requires a finding of probable cause) has been filed in court, while under the *Ombudsman Act*, it is imposed when, in the judgment of the Ombudsman, the evidence of guilt is strong; and (a) the charge involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; or (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

Notably in all cases of preventive suspension, the suspended official is barred from performing the functions of his office and does not receive salary in the meanwhile, but does not vacate and lose title to his office; loss of office is a consequence that only results upon an eventual finding of guilt or liability.

Preventive suspension is a remedial measure that operates under closely-controlled conditions and *gives a premium to the protection of the service rather than to the interests of the*

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[17] RA 7160, Sections 63 and 64.

[18] RA 3019, Section 13.

[19] RA 6770, Sections 24 and 25.

individual office holder. Even then, protection of the service goes only as far as a *temporary prohibition* on the *exercise* of the functions of the official's office; the official is reinstated to the *exercise of his position* as soon as the preventive suspension is lifted. Thus, while a temporary incapacity in the exercise of power results, no position is vacated when a public official is preventively suspended. **This was what exactly happened to Asilo.**

That the imposition of preventive suspension can be abused is a reality that is true in the exercise of all powers and prerogative under the Constitution and the laws. The imposition of preventive suspension, however, is not an unlimited power; there are limitations built into the laws[20] themselves that the courts can enforce when these limitations are transgressed, particularly when grave abuse of discretion is present. In light of this well-defined parameters in the imposition of preventive suspension, we should not view preventive suspension from the extreme situation – that it can totally deprive an elective office holder of the prerogative to serve and is thus an effective interruption of an election official's term.

Term limitation and preventive suspension are two vastly different aspects of an elective officials' service in office and they do not overlap. As already mentioned above, preventive suspension involves protection of the service and of the people being served, and prevents the office holder from temporarily exercising the power of his office. Term limitation, on the other hand, is triggered after an elective official has served his three terms in office without any break. Its companion concept – interruption of a term – on the other hand, requires loss of title to office. If preventive suspension and term limitation or interruption have any commonality at all, this common point may be with respect to the discontinuity of service that may occur in both. But even on this point, they merely run parallel to each other and never intersect; *preventive suspension, by its nature, is a temporary incapacity to render service* ***during an unbroken term****; in the context of term limitation, interruption of service occurs after there has been a* ***break in the term.***

[20] *See:* Sec. 24, R.A. No. 6770; Sec. 63, R.A. No. 7160; Sec. 13, R.A. No. 3019.

b. Preventive Suspension and the Intent of the Three-Term Limit Rule

Strict adherence to the intent of the three-term limit rule demands that preventive suspension should not be considered an interruption that allows an elective official's stay in office beyond three terms. A preventive suspension cannot simply be a term interruption because the suspended official continues to stay in office although he is barred from exercising the functions and prerogatives of the office within the suspension period. *The best indicator of the suspended official's continuity in office is the* ***absence of a permanent replacement*** *and the* ***lack of the authority to appoint one*** *since no vacancy exists.*

To allow a preventively suspended elective official to run for a fourth and prohibited term is to close our eyes to this reality and to allow a constitutional violation through sophistry by equating the temporary inability to discharge the functions of office with the interruption of term that the constitutional provision contemplates. To be sure, many reasons exist, voluntary or involuntary – some of them personal and some of them by operation of law – that may temporarily prevent an elective office holder from exercising the functions of his office in the way that preventive suspension does. A serious extended illness, inability through *force majeure*, or the enforcement of a suspension as a penalty, to cite some involuntary examples, may prevent an office holder from exercising the functions of his office for a time without forfeiting title to office. Preventive suspension is no different because it disrupts actual delivery of service for a time within a term. Adopting such interruption of *actual* service as the standard to determine effective interruption of term under the three-term rule raises at least the possibility of confusion in implementing this rule, given the many modes and occasions when actual service may be interrupted in the course of serving a term of office. The standard may reduce the enforcement of the three-term limit rule to a case-to-case and possibly see-sawing determination of what an effective interruption is.

c. Preventive Suspension and Voluntary Renunciation

Preventive suspension, because it is imposed by operation of law, does not involve a voluntary act on the part of the suspended official, except in the indirect sense that he may have voluntarily committed the act that became the basis of the charge against him. From this perspective, preventive suspension does not have the element of voluntariness that voluntary renunciation embodies. Neither does it contain the element of renunciation or loss of title to office as it merely involves the temporary incapacity to perform the service that an elective office demands. Thus viewed, preventive suspension is – by its very nature – the exact opposite of voluntary renunciation; it is involuntary and temporary, and involves only the actual delivery of service, not the title to the office. The easy conclusion therefore is that they are, by nature, different and non-comparable.

But beyond the obvious comparison of their respective natures is the more important consideration of how they affect the three-term limit rule.

Voluntary renunciation, while involving loss of office and the total incapacity to render service, is disallowed by the Constitution as an effective interruption of a term. It is therefore not allowed as a mode of circumventing the three-term limit rule.

Preventive suspension, by its nature, does not involve an effective interruption of a term and should therefore not be a reason to avoid the three-term limitation. It can pose as a threat, however, if we shall disregard its nature and consider it an effective interruption of a term. Let it be noted that a preventive suspension is easier to undertake than voluntary renunciation, as it does not require relinquishment or loss of office even for the briefest time. It merely requires an easily fabricated administrative charge that can be dismissed soon after a preventive suspension has been imposed. In this sense, recognizing preventive suspension as an effective interruption of a term can serve as a circumvention more potent than the voluntary renunciation that the Constitution expressly disallows as an interruption.

Conclusion

To recapitulate, Asilo's 2004-2007 term was not interrupted by the Sandiganbayan-imposed preventive suspension in 2005, as preventive suspension does not interrupt an elective official's term. Thus, the COMELEC refused to apply the legal command of Section 8, Article X of the Constitution when it granted due course to Asilo's certificate of candidacy for a prohibited fourth term. By so refusing, the COMELEC effectively committed grave abuse of discretion amounting to lack or excess of jurisdiction; its action was a refusal to perform a positive duty required by no less than the Constitution and was one undertaken outside the contemplation of law.[21]

WHEREFORE, premises considered, we *GRANT* the petition and accordingly *NULLIFY* the assailed COMELEC rulings. The private respondent Wilfredo F. Asilo is declared *DISQUALIFIED* to run, and perforce to serve, as Councilor of Lucena City for a prohibited fourth term. Costs against private respondent Asilo.

SO ORDERED.

Corona, Velasco, Jr., Nachura, Peralta, Bersamin, and *Villarama, Jr., JJ.,* concur.

Leonardo-de Castro and *Abad, JJ.,* see separate concurring opinions.

Puno, C.J., concurs in the result.

Carpio, J. (Acting C.J.), see dissenting opinion.

Carpio Morales and *Del Castillo, JJ.,* join the dissent of *J.* Carpio.

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[21] Grave abuse of discretion defies exact definition, but it generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction – the abuse of discretion must be patent and gross as to amount to an evasion of positive duty or 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 and hostility; *Quintos v. Commission on Elections*, 440 Phil. 1045, 1064 (2002), citing *Sahali v. Commission on Elections*, 381 Phil. 505 (2002).

CONCURRING OPINION

LEONARDO-DE CASTRO, *J*.:

I concur with the well-written *ponencia* of Honorable Justice Arturo D. Brion which holds that "preventive suspension" is not equivalent to an "involuntary renunciation" of a public office for the purpose of applying Section 8, Article X of the Constitution. However, I wish to further elucidate my concurrence to the views of Justice Brion and give my reflections on the implications of the outcome of the case for which an elective public official is suspended *pendente lite*, which I believe is relevant to the issue on hand.

The aforementioned provision of Article X reads as follows:

> Section 8. The term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

The minority view considers "preventive suspension" as an "involuntary renunciation" of an elective public official's term of office, such that even if he was elected thrice to serve for three (3) consecutive terms, he may still run for a fourth term because his service was interrupted by his preventive suspension. However, according to this view, his continuation in office for such fourth term will depend on his exoneration in the case where he was preventively suspended. In other words, the suspended public official will be deemed disqualified to run for a fourth term only upon his conviction which will retroact to the date when he filed his certificate of candidacy for his fourth term. This means that even if he runs and wins a fourth term and thereafter is convicted in the case in which he was previously preventively suspended, he will be deemed to have renounced voluntarily his fourth term.

I concur with Justice Brion's view that *Borja v. Commission on Elections* is not the controlling precedent on preventive

suspension because this matter was not squarely raised in the said case and that the consideration of preventive suspension from the perspective of voluntary or involuntary renunciation is inappropriate.

Nonetheless, I would like to venture into the effect of the acquittal or conviction of the preventively suspended public officer to further support my position that "preventive suspension" does not partake of the nature of "involuntary renunciation" of an office.

The language of Section 8, Article X of the Constitution implies that an interruption in the continuity of the service of elective officials is a valid ground for him to run for a fourth consecutive term. The same provision of the Constitution is explicit and categorical in its declaration that "voluntary renunciation" of elective position for any length of time is not to be considered as an interruption in the continuity of service of an elective official. Conversely, "involuntary renunciation of office" can be deemed an interruption in the continuity of the service of the elective official which would render him eligible to run for a fourth term.

In my opinion, preventive suspension cannot be considered as an "involuntary renunciation" of an elective position. One who has been elected to a public office for three (3) consecutive terms is prohibited to run for the same position for a fourth term, notwithstanding his preventive suspension during any of his first three (3) consecutive terms. Since preventive suspension is not akin to involuntary renunciation, the rule should hold true irrespective of his acquittal or conviction in the case in which an elective official was preventively suspended.

There is an inherent difference between "renunciation" and "preventive suspension" even if the former is involuntary. The former connotes an act of abandonment or giving up of a position by a public officer which would result in the termination of his service, whereas the latter means that a public officer is prevented by legal compulsion, not by his own volition, from discharging the functions and duties of his office, but without being removed or separated from his office. The term of office of a preventively

suspended public officer subsists because preventive suspension does not create a vacancy in his office. As Justice Brion puts it, he does not become a private citizen while he is under preventive suspension. The continuity of the term of the suspended official during the period of his preventive suspension, whether rendered administrative or court proceedings, is recognized by law and jurisprudence, such that a public officer who is acquitted of the charges against him, is entitled to receive the salaries and benefits which he failed to receive during the period of his preventive suspension (Section 64, Local Government Code of 1991, Republic Act (R.A.) No. 7160; Section 13, R.A. 3019, as amended; *Tan v. Department of Public Works and Highways*, G.R. No. 143289, Nov. 11, 2004, 442 SCRA 192, 202).

If the suspended public officer is convicted of the charges, still there is no interruption of service within the three (3) consecutive terms, within the meaning of the Constitution which will warrant his running for a fourth term. Here, it is not the preventive suspension but his having committed a wrongdoing, which gave ground for his removal from office or for forfeiture of the remainder of his term which can be considered as voluntary renunciation of his office. The commission of a crime or an administrative infraction which is a ground for the removal from office of a public officer is akin to his "voluntary renunciation" of his office. He may be deemed, by his willful wrongdoing, which betrayed public trust, to have thereby voluntarily renounced his office under the provision of Section 8, Article X of the Constitution.

I beg to disagree with the proposition that the suspended public official should be allowed to run for a fourth time and if convicted, he should be considered to have voluntarily renounced his fourth term. My reason is that the crime was committed not during his fourth term but during his previous term. The renunciation should refer to the term during which the crime was committed. The commission of the crime is tantamount to his voluntary renunciation of the term he was then serving, and not any future term. Besides, the electorate should not be placed in an uncertain situation wherein they will be allowed to

vote for a fourth term a candidate who may later on be convicted and removed from office by a judgment in a case where he was previously preventively suspended.

In view of the foregoing, I reiterate my concurrence with the majority opinion that preventive suspension, regardless of the outcome of the case in which an elective public officer has been preventively suspended, should not be considered as an interruption of the service of the said public officer that would qualify him to run for a fourth term.

SEPARATE CONCURRING OPINION

ABAD, *J*.:

I join the majority opinion and add a few thoughts of my own.

The Facts

Respondent Wilfredo F. Asilo won three consecutive elections as councilor of Lucena City, specifically from 1998 to 2001, from 2001 to 2004, and from 2004 to 2007. During his last term or on October 3, 2005, the Sandiganbayan ordered him placed under preventive suspension for ninety days in connection with a crime of which he had been charged. After about thirty-seven days, however, or on November 9, 2005, this Court lifted the order of suspension and allowed Asilo to resume the duties of his office.

Believing that his brief preventive suspension interrupted his full service in office and allowed him to seek a fourth term as councilor because of it, Asilo filed a certificate of candidacy for the same office in the 2007 elections. When this was questioned, both the Second Division of the Commission on Elections and its *En Banc* ruled that the three-term limit did not apply to Asilo's case since the Sandiganbayan's order of preventive suspension did not allow him to complete the third term for which he was elected in 2004.

The Issue

The issue in this case is whether or not respondent Asilo's preventive suspension during his third term as councilor, which shortened the length of his normal service by thirty-seven days, allowed him to run for a fourth consecutive term for the same office.

Discussion

The issue in this case revolves around Section 8 of Article X of the 1987 Constitution:

> **The term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.**

The first part states that no local official shall serve for more than three consecutive terms.

The second, on the other hand, states that voluntary renunciation of office shall not be considered an interruption in the continuity of his service for the full term for which he was elected.[1]

That the first part is a prohibitory rule is not in question. This is quite clear. It says that no local official can serve for more than three terms. Traditionally, politicians find ways of entrenching themselves in their offices and the consensus is that this practice is not ideal for good government. Indeed, the Constitution expresses through the three-term limit rule a determination to open public office to others and bring fresh ideas and energies into government as a matter of policy. The mandate of this Court in this case is to enforce such constitutionally established prohibition.

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[1] *Socrates v. Commission on Elections*, G.R. No. 154512, November 12, 2002, 391 SCRA 457, 467.

Actually, what creates the mischief is the statement in the second part of Section 8 that "voluntary renunciation" of office shall not be considered an interruption in the continuity of his service for the full term for which the local official was elected. The dissenting opinion infers from this that "any service short of full service of three consecutive terms, save for voluntary renunciation of office, does not bar an elective local official from running again for the same local government post." In other words, elected politicians whose services are cut in the course of any term by "involuntary renunciation" are eligible for a fourth term.

Relying on its above inference, the dissenting opinion claims that preventive suspension is, by default, an "involuntary renunciation" of an elective official's term of office since he does not choose to be preventively suspended. Preventive suspension cuts into the full term of the elected official and gives him justification for seeking a fourth term.

But, there is in reality no such thing as "involuntary" renunciation. Renunciation is essentially "formal or voluntary." It is the act, says Webster, "of renouncing; a giving up formally or voluntarily, often at a sacrifice, of a right, claim, title, *etc.*"[2] If the dissenting opinion insists on using the term "involuntary renunciation," it could only mean "coerced" renunciation, *i.e.*, renunciation forced on the elected official. With this meaning, any politician can simply arrange for someone to make him sign a resignation paper at gun point. This will justify his running for a fourth term. But, surely, the law cannot be mocked in this way.

Parenthetically, there can be other causes for "involuntary renunciation," interruption of service that is not of the elected official's making. For instance, through the fault of a truck driver, the elected official's car could fall into a ditch and put the official in the hospital for a week, cutting his service in office against his will. Temporary illness can also interrupt service. Natural calamities like floods and earthquakes could produce the same result. Since these are "involuntary renunciations" or

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[2] Webster's *New World College Dictionary*, Third Edition, p. 1137.

interruptions in the elective official's service, it seems that he would, under the dissenting opinion's theory, be exempt from the three-year rule. But surely, Section 8 could not have intended this for it would overwhelm the constitutional ban against election for more than three consecutive terms.

Actually, though, "voluntary renunciation," the term that the law uses simply means resignation from or abandonment of office. The elected official who voluntarily resigns or abandons his duties freely renounces the powers, rights, and privileges of his position. The opposite of "voluntary renunciation" in this context would be "removal from office," a sanction imposed by some duly authorized person or body, not an initiative of or a choice freely made by the elected official. Should "removal from office" be the test, therefore, for determining interruption of service that will warrant an exception to the three-term limit rule?

Apparently not, since an elected official could be removed from office through recall (a judgment by the electorates that he is unfit to continue serving in office),[3] criminal conviction by final judgment,[4] and administrative dismissal.[5] Surely, the Constitution could not have intended to reward those removed in this way with the opportunity to skip the three-year bar.

The only interruption in the continuity of service of an elected official that does not amount to removal is termination of his service by operation of law. This is exemplified in the case of *Montebon v. COMELEC*,[6] where this Court deemed the highest-ranking councilor's third term as such "involuntarily" interrupted

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[3] R.A. No. 7160, Section 69. By Whom Exercised. - The power of recall for loss of confidence shall be exercised by the registered voters of a local government unit to which the local elective official subject to such recall belongs.

[4] There are cases where an official is punished with the penalty of perpetual disqualification from public office and, thus, the three-term rule ceases to be an issue. *See* R.A. No. 3019, Section 9 (a).

[5] Under Section 40 (b) of R.A. No. 7160, those removed from office as a result of an administrative case are disqualified from running for any elective local position. In this case, the three-term rule also ceases to be an issue.

[6] G.R. No. 180444, April 9, 2008, 551 SCRA 50.

when he succeeded as vice mayor by operation of law upon the latter's retirement. This Court considered the ranking councilor eligible to run again as councilor for the succeeding term.

But *Montebon* cannot be compared with Asilo's case since Montebon's term as councilor ended by operation of law when the vice mayor retired and Montebon had to step into his shoes.[7] Asilo's term, on the other hand, did not end when the Sandiganbayan placed him under preventive suspension. He did not vacate his office. It merely enjoined him in the meantime from performing his duties and exercising his powers. His term ran the full course; it was not cut.

It might be correct to say that the will of the electorates is for Asilo to serve the full term of his office. But, given the presumption that the electorates knew of the law governing preventive suspension when they elected him, it must be assumed that they elected him subject to the condition that he can be preventively suspended if the occasion warrants. Such suspension cannot, therefore, be regarded as a desecration of the people's will.

It does not matter that the preventive suspension imposed on the elected official may later on prove unwarranted. The law provides the proper remedy for such error. Here, the Supreme Court supplied that remedy. It set aside the preventive suspension imposed on Asilo by the Sandiganbayan. There is, on the other hand, no law that allows an elected official to tack to his term of office the period of service he had lost by reason of preventive suspension just so he can make up for the loss. The dissenting opinion's position would create a rule that will

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[7] R.A. No. 7160, Section 44. *Permanent Vacancies in the Offices of the Governor, Vice Governor, Mayor, and Vice Mayor.* – (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice governor or vice mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice governor, mayor or vice mayor, the highest ranking *sanggunian* member or, in case of his permanent inability, the second highest ranking *sanggunian* member, shall become the governor, vice governor, mayor or vice mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other *sanggunian* members according to their ranking as defined herein. x x x.

allow Asilo, who lost thirty-seven days of service because of that suspension, a right to be re-elected to a fourth consecutive term of one thousand ninety-five days (365 days x 3).

In *Borja, Jr. v. COMELEC*,[8] this Court cited a hypothetical situation where *B* is elected Mayor and, during his first term, he is twice suspended for misconduct for a total of one year. If he is twice reelected after that, can he run for one more term in the next election? This Court answered in the affirmative, stating as reason that *B* successfully served only two full terms.[9]

But such interpretation of the law wounds its very spirit for, in effect, it would reward the elected official for his misconduct. Fr. Joaquin G. Bernas, S.J., a recognized constitutionalist, is also not swayed by it. He points out that when an elected official is suspended, he shortens neither his term nor his tenure. He is still seen as the rightful holder of the office and, therefore, must be considered as having served a full term during the period of suspension.[10]

ACCORDINGLY, I submit that preventive suspension did not interrupt Asilo's term of office from 2004-2007 and it cannot be considered an exception to the three-term limit rule. Thus, Asilo is disqualified from running in the 2007 elections for violation of that rule pursuant to Section 8, Article X of the Constitution. I vote to *GRANT* the petition.

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[8] G.R. No. 133495, September 3, 1998, 295 SCRA 157.

[9] *Id.* at 169.

[10] Bernas S.J., Joaquin. *The 1987 Constitution of the Republic of the Philippines: A Commentary,* 2003 Ed., pp. 1092-1093.

DISSENTING OPINION

CARPIO, *J.*:

The *ponencia* barred Wilfredo F. Asilo (Asilo) from running for office for the 2007-2010 term. The *ponencia* declared that Asilo's preventive suspension from 16 October to 15 November 2005 did not interrupt, and hence, had no effect, on the application of the three-term limit rule.

Asilo was elected and served as Councilor of Lucena City for three terms: 1998-2001, 2001-2004, and 2004-2007. Asilo was serving his third term when the Fourth Division of the Sandiganbayan ordered Asilo's suspension *pendente lite* on 3 October 2005. The certification from Ernesto N. Jalbuena, City Government Department Head II and City Secretary, reads:

> THIS IS TO CERTIFY that Councilor Wilfredo F. Asilo [has] served the City Government of Lucena as a duly elected member of the Office of the Sangguniang Panlungsod on the basis of the local elections:
>
> 1. July 1, 1998 - June 30, 2001
> 2. July 1, 2001 - June 30, 2004
> 3. July 1, 2004 - June 30, 2007
>
> However, the Sandiganbayan, 4th Division, Quezon City, in a Resolution dated October 3, 2005 issued a Suspension Order of all accused pendente lite under Criminal Case No. 27738, entitled *People of the Philippines vs. Ramon Y. Talaga, Jr., et al,* City Officials, Lucena City for a total period of 90 days. Said suspension is further covered by DILG Memo dated 10 October 2005. Said respondents including Councilor Wilfredo F. Asilo did not receive any salary and other benefits during the period from October 16-31 and November 1-15, 2005.
>
> However, on 14 November 2005, the Department of the Interior and Local Government thru Secretary Angelo T. Reyes served a certified true copy of a Resolution dated 9 November 2005 from the Honorable Supreme Court, 2nd Division, restraining public respondents from implementing the resolution dated October 3, 2005 of the Sandiganbayan, 4th Division effective immediately.[1]

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[1] *Rollo*, p. 37.

This Court lifted Asilo's suspension on 9 November 2005. The lifting of the suspension prompted Department of Interior and Local Government (DILG) Secretary Angelo T. Reyes to issue a memorandum directing Asilo and his co-accused to reassume their respective offices. Secretary Reyes' memorandum reads:

> It may be recalled that on 03 October 2005, the Sandiganbayan 4th Division in Criminal Case No. 27738, promulgated a Resolution suspending you *pendente lite*, and Sangguniang Panlungsod Members Godofredo V. Faller, Danilo R. Zaballero, Salome S. Dato, Simon N. Aldovino, Wilfredo F. Asilo and Aurora C. Garcia, all of Lucena City, wherein the undersigned was directed to implement the same.
>
> Accordingly, the Department, on 10 October 2005, issued implementation orders in compliance with the Sandiganbayan Resolution, which were duly served to all of you on 13 October 2005.
>
> On 11 November 2005, we received a certified true copy of a Resolution dated 09 November 2005, issued by the Honorable Supreme Court 2nd Division, in G.R. No. 169888, entitled: "*Ramon Y. Talaga, Jr., City Mayor, Lucena City, Petitioner, vs. Hon. Sandiganbayan 4th Division and People of the Philippines, Respondents*," restraining public respondents from implementing the Resolution dated 03 October 2005 of the Sandiganbayan 4th Division, effective immediately and continuing until further orders from said court.
>
> Accordingly, this Department's implementation orders issued in furtherance of the 03 October 2005 Resolution of the Sandiganbayan 4th Division is hereby recalled. You may now reassume your respective offices in Lucena City, immediately effective upon receipt hereof.[2]

Asilo then reassumed office and continued his duties as City Councilor.

Asilo filed his certificate of candidacy as Councilor of Lucena City for the 2007-2010 term. On 18 April 2007, Simon B. Aldovino, Jr., Danilo B. Faller, and Ferdinand N. Talabong (petitioners) filed before the Office of the Provincial Election Supervisor of Quezon a petition to deny due course and/or cancel the candidacy of Asilo for violating the three-term limit

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

rule in relation to Section 78 of the Omnibus Election Code. Asilo filed his answer on 25 April 2007. Petitioners filed their reply on 30 April 2007. Asilo filed his position paper on 3 May 2007 while petitioners filed their Memorandum the next day.

The COMELEC Second Division, in a Resolution promulgated on 28 November 2007, ruled against petitioners and in favor of Asilo. The COMELEC Second Division held that the three-term limit rule did not apply in Asilo's case. Asilo was unable to render complete service for the 2004- 2007 term because of the suspension ordered by the Sandiganbayan. The COMELEC Second Division dismissed the petition for lack of merit.

Petitioners filed a motion for reconsideration before the COMELEC *En Banc*. Petitioners argued that there was no effective renunciation of office, whether voluntary or involuntary, as Asilo was merely the subject of preventive suspension. Asilo allegedly remained a Councilor of Lucena City and did not become a private citizen.

The COMELEC *En Banc*, in a Resolution promulgated on 7 October 2008, denied petitioners' motion for reconsideration for utter lack of merit. The COMELEC *En Banc* found that there was "no established or discernible error in the earlier Resolution of the Second Division"[3] of the COMELEC.

The *ponencia* reversed the COMELEC's rulings.

I submit that the *ponencia* erred in its application of the concept of voluntary renunciation to the three-term limit rule.

Section 8, Article X of the Constitution, the application of which is at issue in the present case, reads:

> The term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of lime shall not be considered as **an interruption in the continuity of his service for the full term for which he was elected**. (Emphasis supplied)

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[3] *Id.* at 32.

The first sentence prescribes that the term limit of elective local officials shall not be more than "three consecutive terms." The second sentence states that **voluntary renunciation** of office does not interrupt the continuity of service for the full term of an elective local official. While the first sentence limits an elective local official's term of office to a maximum of "three consecutive terms," the second sentence prescribes that each of the three consecutive terms must be served for the "**full term**" for the three-term limit rule to apply. Any break "in the continuity of his service for the full term" due to voluntary renunciation will not prevent the application of the three-term limit rule. **The clear implication is that any break in the continuity of his service due to involuntary renunciation or severance from office prevents the application of the three-term limit rule.**

Thus, it cannot be disputed that **any involuntary act** depriving an elective local official of his office constitutes an interruption in the continuity of service for the full term for which he was elected. **The "three consecutive terms" may be broken by "<u>an interruption</u> in the continuity of service for the full term for which he was elected," provided such interruption is involuntary**. Once there is **"an interruption"** in the continuity of service of any of his three consecutive terms, there results a break in his continuity of service, unless the interruption is caused by voluntary renunciation.

In short, a plain reading of Section 8, Article X of the Constitution clearly provides that with the exception of voluntary renunciation, "<u>an interruption</u> in the continuity of [an elective official's] service for the full term for which he was elected" constitutes a break in the continuity of his service for purposes of determining whether he has fully served "three consecutive terms."

In this case, Asilo's preventive suspension, as it currently stands, is an indisputably involuntary act, which interrupted his term for purposes of the three-term limit rule. However, we clarify that, subject to certain conditions, preventive suspension

may eventually result in voluntary renunciation of office and may not interrupt an elected official's continuity of service.

The Three-Term Limit Rule

The three-term limit rule was borne out of the awareness of the members of the Constitutional Commission of the **possibility of excessive accumulation of power as a result of "continuous service and frequent re-elections."**[4] The members of the Constitutional Commission sought to balance the preservation of the people's freedom of choice and the prevention of the monopolization of political power. They chose between two proposals, that of Commissioner Edmundo Garcia, who proposed to prohibit reelection after serving three consecutive terms or nine years; and that of Commissioner Christian Monsod, who proposed that elected officials be merely barred from running for the same position in the immediately succeeding election following the expiration of the third consecutive term.

MR. GARCIA. I would like to advocate the proposition that no further election for local and legislative officials be allowed after a total of three terms or nine years. I have four reasons why I would like to advocate this proposal, which are as follows: (1) to prevent monopoly of political power; (2) to broaden the choice of the people; (3) so that no one is indispensable in running the affairs of the country; and (4) to create a reserve of statesmen both in the national and local levels. May I explain briefly these four reasons.

First: To prevent monopoly of political power – Our history has shown that prolonged stay in public office can lead to the creation of entrenched preserves of political dynasties. In this regard, I would also like to advocate that immediate members of the families of public officials be barred from occupying the same position being vacated.

Second: To broaden the choice of the people – Although individuals have the right to present themselves for public office, our times demand that we create structures that will enable more aspirants to offer to serve and to provide the people a broader choice of those who will serve them; in other words, to broaden the choice so that more and more people can be enlisted to the cause of public service,

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[4] II RECORD, CONSTITUTIONAL COMMISSION 239 (25 July 1986).

not just limited only to those who may have the reason or the advantage due to their position.

Third: No one is indispensable in running the affairs of the country –After the official's more than a decade or nearly a decade of occupying the same public office, I think we should try to encourage a more team-oriented consensual approach to governance favored by a proposal that will limit public servants to occupy the same office for three terms. And this would also favor not relying on personalities no matter how heroic, some of who, in fact, are now in our midst.

Lastly, the fact that we will not reelect people after three terms would also favor the creation of a reserve of statesmen both in the national and local levels.

Turnovers in public office after nine years will ensure that new ideas and new approaches will be welcome. Public office will no longer be a preserve of conservatism and tradition. At the same time, we will create a reserve of statesmen, both in the national and local levels, since we will not deprive the community of the wealth of experience and advice that could come from those who have served for nine years in public office.

Finally, the concept of public service, if political dynasty symbolized by prolonged stay in particular public offices is barred, will have fuller meaning. It will not be limited only to those who directly hold public office, but also to consultative bodies organized by the people, among whom could be counted those who have served in public office with accomplishment and distinction, for public service must no longer be limited only to public office.

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MR. MONSOD. Madam President, I was reflecting on this issue earlier and I asked to speak because in this draft Constitution, we are recognizing people's power. We have said that now there is a new awareness, a new kind of voter, a new kind of Filipino. And yet at the same time, we are prescreening candidates among whom they will choose. We are saying that this 48-member Constitutional Commission has decreed that those who have served for a period of nine years are barred from running for the same position.

The argument is that there may be other positions. But there are some people who are very skilled and good at legislation, and yet

are not of a national stature to be Senators. They may be perfectly honest, perfectly competent and with integrity. They get voted into office at the age of 25, which is the age we provide for Congressmen. And at 34 years old we put them to pasture.

Second, we say that we want to broaden the choices of the people. We are talking here only of congressional or senatorial seats. We want to broaden the people's choice but we are making a prejudgment today because we exclude a certain number of people. We are, in effect, putting an additional qualification for office – that the officials must not have served a total of more than a number of years in their lifetime.

Third, we are saying that by putting people to pasture, we are creating a reserve of statesmen, but the future participation of these statesmen are limited. Their skills may be only in some areas, but we are saying that they are going to be barred from running for the same position.

Madam President, the ability and capacity of a statesman depend as well on the day-to-day honing of his skills and competence, in intellectual combat, in concern and contact with the people, and here we are saying that he is going to be barred from the same kind of public service.

I do not think that it is in our place today to make such a very important and momentous decision with respect to many of our countrymen in the future who may have a lot more years ahead of them in the service of their country.

If we agree that we will make sure that these people do not set up structures that will perpetuate them, then let us give them this rest period of three years or whatever it is. Maybe during that time, we would even agree that their fathers or mothers or relatives of the second degree should not run. But let us not bar them for life after serving the public for a number of years.[5]

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[5] II RECORD, CONSTITUTIONAL COMMISSION 236-237 (25 July 1986).

The Constitution has provisions for term limits of the Legislative[6] and Executive[7] which are similarly worded to term limits of elective local officials. Section 8 of Article X of the Constitution, quoted above, is repeated in Section 43(b) of the Local Government Code. Section 43(b) reads:

Term of Office. — x x x

(b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as **an**

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[6] Section 4 of Article VI reads:

The term of office of the Senators shall be six years and shall commence, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

No Senator shall serve for more than two consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term of which he was elected.

Section 7 of Article VI reads:

The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

No Member of the House of Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

[7] Section 4 of Article VII reads in part:

The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date, six years thereafter. The President shall not be eligible for any re-election. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

No Vice-President shall serve for more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.

x x x x x x x x x

interruption in the continuity of service for the full term for which the elective official concerned was elected. (Emphasis supplied)

The Effect of Preventive Suspension on the Three-Term Limit Rule

An elective local official is not barred from running again for the same local government post unless two conditions concur: one, that the official has been elected to the same local government post for three consecutive terms, and two, that he has fully served three consecutive terms.[8] **Any service short of full service of three consecutive terms, save for voluntary renunciation of the office, does not bar an elective local official from running again for the same local government post.** If voluntary renunciation is not considered a break in the continuity of service, then the converse should be true: involuntary renunciation should be considered a break in the continuity of service. **And there can be no more illustrative case of involuntary renunciation from service than removal from office by suspension or dismissal.**

We illustrated the concurrence of the two conditions of being elected and having fully served in *Borja, Jr. v. COMELEC*:[9]

Case No. 1. Suppose *A* is a vice-mayor who becomes mayor by reason of the death of the incumbent. Six months before the next election, he resigns and is twice elected thereafter. Can he run again for mayor in the next election?

Yes, because he has already first served as mayor by succession and subsequently resigned from office before the full term expired, he has not actually served three full terms in all for the purpose of applying the term limit. Under Art. X, §8, voluntary renunciation of the office is not considered as an interruption in the continuity of his service for the full term only if the term is one "for which he was elected." Since *A* is only completing the service of the term for which the deceased and he was elected, *A* cannot be considered to have completed one term. His resignation constitutes an interruption of the full term.

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[8] *Lonzanida v. COMELEC,* 370 Phil. 625, 636 (1999).

[9] 356 Phil. 467, 478 (1998).

***Case No. 2*. Suppose *B* is elected Mayor and, during his first term, he is twice suspended for misconduct for a total of one year. If he is twice reelected after that, can he run for *one more* term in the next election?**

Yes, because he has served only two full terms successively. (Emphasis supplied)

We qualify Case No. 2 above. Suspension of an elective local official may either be preventive or punitive, and is covered by different laws. In the Local Government Code (Republic Act [R.A.] No. 7160), preventive suspension is governed by Sections 63 and 64:

Section 63. *Preventive Suspension*. — (a) Preventive suspension may be imposed:

(1) By the President, if the respondent is an elective official of a province, a highly urbanized or an independent component city;

(2) By the governor, if the respondent is an elective official of a component city or municipality; or

(3) By the mayor, if the respondent is an elective official of the *Barangay*.

(b) Preventive suspension may be imposed at any time after the issues are joined, when the evidence of guilt is strong, and given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence: Provided, That, any single preventive suspension of local elective officials shall not extend beyond sixty (60) days: Provided, further, That in the event that several administrative cases are filed against an elective official, he cannot be preventively suspended for more than ninety (90) days within a single year on the same ground or grounds existing and known at the time of the first suspension.

(c) Upon expiration of the preventive suspension, the suspended elective official shall be deemed reinstated in office without prejudice to the continuation of the proceedings against him, which shall be terminated within one hundred twenty (120) days from the time he was formally notified of the case against him. However, if the delay in the proceedings of the case is due to his fault, neglect, or request,

other than the appeal duly filed, the duration of such delay shall not be counted in computing the time of termination of the case.

(d) Any abuse of the exercise of the power of preventive suspension shall be penalized as abuse of authority.

Section 64. *Salary of Respondent Pending Suspension.* — The respondent official preventively suspended from office shall receive no salary or compensation during such suspension; but, upon subsequent exoneration and reinstatement, he shall be paid full salary or compensation including such emoluments accruing during such suspension.

The Anti-Graft and Corrupt Practices Act (R.A. No. 3019) and the Ombudsman Act of 1989 (R.A. No. 6770) have provisions for both preventive and punitive suspensions. Section 13 of R.A. No. 3019 reads:

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.

Sections 24 and 25 of R.A. No. 6770 read:

Section 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.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period

of such delay shall not be counted in computing the period of suspension herein provided.

Section 25. *Penalties*.— (1) In administrative proceedings under Presidential Decree No. 807, the penalties and rules provided therein shall be applied.

(2) In other administrative proceedings, the penalty ranging from suspension without pay for one year to dismissal with forfeiture of benefits or a fine ranging from five thousand pesos (₱5,000.00) to twice the amount malversed, illegally taken or lost, or both at the discretion of the Ombudsman, taking into consideration circumstances that mitigate or aggravate the liability of the officer or employee found guilty of the complaint or charges. (Emphasis supplied)

Preventive suspension has a limited duration: not more than 60 days for a single offense or not more than 90 days in a year for offenses that fulfill certain conditions under the Local Government Code; and not more than 6 months under the Ombudsman Act of 1989. A 60-day suspension cuts into 1/13 of a term; a 90-day suspension into 1/12 of a term; and a 6-month suspension into 1/6 of a term. Preventive suspension can be imposed consecutively for different offenses filed separately, although under the local Government Code, an elective official cannot be preventively suspended for more than 90 days within a single year "on the same ground or grounds existing and known at the time of the first suspension." If the grounds for suspension are different, then an elective official can be suspended for more than 90 days in a single year. **Thus, under the Local Government Code, preventive suspension can cut an elective official's term of office to less than a year.**

Under the Ombudsman Act, however, the Ombudsman can preventively suspend an elective official more than once in the same year during the elective official's term of office, regardless of the grounds for suspension, provided that the cases are filed separately. **Such cumulative preventive suspension can also cut the term of office of an elective official to less than a year**. This will subject elective local officials to harassment through successive suspensions. If we follow the majority opinion, an elective local official who is successively preventively suspended

will still be deemed to have completed his term. The disciplining authority may suspend any elective local official who is not aligned with the desires of the ruling party and keep him suspended by filing different cases until his term is over. Preventive suspension can be used as a tool to frustrate the will of the people, and there is no effective counter-check for this abuse.

An elective local official may have two months left in his term but can be preventively suspended for three months. **This preventive suspension cuts short his term and he cannot go back to assume office, effectively resulting in loss of title to his office.**

Several Metro Manila mayors faced graft charges before the Office of the Ombudsman prior to the 2007 elections. Consider the data in the following table:[10]

Mayor	City / Municipality	Number of Charges Filed	Suspended or Dismissed
Lito Atienza	Manila	12	No
James Fresnedi	Muntinlupa	14	No
Enrico Echiverri	Caloocan	16	No
Lourdes Fernando	Marikina	14	No
Florencio Bernabe	Parañaque	8	No
Sigfrido Tinga	Taguig	5	No
Sherwin Gatchalian	Valenzuela	4	No
Vicente Eusebio	Pasig	4	No
Imelda Aguilar	Las Piñas	2	No
Jejomar Binay	Makati	4	Yes
Wenceslao Trinidad	Pasay	7	Yes

[10] *Ombudsman: Other Metro mayors also facing graft charges*, 19 October 2006 <http://www.philstar.com/ArticlePrinterFriendly.aspx?articled =363806> (accessed 13 October 2009).

Preventive suspension is often resorted to prior to the elections.[11] The DILG suspended Makati Mayor Jejomar Binay, Vice Mayor Ernesto Mercado and 16 councilors on 17 October 2006 pending the outcome of a graft case filed against them by former Makati Vice Mayor Roberto Brillante in August 2006 for allegedly hiring ghost employees.[12] Mayor Binay received yet another suspension order a few days before the 2007 elections. The suspension order, based on a complaint by former Councilor Oscar Ibay for alleged unremitted withholding taxes, was served at 11:30 p.m. on 4 May 2007.[13] The Ombudsman issued both suspension and dismissal orders on the eve of the 2007 election period.

Mayor Binay, however, was not the sole recipient of orders adverse to his continued administration.

On 14 January 2007, the DILG served the Ombudsman's suspension order upon Batangas Governor Armando Sanchez.[14] Prior to this, the DILG also suspended for six months Cavite

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[11] *Ombudsman Defends Suspension of Binay*, 8 May 2007 <http://www.newsflash.org/2004/02/h1/h1105564.htm> (accessed 8 October 2009); *12 local officials ordered dismissed from posts,* 16 January 2007 <http://www.sunstar.com.ph/static/net/2007/01/16/12.local.officials.ordered.dismissed.from.posts.html> (accessed 9 October 2009).

[12] Mayor Binay was able to obtain a temporary restraining order from the appellate court on 19 October 2006. CA *stops Binay's suspension*, 20 October 2006 <http://www.philstar.com/ArticlePrinterFriendly.aspx?articleId=363911&publicationSubCategoryId=63> (accessed 13 October 2009).

[13] DILG Secretary Ronaldo Puno deferred the implementation of the second suspension order against Mayor Binay during the election period "in the interest of fair play." *DILG chief defers Binay suspension*, 7 May 2007 <http:www.philstar.com/ArticlePrinterFriendly.aspx?articleId=397350>.

[14] On 9 April 2008, this Court denied with finality the preventive suspension order of the Office of the Ombudsman against former Batangas Governor Armando C. Sanchez and other Batangas provincial officials. The Office of the Deputy Ombudsman committed grave abuse of discretion when it issued preventive suspension orders against these officials despite the finding by the Deputy Ombudsman for Luzon that no strong evidence of guilt had been established. *Office of the Ombudsman v. Armando C. Sanchez*, G.R. No. 179336, 9 April 2008.

Governor Erineo Maliksi; Mamburao, Occidental Mindoro Mayor Joel Panaligan; Aguilar, Pangasinan Mayor Ricardo Evangelista; Vallehermoso, Negros Occidental Mayor Joniper Villegas; and Panglao, Bohol Mayor Doloreich Dumaluan. The DILG also implemented dismissal orders issued by the Office of the Ombudsman against certain local elective officials, such as Iloilo Governor Niel Tupas and Sangguniang Panlalawigan member Cecilia Capadosa; Jaen, Nueva Ecija Mayor Antonio Esquivel; and Pasay City Mayor Wenceslao "Peewee" Trinidad, Vice Mayor Antonio Calixto and eight city councilors.[15] On 12 January 2007, the Office of the Ombudsman meted out the penalty of dismissal from service to Governor Tupas and Sangguniang Panlalawigan member Capadosa; Mayor Esquivel; and Mayor Trinidad, Vice Mayor Calixto and eight city councilors which carries with it the cancellation of egibility, forfeiture of retirement benefits and perpetual disqualification from reemployment for government service, upon these elective officials.

Of course, it goes without saying that the elective local official who is under preventive suspension can avail of remedies under the law. In defending the Executive Department's suspension of Mayor Binay, Executive Secretary Eduardo Ermita stated, "That is the beauty of our laws, beauty in the sense that there are times that we know it's supposed to be applied in a standard manner equally to everybody...but then there are people with better contacts, better resources, that's how it is but still within the bounds of the law."[16] **In that statement, Secretary Ermita effectively admitted that connections, political or otherwise, can make the difference in the security of tenure of an incumbent elected official.**

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[15] Vice Mayor Calixto was able to secure a temporary restraining order preventing his suspension; however, the Ombudsman issued a suspension order against him on yet another case. *Pasay City execs remain suspended on 2nd Palace order*. 5 October 2006 <http://www.gmanews.tv/print/17022> (accessed 13 October 2009).

[16] *Gov't to seek lifting of Binay TRO*, 21 October 2006 <http://www.philstar.com/ArticlePrinterFriendly.aspx?articleId=364100> (accessed 13 October 2009).

The elective local official who is under preventive suspension shall not receive any salary or compensation during his suspension. Preventive suspension, however, has effects which go beyond the financial and even beyond the person of the suspended elective official. The electorate is deprived of the services of the person they elected.

An elective official, elected by popular vote, is directly responsible to the community that elected him. The official has a definite term of office fixed by law which is relatively of short duration. Suspension and removal from office definitely affects and shortens this term of office. **When an elective official is suspended or removed, the people are deprived of the services of the man they had elected. Implicit in the right of suffrage is that the people are entitled to the services of the elective official of their choice.**[17] (Emphasis supplied)

A rest period during which a local official steps down from office and becomes a private citizen is **not** a necessary element of involuntary interruption of service of term of office.[18] In *Montebon v. Commission on Elections*,[19] service of a term as councilor was involuntarily interrupted when, by operation of law, the highest ranking municipal councilor succeeded as vice mayor. We ruled in *Montebon* that the highest ranking municipal councilor's assumption of office as vice mayor was an **involuntary** interruption of his term of office as councilor. **There was no interim rest period in *Montebon* because the elective official concerned did not become a private citizen at any time**. In *Montebon,* even without an interim rest period as a private citizen, the elective officer concerned was considered not to have fully served his three consecutive terms and, thus, was eligible to run for the immediately succeeding term after his third term of office.

Most importantly, neither is loss of title to the office a necessary element of involuntary interruption of service of "three consecutive terms." The second sentence of Section 8, Article X of the

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[17] *Hon. Joson v. Exec. Sec. Torres*, 352 Phil. 888, 927 (1998).

[18] *See Adormeo v. Commission on Elections,* 426 Phil. 472 (2002); *Socrates v. Commission on Elections*, 440 Phil. 106 (2002).

[19] G.R. No. 180444, 9 April 2008, 551 SCRA 50.

Constitution provides: "Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected." There is a break in an elective official's "three consecutive terms" if there is "an interruption in the continuity of his service." Voluntary renunciation, like resignation or abandonment, is not deemed an interruption. However, the opposite must necessarily be true; otherwise Section 8 will not make sense. Thus, involuntary cessation from the exercise of functions of the office, brought about by preventive suspension or removal, is an interruption in the continuity of service. The *ponencia* stresses that there is no such thing as an "involuntary" renunciation. However, if that is so, then why is there a need to qualify "renunciation" with "voluntary" when "renunciation" will do? Any form of renunciation will then interrupt the continuity of service of an elective official for the full term for which he was elected.

An elected officer who is preventively suspended is forbidden from rendering service to the people who elected him. Loss of title to the office is, therefore, irrelevant as the elective local official is already emasculated and left with an empty shell of a title. One may have the title of a Mayor but cannot perform the duties of a Mayor. Preventive suspension frustrates the will of the people. The proposed additional requirement of loss of title to the office emphasizes only the formality of the elected office and ignores the substance of rendering service to the electorate. And what did the Constitutional Commission say about the three-term limit? "...[T]hose who have served a period of nine years are barred from running for the same position." Aside from *Borja*, this Court, in the cases of *Lonzanida v. Commission on Elections*,[20] *Ong v. Alegre*,[21] *Rivera v. COMELEC*,[22] *Adormeo v. Commission on Elections*,[23] *Socrates v. Commission on Elections*[24] and *Latasa v. Commission on*

[20] 370 Phil. 625 (1999).

[21] G.R. Nos. 163295 and 163354, 23 January 2006, 479 SCRA 473.

[22] G.R.Nos. 167591 and 170577, 9 May 2007, 523 SCRA 41.

[23] G.R No. 147927, 4 February 2002, 376 SCRA 90.

[24] 440 Phil. 106 (2002).

Elections,[25] stressed that it is service rather than title to the office which determines the definition of "full service of three consecutive terms." In *Lonzanida*, compliance with the writ of execution issued by the COMELEC was considered an involuntary severance from office. In *Ong* as well as in *Rivera*, assumption of office for the full term despite a contrary COMELEC ruling constituted one full term service in the context of the three-term limit rule. Both *Adormeo* and *Socrates* ruled that service of a recall term is a full term for purposes of counting the consecutiveness of an elective official's terms in office because "term limits must be strictly construed to give the fullest effect to the sovereign will of the people." In *Latasa*, service rendered to the same inhabitants in the same territorial jurisdiction, and not service rendered to a different local government unit, was a deciding factor against the petition.

The definition of "full service of three consecutive terms" is linked to the concepts of "interruption of service" and "voluntary renunciation." In *Ong v. Alegre,*[26] we stated that service for a full term in contemplation of the three-term rule consists of proclamation as winner by the Board of Canvassers, coupled by assumption of office and continuous exercise of the functions thereof from start to finish of the term. There is no interruption or break in the continuity of service when the elected official is never unseated during the term in question or never ceases discharging his duties and responsibilities for the entire period covering his term.

The term "voluntary renunciation" caught the attention of Commissioner Regalado Maambong during the deliberations of the Constitutional Commission. Commissioner Hilario G. Davide, Jr. explained the concept of voluntary renunciation, thus:

> MR. MAAMBONG. Could I address the clarificatory question to the Committee? This term "voluntary renunciation" does not only appear in Section 3 [of Article VI]; it [also] appears in Section 6 [of Article VI].

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[25] 463 Phil. 296 (2003).

[26] See G.R. Nos. 163295 and 163354, 23 January 2006, 479 SCRA 473, 482-484.

MR. DAVIDE. Yes.

MR. MAAMBONG. It is also a recurring phrase all over the Constitution. Could the Committee please enlighten us exactly what "voluntary renunciation" means? Is this akin to abandonment?

MR. DAVIDE. Abandonment is voluntary. In other words, he cannot circumvent the restriction by merely resigning at any given time on the second term.

MR. MAAMBONG. Is the Committee saying that the term "voluntary renunciation" is more general than abandonment and resignation?

MR. DAVIDE. It is more general, more embracing.[27]

We see that Commissioners leaned toward a broad interpretation of the term "voluntary renunciation," such that it encompasses the concepts of abandonment and resignation. In the same manner, the interpretation of its converse, being the opposite side of the same coin, "involuntary renunciation," should likewise be broad and encompass concepts which are not abandonment and not resignation.

Preventive suspension may result in either voluntary or involuntary renunciation of office. The term "voluntary" implies "freedom from any compulsion that constrains one's choice."[28] The presence and impact of a constraining compulsion is what makes the *ponencia's* examples of *force majeure* and sickness absurd. The choice of an elective official as to where he may be, as well as to when to take a leave, is voluntary. This is also the reason why Asilo, if eventually convicted by final judgment, is deemed to be disqualified from running for a fourth term.

Renunciation of office results in a cessation of the exercise of power or authority. Preventive suspension is, by default, an involuntary renunciation of an elective local official's term of office. An elective local official does not actively choose to be preventively suspended. Although the laws provide for preventive suspension, its operation is not automatic unlike that of succession of office. Preventive suspension is a double-edged

[27] II RECORD, CONSTITUTIONAL COMMISSION 591 (1 August 1986).

[28] Webster's *Third New International Dictionary* 2564 (1986).

sword. On one hand, any person can use preventive suspension not only as a way to deprive the electorate of an elected official, but also as a tool to restrain a particular elective local official from the performance of his duties. On the other hand, preventive suspension lessens the possibility that the accused would intimidate witnesses or otherwise hamper his prosecution. Preventive suspension also prevents the accused from committing other acts of malfeasance while in office.[29]

We quote with approval the resolution of the COMELEC *En Banc*:

> We have to understand that when a candidate is elected to office, his election is the embodiment of the will of the people; it is the expression of their sovereign will. Any act that will defeat the choice of the people as to the personalities they want to lead them must not be countenanced. The interruption of service thwarted the people's will, and [Asilo's] new term (as it should now be properly treated) is the only appropriate recompense for what the electorate may have already lost owing to [Asilo's] unjustified suspension from public office.[30]

Fr. Joaquin G. Bernas, a noted constitutionalist, was cited to support the opinion that a preventively suspended elected official should not be allowed to tack to his term of office the period of service lost by reason of preventive suspension. Fr. Bernas stated that "[t]o reward [the suspended elected official] with another full term would seem to reward wrong-doing." However, Fr. Bernas was not only quoted out of context but it was also conveniently forgotten that an accused is innocent until proven guilty. This is the reason why an elective local official's preventive suspension may be considered, for purposes of the application of the three-term limit rule, a voluntary renunciation of office only upon conviction by final judgment of the official for the offense for which he was preventively suspended. Let us suppose that *X*, like Asilo, was elected for three terms to the same office and was preventively suspended during his third term. Because

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[29] *Bolastig v. Sandiganbayan*, G.R. No. 110503, 4 August 1994, 235 SCRA 103.

[30] *Rollo*, p. 32.

preventive suspension is, by default, an involuntary renunciation of office, *X* is given a fresh three-term limit and can file a certificate of candidacy for the fourth consecutive term. The interruption caused by his preventive suspension cut *X*'s service of his third term. *X* gets reelected for a fourth term. However, while *X* is serving his "fourth" term, there is a final judgment convicting *X* for the offense for which he was preventively suspended. The final judgment converts *X*'s prior preventive suspension from involuntary to voluntary renunciation. The presumption of *X's* innocence has been overturned, and *X's* preventive suspension was the consequence of *X's* voluntary act of committing an offense. *X* should now be removed from office because he was disqualified from running a fourth time.

The effect of disqualification from being a candidate should not be equated with that of commission of a crime by an elective local official during his term. The uncertainty in the qualifications of a candidate exists in all disqualification cases, and is par for the course during elections. As applied in the present case, the effect of *X's* conviction by final judgment retroacts to the time *X* filed his certificate of candidacy and disqualifies *X* from running for office for the fourth term because of *X's* voluntary renunciation.

The effect of a final judgment against a person in a criminal or administrative case is laid down in Section 40 of the Local Government Code, which provides:

> Section 40. *Disqualification.* – The following persons are disqualified from running for any elective local position:
>
> (a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;
>
> (b) Those removed from office as a result of an administrative case;
>
> x x x x x x x x x

The finality of the judgment results in the disqualification of a person from running for any elective local office. The local official cannot be disqualified prior to the finality of the judgment on the sole ground that he has been charged with a criminal or

administrative case.[31] However, upon finality of the judgment, the disqualification attaches and the elective local official cannot claim that he has not fully completed his "three consecutive terms." There is no escaping from disqualification if an elective local official is found guilty in a final judgment. Thus, ultimately, a guilty elective local official cannot profit from his own wrongdoing.

At present, Asilo should not be barred from running for office for the 2007-2010 term. Although Asilo was elected to the same local government post for three consecutive terms, he has not fully served three consecutive terms. Under the present circumstances, Asilo's failure to fully serve three consecutive terms is not a voluntary renunciation of office. However, should Asilo be convicted by final judgment for the offense for which he was preventively suspended, Asilo has to step down from office because he was actually disqualified when he filed his certificate of candidacy.

WHEREFORE, I vote to *DISMISS* the petition. I vote to *AFFIRM* the Resolution of the Commission on Elections *En Banc* dated 7 October 2008 as well as the Resolution of the Commission on Elections Second Division dated 28 November 2007.

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[31] In *Reyes v. COMELEC*, 324 Phil. 813 (1996), we held: "Here, . . . the decision in the administrative case . . . was served on petitioner and it thereafter became final on April 3, 1995, because petitioner failed to appeal to the Office of the President. He was thus validly removed from office and, pursuant to §40(b) of the Local Government Code, he was disqualified from running for reelection." In *Lingating v. COMELEC*, 440 Phil. 308 (2002), we ruled: "However, Reyes cannot be applied to this case because it appears that the 1992 decision of the Sangguniang Panlalawigan, finding respondent Sulong guilty of dishonesty, falsification and malversation of public funds, has not until now become final. The records of this case show that the Sangguniang Panlalawigan of Zamboanga del Sur rendered judgment in AC Nos. 12-91 on February 4, 1992, a copy of which was received by respondent Sulong on February 17, 1992; that on February 18, 1992, he filed a 'motion for reconsideration and/or notice of appeal'; that on February 27, 1992, the Sangguniang Panlalawigan, required Jim Lingating, the complainant in AC Nos. 12-91, to comment; and that the complainant in AC Nos. 12-91 has not filed a comment nor has the Sangguniang Panlalawigan resolved respondent's motion. The filing of his motion for reconsideration prevented the decision of Sangguniang Panlalawigan from becoming final."

THIRD DIVISION

[G.R. No. 185011. December 23, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SPO3 SANGKI ARA *y* MIRASOL, MIKE TALIB *y* MAMA, and JORDAN MUSA *y* BAYAN,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. (RA) 9165 OR THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; BUY-BUST OPERATION; A LEGITIMATE FORM OF CATCHING OFFENDERS IN THE ACT OF COMMITTING AN OFFENSE; WARRANTLESS ARREST AND SEIZURE, LAWFUL; CASE AT BAR.—** Owing to the special circumstances surrounding the drug trade, a buy-bust operation has long been held as a legitimate method of catching offenders. It is a form of entrapment employed as an effective way of apprehending a criminal in the act of commission of an offense. We have ruled that a buy-bust operation can be carried out after a long period of planning. The period of planning for such operation cannot be dictated to the police authorities who are to undertake such operation. It is unavailing then to argue that the operatives had to first secure a warrant of arrest given that the objective of the operation was to apprehend the accused-appellants *in flagrante delicto.* In fact, one of the situations covered by a lawful warrantless arrest under Section 5(a), Rule 113 of the Rules of Court is when a person has committed, is actually committing, or is attempting to commit an offense in the presence of a peace officer or private person.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARRESTS AND SEARCHES, VALIDITY THEREOF; PROBABLE CAUSE; BASIS; CASE AT BAR.—** Probable cause, in warrantless searches, must only be based on reasonable ground of suspicion or belief that a crime has been committed or is about to be committed. There is no hard and fast rule or fixed formula for determining probable cause, for its determination varies according to the facts of each case. Probable cause was provided by information gathered from

the CI and from accused-appellants themselves when they instructed PO1 Ayao to enter their vehicle and begin the transaction. The illegal sale of *shabu* inside accused-appellants' vehicle was afterwards clearly established. Thus, as we have previously held, the arresting officers were justified in making the arrests as accused-appellants had just committed a crime when Ara sold *shabu* to PO1 Ayao. Talib and Musa were also frisked for contraband as it may be logically inferred that they were also part of Ara's drug activities inside the vehicle. This inference was further strengthened by Musa's attempt to drive the vehicle away and elude arrest.

3. **ID.; ID.; ID.; EVIDENCE ADMISSIBLE SINCE BUY-BUST OPERATION WAS WITHIN LEGAL BOUNDS; CASE AT BAR.—** The trial court correctly denied the Motion to Suppress or Exclude Evidence. We need not reiterate that the evidence was not excluded since the buy-bust operation was shown to be a legitimate form of entrapment. The pieces of evidence thus seized therein were admissible. As the appellate court noted, it was within legal bounds and no anomaly was found in the conduct of the buy-bust operation. There is, therefore, no basis for the assertion that the trial court's order denying said motion was biased and committed with grave abuse of discretion.

4. **ID.; EVIDENCE; ILLEGAL SALE OF *SHABU*; ELEMENTS TO BE ESTABLISHED FOR SUCCESSFUL PROSECUTION; CASE AT BAR.—** For the successful prosecution of the illegal sale of *shabu*, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. All these requisites were met by the prosecution.

5. **ID.; ID.; ID.; ID.; PRESUMPTION OF REGULARITY IN PERFORMANCE OF OFFICIAL DUTIES PREVAILS OVER DENIAL AND ALIBI; CASE AT BAR.—** Ara, the sole defense witness, could only proffer the weak defenses of denial and alibi. He expressed surprise at having Talib in his car and claimed he was framed and that the *shabu* confiscated from him was planted. According to the trial court, however, Ara's lying on the witness stand "was so intense as he tried very hard

in vain to win the Court's sympathy." Given the prosecution's evidence, we rule that the presumption of regularity in the performance of official duties has not been overturned. The presumption remains because the defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive. Ara could not explain why his fellow police officers, who did not know him prior to his arrest, would frame him for such a serious offense.

6. **ID.; ID.; ID.; ID.; BUY-BUST OPERATIONS; LEGITIMACY; PRESENTATION OF MARKED MONEY NOT A REQUIREMENT IN PROVING LEGITIMACY; CASE AT BAR.—** There are requirements that must be complied with in proving the legitimacy of drug buy-bust operations. Nevertheless, this Court has ruled that presentation of the marked money used is not such a requirement. In the prosecution for the sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution, as long as the sale of dangerous drugs is adequately proved and the drug subject of the transaction is presented before the court. In the instant case, the police officers' testimonies adequately established the illegal sale of *shabu*. The *shabu* was then presented before the trial court. The non-presentation of the marked money may, thus, be overlooked as a peripheral matter.

7. **ID.; ID.; ID.; ID.; DRUG TRANSACTIONS CONDUCTED WITHOUT MUCH CARE FOR AN INCONSPICUOUS LOCATION.—** Judicial experience has shown that drug transactions have been conducted without much care for an inconspicuous location. Thus, we observed in *People v. Roldan*: Drug pushing when done on a small level x x x belongs to that class of crimes that may be committed at anytime and at any place. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade these factors may even serve to camouflage the same. Hence, the Court has sustained the conviction of drug pushers caught selling illegal drugs in a billiard hall, in front of a store, along a street at 1:45 p.m., and in front of a house.

8. ID.; ID.; ID.; ID.; OBSERVATIONS ON DRUG TRANSACTIONS AND BUY-BUST OPERATIONS.— *First*, there is no uniform method by which drug pushers and their buyers operate. *Second*, the choice of effective ways to apprehend drug dealers is within the ambit of police authority. Police officers have the expertise to determine which specific approaches are necessary to enforce their entrapment operations. *Third*, as long as they enjoy credibility as witnesses, the police officers' account of how the buy-bust operation transpired is entitled to full faith and credit.

9. ID.; CRIMINAL PROCEDURE; DEMURRER TO EVIDENCE; ACTION OF COURT THEREON RESTS ON THE SOUND EXERCISE OF JUDICIAL DISCRETION.— An action on a demurrer or on a motion to dismiss rests on the sound exercise of judicial discretion. In *Gutib v. CA*, we explained that: A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is *competent* or *sufficient* evidence to sustain the indictment or to support a verdict of guilt.

10. ID.; ID.; INFORMATION; ALLEGATION OF CONSPIRACY NECESSARY ONLY WHEN CONSPIRACY IS CHARGED AS A CRIME; CASE AT BAR.— We find no merit in accused-appellants' insistence that conspiracy should have been alleged in the separate Informations indicting them. We agree with the appellate court, which succinctly stated that conspiracy was not alleged "precisely because they were charged with different offenses for the distinct acts that each of them committed. One's possession of an illegal drug does not need to be conspired by another who, on his part, also possessed an illegal drug." The three separate indictments against Ara, Musa, and Talib do not need to allege conspiracy, for the act of conspiring and all the elements of the crime must be set forth in the complaint or information only when conspiracy is charged as a crime.

11. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; "CHAIN OF CUSTODY" RULE;

NON–COMPLIANCE THEREWITH WILL NOT INVALIDATE ARREST OF AN ACCUSED NOR RENDER INADMISSIBLE THE ITEMS SEIZED; PRESENTATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF ITEMS SEIZED, ESSENTIAL.— As recently highlighted in *People v. Cortez* and *People v. Lazaro, Jr.*, RA 9165 and its subsequent Implementing Rules and Regulations (IRR) do not require strict compliance as to the chain of custody rule. The arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Sec. 21, Article II of RA 9165. We have emphasized that what is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused." Briefly stated, non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons, is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation.

12. ID.; ID.; ID.; ID.; CASE AT BAR.— The chain of custody in the instant case did not suffer from serious flaws as accused-appellants argue. The recovery and handling of the seized drugs showed that, as to Ara, *first*, PO1 Ayao recovered six plastic sachets of white crystalline substance from Ara and marked them with both his and Ara's initials. *Second*, the sachets were likewise signed by property custodian PO3 Pelenio. *Third*, PO1 Ayao signed a Request for Laboratory Examination then personally delivered the sachets to the PNP Crime Laboratory for examination. *Fourth*, SPO4 Mallorca then received the sachets at the crime laboratory. As to Musa, *first*, SPO1 Furog seized the sachets from Musa and marked each with his own initials. *Second*, an Inventory of Property Seized was then made by SPO4 Galendez. *Lastly*, SPO1 Furog later submitted a Request for Laboratory Examination of the five (5) sachets weighing a total of 14.2936 grams to the PNP Crime Laboratory. As to Talib, *first*, PO2 Lao seized a small sachet from Talib during the buy-bust operation. *Second*, PO2 Lao delivered a Request for Laboratory Examination of one (1) sachet of suspected *shabu* weighing 0.3559 gram. *Third*, SPO4 Mallorca also received the items at the PNP Crime Laboratory. Forensic Chemist Noemi Austero's examination of the sachets confiscated from

all accused-appellants showed that these were positive for *shabu*. During trial, the seized items were identified in court. The five (5) sachets taken from Musa were marked Exhibits "A-1" to "A-5", while the sachet seized from Talib was marked Exhibit "B". The six (6) sachets taken from Ara were marked Exhibits "B1-B6". We are, thus, satisfied that the prosecution was able to preserve the integrity and evidentiary value of the *shabu* in all three criminal cases against accused-appellants.

13. ID.; ID.; CRIME OF ILLEGAL POSSESSION OF DRUGS; IMPOSABLE PENALTIES IN CASE AT BAR.— The crime of illegal possession of drugs is punishable by Sec. 11 of RA 9165, as follows: Sec. 11. *Possession of Dangerous Drugs*. – x x x 3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x methamphetamine hydrochloride x x x. Talib was sentenced to imprisonment of sixteen (16) years and a fine of PhP 300,000. x x x **Criminal Case No. 51,473-2002 against Musa** The provision Musa was charged of violating provides the following penalty: (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; Musa was sentenced to life imprisonment and a fine of PhP 400,000.

14. ID.; ID.; CRIME OF ILLEGAL SALE OF *SHABU*; IMPOSABLE PENALTY IN CASE AT BAR.— The crime of illegal sale of *shabu* is penalized by Sec. 5, Art. 11 of RA 9165: SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/ or Controlled Precursors and Essential Chemicals*. – The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity

involved, or shall act as a broker in any of such transactions. The same section contains the following provision: If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case. Since the sale of *shabu* was within five (5) to six (6) meters from St. Peter's College, the maximum penalty of death should be imposed on Ara. Pursuant to RA 9346 or "An Act Prohibiting the Imposition of Death Penalty in the Philippines," however, only life imprisonment and a fine shall be meted on him. Ara was sentenced to life imprisonment and a fine of PhP 10,000,000. He, however, is no longer eligible for parole.

15. **ID.; ID.; CRIMES OF SALE AND POSSESSION OF ILLEGAL DRUGS; PENALTIES GIVEN TO DRUG PUSHERS SHOULD SERVE AS DETERRENT.—** The ill effects of the use of illegal drugs are too repulsive and shocking to enumerate. Thus, once the charges of sale and possession of said drugs are established in cases such as this, any errors or technicalities raised by the suspects should not be allowed to invalidate the actions of those involved in curtailing their illegal activities. The punishments given to drug pushers should serve as deterrent for others not to commit the same offense. No price seems high enough for drug dealers to pay; it is just unfortunate that the penalty of death can no longer be imposed because it has been abolished.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the December 13, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00025B entitled *People of the Philippines v. SPO3 Sangki Ara y Mirasol, Mike Talib y Mama, Jordan Musa y Bayan*, which affirmed the Decision of the Regional Trial Court (RTC), Branch 9 in Davao

City, convicting accused-appellants of violation of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

Three Informations charged accused-appellants Sangki Ara, Mike Talib, and Jordan Musa, as follows:

Criminal Case No. 51,471-2002 against Ara

That on or about December 20, 2002, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and consciously traded, transported and delivered 26.6563 grams of Methamphetamine Hydrochloride or "*shabu*," which is a dangerous drug, with the aggravating circumstance of trading, transporting and delivering said 26.6563 grams of "*shabu*" within 100 meters from [the] school St. Peter's College of Toril, Davao City.

CONTRARY TO LAW.[1]

Criminal Case No. 51,472-2002 against Talib

That on or about December 20, 2002, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and consciously had in his possession and control one (1) plastic sachet of Methamphetamine Hydrochloride or "*shabu*," weighing 0.3559 gram, which is a dangerous drug.

CONTRARY TO LAW.[2]

Criminal Case No. 51,473-2002 against Musa

That on or about December 20, 2002, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, without being authorized by law, willfully, unlawfully and consciously had in his possession and control five (5) big plastic sachet[s] of Methamphetamine Hydrochloride or "*shabu*" weighing 14.2936 grams, which is a dangerous drug.

CONTRARY TO LAW.[3]

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

[2] *Id.* at 34-35.

[3] *Id.* at 35.

During their arraignment, accused-appellants all gave a "not guilty" plea.

Version of the Prosecution

At the trial, the prosecution presented the following witnesses: Forensic Chemist Noemi Austero, PO2 Ronald Lao, SPO1 Bienvenido Furog, PO1 Enrique Ayao, Jr., SPO4 Rodrigo Mallorca, and PO2 Jacy Jay Francia.

In the morning of December 20, 2002, a confidential informant (CI) came to the Heinous Crime Investigation Section (HCIS) of the Davao City Police Department and reported that three (3) suspected drug pushers had contacted him for a deal involving six (6) plastic sachets of *shabu.* He was instructed to go that same morning to St. Peter's College at Toril, Davao City and look for an orange Nissan Sentra car.[4]

Police Chief Inspector Fulgencio Pavo, Sr. immediately formed a buy-bust team composed of SPO3 Reynaldo Capute, SPO4 Mario Galendez, SPO3 Antonio Balolong, SPO2 Arturo Lascaños, SPO2 Jim Tan, SPO1 Rizalino Aquino, SPO1 Bienvenido Furog, PO2 Vivencio Jumawan, Jr., PO2 Ronald Lao, and PO1 Enrique Ayao, Jr., who would act as poseur-buyer.[5]

The team proceeded to the school where PO1 Ayao and the CI waited by the gate. At around 8:45 a.m., an orange Nissan Sentra bearing plate number UGR 510 stopped in front of them. The two men approached the vehicle and the CI talked briefly with an old man in the front seat. PO1 Ayao was then told to get in the back seat as accused-appellant Mike Talib opened the door. The old man, later identified as accused-appellant SPO3 Ara, asked PO1 Ayao if he had the money and the latter replied in the positive. Ara took out several sachets with crystalline granules from his pocket and handed them to PO1 Ayao, who thereupon gave the pre-arranged signal of opening the car door. The driver of the car, later identified as accused-appellant Jordan Musa, tried to drive away but PO1 Ayao was able to switch off

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[4] *Rollo*, p. 7.

[5] *Id.*

the car engine in time. The back-up team appeared and SPO1 Furog held on to Musa while PO2 Lao restrained Talib. PO1 Ayao then asked Ara to get out of the vehicle.[6]

Recovered from the group were plastic sachets of white crystalline substance: six (6) big sachets, weighing 26.6563 grams, from Ara by PO1 Ayao; five (5) big sachets, weighing 14.2936 grams, from Musa by SPO1 Furog; and a small sachet, weighing 0.3559 gram, from Talib by PO2 Lao.[7]

The three suspects were brought to the HCIS and the seized items indorsed to the Philippine National Police (PNP) Crime Laboratory for examination. Forensic Chemist Austero, who conducted the examination, found that the confiscated sachets all tested positive for *shabu.*[8]

Version of the Defense

The defense offered the sole testimony of Ara, who said that he had been a member of the PNP for 32 years, with a spotless record. On December 20, 2002, SPO3 Ara was in Cotabato City, at the house of his daughter Marilyn, wife of his co-accused Musa. He was set to go that day to the Ombudsman's Davao City office for some paperwork in preparation for his retirement on July 8, 2003. He recounted expecting at least PhP 1.6 million in retirement benefits.[9] Early that morning, past three o'clock, he and Musa headed for Davao City on board the latter's car. As he was feeling weak, Ara slept in the back seat.

Upon reaching Davao City, he was surprised to see another man, Mike Talib, in the front seat of the car when he woke up. Musa explained that Talib had hitched a ride on a bridge they had passed.[10]

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

[7] *Id.* at 9.

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

[9] *Id.* at 11.

[10] *Id.* at 12.

When they arrived in Toril, Ara noticed the car to be overheating, so they stopped. Ara did not know that they were near St. Peter's College since he was not familiar with the area. Talib alighted from the car and Ara transferred to the front seat. While Talib was getting into the back seat, PO1 Ayao came out of nowhere, pointed his .45 caliber pistol at Ara even if he was not doing anything, and ordered him to get off the vehicle. He saw that guns were also pointed at his companions. As the group were being arrested, he told PO1 Ayao that he was also a police officer. Ara insisted that he was not holding anything and that the *shabu* taken from him was planted. He asserted that the only time he saw *shabu* was on television.[11]

The Ruling of the Trial Court

The RTC pronounced accused-appellants guilty of the crimes charged. In its Decision dated March 1, 2003, the trial court held that the prosecution was able to establish the quantum of proof showing the guilt of accused-appellants beyond reasonable doubt. It further ruled that the "intercept operation" conducted by the buy-bust team was valid.

The dispositive portion of the RTC Decision reads:

WHEREFORE, premised on the foregoing the Court finds the following:

In Criminal Case No. 51,471-2002, the accused herein SANGKI ARA *Y* MASOL, Filipino, 55 years old, widower, a resident of Kabuntalan, Cotabato City, is hereby found GUILTY beyond reasonable doubt, and is CONVICTED of the crime of violation of Sec. 5, 1st paragraph of Republic Act 9165. He is hereby imposed the DEATH PENALTY and FINE of TEN MILLION PESOS (PhP 10,000,000) with all the accessory penalties corresponding thereto, including absolute perpetual disqualification from any public office, in view of the provision of section 28 of RA 9165 quoted above.

Since the prosecution proved beyond reasonable doubt that the crime was committed in the area which is only five (5) to six (6) meters away from the school, the provision of Section 5 paragraph 3

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[11] *Id.* at 13.

Article II of RA 9165 was applied in the imposition of the maximum penalty against the herein accused.

In Criminal Case No. 51,472-2002, the accused herein MIKE TALIB *y* MAMA, Filipino, of legal age, single and a resident of Parang, Cotabato, is found GUILTY beyond reasonable doubt, and is CONVICTED of the crime of violation of Sec. 11, 3rd paragraph, Article II of Republic Act 9165. He is hereby imposed a penalty of Imprisonment of SIXTEEN (16) YEARS and a fine of THREE HUNDRED THOUSAND PESOS (PhP 300,000) with all the accessory penalties corresponding thereto.

In Criminal Case No. 51,473-2002 the accused herein JORDAN MUSA *Y* BAYAN, Filipino, 30 years old, married and a resident of Cotabato City, is hereby found GUILTY beyond reasonable doubt and is CONVICTED of the crime for Violation of Sec. 11, 1st paragraph, Article II of Republic Act No. 9165. He is hereby sentenced to suffer a penalty of LIFE IMPRISONMENT and FINE of FOUR HUNDRED THOUSAND PESOS (PhP 400,000) with all the accessory penalties corresponding thereto.

SO ORDERED.[12]

As the death penalty was imposed on Ara, the case went on automatic review before this Court. Conformably with *People v. Mateo*,[13] we, however, ordered the transfer of the case to the CA.

The Ruling of the Appellate Court

Contesting the RTC Decision, accused-appellants filed separate appeals before the CA. Talib claimed that it was erroneous for the trial court to have used the complaining witnesses' affidavits as basis for ruling that their arrest was valid. He also cited as erroneous the trial court's refusal to rule that the prosecution's evidence was inadmissible. Lastly, he questioned the failure of the buy-bust team to follow the requirements of RA 9165 on proper inventory of seized drugs.

Ara and Musa filed a joint brief, alleging the following: (1) the trial court erred in denying the Motion to Suppress and/or

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[12] CA *rollo*, pp. 45-46.

[13] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

exclude illegally obtained evidence; (2) the trial court erred in denying the Demurrer to Evidence; (3) the trial court failed to consider that the criminal informations did not allege conspiracy among the accused; and (4) the trial court erred in ruling that the "intercept operation" was valid.

The CA affirmed the trial court's decision with some modifications on the penalty imposed. It ruled that a majority of the errors raised in the appeal referred to technicalities in the conduct of buy-bust operations that did not invalidate the police officers' actions. On the issue of the evidence presented, the CA held that the presumption that police officers performed their duties in a regular manner was not overturned.

The appellate court resolved the issue of the validity of the buy-bust operation by stating that the law requires no specific method of conducting such an operation. It ruled that to require a warrant of arrest would not accomplish the goal of apprehending drug pushers *in flagrante delicto.* The CA's Decision emphasized that all the elements necessary for the prosecution of illegal sale of drugs were established.

The *fallo* of the December 13, 2007 CA Decision reads:

WHEREFORE, premises foregoing, the appeal is hereby DISMISSED and the appealed March 1, 2003 Decision is hereby AFFIRMED subject to the modification insofar as the death penalty imposed upon accused SPO3 Sangki Ara is concerned. Accordingly, his penalty is hereby reduced to life imprisonment pursuant to Republic Act No. 9346.

SO ORDERED.[14]

On December 17, 2008, this Court required the parties to submit supplemental briefs if they so desired. The parties, save for Musa, manifested their willingness to forego the filing of additional briefs.

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[14] *Rollo*, p. 32. The Decision was penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Michael P. Elbinias, concurring.

The Issues

Reiterating the matters raised before the CA, accused-appellants alleged the following:

I

Whether the Court of Appeals erred in holding that the arrest of the accused-appellants was valid based on the affidavits of the complaining witnesses

II

Whether the Court of Appeals erred in disregarding the apparent defects and inconsistencies in the affidavits of the complaining witnesses

III

Whether the Court of Appeals erred in refusing to consider the suppression or exclusion of evidence

IV

Whether the Court of Appeals erred in not holding that the prosecution miserably failed to prove the guilt of the accused beyond reasonable doubt

Talib also raises the following grounds for his acquittal:

I

Whether the arrest of Talib was illegal and the evidence confiscated from him illegally obtained

II

Whether the police officers who conducted the illegal search and arrest also deliberately failed and/or violated the provisions of RA 9165

III

Whether the testimonies of the prosecution's witnesses and their respective affidavits were gravely inconsistent

Ara and Musa additionally raise the following issues:

I

Whether the trial court erred in denying the Demurrer to Evidence

II

Whether the trial court failed to consider that the criminal informations did not allege conspiracy among the accused

III

Whether the trial court erred in ruling that the "intercept operation" was valid

Accused-appellant Musa also avers that the CA erred in convicting him since the prosecution failed to prove the *corpus delicti* of the offense charged.

The Ruling of this Court

What are mainly raised in this appeal are (1) whether the buy-bust conducted was valid; (2) whether the crimes of illegal sale and illegal possession of drugs were sufficiently established; and (3) whether the chain of custody over the *shabu* was unbroken.

Warrantless Arrest and Seizure Valid

In calling for their acquittal, accused-appellants decry their arrest without probable cause and the violation of their constitutional rights. They claim that the buy-bust team had more than a month to apply for an arrest warrant yet failed to do so.

Owing to the special circumstances surrounding the drug trade, a buy-bust operation has long been held as a legitimate method of catching offenders. It is a form of entrapment employed as an effective way of apprehending a criminal in the act of commission of an offense.[15] We have ruled that a buy-bust operation can be carried out after a long period of planning. The period of planning for such operation cannot be dictated to the police authorities who are to undertake such operation.[16] It

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[15] *People v. Encila*, G.R. No. 182419, February 10, 2009.

[16] *Quinicot v. People*, G. R. No. 179700, June 22, 2009.

is unavailing then to argue that the operatives had to first secure a warrant of arrest given that the objective of the operation was to apprehend the accused-appellants *in flagrante delicto.* In fact, one of the situations covered by a lawful warrantless arrest under Section 5(a), Rule 113 of the Rules of Court is when a person has committed, is actually committing, or is attempting to commit an offense in the presence of a peace officer or private person.

It is erroneous as well to argue that there was no probable cause to arrest accused-appellants. Probable cause, in warrantless searches, must only be based on reasonable ground of suspicion or belief that a crime has been committed or is about to be committed. There is no hard and fast rule or fixed formula for determining probable cause, for its determination varies according to the facts of each case.[17] Probable cause was provided by information gathered from the CI and from accused-appellants themselves when they instructed PO1 Ayao to enter their vehicle and begin the transaction. The illegal sale of *shabu* inside accused-appellants' vehicle was afterwards clearly established. Thus, as we have previously held, the arresting officers were justified in making the arrests as accused-appellants had just committed a crime when Ara sold *shabu* to PO1 Ayao.[18] Talib and Musa were also frisked for contraband as it may be logically inferred that they were also part of Ara's drug activities inside the vehicle. This inference was further strengthened by Musa's attempt to drive the vehicle away and elude arrest.

Moreover, the trial court correctly denied the Motion to Suppress or Exclude Evidence. We need not reiterate that the evidence was not excluded since the buy-bust operation was shown to be a legitimate form of entrapment. The pieces of evidence thus seized therein were admissible. As the appellate court noted, it was within legal bounds and no anomaly was found in the conduct of the buy-bust operation. There is, therefore, no basis

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[17] *Epie, Jr. v. Ulat-Marredo*, G.R. No. 148117, March 22, 2007, 518 SCRA 641, 647.

[18] *People v. Lopez*, G.R. No. 181441, November 14, 2008.

for the assertion that the trial court's order denying said motion was biased and committed with grave abuse of discretion.

Prosecution Established Guilt Beyond Reasonable Doubt

For the successful prosecution of the illegal sale of *shabu*, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[19] All these requisites were met by the prosecution.

In contrast, Ara, the sole defense witness, could only proffer the weak defenses of denial and alibi. He expressed surprise at having Talib in his car and claimed he was framed and that the *shabu* confiscated from him was planted. According to the trial court, however, Ara's lying on the witness stand "was so intense as he tried very hard in vain to win the Court's sympathy."[20]

Given the prosecution's evidence, we rule that the presumption of regularity in the performance of official duties has not been overturned. The presumption remains because the defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive.[21] Ara could not explain why his fellow police officers, who did not know him prior to his arrest, would frame him for such a serious offense.

Validity of Buy-Bust Operation

Likewise questioned by the defense in the affidavits of the police officers was the allegation that there was a legitimate buy-bust operation. No marked money was presented to back up the police officers' claims. This argument lacks basis, however. There are requirements that must be complied with in proving the legitimacy of drug buy-bust operations. Nevertheless, this

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[19] *Cruz v. People*, G.R. No. 164580, February 6, 2009.

[20] CA *rollo*, p. 43.

[21] *People v. Concepcion*, G.R. No. 178876, June 27, 2008.

Court has ruled that presentation of the marked money used is not such a requirement. In the prosecution for the sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution, as long as the sale of dangerous drugs is adequately proved and the drug subject of the transaction is presented before the court.[22] In the instant case, the police officers' testimonies adequately established the illegal sale of *shabu*. The *shabu* was then presented before the trial court. The non-presentation of the marked money may, thus, be overlooked as a peripheral matter.

Talib further contends that it is incredible that a *shabu* transaction would be carried out in a very open and public place. Contrary to Talib's claim, however, judicial experience has shown that drug transactions have been conducted without much care for an inconspicuous location.

Thus, we observed in *People v. Roldan*:

> Drug pushing when done on a small level x x x belongs to that class of crimes that may be committed at anytime and at any place. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade these factors may even serve to camouflage the same. Hence, the Court has sustained the conviction of drug pushers caught selling illegal drugs in a billiard hall, in front of a store, along a street at 1:45 p.m., and in front of a house.[23]

It is also argued as impossible to believe that even if there was already a deal between the informant and accused-appellants, it was the apprehending police officer who acted as the buyer and that he requested to see the *shabu* first before showing the money. These claims by Talib are similarly undeserving of consideration. *First*, there is no uniform method by which drug

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[22] *Cruz v. People*, *supra* note 19.

[23] G.R. No. 98398, July 6, 1993, 224 SCRA 536, 548; citing *People v. Paco*, G.R. No. 76893, February 27, 1989, 170 SCRA 681 (other citations omitted).

pushers and their buyers operate. *Second*, the choice of effective ways to apprehend drug dealers is within the ambit of police authority. Police officers have the expertise to determine which specific approaches are necessary to enforce their entrapment operations.[24] *Third*, as long as they enjoy credibility as witnesses, the police officers' account of how the buy-bust operation transpired is entitled to full faith and credit.[25] *Lastly*, these arguments are merely incidental and do not affect the elements of the crime which have been, in the instant case, sufficiently established.

Talib also alleges that during his testimony, SPO1 Furog was not certain as to the reason he was apprehending Musa. Another claim is that SPO1 Furog, when examined by the prosecutor and two different defense lawyers, allegedly made relevant inconsistencies in his testimony. The pertinent exchange reads:

Direct Examination of SPO1 Furog:

Prosecutor Weis:

Q What was your basis for stopping [Musa] from letting the car go?

A I made him [stop] the car[.] [W]e [had] to check them first because I think Ayao saw [that] Ara [had] the suspected *shabu*.

Cross-Examination of SPO1 Furog:

Atty. Estrada

Q When you arrested Musa as you said, it was because he attempted to drive the car away, that was it?

A The most, when SPO3 Sangki Ara told us that he was a PNP member and when we saw the substances from the two of them first.

x x x x x x x x x

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[24] *People v. Lim*, G.R. No. 187503, September 11, 2009.

[25] Unless there is a clear and convincing evidence that the members of the buy-bust team were impelled by any improper motive, or were not properly performing their duties, their testimonies on the operation deserve full faith and credit. *Chan v. Secretary of Justice*, G.R. No. 147065, March 14, 2008.

Q You are referring to Musa and Ara?

A Yes sir.[26]

x x x x x x x x x

Atty. Javines

Q Ayao did not arrest [Ara] inside the vehicle?

A Only I rushed to the vehicle. I don't know if he directly arrested him when he saw the substance and [got] out of the vehicle but I saw him get out from the vehicle.[27]

The alleged inconsistencies in SPO1 Furog's "reason for apprehending Musa" are, however, insignificant and do not merit much consideration as well. The questioned parts in the testimony of SPO1 Furog do not dent the totality of evidence against accused-appellants. To repeat, the elements of the crime of illegal sale of drugs and illegal possession of drugs were both sufficiently established. Although SPO1 Furog was not categorical in explaining his basis for apprehending Musa, the arrest of the latter must be considered as part of a legitimate buy-bust operation which was consummated. Musa's arrest came after the pre-arranged signal was given to the back-up team and this served as basis for the police officers to apprehend all those in the vehicle, including Musa.

Denial of Demurrer to Evidence

Although alleged by accused-appellants Ara and Musa, no reason was given in the appeal as to why the trial court erred in denying their Demurrer to Evidence. Whatever their basis may be, an action on a demurrer or on a motion to dismiss rests on the sound exercise of judicial discretion.[28] In *Gutib v. CA*,[29] we explained that:

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[26] TSN, February 5, 2003, p. 18.

[27] *Id.* at 28.

[28] *Nicolas v. Sandiganbayan,* G.R. Nos. 175930-31, February 11, 2008.

[29] G.R. No. 131209, August 13, 1999, 312 SCRA 365.

A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is *competent* or *sufficient* evidence to sustain the indictment or to support a verdict of guilt.

Here, the trial court found competent and sufficient evidence to support a conviction of all three accused-appellants. We see no reason to overturn the trial court's finding.

Allegation of Conspiracy in Information Not Necessary

We find no merit in accused-appellants' insistence that conspiracy should have been alleged in the separate Informations indicting them. We agree with the appellate court, which succinctly stated that conspiracy was not alleged "precisely because they were charged with different offenses for the distinct acts that each of them committed. One's possession of an illegal drug does not need to be conspired by another who, on his part, also possessed an illegal drug."[30] The three separate indictments against Ara, Musa, and Talib do not need to allege conspiracy, for the act of conspiring and all the elements of the crime must be set forth in the complaint or information only when conspiracy is charged as a crime.[31]

Requirements of RA 9165 on Proper Inventory

Musa contends that since the markings on the seized items were only made at the police station, there is a great possibility that these were replaced. The result, he argues, would be a lack of guarantee that what were inventoried and photographed at the crime laboratory were the same specimens confiscated from the accused.

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[30] *Rollo*, p. 30.

[31] *Lazarte v. Sandiganbayan*, G.R. No. 180122, March 13, 2009.

As recently highlighted in *People v. Cortez*[32] and *People v. Lazaro, Jr.*,[33] RA 9165 and its subsequent Implementing Rules and Regulations (IRR) do not require strict compliance as to the chain of custody rule. The arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Sec. 21, Article II of RA 9165. We have emphasized that what is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."

Briefly stated, non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons, is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation.[34]

The chain of custody in the instant case did not suffer from serious flaws as accused-appellants argue. The recovery and handling of the seized drugs showed that, as to Ara, *first*, PO1 Ayao recovered six plastic sachets of white crystalline substance from Ara and marked them with both his and Ara's initials. *Second*, the sachets were likewise signed by property custodian PO3 Pelenio. *Third*, PO1 Ayao signed a Request for Laboratory Examination then personally delivered the sachets to the PNP Crime Laboratory for examination. *Fourth*, SPO4 Mallorca then received the sachets at the crime laboratory.

As to Musa, *first*, SPO1 Furog seized the sachets from Musa and marked each with his own initials. *Second*, an Inventory of Property Seized was then made by SPO4 Galendez. *Lastly*, SPO1 Furog later submitted a Request for Laboratory Examination of the five (5) sachets weighing a total of 14.2936 grams to the PNP Crime Laboratory.

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[32] G.R. No. 183819, July 23, 2009.

[33] G.R. No. 186418, October 16, 2009.

[34] *People v. Daria*, G.R. No. 186138, September 11, 2009.

As to Talib, *first*, PO2 Lao seized a small sachet from Talib during the buy-bust operation. *Second*, PO2 Lao delivered a Request for Laboratory Examination of one (1) sachet of suspected *shabu* weighing 0.3559 gram. *Third*, SPO4 Mallorca also received the items at the PNP Crime Laboratory.

Forensic Chemist Noemi Austero's examination of the sachets confiscated from all accused-appellants showed that these were positive for *shabu*. During trial, the seized items were identified in court. The five (5) sachets taken from Musa were marked Exhibits "A-1" to "A-5", while the sachet seized from Talib was marked Exhibit "B". The six (6) sachets taken from Ara were marked Exhibits "B1-B6".

We are, thus, satisfied that the prosecution was able to preserve the integrity and evidentiary value of the *shabu* in all three criminal cases against accused-appellants.

The rest of the arguments interposed are evidently without merit and do not warrant discussion.

Penalties Imposed

Criminal Case No. 51,472-2002 against Talib

The crime of illegal possession of drugs is punishable by Sec. 11 of RA 9165, as follows:

> Sec. 11. *Possession of Dangerous Drugs*. – x x x
>
> x x x x x x x x x
>
> 3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x methamphetamine hydrochloride x x x.

Talib was sentenced to imprisonment of sixteen (16) years and a fine of PhP 300,000.

Criminal Case No. 51,473-2002 against Musa

The provision Musa was charged of violating provides the following penalty:

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;

Musa was sentenced to life imprisonment and a fine of PhP 400,000.

Criminal Case No. 51,471-2002 against Ara

The crime of illegal sale of *shabu* is penalized by Sec. 5, Art. II of RA 9165:

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. – The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The same section contains the following provision:

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

Since the sale of *shabu* was within five (5) to six (6) meters from St. Peter's College, the maximum penalty of death should be imposed on Ara. Pursuant to RA 9346 or "An Act Prohibiting the Imposition of Death Penalty in the Philippines," however, only life imprisonment and a fine shall be meted on him.

Ara was sentenced to life imprisonment and a fine of PhP 10,000,000. He, however, is no longer eligible for parole.

What distinguishes this case from others is that one of the accused-appellants was a police officer himself who should have known better than to break the law he was duty-bound to enforce. What is more, he is charged with the crime of selling illegal drugs, an offense so horrendous for destroying the lives of its victims and their families that the penalty of death used to be imposed on its perpetrators. No one could have been more deserving of such a punishment than someone who should be enforcing the law but caught pushing drugs instead. As it was, the death penalty was indeed originally imposed on SPO3 Ara, who had been in the service for more than 30 years.

The ill effects of the use of illegal drugs are too repulsive and shocking to enumerate. Thus, once the charges of sale and possession of said drugs are established in cases such as this, any errors or technicalities raised by the suspects should not be allowed to invalidate the actions of those involved in curtailing their illegal activities. The punishments given to drug pushers should serve as deterrent for others not to commit the same offense. No price seems high enough for drug dealers to pay; it is just unfortunate that the penalty of death can no longer be imposed because it has been abolished.

As the penalties meted out to all three accused-appellants are within the range provided by RA 9165, we affirm the CA's sentence.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 00025B entitled *People of the Philippines v. SPO3 Sangki Ara y Mirasol, Mike Talib y Mama, Jordan Musa y Bayan* is *AFFIRMED* with the modification that accused-appellant Sangki Ara is not eligible for parole.

SO ORDERED.

Corona (Chairperson), Nachura, Peralta, and *Del Castillo,*[*] *JJ.,* concur.

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[*] Additional member per Special Order No. 805 dated December 4, 2009.

THIRD DIVISION

[G.R. No. 186242. December 23, 2009]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **CITY TREASURER and CITY ASSESSOR of the CITY OF MANILA,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; NATIONAL GOVERNMENT; INSTRUMENTALITIES; GOVERNMENT SERVICE INSURANCE SYSTEM; INITIAL EXEMPTION UNDER CA 186.—** In 1936, Commonwealth Act No. (CA) 186 was enacted abolishing the then pension systems under Act No. 1638, as amended, and establishing the GSIS to manage the pension system, life and retirement insurance, and other benefits of all government employees. Under what may be considered as its first charter, the GSIS was set up as a non-stock corporation managed by a board of trustees. Notably, Section 26 of CA 186 provided exemption from any legal process and liens but only for insurance policies and their proceeds, thus: Section 26. Exemption from legal process and liens. — No policy of life insurance issued under this Act, or the proceeds thereof, when paid to any member thereunder, nor any other benefit granted under this Act, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of such member, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the member for payment of his debt.

2. **ID.; ID.; ID.; ID.; FULL TAX EXEMPTION UNDER P.D. 1146.—** In 1977, PD 1146, otherwise known as the *Revised Government Service Insurance Act of 1977*, was issued, providing for an expanded insurance system for government employees. Sec. 33 of PD 1146 provided for a new tax treatment for GSIS, thus: **Section 33.** *Exemption from Tax, Legal Process and Lien.* It is hereby declared to be the policy of the State

that the actuarial solvency of the funds of the System shall be preserved and maintained at all times and that the contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the System and/or their employees. Taxes imposed on the System tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits under this Act. Accordingly, notwithstanding any laws to the contrary, the **System, its assets, revenues including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. These exemptions shall continue unless expressly and specifically revoked and any assessment against the System as of the approval of this Act are hereby considered paid. The benefits granted under this Act shall not be subject, among others, to attachment, garnishment, levy or other processes. This, however, shall not apply to obligations of the member to the System, or to the employer, or when the benefits granted herein are assigned by the member with the authority of the System.

3. **ID.; ID.; ID.; ID.; WITHDRAWAL OF TAX EXEMPTION PURSUANT TO R.A. 7160.—** Then came the enactment in 1991 of the LGC or RA 7160, providing the exercise of local government units (LGUs) of their power to tax, the scope and limitations thereof, and the exemptions from taxations. Of particular pertinence is the general provision on withdrawal of tax exemption privileges in Sec. 193 of the LGC, and the special provision on withdrawal of exemption from payment of real property taxes in the last paragraph of the succeeding Sec. 234, thus: SEC. 193. *Withdrawal of Tax Exemption Privileges*. – Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or -controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code. SEC. 234. *Exemption from Real Property Tax.* – x x x Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned

or controlled corporation are hereby withdrawn upon the effectivity of this Code. From the foregoing provisos, there can be no serious doubt about the Congress' intention to withdraw, subject to certain defined exceptions, tax exemptions granted prior to the passage of RA 7160. The question that easily comes to mind then is whether or not the full tax exemption heretofore granted to GSIS under PD 1146, particular insofar as realty tax is concerned, was deemed withdrawn. We answer in the affirmative. In *Mactan Cebu International Airport Authority v. Marcos*, the Court held that the express withdrawal by the LGC of previously granted exemptions from realty taxes applied to instrumentalities and government-owned and controlled corporations (GOCCs), such as the Mactan-Cebu International Airport Authority. In *City of Davao v. RTC, Branch XII, Davao City*, the Court, citing *Mactan Cebu International Airport Authority*, declared the GSIS liable for real property taxes for the years 1992 to 1994 (contested real estate tax assessment therein), its previous exemption under PD 1146 being considered withdrawn with the enactment of the LGC in 1991.

4. **ID.; ID.; ID.; ID.; FULL TAX EXEMPTION REENACTED THROUGH R.A. 8291.**— Indeed, almost 20 years to the day after the issuance of the GSIS charter, *i.e.*, PD 1146, it was further amended and expanded by RA 8291 which took effect on June 24, 1997. Under it, the full tax exemption privilege of GSIS was restored, the operative provision being Sec. 39 thereof, a virtual replication of the earlier quoted Sec. 33 of PD 1146. Sec. 39 of RA 8291 reads: SEC. 39. *Exemption from Tax, Legal Process and Lien*. – It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the GSIS shall be preserved and maintained at all times and that contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the GSIS and their employers. Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act. Accordingly, notwithstanding, any laws to the contrary, the **GSIS, its assets, revenues including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. **These exemptions shall continue unless expressly and**

specifically revoked and any assessment against the GSIS as of the approval of this Act are hereby considered paid. Consequently, all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect. Moreover, **these exemptions shall not be affected by subsequent laws to the contrary unless this section is expressly, specifically and categorically revoked or repealed by law and a provision is enacted to substitute or replace the exemption referred to herein as an essential factor to maintain or protect the solvency of the fund**, notwithstanding and independently of the guaranty of the national government to secure such solvency or liability. The **funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial agencies or administrative bodies** including Commission on Audit (COA) disallowances and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS.

5. **ID.; ID.; ID.; ID.; ID.; ANY ASSESSMENT AGAINST THE GSIS AS OF THE DATE OF APPROVAL OF RA 8291 IS CONSIDERED PAID.—** While recognizing the exempt status of GSIS owing to the reenactment of the full tax exemption clause under Sec. 39 of RA 8291 in 1997, the *ponencia* in *City of Davao* appeared to have failed to take stock of and fully appreciate the all-embracing condoning proviso in the very same Sec. 39 which, for all intents and purposes, considered as paid "**any assessment against the GSIS as of the approval of this Act**." If only to stress the point, we hereby reproduce the pertinent portion of said Sec. 39: SEC. 39. *Exemption from Tax, Legal Process and Lien*. – x x x Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act. Accordingly, notwithstanding, any laws to the contrary, the **GSIS, its assets,** revenues including all accruals

thereto, and benefits paid, **shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. **These exemptions shall continue** unless expressly and specifically revoked **and <u>any assessment against the GSIS as of the approval of this Act are hereby considered paid</u>**. Consequently, all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect.

6. ID.; ID.; ID.; ID.; ID.; BENEFICIAL USE DOCTRINE.— It is true that said Sec. 234(a), quoted below, exempts from real estate taxes real property owned by the Republic, unless the beneficial use of the property is, for consideration, transferred to a taxable person. SEC. 234. *Exemptions from Real Property Tax*. – **The following are exempted from payment of the real property tax**: (a) **Real property owned by the Republic of the Philippines** or any of its political subdivisions **except when the <u>beneficial use</u> thereof has been granted, for consideration or otherwise, to a taxable person**. This exemption, however, must be read in relation with Sec. 133(o) of the LGC, which prohibits LGUs from imposing taxes or fees of any kind on the national government, its agencies, and instrumentalities: SEC. 133. ***Common Limitations on the Taxing Powers of Local Government Units***. – Unless otherwise provided herein, **the exercise of the taxing powers of provinces, cities, municipalities, and *barangays* shall not extend to the levy of the following**: x x x (o) **Taxes, fees or charges of any kinds on the National Government, its agencies and <u>instrumentalities</u>, and local government units**. Thus read together, the provisions allow the Republic to grant the beneficial use of its property to an agency or instrumentality of the national government. Such grant does not necessarily result in the loss of the tax exemption. The tax exemption the property of the Republic or its instrumentality carries ceases only if, as stated in Sec. 234(a) of the LGC of 1991, "beneficial use thereof has been granted, for a consideration or otherwise, to a taxable person."

7. TAXATION; LAND OWNED BY INSTRUMENTALITY OF NATIONAL GOVERNMENT; BENEFICIAL USE; PROPERTY TAX; TO BE PAID BY PERSON WHO HAD

BENEFICIAL USE.— As we declared in *Testate Estate of Concordia T. Lim*, "the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner." Of the same tenor is the Court's holding in the subsequent *Manila Electric Company v. Barlis* and later in *Republic v. City of Kidapawan*. Actual use refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof.

8. **ID.; ID.; ID.; ID.; GSIS PROPERTIES ARE EXEMPT FROM ANY ATTACHMENT, GARNISHMENT, EXECUTION, LEVY, OR OTHER LEGAL PROCESSES.—** A valid tax levy presupposes a corresponding tax liability. Nonetheless, it will not be remiss to note that it is without doubt that the subject GSIS properties are exempt from any attachment, garnishment, execution, levy, or other legal processes. This is the clear import of the third paragraph of Sec. 39, RA 8291, which we quote anew for clarity: SEC. 39. *Exemption from Tax, Legal Process and Lien*. – x x x. x x x The **funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial agencies or administrative bodies** including Commission on Audit (COA) disallowances and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS.

APPEARANCES OF COUNSEL

GSIS Law Office for petitioner.
Office of the City Legal Officer (Manila) for respondents.

DECISION

VELASCO, JR., *J.*:

The Case

For review under Rule 45 of the Rules of Court on pure question of law are the November 15, 2007 Decision[1] and January 7, 2009 Order[2] of the Regional Trial Court (RTC), Branch 49 in Manila, in Civil Case No. 02-104827, a suit to nullify the assessment of real property taxes on certain properties belonging to petitioner Government Service Insurance System (GSIS).

The Facts

Petitioner GSIS owns or used to own two (2) parcels of land, one located at Katigbak 25th St., Bonifacio Drive, Manila (Katigbak property), and the other, at Concepcion cor. Arroceros Sts., also in Manila (Concepcion-Arroceros property). Title to the Concepcion-Arroceros property was transferred to this Court in 2005 pursuant to Proclamation No. 835[3] dated April 27, 2005. Both the GSIS and the Metropolitan Trial Court (MeTC) of Manila occupy the Concepcion-Arroceros property, while the Katigbak property was under lease.

The controversy started when the City Treasurer of Manila addressed a letter[4] dated September 13, 2002 to GSIS President and General Manager Winston F. Garcia informing him of the unpaid real property taxes due on the aforementioned properties for years 1992 to 2002, broken down as follows: (a) PhP 54,826,599.37 for the Katigbak property; and (b) PhP 48,498,917.01 for the Concepcion-Arroceros property. The letter warned of the inclusion of the subject properties in

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[1] *Rollo*, pp. 29-38. Penned by Judge Concepcion S. Alarcon-Vergara.

[2] *Id.* at 39.

[3] *Id.* at 51-52, entitled "Amending Proclamation No. 78 dated October 13, 1954 by Transferring the Property Housing the Former Offices of the [GSIS] to the Supreme Court of the Philippines, Reserving the Same for the City of Manila Hall of Justice."

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

the scheduled October 30, 2002 public auction of all delinquent properties in Manila should the unpaid taxes remain unsettled before that date.

On September 16, 2002, the City Treasurer of Manila issued separate Notices of Realty Tax Delinquency[5] for the subject properties, with the usual warning of seizure and/or sale. On October 8, 2002, GSIS, through its legal counsel, wrote back emphasizing the GSIS' exemption from all kinds of taxes, including realty taxes, under Republic Act No. (RA) 8291.[6]

Two days after, GSIS filed a petition for *certiorari* and prohibition[7] with prayer for a restraining and injunctive relief before the Manila RTC. In it, GSIS prayed for the nullification of the assessments thus made and that respondents City of Manila officials be permanently enjoined from proceedings against GSIS' property. GSIS would later amend its petition[8] to include the fact that: (a) the Katigbak property, covered by TCT Nos. 117685 and 119465 in the name of GSIS, has, since November 1991, been leased to and occupied by the Manila Hotel Corporation (MHC), which has contractually bound itself to pay any realty taxes that may be imposed on the subject property; and (b) the Concepcion-Arroceros property is partly occupied by GSIS and partly occupied by the MeTC of Manila.

The Ruling of the RTC

By Decision of November 15, 2007, the RTC dismissed GSIS' petition, as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered, DISMISSING the petition for lack of merit, and declaring the assessment conducted by the respondents City of Manila on the subject real properties of GSIS as valid pursuant to law.
>
> SO ORDERED.[9]

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[5] *Id.* at 53, 54-55.

[6] *Id.* at 56-62.

[7] *Id.* at 63-76, dated October 7, 2002.

[8] *Id.* at 77-90.

[9] *Id.* at 38.

GSIS sought but was denied reconsideration per the assailed Order dated January 7, 2009.

Thus, the instant petition for review on pure question of law.

The Issues

1. Whether petitioner is exempt from the payment of real property taxes from 1992 to 2002;
2. Whether petitioner is exempt from the payment of real property taxes on the property it leased to a taxable entity; and
3. Whether petitioner's real properties are exempt from warrants of levy and from tax sale for non-payment of real property taxes.[10]

The Court's Ruling

The issues raised may be formulated in the following wise: *first*, whether GSIS under its charter is exempt from real property taxation; *second*, assuming that it is so exempt, whether GSIS is liable for real property taxes for its properties leased to a taxable entity; and *third*, whether the properties of GSIS are exempt from levy.

In the main, it is petitioner's posture that both its old charter, Presidential Decree No. (PD) 1146, and present charter, RA 8291 or the *GSIS Act of 1997*, exempt the agency and its properties from all forms of taxes and assessments, inclusive of realty tax. Excepting, respondents counter that GSIS may not successfully resist the city's notices and warrants of levy on the basis of its exemption under RA 8291, real property taxation being governed by RA 7160 or the *Local Government Code of 1991* (LGC, hereinafter).

The petition is meritorious.

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[10] *Id.* at 11.

First Core Issue: GSIS Exempt from Real Property Tax

Full tax exemption granted through PD 1146

In 1936, Commonwealth Act No. (CA) 186[11] was enacted abolishing the then pension systems under Act No. 1638, as amended, and establishing the GSIS to manage the pension system, life and retirement insurance, and other benefits of all government employees. Under what may be considered as its first charter, the GSIS was set up as a non-stock corporation managed by a board of trustees. Notably, Section 26 of CA 186 provided exemption from any legal process and liens but only for insurance policies and their proceeds, thus:

Section 26. Exemption from legal process and liens. — No policy of life insurance issued under this Act, or the proceeds thereof, when paid to any member thereunder, nor any other benefit granted under this Act, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of such member, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the member for payment of his debt. x x x

In 1977, PD 1146,[12] otherwise known as the *Revised Government Service Insurance Act of 1977*, was issued, providing for an expanded insurance system for government employees. Sec. 33 of PD 1146 provided for a new tax treatment for GSIS, thus:

Section 33. *Exemption from Tax, Legal Process and Lien.* It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the System shall be preserved and maintained

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[11] Entitled "An Act to Create and Establish a 'Government Service Insurance System,' to Provide for its Administration, and to Appropriate the Necessary Funds Therefor."

[12] Entitled "Amending, Expanding, Increasing and Integrating the Social Security and Insurance Benefits of Government Employees and Facilitating the Payment Thereof Under Commonwealth Act No. 186, as Amended, and for Other Purposes," approved on May 31, 1977.

at all times and that the contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the System and/or their employees. Taxes imposed on the System tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits under this Act. Accordingly, notwithstanding any laws to the contrary, the **System, its assets, revenues including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. These exemptions shall continue unless expressly and specifically revoked and any assessment against the System as of the approval of this Act are hereby considered paid.

The benefits granted under this Act shall not be subject, among others, to attachment, garnishment, levy or other processes. This, however, shall not apply to obligations of the member to the System, or to the employer, or when the benefits granted herein are assigned by the member with the authority of the System. (Emphasis ours.)

A scrutiny of PD 1146 reveals that the non-stock corporate structure of GSIS, as established under CA 186, remained unchanged. Sec. 34[13] of PD 1146 pertinently provides that the GSIS, as created by CA 186, shall implement the provisions of PD 1146.

RA 7160 lifted GSIS tax exemption

Then came the enactment in 1991 of the LGC or RA 7160, providing the exercise of local government units (LGUs) of their power to tax, the scope and limitations thereof,[14] and the exemptions from taxations. Of particular pertinence is the general provision on withdrawal of tax exemption privileges in Sec. 193 of the LGC, and the special provision on withdrawal of exemption from payment of real property taxes in the last paragraph of the succeeding Sec. 234, thus:

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[13] Section 34. *Implementing Body.*––The Government Service Insurance System as created and established under Commonwealth Act No. 186 shall implement the provisions of this Act.

[14] Sec. 133(o) of the LGC provides that the taxing power of LGUs shall not extend to the levy of taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities and LGUs.

SEC. 193. *Withdrawal of Tax Exemption Privileges*. – Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or -controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

SEC. 234. *Exemption from Real Property Tax.* – x x x Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporation are hereby withdrawn upon the effectivity of this Code.

From the foregoing provisos, there can be no serious doubt about the Congress' intention to withdraw, subject to certain defined exceptions, tax exemptions granted prior to the passage of RA 7160. The question that easily comes to mind then is whether or not the full tax exemption heretofore granted to GSIS under PD 1146, particular insofar as realty tax is concerned, was deemed withdrawn. We answer in the affirmative.

In *Mactan Cebu International Airport Authority v. Marcos*,[15] the Court held that the express withdrawal by the LGC of previously granted exemptions from realty taxes applied to instrumentalities and government-owned and controlled corporations (GOCCs), such as the Mactan-Cebu International Airport Authority. In *City of Davao v. RTC, Branch XII, Davao City*,[16] the Court, citing *Mactan Cebu International Airport Authority*, declared the GSIS liable for real property taxes for the years 1992 to 1994 (contested real estate tax assessment therein), its previous exemption under PD 1146 being considered withdrawn with the enactment of the LGC in 1991.

Significantly, the Court, in *City of Davao*, stated the observation that the GSIS' tax-exempt status withdrawn in 1992 by the LGC was restored in 1997 by RA 8291.[17]

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[15] G.R. No. 120082, September 11, 1996, 261 SCRA 667.

[16] G.R. No. 127383, 18 August 2005, 467 SCRA 280.

[17] *Id.* at 299.

Full tax exemption reenacted through RA 8291

Indeed, almost 20 years to the day after the issuance of the GSIS charter, *i.e.*, PD 1146, it was further amended and expanded by RA 8291 which took effect on June 24, 1997.[18] Under it, the full tax exemption privilege of GSIS was restored, the operative provision being Sec. 39 thereof, a virtual replication of the earlier quoted Sec. 33 of PD 1146. Sec. 39 of RA 8291 reads:

SEC. 39. *Exemption from Tax, Legal Process and Lien*. – It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the GSIS shall be preserved and maintained at all times and that contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the GSIS and their employers. Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act. Accordingly, notwithstanding, any laws to the contrary, the **GSIS, its assets, revenues including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. **These exemptions shall continue unless expressly and specifically revoked and <u>any assessment against the GSIS as of the approval of this Act are hereby considered paid</u>**. Consequently, all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect.

Moreover, **these exemptions shall not be affected by subsequent laws to the contrary unless this section is expressly, specifically and categorically revoked or repealed by law and a provision is enacted to substitute or replace the exemption referred to herein as an essential factor to maintain or protect the solvency of the fund**, notwithstanding and independently of the guaranty of the national government to secure such solvency or liability.

The **funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial**

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[18] After its publication in the June 9, 1997 issue of the *Philippine Star*.

agencies or administrative bodies including Commission on Audit (COA) disallowances and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS. (Emphasis ours.)

The foregoing exempting proviso, couched as it were in an encompassing manner, brooks no other construction but that GSIS is exempt from all forms of taxes. While not determinative of this case, it is to be noted that prominently added in GSIS' present charter is a paragraph precluding any implied repeal of the tax-exempt clause so as to protect the solvency of GSIS funds. Moreover, an express repeal by a subsequent law would not suffice to affect the full exemption benefits granted the GSIS, unless the following conditionalities are met: **(1) The repealing clause must expressly, specifically, and categorically revoke or repeal Sec. 39; and (2) a provision is enacted to substitute or replace the exemption** referred to herein as an essential factor to maintain or protect the solvency of the fund. These restrictions for a future express repeal, notwithstanding, do not make the proviso an irrepealable law, for such restrictions do not impinge or limit the *carte blanche* legislative authority of the legislature to so amend it. The restrictions merely enhance other provisos in the law ensuring the solvency of the GSIS fund.

Given the foregoing perspectives, the following may be assumed: (1) Pursuant to Sec. 33 of PD 1146, GSIS enjoyed tax exemption from real estate taxes, among other tax burdens, until January 1, 1992 when the LGC took effect and withdrew exemptions from payment of real estate taxes privileges granted under PD 1146; (2) RA 8291 restored in 1997 the tax exempt status of GSIS by reenacting under its Sec. 39 what was once Sec. 33 of P.D. 1146;[19] and (3) If any real estate tax is due to the City of Manila, it is, following *City of Davao*, only for the interim period, or from 1992 to 1996, to be precise.

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[19] *City of Davao*, *supra* note 16.

Real property taxes assessed and due from GSIS considered paid

While recognizing the exempt status of GSIS owing to the reenactment of the full tax exemption clause under Sec. 39 of RA 8291 in 1997, the *ponencia* in *City of Davao* appeared to have failed to take stock of and fully appreciate the all-embracing condoning proviso in the very same Sec. 39 which, for all intents and purposes, considered as paid "**any assessment against the GSIS as of the approval of this Act**." If only to stress the point, we hereby reproduce the pertinent portion of said Sec. 39:

> SEC. 39. *Exemption from Tax, Legal Process and Lien*. – x x x Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act. Accordingly, notwithstanding, any laws to the contrary, the **GSIS, its assets,** revenues including all accruals thereto, and benefits paid, **shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. **These exemptions shall continue** unless expressly and specifically revoked **and <u>any assessment against the GSIS as of the approval of this Act are hereby considered paid</u>**. Consequently, all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect. (Emphasis added.)

GSIS an instrumentality of the National Government

Apart from the foregoing consideration, the Court's fairly recent ruling in *Manila International Airport Authority v. Court of Appeals*,[20] a case likewise involving real estate tax assessments by a Metro Manila city on the real properties administered by MIAA, argues for the non-tax liability of GSIS for real estate taxes. There, the Court held that MIAA does not qualify as a GOCC, not having been organized either as a stock corporation, its capital not being divided into shares, or as a non-stock corporation because it has no members. MIAA is rather an **instrumentality** of the National Government and, hence, outside the purview of local taxation by force of Sec. 133 of the LGC

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[20] G.R. No. 155650, July 20, 2006, 495 SCRA 591.

providing in context that "**unless otherwise provided**," local governments cannot tax national government instrumentalities. And as the Court pronounced in *Manila International Airport Authority*, the airport lands and buildings MIAA administers belong to the Republic of the Philippines, which makes MIAA a mere trustee of such assets. No less than the Administrative Code of 1987 recognizes a scenario where a piece of land owned by the Republic is titled in the name of a department, agency, or instrumentality. The following provision of the said Code suggests as much:

> Sec. 48. *Official Authorized to Convey Real Property*.—Whenever real property of the Government is authorized by law to be conveyed, the deed of conveyance shall be executed in behalf of the government by the following: x x x
>
> (2) For property belonging to the Republic of the Philippines, but titled in the name of x x x any corporate agency or instrumentality, by the executive head of the agency or instrumentality.[21]

While perhaps not of governing sway in all fours inasmuch as what were involved in *Manila International Airport Authority*, *e.g.*, airfields and runways, are properties of the public dominion and, hence, outside the commerce of man, the rationale underpinning the disposition in that case is squarely applicable to GSIS, both MIAA and GSIS being similarly situated. *First*, while created under CA 186 as a non-stock corporation, a status that has remained unchanged even when it operated under PD 1146 and RA 8291, GSIS is not, in the context of the aforequoted Sec. 193 of the LGC, a GOCC following the teaching of *Manila International Airport Authority*, for, like MIAA, GSIS' capital is not divided into unit shares. Also, GSIS has no members to speak of. And by members, the reference is to those who, under Sec. 87 of the Corporation Code, make up the non-stock corporation, and not to the compulsory members of the system who are government employees. Its management is entrusted to a Board of Trustees whose members are appointed by the President.

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[21] Chapter 12, Book I.

Second, the subject properties under GSIS's name are likewise owned by the Republic. The GSIS is but a mere trustee of the subject properties which have either been ceded to it by the Government or acquired for the enhancement of the system. This particular property arrangement is clearly shown by the fact that the disposal or conveyance of said subject properties are either done by or through the authority of the President of the Philippines. Specifically, in the case of the Concepcion-Arroceros property, it was transferred, conveyed, and ceded to this Court on April 27, 2005 through a presidential proclamation, Proclamation No. 835. Pertinently, the text of the proclamation announces that the Concepcion-Arroceros property was earlier ceded to the GSIS on October 13, 1954 pursuant to Proclamation No. 78 for office purposes and had since been titled to GSIS which constructed an office building thereon. Thus, the transfer on April 27, 2005 of the Concepcion-Arroceros property to this Court by the President through Proclamation No. 835. This illustrates the nature of the government ownership of the subject GSIS properties, as indubitably shown in the last clause of Presidential Proclamation No. 835:

> WHEREAS, by virtue of the Public Land Act (Commonwealth Act No. 141, as amended), Presidential Decree No. 1455, and the Administrative Code of 1987, the **President is authorized to transfer any government property that is no longer needed by the agency to which it belongs to other branches or agencies of the government**. (Emphasis ours.)

Third, GSIS manages the funds for the life insurance, retirement, survivorship, and disability benefits of all government employees and their beneficiaries. This undertaking, to be sure, constitutes an essential and vital function which the government, through one of its agencies or instrumentalities, ought to perform if social security services to civil service employees are to be delivered with reasonable dispatch. It is no wonder, therefore, that the Republic guarantees the fulfillment of the obligations of the GSIS to its members (government employees and their beneficiaries) when and as they become due. This guarantee

was first formalized under Sec. 24[22] of CA 186, then Sec. 8[23] of PD 1146, and finally in Sec. 8[24] of RA 8291.

Second Core Issue: Beneficial Use Doctrine Applicable

The foregoing notwithstanding, the leased Katigbak property shall be taxable pursuant to the "beneficial use" principle under Sec. 234(a) of the LGC.

It is true that said Sec. 234(a), quoted below, exempts from real estate taxes real property owned by the Republic, unless the beneficial use of the property is, for consideration, transferred to a taxable person.

SEC. 234. *Exemptions from Real Property Tax*. – **The following are exempted from payment of the real property tax**:

(a) **Real property owned by the Republic of the Philippines** or any of its political subdivisions **except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person**.

This exemption, however, must be read in relation with Sec. 133(o) of the LGC, which prohibits LGUs from imposing taxes or fees of any kind on the national government, its agencies, and instrumentalities:

SEC. 133. ***Common Limitations on the Taxing Powers of Local Government Units***. – Unless otherwise provided herein, **the exercise**

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[22] Section 24. *Accounts to be maintained.* — The System shall keep separate and distinct from one another the following funds:

(a) x x x

The Government of the Republic of the Philippines hereby guarantees the fulfillment of the obligations of the [GSIS] to the members thereof when and as they shall become due.

[23] Section 8. *Government Guarantee.*––The Government of the Republic of the Philippines hereby guarantees the fulfillment of the obligations of the System to its members as and when they fall due.

[24] SEC. 8. *Government Guarantee*. – The government of the Republic of the Philippines hereby guarantees the fulfillment of the obligations of the GSIS to its members as and when they fall due.

of the taxing powers of provinces, cities, municipalities, and *barangays* shall not extend to the levy of the following:

x x x x x x x x x

(o) **Taxes, fees or charges of any kinds on the National Government, its agencies and instrumentalities, and local government units**. (Emphasis supplied.)

Thus read together, the provisions allow the Republic to grant the beneficial use of its property to an agency or instrumentality of the national government. Such grant does not necessarily result in the loss of the tax exemption. The tax exemption the property of the Republic or its instrumentality carries ceases only if, as stated in Sec. 234(a) of the LGC of 1991, "beneficial use thereof has been granted, for a consideration or otherwise, to a taxable person." GSIS, as a government instrumentality, is not a taxable juridical person under Sec. 133(o) of the LGC. GSIS, however, lost in a sense that status with respect to the Katigbak property when it contracted its beneficial use to MHC, doubtless a taxable person. Thus, the real estate tax assessment of PhP 54,826,599.37 covering 1992 to 2002 over the subject Katigbak property is valid insofar as said tax delinquency is concerned as assessed over said property.

Taxable entity having beneficial use of leased property liable for real property taxes thereon

The next query as to which between GSIS, as the owner of the Katigbak property, or MHC, as the lessee thereof, is liable to pay the accrued real estate tax, need not detain us long. MHC ought to pay.

As we declared in *Testate Estate of Concordia T. Lim*, "the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner." Of the same tenor is the Court's holding in the subsequent *Manila Electric*

Company v. Barlis[25] and later in *Republic v. City of Kidapawan*.[26] Actual use refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof.[27]

Being in possession and having actual use of the Katigbak property since November 1991, MHC is liable for the realty taxes assessed over the Katigbak property from 1992 to 2002.

The foregoing is not all. As it were, MHC has obligated itself under the GSIS-MHC Contract of Lease to shoulder such assessment. Stipulation l8 of the contract pertinently reads:

> 18. By law, the Lessor, [GSIS], is exempt from taxes, assessments and levies. Should there be any change in the law or the interpretation thereof or any other circumstances which would subject the Leased Property to any kind of tax, assessment or levy which would constitute a charge against the Lessor or create a lien against the Leased Property, the **Lessee agrees and obligates itself to shoulder and pay such tax, assessment or levy as it becomes due**.[28] (Emphasis ours.)

As a matter of law and contract, therefore, MHC stands liable to pay the realty taxes due on the Katigbak property. Considering, however, that MHC has not been impleaded in the instant case, the remedy of the City of Manila is to serve the realty tax assessment covering the subject Katigbak property to MHC and to pursue other available remedies in case of nonpayment, for said property cannot be levied upon as shall be explained below.

Third Core Issue: GSIS Properties Exempt from Levy

In light of the foregoing disquisition, the issue of the propriety of the threatened levy of subject properties by the City of Manila to answer for the demanded realty tax deficiency is now moot

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[25] G.R. No. 114231, May 18, 2001, 357 SCRA 832 and June 29, 2004, 433 SCRA 11.

[26] G.R. No. 166651, December 9, 2005, 477 SCRA 324.

[27] *Id* at 333-334; citing LOCAL GOVERNMENT CODE, Sec. 199(b).

[28] *Rollo*, p. 48.

and academic. A valid tax levy presupposes a corresponding tax liability. Nonetheless, it will not be remiss to note that it is without doubt that the subject GSIS properties are exempt from any attachment, garnishment, execution, levy, or other legal processes. This is the clear import of the third paragraph of Sec. 39, RA 8291, which we quote anew for clarity:

SEC. 39. *Exemption from Tax, Legal Process and Lien*. – x x x.

x x x x x x x x x

The **funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial agencies or administrative bodies** including Commission on Audit (COA) disallowances and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS. (Emphasis ours.)

The Court would not be indulging in pure speculative exercise to say that the underlying legislative intent behind the above exempting proviso cannot be other than to isolate GSIS funds and properties from legal processes that will either impair the solvency of its fund or hamper its operation that would ultimately require an increase in the contribution rate necessary to sustain the benefits of the system. Throughout GSIS' life under three different charters, the need to ensure the solvency of GSIS fund has always been a legislative concern, a concern expressed in the tax-exempting provisions.

Thus, even granting *arguendo* that GSIS' liability for realty taxes attached from 1992, when RA 7160 effectively lifted its tax exemption under PD 1146, to 1996, when RA 8291 restored the tax incentive, the levy on the subject properties to answer for the assessed realty tax delinquencies cannot still be sustained. The simple reason: The governing law, RA 8291, in force at the time of the levy prohibits it. And in the final analysis, the

proscription against the levy extends to the leased Katigbak property, the beneficial use doctrine, notwithstanding.

Summary

In sum, the Court finds that GSIS enjoys under its charter full tax exemption. Moreover, as an instrumentality of the national government, it is itself not liable to pay real estate taxes assessed by the City of Manila against its Katigbak and Concepcion-Arroceros properties. Following the "beneficial use" rule, however, accrued real property taxes are due from the Katigbak property, leased as it is to a taxable entity. But the corresponding liability for the payment thereof devolves on the taxable beneficial user. The Katigbak property cannot in any event be subject of a public auction sale, notwithstanding its realty tax delinquency. This means that the City of Manila has to satisfy its tax claim by serving the accrued realty tax assessment on MHC, as the taxable beneficial user of the Katigbak property and, in case of nonpayment, through means other than the sale at public auction of the leased property.

WHEREFORE, the instant petition is hereby *GRANTED*. The November 15, 2007 Decision and January 7, 2009 Order of the Regional Trial Court, Branch 49, Manila are *REVERSED* and *SET ASIDE*. Accordingly, the real property tax assessments issued by the City of Manila to the Government Service Insurance System on the subject properties are declared *VOID*, except that the real property tax assessment pertaining to the leased Katigbak property shall be valid if served on the Manila Hotel Corporation, as lessee which has actual and beneficial use thereof. The City of Manila is permanently restrained from levying on or selling at public auction the subject properties to satisfy the payment of the real property tax delinquency.

No pronouncement as to costs.

SO ORDERED.

Corona (Chairperson), Nachura, Peralta, and *Del Castillo,*[*] *JJ.,* concur.

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[*] Additional member per Special Order No. 805 dated December 4, 2009.

SECOND DIVISION

[G.R. No. 186965. December 23, 2009]

TEMIC AUTOMOTIVE PHILIPPINES, INC., *petitioner, vs.* **TEMIC AUTOMOTIVE PHILIPPINES, INC. EMPLOYEES UNION-FFW,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; CONTRACTOR OR SUBCONTRACTOR; OUTSOURCING AS A LEGITIMATE ACTIVITY; REQUISITES COMPLIED WITH IN CASE AT BAR.—** In *Meralco v. Quisumbing*, we joined this universal recognition of outsourcing as a legitimate activity when we held that a company can determine in its best judgment whether it should contract out a part of its work for as long as the employer is motivated **by good faith;** the contracting is not for purposes of **circumventing the law; and does not involve or be the result of malicious or arbitrary action.** For the instant case, both the voluntary arbitrator and the CA recognized that the petitioner was within its right in entering the forwarding agreements with the forwarders as an exercise of its management prerogative. The petitioner's declared objective for the arrangement is to achieve greater economy and efficiency in its operations – a universally accepted business objective and standard that the union has never questioned. x x x Our own examination of the agreement shows that the forwarding arrangement complies with the requirements of Article 106 of the Labor Code and its implementing rules. x x x The forwarding arrangement has been in place since 1998 and no evidence has been presented showing that any regular employee has been dismissed or displaced by the forwarders' employees since then. No evidence likewise stands before us showing that the outsourcing has resulted in a reduction of work hours or the splitting of the bargaining unit – effects that under the implementing rules of Article 106 of the Labor Code can make a contracting arrangement illegal. The other requirements of Article 106, on the other hand, are simply not material to the present petition. Thus, on the whole, we see no evidence or argument effectively

showing that the outsourcing of the forwarding activities violate our labor laws, regulations, and the parties' CBA, specifically that it interfered with, restrained or coerced employees in the exercise of their rights to self-organization as provided in Section 6, par. (f) of the implementing rules.

2. **ID.; ID.; ID.; ID.; ID.; FUNCTIONS OF FORWARDERS *VIS-À-VIS* THOSE OF REGULAR EMPLOYEES OF THE COMPANY; CASE AT BAR.—** The job of forwarding x x x consists not only of a single activity but of several services that complement one another and can best be viewed as one whole process involving a package of services. These services include packing, loading, materials handling and support clerical activities, all of which are directed at the transport of company goods, usually to foreign destinations. It is in the appreciation of these forwarder services as one whole package of inter-related services that we discern a basic misunderstanding that results in the error of equating the functions of the forwarders' employees with those of regular rank-and-file employees of the company. A clerical job, for example, may similarly involve typing and paper pushing activities and may be done on the same company products that the forwarders' employees and company employees may work on, but these similarities do not necessarily mean that all these employees work for the company. The regular company employees, to be sure, work for the company under its supervision and control, but forwarder employees work for the forwarder in the forwarder's own operation that is itself a contracted work from the company. The company controls its employees in the means, method and results of their work, in the same manner that the forwarder controls its own employees in the means, manner and results of their work. x x x Thus, the skills requirements and job content between forwarders' jobs and bargaining unit jobs may be the same, and they may even work on the same company products, but their work for different purposes and for different entities completely distinguish and separate forwarder and company employees from one another. A clerical job, therefore, if undertaken by a forwarders' employee in support of forwarding activities, is not a CBA-covered undertaking or a regular company activity.

3. **ID.; ID.; ID.; ID.; ID.; ID.; FORWARDERS EMPLOYEES NOT CONSIDERED AS REGULAR EMPLOYEES; CASE**

AT BAR.— Significantly, the evidence presented does not also prove the union's point that forwarder employees undertake company rather than the forwarders' activities. We say this mindful that forwarding includes a whole range of activities that may duplicate company activities in terms of the exact character and content of the job done and even of the skills required, but cannot be legitimately labeled as company activities because they properly pertain to forwarding that the company has contracted out. x x x From the perspective of the union in the present case, we note that the forwarding agreements were already in place when the current CBA was signed. In this sense, the union accepted the forwarding arrangement, albeit implicitly, when it signed the CBA with the company. Thereby, the union agreed, again implicitly by its silence and acceptance, that jobs related to the contracted forwarding activities are not regular company activities and are not to be undertaken by regular employees falling within the scope of the bargaining unit but by the forwarders' employees.

4. **ID.; ID.; COLLECTIVE BARGAINING AGREEMENT; VOLUNTARY ARBITRATION; RULING VALID ONLY BETWEEN IMMEDIATE PARTIES; CASE AT BAR.—** As submitted by the parties, the first issue is *"whether or not the company validly contracted out or outsourced the services involving forwarding, packing, loading and clerical activities related thereto."* However, the forwarders, with whom the petitioner had written contracts for these services, were never made parties (and could not have been parties to the voluntary arbitration except with their consent) so that **the various forwarders' agreements could not have been validly impugned through voluntary arbitration and declared invalid as against the forwarders.** The second submitted issue is "*whether or not the functions of the forwarders' employees are functions being performed by regular rank-and-file employees covered by the bargaining unit."* While this submission is couched in general terms, the issue as discussed by the parties is limited to the forwarders' employees undertaking services as clerks, material handlers, system encoders and general clerks, which functions are allegedly the same functions undertaken by regular rank-and-file company employees covered by the bargaining unit. Either way, however, **the issue poses jurisdictional problems as the forwarders' employees**

are not parties to the case and the union has no authority to speak for them. From this perspective, the voluntary arbitration submission covers matters affecting third parties who are not parties to the voluntary arbitration and over whom the voluntary arbitrator has no jurisdiction; thus, the voluntary arbitration ruling cannot bind them. While they may voluntarily join the voluntary arbitration process as parties, no such voluntary submission appears in the record and we cannot presume that one exists. Thus, the voluntary arbitration process and ruling can only be recognized as valid between its immediate parties as a case arising from their collective bargaining agreement. This limited scope, of course, poses no problem as the forwarders and their employees are not indispensable parties and the case is not mooted by their absence. Our ruling will fully bind the immediate parties and shall fully apply to, and clarify the terms of, their relationship, particularly the interpretation and enforcement of the CBA provisions pertinent to the arbitrated issues.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Federation of Free Workers (FFW) Legal Center for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari*[1] filed by Temic Automotive Philippines Inc. (*petitioner*) to challenge the decision[2] and resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 99029.[4]

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[1] Filed pursuant to Rule 45 of the Rules of Court; *Rollo*, pp. 25-53.

[2] Dated October 28, 2008; penned by Associate Justice Isaias Dicdican with Associate Justice Juan Q. Enriquez and Associate Justice Marlene Gonzales-Sison, concurring; *id.* at 8-19.

[3] Dated February 25, 2009, *id.* at 21-22.

[4] *Temic Automotive Philippines, Inc. v. Temic Automotive Phils., Inc. Employees Union-FFW.*

The Antecedents

The petitioner is a corporation engaged in the manufacture of electronic brake systems and comfort body electronics for automotive vehicles. Respondent Temic Automotive Philippines, Inc. Employees Union-FFW (*union*) is the exclusive bargaining agent of the petitioner's rank-and-file employees. On May 6, 2005, the petitioner and the union executed a collective bargaining agreement (CBA) for the period January 1, 2005 to December 31, 2009.

The petitioner is composed of several departments, one of which is the warehouse department consisting of two warehouses – the electronic braking system and the comfort body electronics. These warehouses are further divided into four sections – receiving section, raw materials warehouse section, indirect warehouse section and finished goods section. The union members are regular rank-and-file employees working in these sections as clerks, material handlers, system encoders and general clerks. Their functions are interrelated and include: receiving and recording of incoming deliveries, raw materials and spare parts; checking and booking-in deliveries, raw materials and spare parts with the use of the petitioner's system application processing; generating bar codes and sticking these on boxes and automotive parts; and issuing or releasing spare parts and materials as may be needed at the production area, and piling them up by means of the company's equipment (forklift or jacklift).

By practice established since 1998, the petitioner contracts out some of the work in the warehouse department, specifically those in the receiving and finished goods sections, to three independent service providers or forwarders (*forwarders*), namely: Diversified Cargo Services, Inc. (*Diversified*), Airfreight 2100 (*Airfreight*) and Kuehne & Nagel, Inc. (*KNI*). These forwarders also have their own employees who hold the positions of clerk, material handler, system encoder and general clerk. The regular employees of the petitioner and those of the forwarders share the same work area and use the same equipment, tools and computers all belonging to the petitioner.

This outsourcing arrangement gave rise to a union grievance on the issue of the scope and coverage of the collective bargaining unit, specifically to the question of "*whether or not the functions of the forwarders' employees are functions being performed by the regular rank-and-file employees covered by the bargaining unit*."[5] The union thus demanded that the forwarders' employees be absorbed into the petitioner's regular employee force and be given positions within the bargaining unit. The petitioner, on the other hand, on the premise that the contracting arrangement with the forwarders is a valid exercise of its management prerogative, posited that the union's position is a violation of its management prerogative to determine who to hire and what to contract out, and that the regular rank-and-file employees and their forwarders' employees serving as its clerks, material handlers, system encoders and general clerks do not have the same functions as regular company employees.

The union and the petitioner failed to resolve the dispute at the grievance machinery level, thus necessitating recourse to voluntary arbitration. The parties chose Atty. Roberto A. Padilla as their voluntary arbitrator. Their voluntary arbitration submission agreement delineated the issues to be resolved as follows:

1. Whether or not the company validly contracted out or outsourced the services involving forwarding, packing, loading and clerical activities related thereto; and
2. Whether or not the functions of the forwarders' employees are functions being performed by regular rank-and-file employees covered by the bargaining unit.[6]

To support its position, the union submitted in evidence a copy of the complete manpower complement of the petitioner's warehouse department as of January 3, 2007[7] showing that there were at the time 19 regular company employees and 26

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[5] *Rollo*, pp. 77 and 237.

[6] *Id.* at 241.

[7] *Id.* at 80.

forwarder employees. It also presented the affidavits[8] of Edgardo P. Usog, Antonio A. Muzones, Endrico B. Dumolong, Salvador R. Vargas and Harley J. Noval, regular employees of the petitioner, who deposed that they and the forwarders' employees assigned at the warehouse department were performing the same functions. The union also presented the affidavits of Ramil V. Barit[9] (*Barit*), Jonathan G. Prevendido[10] (*Prevendido*) and Eduardo H. Enano[11] (*Enano*), employees of forwarder KNI, who described their work at the warehouse department.

In its submission,[12] the petitioner invoked the exercise of its management prerogative and its authority under this prerogative to contract out to independent service providers the forwarding, packing, loading of raw materials and/or finished goods and all support and ancillary services (such as clerical activities) for greater economy and efficiency in its operations. It argued that in *Meralco v. Quisumbing*[13] this Court explicitly recognized that the contracting out of work is an employer proprietary right in the exercise of its inherent management prerogative.

The forwarders, the petitioners alleged, are all highly reputable freight forwarding companies providing total logistics services such as customs brokerage that includes the preparation and processing of import and export documentation, cargo handling, transport (air, land or sea), delivery and trucking; and they have substantial capital and are fully equipped with the technical knowledge, facilities, equipment, materials, tools and manpower to service the company's forwarding, packing and loading requirements. Additionally, the petitioner argued that the union is not in a position to question its business judgment, for even their *CBA* expressly recognizes its prerogative to have exclusive

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[8] *Id.* at 91-95.

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

[10] *Id.* at 98-99.

[11] *Id.* at 100-101.

[12] *Id.* at 105-115.

[13] G.R. No. 127598, January 27, 1999, 302 SCRA 173.

control of the management of all functions and facilities in the company, including the exclusive right to plan or control operations and introduce new or improved systems, procedures and methods.

The petitioner maintained that the services rendered by the forwarders' employees are not the same as the functions undertaken by regular rank-and-file employees covered by the bargaining unit; therefore, the union's demand that the forwarders' employees be assimilated as regular company employees and absorbed by the collective bargaining unit has no basis; what the union asks constitutes an unlawful interference in the company's prerogative to choose who to hire as employees. It pointed out that the union could not, and never did, assert that the contracting-out of work to the service providers was in violation of the CBA or prohibited by law.

The petitioner explained that its regular employees' clerical and material handling tasks are not identical with those done by the service providers; the clerical work rendered by the contractors are recording and documentation tasks ancillary to or supportive of the contracted services of forwarding, packing and loading; on the other hand, the company employees assigned as general clerks prepare inventory reports relating to its shipments in general to ensure that the recording of inventory is consistent with the company's general system; company employees assigned as material handlers essentially assist in counter-checking and reporting activities to ensure that the contractors' services comply with company standards.

The petitioner submitted in evidence the affidavits of Antonio Gregorio[14] (*Gregorio*), its warehouse manager, and Ma. Maja Bawar[15] (*Bawar*), its section head.

<u>The Voluntary Arbitration Decision</u>

In his decision of May 1, 2007,[16] the voluntary arbitrator defined forwarding as a universally accepted and normal business

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[14] *Rollo*, pp. 180-184.

[15] *Id.* at 211-216.

[16] *Id.* at 237.

practice or activity, and ruled that the company validly contracted out its forwarding services. The voluntary arbitrator observed that exporters, in utilizing forwarders as travel agents of cargo, mitigate the confusion and delays associated with international trade logistics; the company need not deal with many of the details involved in the export of goods; and given the years of experience and constant attention to detail provided by the forwarders, it may be a good investment for the company. He found that the outsourcing of forwarding work is expressly allowed by the rules implementing the Labor Code.[17]

At the same time, however, the voluntary arbitrator found that the petitioner went beyond the limits of the legally allowable contracting out because the forwarders' employees encroached upon the functions of the petitioner's regular rank-and-file workers. He opined that the forwarders' personnel serving as clerks, material handlers, system encoders and general clerks perform "*functions [that] are being performed by regular rank-and-file employees covered by the bargaining unit*." He also noted that the forwarders' employees perform their jobs in the company warehouse together with the petitioner's employees, use the same company tools and equipment and work under the same company supervisors – indicators that the petitioner exercises supervision and control over all the employees in the warehouse department. For these reasons, he declared the forwarders' employees serving as clerks, material handlers, system encoders and general clerks to be "*employees of the company who are entitled to all the rights and privileges of regular employees of the company including security of tenure*."[18]

The petitioner sought relief from the CA through a petition for review under Rule 43 of the Rules of Court invoking questions of facts and law.[19] It specifically questioned the ruling that the company did not validly contract out the services performed

[17] DOLE Department Order No. 18-02 (2002), Rules Implementing Articles 106 to 109 of the Labor Code, as amended.

[18] *Rollo,* p. 250.

[19] *Id.* at 251-271.

by the forwarders' clerks, material handlers, system encoders and general clerks, and claimed that the voluntary arbitrator acted in excess of his authority when he ruled that they should be considered regular employees of the company.

The CA Decision

In its decision of October 28, 2008,[20] the CA fully affirmed the voluntary arbitrator's decision and dismissed the petition for lack of merit. The discussion essentially focused on three points. *First*, that decisions of voluntary arbitrators on matters of fact and law, acting within the scope of their authority, are conclusive and constitute *res adjudicata* on the theory that the parties agreed that the voluntary arbitrator's decision shall be final. *Second*, that the petitioner has the right to enter into the forwarding agreements, but these agreements should be limited to forwarding services; the petitioner failed to present clear and convincing proof of the delineation of functions and duties between company and forwarder employees engaged as clerks, material handlers, system encoders and general clerks; thus, they should be considered regular company employees. *Third,* on the extent of the voluntary arbitrator's authority, the CA acknowledged that the arbitrator can only decide questions agreed upon and submitted by the parties, but maintained that the arbitrator also has the power to rule on consequential issues that would finally settle the dispute. On this basis, the CA justified the ruling on the employment status of the forwarders' clerks, material handlers, system encoders and general clerks as a necessary consequence that ties up the loose ends of the submitted issues for a final settlement of the dispute.

The CA denied the petitioner's motion for reconsideration, giving way to the present petition.

The Petition

The petition questions as a preliminary issue the CA ruling that decisions of voluntary arbitrators are conclusive and constitute *res adjudicata* on the facts and law ruled upon.

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[20] *Supra* note 2.

Expectedly, it cites as error the voluntary arbitrator's and the CA's rulings that: (a) the forwarders' employees undertaking the functions of clerks, material handlers, system encoders and general clerks exercise the functions of regular company employees and are subject to the company's control; and (b) the functions of the forwarders' employees are beyond the limits of what the law allows for a forwarding agreement.

The petitioner reiterates that there are distinctions between the work of the forwarders' employees and that of the regular company employees. The receiving, unloading, recording or documenting of materials the forwarders' employees undertake form part of the contracted forwarding services. The similarity of these activities to those performed by the company's regular employees does not necessarily lead to the conclusion that the forwarders' employees should be absorbed by the company as its regular employees. No proof was ever presented by the union that the company exercised supervision and control over the forwarders' employees. The contracted services and even the work performed by the regular employees in the warehouse department are also not usually necessary and desirable in the manufacture of automotive electronics which is the company's main business. It adds that as held in *Philippine Global Communications, Inc. v. De Vera,*[21] management can contract out even services that are usually necessary or desirable in the employer's business.

On the issue of jurisdiction, the petitioner argues that the voluntary arbitrator neither had jurisdiction nor basis to declare the forwarders' personnel as regular employees of the company because the matter was not among the issues submitted by the parties for arbitration; in voluntary arbitration, it is the parties' submission of the issues that confers jurisdiction on the voluntary arbitrator. The petitioner finally argues that the forwarders and their employees were not parties to the voluntary arbitration case and thus cannot be bound by the voluntary arbitrator's decision.

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[21] G.R. No. 157214, June 7, 2005, 459 SCRA 260.

The Case for the Union

In its comment,[22] the union takes exception to the petitioner's position that the contracting out of services involving forwarding and ancillary activities is a valid exercise of management prerogative. It posits that the exercise of management prerogative is not an absolute right, but is subject to the limitation provided for by law, contract, existing practice, as well as the general principles of justice and fair play. It submits that both the law and the parties' CBA prohibit the petitioner from contracting out to forwarders the functions of regular employees, especially when the contracting out will amount to a violation of the employees' security of tenure, of the CBA provision on the coverage of the bargaining unit, or of the law on regular employment.

The union disputes the petitioner's claim that there is a distinction between the work being performed by the regular employees and that of the forwarders' employees. It insists that the functions being assigned, delegated to and performed by employees of the forwarders are also those assigned, delegated to and being performed by the regular rank-and-file employees covered by the bargaining unit.

On the jurisdictional issue, the union submits that while the submitted issue is "*whether or not the functions of the forwarders' employees are functions being performed by the regular rank-and-file employees covered by the bargaining unit,*" the ruling of the voluntary arbitrator was a necessary consequence of his finding that the forwarders' employees were performing functions similar to those being performed by the regular employees of the petitioner. It maintains that it is within the power of the voluntary arbitrator to rule on the issue since it is inherently connected to, or a consequence of, the main issues resolved in the case.

The Court's Ruling

We find the petition meritorious.

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[22] *Rollo*, pp. 356-367.

Underlying Jurisdictional Issues

As submitted by the parties, the first issue is *"whether or not the company validly contracted out or outsourced the services involving forwarding, packing, loading and clerical activities related thereto."* However, the forwarders, with whom the petitioner had written contracts for these services, were never made parties (and could not have been parties to the voluntary arbitration except with their consent) so that **the various forwarders' agreements could not have been validly impugned through voluntary arbitration and declared invalid as against the forwarders.**

The second submitted issue is "*whether or not the functions of the forwarders' employees are functions being performed by regular rank-and-file employees covered by the bargaining unit."* While this submission is couched in general terms, the issue as discussed by the parties is limited to the forwarders' employees undertaking services as clerks, material handlers, system encoders and general clerks, which functions are allegedly the same functions undertaken by regular rank-and-file company employees covered by the bargaining unit. Either way, however, **the issue poses jurisdictional problems as the forwarders' employees are not parties to the case and the union has no authority to speak for them.**

From this perspective, the voluntary arbitration submission covers matters affecting third parties who are not parties to the voluntary arbitration and over whom the voluntary arbitrator has no jurisdiction; thus, the voluntary arbitration ruling cannot bind them.[23] While they may voluntarily join the voluntary arbitration process as parties, no such voluntary submission appears in the record and we cannot presume that one exists. Thus, the voluntary arbitration process and ruling can only be recognized as valid between its immediate parties as a case arising from their collective bargaining agreement. This limited

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[23] *Stanfilco Employees Agrarian Reform Beneficiaries Multi-Purpose Cooperative v. Dole Philippines, Inc. (Stanfilco Division)*, G.R. No. 154048, November 27, 2009.

scope, of course, poses no problem as the forwarders and their employees are not indispensable parties and the case is not mooted by their absence. Our ruling will fully bind the immediate parties and shall fully apply to, and clarify the terms of, their relationship, particularly the interpretation and enforcement of the CBA provisions pertinent to the arbitrated issues.

Validity of the Contracting Out

The voluntary arbitration decision itself established, without objection from the parties, the description of the work of forwarding as a basic premise for its ruling. We similarly find the description acceptable and thus adopt it as our own starting point in considering the nature of the service contracted out when the petitioner entered into its forwarding agreements with Diversified, Airfreight and KNI. To quote the voluntary arbitration decision:

> As forwarders they act as travel agents for cargo. They specialize in arranging transport and completing required shipping documentation of respondent's company's finished products. They provide custom crating and packing designed for specific needs of respondent company. These freight forwarders are actually acting as agents for the company in moving cargo to an overseas destination. These agents are familiar with the import rules and regulations, the methods of shipping, and the documents related to foreign trade. They recommend the packing methods that will protect the merchandise during transit. Freight forwarders can also reserve for the company the necessary space on a vessel, aircraft, train or truck.
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> They also prepare the bill of lading and any special required documentation. Freight forwarders can also make arrangement with customs brokers overseas that the goods comply with customs export documentation regulations. They have the expertise that allows them to prepare and process the documentation and perform related activities pertaining to international shipments. As an analogy, freight forwarders have been called travel agents for freight.[24]

In the instant case, both the voluntary arbitrator and the CA recognized that the petitioner was within its right in entering

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[24] *Rollo*, p. 241.

the forwarding agreements with the forwarders as an exercise of its management prerogative. The petitioner's declared objective for the arrangement is to achieve greater economy and efficiency in its operations – a universally accepted business objective and standard that the union has never questioned. In *Meralco v. Quisumbing*,[25] we joined this universal recognition of outsourcing as a legitimate activity when we held that a company can determine in its best judgment whether it should contract out a part of its work for as long as the employer is motivated **by good faith;** the contracting is not for purposes of **circumventing the law; and does not involve or be the result of malicious or arbitrary action.**

While the voluntary arbitrator and the CA saw nothing irregular in the contracting out as a whole, they held otherwise for the ancillary or support services involving clerical work, materials handling and documentation. They held these to be the same as the workplace activities undertaken by regular company rank-and-file employees covered by the bargaining unit who work under company control; hence, they concluded that the forwarders' employees should be considered as regular company employees.

Our own examination of the agreement shows that the forwarding arrangement complies with the requirements of Article 106[26] of the Labor Code and its implementing

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[25] *Supra* note 13.

[26] Article 106. *Contractor or Subcontractor.*

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, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

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

rules.[27] To reiterate, no evidence or argument questions the company's basic objective of achieving "*greater economy and efficiency of operations*." This, to our mind, goes a long way to negate the presence of bad faith. The forwarding arrangement has been in place since 1998 and no evidence has been presented showing that any regular employee has been dismissed or displaced by the forwarders' employees since then. No evidence likewise stands before us showing that the outsourcing has resulted in a reduction of work hours or the splitting of the bargaining unit – effects that under the implementing rules of Article 106 of the Labor Code can make a contracting arrangement illegal. The other requirements of Article 106, on the other hand, are simply not material to the present petition. Thus, on

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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, to prevent any violation or circumvention of any provision 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 latter were directly employed by him.

[27] *Supra* note 17.

Sections 1 and 6 (a) of Department Order No. 18-02 state:

Section 1. *Guiding principles*. – Contracting or subcontracting arrangements are expressly allowed by law and are subject to regulation for the promotion of employment and the observance of the rights of workers to just and humane conditions of work, security of tenure, self-organization, and collective bargaining. Labor-only contracting as defined herein shall be prohibited.

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Section 6. *Prohibitions*. – Notwithstanding Section 5 of these Rules, the following are hereby declared prohibited for being contrary to law or public policy:

(a) Contracting out of a job, work or service when not done in good faith and not justified by the exigencies of the business and the same results in the termination of regular employees and reduction of work hours or reduction or splitting of the bargaining unit;

the whole, we see no evidence or argument effectively showing that the outsourcing of the forwarding activities violate our labor laws, regulations, and the parties' CBA, specifically that it interfered with, restrained or coerced employees in the exercise of their rights to self-organization as provided in Section 6, par. (f) of the implementing rules. The only exception, of course, is what the union now submits as a voluntary arbitration issue – *i.e.*, the failure to recognize certain forwarder employees as regular company employees and the effect of this failure on the CBA's scope of coverage – which issue we fully discuss below.

The job of forwarding, as we earlier described, consists not only of a single activity but of several services that complement one another and can best be viewed as one whole process involving a package of services. These services include packing, loading, materials handling and support clerical activities, all of which are directed at the transport of company goods, usually to foreign destinations.

It is in the appreciation of these forwarder services as one whole package of inter-related services that we discern a basic misunderstanding that results in the error of equating the functions of the forwarders' employees with those of regular rank-and-file employees of the company. A clerical job, for example, may similarly involve typing and paper pushing activities and may be done on the same company products that the forwarders' employees and company employees may work on, but these similarities do not necessarily mean that all these employees work for the company. The regular company employees, to be sure, work for the company under its supervision and control, but forwarder employees work for the forwarder in the forwarder's own operation that is itself a contracted work from the company. The company controls its employees in the means, method and results of their work, in the same manner that the forwarder controls its own employees in the means, manner and results of their work. Complications and confusion result because the company at the same time controls the forwarder in the results of the latter's work, without controlling however the means and manner of the forwarder employees' work. This interaction is best exemplified by the adduced evidence,

particularly the affidavits of petitioner's warehouse manager Gregorio[28] and Section Head Bawar[29] discussed below.

From the perspective of the union in the present case, we note that the forwarding agreements were already in place when the current CBA was signed.[30] In this sense, the union accepted the forwarding arrangement, albeit implicitly, when it signed the CBA with the company. Thereby, the union agreed, again implicitly by its silence and acceptance, that jobs related to the contracted forwarding activities are not regular company activities and are not to be undertaken by regular employees falling within the scope of the bargaining unit but by the forwarders' employees. Thus, the skills requirements and job content between forwarders' jobs and bargaining unit jobs may be the same, and they may even work on the same company products, but their work for different purposes and for different entities completely distinguish and separate forwarder and company employees from one another. A clerical job, therefore, if undertaken by a forwarders' employee in support of forwarding activities, is not a CBA-covered undertaking or a regular company activity.

The best evidence supporting this conclusion can be found in the CBA itself, Article 1, Sections 1, 2, 3 and 4 (VII) of which provide:

Section 1. Recognition and Bargaining Unit. – **Upon the union's representation and showing of continued majority status among the employees covered by the bargaining unit as already appropriately constituted, the company recognizes the union as the sole and exclusive collective bargaining representative of all its regular rank-and-file employees**, except those excluded from the bargaining unit as hereinafter enumerated in Sections 2 and 3 of this Article, for purposes of collective bargaining in respect to their rates of pay and other terms and condition of employment for the duration of this Agreement.

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[28] *Supra* note 14.

[29] *Supra* note 15.

[30] *Rollo*, pp. 29 and 40.

Section 2. Exclusions. The following employment categories are expressly excluded from the bargaining unit and from the scope of this Agreement: executives, managers, supervisors and those employees exercising any of the attributes of a managerial employee; Accounting Department, Controlling Department, Human Resources Department and IT Department employees, department secretaries, the drivers and personnel assigned to the Office of the General Manager and the Office of the Commercial Affairs and Treasury, probationary, temporary and casual employees, security guards, and other categories of employees declared by law to be eligible for union membership.

Section 3. Additional Exclusions. Employees within the bargaining unit heretofore defined, who are promoted or transferred to an excluded employment category as herein before enumerated, shall automatically be considered as resigned and/or disqualified from membership in the UNION and automatically removed from the bargaining unit.

Section 4. Definitions – x x x

VII. A regular employee is one who having satisfactorily undergone the probationary period of employment and passed the company's full requirement for regular employees, such as, but not limited to physical fitness, proficiency, acceptable conduct and good moral character, received an appointment as a regular employee duly signed by the authorized official of the COMPANY.

[Emphasis supplied.]

When these CBA provisions were put in place, the forwarding agreements had been in place so that the forwarders' employees were never considered as company employees who would be part of the bargaining unit. To be precise, the forwarders' employees and their positions were not part of the *appropriate* bargaining unit "***as already constituted.***" In fact, even now, the union implicitly recognizes forwarding as a whole as a legitimate non-company activity by simply claiming as part of their unit the forwarders' employees undertaking allied support activities.

At this point, the union cannot simply turn around and claim through voluntary arbitration the contrary position that some forwarder employees should be regular employees and should

be part of its bargaining unit because they undertake regular company functions. What the union wants is a function of negotiations, or perhaps an appropriate action before the National Labor Relations Commission impleading the proper parties, but not a voluntary arbitration that does not implead the affected parties. The union must not forget, too, that before the inclusion of the forwarders' employees in the bargaining unit can be considered, these employees must first be proven to be regular company employees. As already mentioned, the union does not even have the personality to make this claim for these forwarders' employees. This is the impenetrable wall that the union cannot, for now, pass through using the voluntary arbitration proceedings now before us on appeal.

Significantly, the evidence presented does not also prove the union's point that forwarder employees undertake company rather than the forwarders' activities. We say this mindful that forwarding includes a whole range of activities that may duplicate company activities in terms of the exact character and content of the job done and even of the skills required, but cannot be legitimately labeled as company activities because they properly pertain to forwarding that the company has contracted out.

The union's own evidence, in fact, speaks against the point the union wishes to prove. Specifically, the affidavits of forwarder KNI employees Barit, Prevendido, and Enano, submitted in evidence by the union, confirm that the work they were doing was predominantly related to forwarding or the shipment or transport of the petitioner's finished goods to overseas destinations, particularly to Germany and the United States of America (*USA*).

Barit[31] deposed that on August 2, 2004 he started working at the petitioner's CBE finished goods area as an employee of forwarder Emery Transnational Air Cargo Group; on the same date, he was absorbed by KNI and was assigned the same task of a loader; his actual work involved: making of inventories of CBE finished products in the warehouse; double checking of

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[31] *Supra* note 9.

the finished products he inventoried and those received by the other personnel of KNI; securing from his superior the delivery note and print-out indicating the model and the quantity of products to be exported to Germany; and preparing the loading form and then referring it to his co-workers from the forwarders who gather the goods to be transported to Germany based on the model and quantity needed; with the use of the computer, printing the airway bill which serves as cargo ticket for the airline and posted on every box of finished products before loading on the van of goods bound for Germany; preparing the gate pass for the van. He explained that other products to be shipped to the USA, via sea transport, are picked up by the other forwarders and brought to their warehouse in Parañaque.

Prevendido,[32] also a loader, stated that his actual work involved loading into the container van finished CBE products bound for Germany; when there is a build up for the E.K. Express (Emirates Airlines), he is sent by the petitioner to the airlines to load the finished products and check if they are in good condition; although the inspection and checking of loaded finished products should be done by a company supervisor or clerk, he is asked to do them because he is already there in the area; he also conducts an inventory of finished goods in the finished goods area, prepares loading form schedule and generates the airway bill and is asked by his supervisor to call up KNI for the airway bill number.

Enano,[33] for his part, stated that on November 11, 1998, he was absorbed by KNI after initially working in 1996 for a janitorial service agency which had a contract with the petitioner, he was also a loader and assigned at the finished goods section in the warehouse department; his actual work involved preparing the gate pass for finished products of the petitioner to be released; loading the finished products on the truck and calling up KNI (Air Freight Department) to check on the volume of the petitioner's products for export; making inventories of the

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[32] *Supra* note 10.

[33] *Supra* note 11.

remaining finished products and doing other tasks related to the export of the petitioner's products, which he claimed are supposed to be done by the company's finished goods supervisor; and monitoring of KNI's trucking sub-contractor who handled the transport component of KNI's arrangement with the petitioner.

The essential nature of the outsourced services is not substantially altered by the claim of the three KNI employees that they occasionally do work that pertains to the company's finished goods supervisor or a company employee such as the inspection of goods to be shipped and inventory of finished goods. This was clarified by petitioner's warehouse manager Gregorio[34] and Section Head Bawar[35] in their respective affidavits. They explained that the three KNI employees do not conduct inventory of finished goods; rather, as part of the contract, KNI personnel have to count the boxes of finished products they load into the trucks to ensure that the quantity corresponds with the entries made in the loading form; included in the contracted service is the preparation of transport documents like the airway bill; the airway bill is prepared in the office and a KNI employee calls for the airway bill number, a sticker label is then printed; and that the use of the company forklift is necessary for the loading of the finished goods into the truck.

Thus, even on the evidentiary side, the union's case must fail.

In light of these conclusions, we see no need to dwell on the issue of the voluntary arbitrator's authority to rule on issues not expressly submitted but which arise as a consequence of the voluntary arbitrator's findings on the submitted issues.

WHEREFORE, premises considered, we hereby *NULLIFY* and *SET ASIDE* the assailed Court of Appeals Decision in CA-G.R. SP No. 99029 dated October 28, 2008, together with the Voluntary Arbitrator's Decision of May 1, 2007 declaring the

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[34] *Supra* note 14.

[35] *Supra* note 15.

employees of forwarders Diversified Cargo Services, Inc., Airfreight 2100 and Kuehne & Nagel, Inc., presently designated and functioning as clerks, material handlers, system or data encoders and general clerks, to be regular company employees. No costs.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Del Castillo, and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 187494. December 23, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELMER BARBEROS *alias* "EMIE,"** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; APPEAL OF RAPE CASES; GUIDING PRINCIPLES IN REVIEW OF RAPE CASES.—** By the distinctive nature of rape cases, conviction usually rests solely on the basis of the victim's testimony, provided it is credible, natural, convincing, and consistent with human nature and the normal course of things. Accordingly, the Court has unfailingly adhered to the following guiding principles in the review of similar cases, to wit: (1) an accusation for rape can be made with facility; while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot

be allowed to draw strength from the weakness of the evidence for the defense. Complementing the foregoing principles is the rule that the credibility of the victim is always the single most important issue in prosecution for rape; that in passing upon the credibility of witnesses, the highest degree of respect must be afforded to the findings of the trial court.

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; RELEVANT PROVISIONS DEFINING AND PENALIZING RAPE.—** Rape is defined and penalized under Arts. 266-A and 266-B of the RPC, as amended, which provide: ART. 266-A. *Rape, When and How Committed*. — Rape is committed — 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances: a. **Through force, threat or intimidation**; b. When the offended party is deprived of reason or is otherwise unconscious; x x x (R.A. No. 8353, October 22, 1997.) ART. 266-B. *Penalties*. — **Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua***. Thus, in context, for the charge of rape to prosper, the prosecution must prove that (1) the offender had **carnal knowledge of a woman**, (2) **through force, threat, or intimidation**.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; POSITIVE AND CANDID TESTIMONY OF A YOUNG GIRL THAT SHE HAS BEEN RAPED BY APPELLANT DESERVES FULL FAITH AND CREDIT; CASE AT BAR.—** In the instant case, the prosecution established the elements of carnal knowledge and the force, threat, or intimidation employed. AAA, with firmness and certainty, pointed to appellant Elmer as the person who sexually molested her. She never wavered in her identification and was straightforward in her narration of how the assault occurred. Both the RTC and CA found the eloquent testimony of AAA positive and candid, and not at all rebutted during the cross-examination, thus deserving full weight and credit. When the offended party is of tender age and immature, as here, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame and embarrassment to which she would be exposed if the matter to which she testified is not true. Judging from her live birth certificate, AAA was 15 years old at the time of the incident,

barely 16 or 17 when she took the witness stand in 2000. It is settled that when a girl, more so when she is in her early teens, says she has been raped, she says in effect all that is necessary to prove that rape was committed, and if her testimony meets the test of credibility, that is sufficient to convict the accused. As it were, AAA's testimony as to her hideous experience in the hands of appellant deserves full faith and credit, given as it were in a straightforward and candid manner, unshaken by rigid cross-examination and bereft of inconsistencies, or contradictions in material points.

4. **CRIMINAL LAW; RAPE; ABSENCE OF HYMENAL LACERATION DOES NOT NEGATE COMMISSION OF RAPE; CASE AT BAR.—** Appellant has made much of Dr. Rana's report on the absence of medical traces of hymenal laceration on AAA. Given, however, the unwavering sworn account of AAA as to what she went through in appellant's hands, the Court cannot accord merit to the argument that the lack of physical manifestation of rape weakens the case against the latter. The medical report on AAA is only corroborative of the finding of rape. The absence of external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape. This is because hymenal laceration is not an element of the crime of rape, albeit a healed or fresh laceration is a compelling proof of defloration.

5. **ID.; ID.; FULL PENILE PENETRATION OF THE PENIS INTO VAGINA IS NOT REQUIRED FOR THE COMMISSION OF RAPE.—** In a long line of cases, the Court has consistently held that full penile penetration of the penis into the vagina is not required for the commission of rape, as mere penile entry into the *labia* of the *pudendum* of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape. In *People v. Diunsay-Jalandoni*, citing *People v. Iluis*, we ratiocinated, thus: Further, the absence of external signs of violence does not negate the commission of rape. Nor is the absence of spermatozoa material in the prosecution of a rape case. A freshly broken hymen is, likewise, not an essential element of rape, and healed lacerations do not negate rape because full penetration is not necessary to consummate rape. **Penetration of the penis by entry into**

the *labia* of the *pudendum* of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction of rape.

6. **REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER CATEGORICAL AND MORE CREDIBLE TESTIMONIES; CASE AT BAR.—** Paterna's naturally biased testimony in support of her husband's denial of culpability deserves scant consideration in light of the positive identification and categorical declaration made by AAA against the appellant. When the denial of the accused is tended to be established only by himself, his relatives, or friends, such denial should be accorded the strictest scrutiny—it is necessarily suspect and cannot prevail over the testimonies of the more credible testimonies for the prosecution.

7. **ID.; ID.; CREDIBILITY OF WITNESSES; FABRICATED RAPE CHARGES; SUCH ALLEGED MOTIVES HAVE NEVER SWAYED THE COURT FROM LENDING FULL CREDENCE TO TESTIMONY OF COMPLAINANT; CASE AT BAR.—** The thesis the defense espoused that AAA's family fabricated the charge against Elmer owing to some misunderstanding over a piece of land taxes credulity. For one, no credible evidence had been adduced to prove the supposed land dispute. For another, the lengthy narrative of AAA of how appellant ravished her strikes the Court as a product of her thirst for justice, not as a jumping board to settle old slight. And for a third, the presence of the elements of the crime of rape had been sufficiently established. In *People v. Gagto*, we held that "not a few accused in rape cases have attributed the charges brought against them to family feuds, resentment, or revenge. But such alleged motives have never swayed the court from lending full credence to the testimony of the complainant who remained steadfast throughout her direct and cross examinations, especially a minor in this case."

8. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; PROPER PENALTY.—** The Court also affirms the penalty thus meted on the appellant, *reclusion perpetua* being the imposable penalty even for unqualified rape. Finally, the award by the CA of moral damages in the amount of PhP 50,000, on top of the award of PhP 50,000 as civil indemnity *ex delicto*, is in order, even

without further proof of moral suffering or anguish, as *People v. Jumawid* and other cases teach.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before us is an appeal from the Decision[1] dated March 5, 2008 of the Court of Appeals (CA) in CA-G.R. CEB-CR-HC No. 00316 which affirmed with modification the Judgment[2] of the Regional Trial Court (RTC), Branch 14 in Cebu City, convicting accused-appellant Elmer Barberos *alias* "Emie" of the crime of rape.

The Facts

In an Information dated January 11, 1999 filed before the RTC of Cebu City and docketed thereat as Criminal Case No. CBU-49307, appellant Elmer was indicted for the crime of rape, as defined under Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,[3] allegedly committed as follows:

That on or about the 22nd day of December 1998, at around 12:00 o'clock past dawn, more or less, in Sitio Cambuntan, Barangay Bolinawan, Municipality of Carcar, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, with lewd design and by means of force and intimidation, the accused, did then and there willfully, unlawfully and feloniously choke her throat and threaten

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[1] *Rollo*, pp. 4-20. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Isaias P. Dicdican and Priscilla Baltazar-Padilla.

[2] CA *rollo*, pp. 20-26. Penned by Presiding Judge Raphael B. Yrastorza, Sr.

[3] Otherwise known as the Anti-Rape Law of 1997, which became effective on October 22, 1997.

her "*SABA RON KAY PATYON TA KA*" (GO AHEAD SHOUT AND I WILL KILL YOU), then forcibly open her short pants and panty, tearing her sando, place himself on top of her and forcibly insert his penis into her vagina and succeed in having sexual intercourse with x x x [AAA], a 15 year-old girl against her will and consent.[4]

Upon arraignment, Elmer pleaded not guilty to the above charge.

Version of the Prosecution

The prosecution presented the following witnesses: AAA, the private complainant, and Dr. Daphnie Rana, the examining doctor, to establish the following facts:

In the evening of December 21, 1998, AAA, then 15 years old, along with four friends, watched a variety show near the cemetery of Cambuntan, Bolinawan, Carcar, Cebu. At around 10:00 or 11:00 p.m., a neighbor informed AAA that her father and uncle were quarreling at her grandmother's place. AAA immediately proceeded to her grandmother's house and heard, as she was nearing the place, the raised voices of her father and uncle. Alarmed, she cried for help but nobody heeded her call. It was at this instance that Elmer, a neighbor, drew near her and told her not to worry because he would protect her. Upon the urging of Elmer, AAA went with him to his two-storey house some 50 meters away. He then led her to a room at the second floor and, once inside, locked the door.

After a while, Elmer made his move and, despite AAA's loud protestation, succeeded in placing himself on top of AAA, who shouted for help but only to be choked and told, "*Saba ron kay patyon ta ka.*" (Do not shout, otherwise I will kill you.) AAA's attempt to wrestle herself free from Elmer's hold did not prevent the latter from getting inside her, although she felt a less-than-total penetration. And at some point during the struggle, AAA was able to cover her private part with her left hand while grabbing Elmer's sex organ with her right hand.

Then, someone knocked at the door. When Elmer stood up to open it, AAA lost no time in picking up her short pants and panty

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[4] CA *rollo*, p. 12. Amended Information.

and jumped out the window. Upon reaching her grandmother's place at around 1:00 a.m., she told her grandmother the ordeal she just went through. She then washed herself. Even at that late hour, she was raring to report the incident to the police until she noticed Elmer standing outside their house.

At about 10:00 a.m. of December 22, 1998, AAA, with her mother, reported the matter to the police. From Carcar, AAA and her mother, accompanied by a policewoman, proceeded to the Don Vicente Sotto Medical Center, where Dr. Rana conducted an examination on AAA. Her findings: an intact hymen and the absence of spermatozoa in the vaginal canal. As to the first phenomenon, the doctor ventured the opinion that a woman raped could still have an intact hymen either because there was no full penile insertion, the penetration was limited only to the *labia*, or the hymen was distensible. The absence of spermatozoa in the vagina could be due to the fact that there might have been no ejaculation, or the sperm might have been washed out.

Version of the Defense

Elmer denied the crime imputed to him. To buttress his defense, Elmer presented his wife, Paterna, who testified being in the vicinity of AAA's grandmother's house when AAA's father and uncle were having an argument. Apparently, the uncle fired at AAA's father, with the explosion and noisy altercation attracting the neighbors.

Upon reaching home on the night in question, Paterna was surprised to find a crying AAA on the second floor, visibly afraid because of the firing incident and crying her help. When Elmer arrived with one Elijorde Paniroso,[5] AAA rushed toward the window apparently to flee and, despite Elmer's admonition to be careful, eventually jumped out.

The defense proffered the theory that the fabricated rape charge was due to a standing feud between the Barberoses and AAA's family which started when the Barberoses built their house on a piece of land formerly tilled by AAA's family.

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[5] His testimony for the defense was stricken off the record for his failure to appear during cross examination.

The Ruling of the RTC

After trial, the RTC, on November 13, 2000, rendered judgment,[6] finding Elmer guilty of the crime charged and accordingly sentenced him, thus:

WHEREFORE, foregoing premises considered, JUDGMENT is hereby rendered finding the accused ELMER BARBEROS GUILTY beyond reasonable doubt of RAPE falling under paragraph 1, subparagraph a, ART. 266-A of the Revised Penal Code as amended by R.A. No. 8351 [sic] and hereby imposes upon him the penalty of *RECLUSION PERPETUA* as imposed under ART. 266-B of the same Code, as amended.

Accused is, likewise, ordered to pay private complainant the amount of ₱50,000.00 as his civil liability to her.

SO ORDERED.[7]

Therefrom, Elmer appealed directly to this Court, the appeal initially docketed as **G.R. No. 147241**. Following, however, the submission by the parties of their respective briefs, *People v. Mateo*[8] was promulgated. And in line with *Mateo*, the Court, via its November 22, 2004 Resolution,[9] referred the instant case to the CA for intermediate review.

The Ruling of the CA

On March 5, 2008, in CA-G.R. CEB-CR-HC No. 00316, the appellate court rendered the appealed decision, affirming that of the RTC, but with the modification awarding AAA moral damages in the amount of PhP 50,000. The *fallo* of the CA decision reads:

All told, the assailed Decision dated 13 November 2000 by the Regional Trial Court, Branch 14, in Cebu City finding the accused **guilty beyond reasonable doubt of RAPE** and sentencing him to suffer the penalty of *reclusion perpetua* is hereby AFFIRMED. The

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[6] *Supra* note 2.

[7] *Id.* at 25-26.

[8] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[9] CA *rollo*, pp. 130-131.

Civil aspect of the case is MODIFIED to read as follows: Appellant is ORDERED to pay private complainant the amount of ₱50,000.00 as moral damages and the amount of ₱50,000.00 as civil indemnity.

SO ORDERED.[10]

On April 3, 2008, Elmer filed his notice of appeal, to which the CA, per its resolution of December 12, 2008, gave due course.

In response to the Court's Resolution for them to submit supplemental briefs if they so desired, the parties manifested their willingness to have the case resolved on the basis of the Brief for the Accused-Appellant[11] and Brief for the Appellee,[12] respectively, filed in **G.R. No. 147241**.

The Issues

Consequently, from his Brief, appellant raises the same assignments of errors earlier passed over and resolved by the CA, to wit: *first*, that the courts *a quo* erred in finding him guilty beyond reasonable doubt of the crime of rape; and *second*, that the courts *a quo* gravely erred in adjudging him guilty of consummated rape instead of attempted rape.

The Court's Ruling

After a circumspect review of the records, the Court affirms appellant's conviction.

Prefatorily, while it is not wont to go over and re-assess the evidence adduced during the trial, more so when the appellate court affirms the findings and conclusions of the trial court, the Court, in criminal cases falling under its review jurisdiction under the Constitution,[13] is nonetheless tasked to assiduously review

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[10] *Rollo*, p. 19.

[11] CA *rollo*, pp. 42-58, dated January 22, 2002.

[12] *Id.* at 75-123, dated May 24, 2002.

[13] Art. VIII, Sec. 5(2)(d) of the 1987 Constitution provides:

SEC. 5. The Supreme Court shall have the following powers: x x x x

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts x x x.

such cases, as in the instant appeal. Besides, utmost care is required in the review of a decision involving conviction of rape due to the pernicious consequences such conviction bear on both the accused and the offended party.[14]

By the distinctive nature of rape cases, conviction usually rests solely on the basis of the victim's testimony, provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.[15] Accordingly, the Court has unfailingly adhered to the following guiding principles in the review of similar cases, to wit: (1) an accusation for rape can be made with facility; while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[16]

Complementing the foregoing principles is the rule that the credibility of the victim is always the single most important issue in prosecution for rape;[17] that in passing upon the credibility of witnesses, the highest degree of respect must be afforded to the findings of the trial court.[18]

Rape is defined and penalized under Arts. 266-A and 266-B of the RPC, as amended, which provide:

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[14] *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318, 329.

[15] *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 444.

[16] *People v. Glivano*, G.R. No. 177565, January 28, 2008, 542 SCRA 656, 662; citing *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318, 329.

[17] *People v. Ceballos*, G.R. No. 169642, September 14, 2007, 533 SCRA 493.

[18] *People v. Balonso*, G.R. No. 176153, September 21, 2007, 533 SCRA 760.

ART. 266-A. *Rape, When and How Committed*. — Rape is committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. **Through force, threat or intimidation**;

b. When the offended party is deprived of reason or is otherwise unconscious;

x x x (R.A. No. 8353, October 22, 1997.)

ART. 266-B. *Penalties*. — **Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua***. (Emphasis supplied.)

Thus, in context, for the charge of rape to prosper, the prosecution must prove that (1) the offender had **carnal knowledge of a woman**, (2) **through force, threat, or intimidation**.

In the instant case, the prosecution established the elements of carnal knowledge and the force, threat, or intimidation employed. AAA, with firmness and certainty, pointed to appellant Elmer as the person who sexually molested her. She never wavered in her identification and was straightforward in her narration of how the assault occurred. Both the RTC and CA found the eloquent testimony of AAA positive and candid, and not at all rebutted during the cross-examination, thus deserving full weight and credit. To quote directly from the records:

Atty. Yongco: **What is the full name of this Emie you are referring to**?

AAA: **Elmer Barberos** my neighbor.

Q: You mean the accused in this case?

A: Yes.

x x x x x x x x x

Q: After he put his arms around your shoulder, what did he say if any?

A: He told me that don't worry about that …

x x x x x x x x x

Q: After then (sic) after that, what happened next?

A: He told me he will keep me in his residence.

Q: Did you not ask why he is going to keep you in his residence?

A: He told me that he will just keep me in his residence because if my uncle would see me he might kill me.

x x x x x x x x x

Q: After you were told by Emie that he will keep you in his residence, what did you do?

A: I went with him.

x x x x x x x x x

Q: Was there anybody in the house when you reached the house?

A: None.

x x x x x x x x x

Q: After Elmer Barberos told you that you will go upstairs, what did he do if any?

A: He told me that we will put off the light because if the house is lighted my uncle might see me and he will kill me and I might be seen outside.

Q: And so did Elmer Barberos put off the light inside the house?

A: Yes, Ma'am.

x x x x x x x x x

Q: After the accused and you entered the room, what did the accused do?

A: He closed the door.

Q: After Elmer Barberos closed the door, what did Elmer Barberos do after he closed the door?

A: Maybe he locked the door because I cannot really see it because it was dark.

Q: So when you were already inside the room and after the accused closed and locked the door, what happened next?

A: He conversed with me.

Q: What was the topic he conversed with you?

x x x x x x x x x

Q: After you told him that you wanted to go home, what did Elmer Barberos answer?

A: He told me later only.

Q: So what did you do when Elmer Barberos told you to wait?

A: I told Elmer Barberos I will just go home because they might be looking for me and they might have finished their fight.

Q: So when you [said] that to Elmer Barberos, what did Elmer Barberos do?

A: Elmer Barberos told me you are a fool and he immediately put his body on top of me.

Q: So after Elmer Barberos told you you are a fool and put himself on top of you, what happened to you?

A: I shouted for help.

Q: How did you exactly shout for help at that time?

A: I shouted Ma, help me Ma because Elmer Barberos put himself on top of me.

Atty. Yongco: **I would like to put on record, Your Honor, that the witness is crying when she uttered the statement**.

Q: After you made a shout for help, what did Elmer Barberos do?

A: **He choked my throat and told me if you will shout I will kill you**.

Q: After Elmer Barberos told you that he will kill you, what did Elmer Barberos do after that?

A: His body was on top of me and he pushed and pull.

COURT: **If the accused is inside the courtroom, can you identify him**?

A: **Yes**.

Q: Can you point to the person?

A: That one.

COURT INTERPRETER: The **witness pointed to the person who responded that his name is Elmer Barberos while the victim kept on crying**.

Q: At that time what were you wearing?

A: I was wearing a white t-shirt and maong short pants.

x x x x x x x x x

Q: You said that after Elmer Barberos choked you and told you not to make any noise because he will kill you, he made a push and pull motion. At that time he was making the push and pull motion were you wearing your shorts?

A: I was wearing maong short pants and he immediately pulled out my short pants.

x x x x x x x x x

A: He forcibly pull[ed] down my short pants because it was loose.

Q: When accused Elmer Barberos pull[ed] down your short pants, was there anything left in your underwear?

A: No more because when he pulled down my short pants my panty went with the short pants.

x x x x x x x x x

Q: And so after Elmer Barberos pulled down your short pants together with your panty, what did Elmer Barberos do after that?

A: **We wrestled because I resisted. There was a time that I was on top and the next time I was under him**.

Q: So after you wrestled with Elmer Barberos, what happened?

A: **His penis was inside my vagina but it did not penetrate. It just stayed on the lip of my vagina**.

Q: **And at that time what did you feel**?

A: **I felt pain but then again I resisted**.

Q: You were telling that the penis of the accused has touched your vagina, what was your position at that time in relation to the position of the accused Barberos?

A: At that time when his penis touched the lip of my vagina my position was lying. Afterwards I wrestled again so at that time I was on top of him again.

x x x x x x x x x

Q: So with that position that you were lying with your right hand at your back, what did the accused Elmer Barberos do?

A: When I was lying while my right hand was at my back he wanted again for the second time to insert his penis into my vagina **but I used my left hand in covering my vagina**.

x x x x x x x x x

Q: And so when you were in that position, what did you feel if any on your vagina because accused Barberos according to you was trying to push his penis to your vagina?

A: **Since I kept on moving at that time my right hand was able to release from my back and I took hold of his penis**.

Q: After you took hold of the penis of the accused Elmer Barberos, what happened?

A: Somebody knocked at the door.

x x x x x x x x x

Q: And so did Elmer Barberos open the door?

A: Yes, Ma'am.

Q: So when Elmer Barberos went to open the door, what did you do?

A: I took my short pants and panty. And since I was near the window I prayed for the help of God, I made a sign of the cross and immediately jumped over the window.[19] (Emphasis supplied.)

The foregoing positive testimony of AAA, as well as the rage that went into it, are badges of truth and sincerity. When the offended party is of tender age and immature, as here, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame and embarrassment to which she would be exposed if the matter

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[19] TSN, February 14, 2000.

to which she testified is not true.[20] Judging from her live birth certificate,[21] AAA was 15 years old at the time of the incident, barely 16 or 17 when she took the witness stand in 2000. It is settled that when a girl, more so when she is in her early teens, says she has been raped, she says in effect all that is necessary to prove that rape was committed, and if her testimony meets the test of credibility, that is sufficient to convict the accused.[22] As it were, AAA's testimony as to her hideous experience in the hands of appellant deserves full faith and credit, given as it were in a straightforward and candid manner, unshaken by rigid cross-examination and bereft of inconsistencies, or contradictions in material points.[23]

Auguring well for AAA's credibility was her eagerness to report right away to the proper authorities a crime committed against her person. When her grandmother exhibited reluctance about immediately reporting the matter to the police, she took it upon herself to do so, but was prevented only by the presence of appellant outside her grandmother's house. But the very next morning, she lost no time in going to the police station to report the rape incident.

The physical examination Dr. Rana conducted on AAA several hours after the incident happened also amply explains and corroborates her testimony on the fact of partial penile penetration. The medical findings of Dr. Rana embodied in her Medical Report[24] are consistent with the partial penetration testified to.

Appellant has made much of Dr. Rana's report on the absence of medical traces of hymenal laceration on AAA. Given, however, the unwavering sworn account of AAA as to what she went

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[20] *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 280, 295-296; *Llave v. People*, G.R. No. 166040, April 26, 2006, 488 SCRA 376, 400.

[21] Exhibit "D".

[22] *People v. Bidoc*, G.R. No. 169430, October 31, 2006, 506 SCRA 481.

[23] *People v. Canuto*, G.R. No. 169083, August 7, 2006, 498 SCRA 198, 216; citing *People v. Baway*, G.R. No. 130406, January 22, 2001, 350 SCRA 29, 46.

[24] Exhibit "A".

through in appellant's hands, the Court cannot accord merit to the argument that the lack of physical manifestation of rape weakens the case against the latter. The medical report on AAA is only corroborative of the finding of rape. The absence of external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape.[25] This is because hymenal laceration is not an element of the crime of rape,[26] albeit a healed or fresh laceration is a compelling proof of defloration.[27] What is more, the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict.[28]

In a long line of cases, the Court has consistently held that full penile penetration of the penis into the vagina is not required for the commission of rape, as mere penile entry into the *labia* of the *pudendum* of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape. In *People v. Diunsay-Jalandoni*,[29] citing *People v. Iluis*,[30] we ratiocinated, thus:

> Further, the absence of external signs of violence does not negate the commission of rape. Nor is the absence of spermatozoa material in the prosecution of a rape case. A freshly broken hymen is, likewise, not an essential element of rape, and healed lacerations do not negate rape because full penetration is not necessary to consummate rape. **Penetration of the penis by entry into the *labia* of the *pudendum* of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction of rape**.[31] (Emphasis supplied.)

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[25] *People v. Boromeo*, G.R. No. 150501, June 3, 2004, 430 SCRA 533, 546.

[26] *People v. Esteves*, 438 Phil. 687, 699 (2002).

[27] *People v. Sambrano*, G.R. No. 143708, February 24, 2003, 398 SCRA 106.

[28] *People v. Logmao*, 414 Phil. 378, 387 (2001).

[29] G.R. No. 174277, February 8, 2007, 515 SCRA 227.

[30] G.R. No. 145995, March 20, 2003, 399 SCRA 396, 406.

[31] *Supra* note 29, at 236.

In light of the foregoing disquisition, the Court need not belabor the issue as to whether appellant's liability is only for attempted, not consummated, rape. Suffice it to state that the trial court, joined by the CA, found appellant's penis to have touched the *labia* and penetrated AAA's vagina, albeit unsuccessful in completely entering it. Full penile penetration is not a consummating ingredient in the crime of rape. The mere knocking at the door of the *pudendum* by the accused's penis suffices to constitute the crime of rape.[32]

As to the means used in the sexual assault, the prosecution had likewise sufficiently showed the force, threat, and intimidation employed by appellant to satisfy his lust. It must be borne in mind that in rape, the force and intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime. As a matter of settled jurisprudence, rape is subjective and not all victims react the same way; there is in fine no stereotypical form of behavior of a woman when facing a traumatic experience, such as a sexual assault.[33]

In the instant case, however, AAA, true to human nature, resisted with all her might the beastly act perpetrated on her. When appellant grabbed her and placed himself on top of her, AAA cried for help which prompted Elmer to choke her and threaten her with death. Yet, while deterred from shouting, AAA still struggled resolutely—as her eloquent testimony above-quoted shows—such that Elmer was not able to achieve full penile penetration. Her vigorous resistance resulted in her being able to cover her vagina with her left hand while eventually holding Elmer's penis forcefully with her right hand.

Not lost on the Court is the established fact of AAA jumping from the second floor of Barberoses' dwelling. She said that she did it just to escape from Elmer's clutches, unmindful of

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[32] *People v. Plurad*, G.R. Nos. 138361-63, December 2, 2002, 393 SCRA 306.

[33] *People v. Soriano*, G.R. No. 172373, September 25, 2007, 534 SCRA 140, 145; *People v. Balonzo*, G.R. No. 176153, September 21, 2007, 533 SCRA 760, 771.

the physical harm it might bring to her. This is similar to running away from danger out of uncontrollable fear, heedless of any resultant injury that might occur, considering, in the instant case, that the leap entailed a fall from a considerable height.

The defense had offered a theory about the jumping incident. The arrival of appellant and his friend, Elijorde, allegedly so frightened the hiding AAA that she was forced to jump from the second floor window. This is, of course, incredulous, for if AAA indeed sought shelter in the Barberoses' residence out of fear of her uncle, as Paterna asserted in the witness box, the Court cannot understand why the mere arrival and sight of the appellant and Elijorde would give AAA a scare.

Paterna's naturally biased testimony in support of her husband's denial of culpability deserves scant consideration in light of the positive identification and categorical declaration made by AAA against the appellant. When the denial of the accused is tended to be established only by himself, his relatives, or friends, such denial should be accorded the strictest scrutiny—it is necessarily suspect and cannot prevail over the testimonies of the more credible testimonies for the prosecution.[34] So it must be here.

The thesis the defense espoused that AAA's family fabricated the charge against Elmer owing to some misunderstanding over a piece of land taxes credulity. For one, no credible evidence had been adduced to prove the supposed land dispute. For another, the lengthy narrative of AAA of how appellant ravished her strikes the Court as a product of her thirst for justice, not as a jumping board to settle old slight. And for a third, the presence of the elements of the crime of rape had been sufficiently established. In *People v. Gagto*, we held that "not a few accused in rape cases have attributed the charges brought against them to family feuds, resentment, or revenge. But such alleged motives have never swayed the court from lending full credence to the testimony of the complainant who remained steadfast throughout her direct and cross examinations, especially a minor in this case."[35]

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[34] *People v. De Guzman*, G.R. No. 173197, April 24, 2007, 522 SCRA 207.

[35] G.R. No. 113345, February 9, 1996, 253 SCRA 455, 467-468.

The Court also affirms the penalty thus meted on the appellant, *reclusion perpetua* being the imposable penalty even for unqualified rape. Finally, the award by the CA of moral damages in the amount of PhP 50,000, on top of the award of PhP 50,000 as civil indemnity *ex delicto*, is in order, even without further proof of moral suffering or anguish, as *People v. Jumawid*[36] and other cases teach.[37]

WHEREFORE, premises considered, we *AFFIRM IN TOTO* the March 5, 2008 Decision of the Court of Appeals in CA-G.R. CEB-CR-HC No. 00316.

No pronouncement as to costs.

SO ORDERED.

Corona (Chairperson), Nachura, Peralta, and *Del Castillo,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 187838. December 23, 2009]

ADRIATICO CONSORTIUM, INC., PRIMARY REALTY CORPORATION, and BENITO CU-UY-GAM, *petitioners, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; COMPROMISE AGREEMENT.— A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced. It is an agreement

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[36] G.R. No. 184756, June 5, 2009.

[37] *People v. Baldo*, G.R. No. 175238, February 24, 2009, 580 SCRA 225.

[*] Additional member per Special Order No. 805 dated December 4, 2009.

intended to terminate a pending suit by making reciprocal concessions.

2. ID.; CONTRACTS; INTERPRETATION OF CONTRACTS; CARDINAL RULE; CONTRACT MUST BE READ AS A WHOLE.— In the construction or interpretation of a compromise agreement, the Court is guided by the fundamental and cardinal rule that the intention of the parties is to be ascertained from the contract and effect should be given to that intention. Likewise, it must be construed so as to give effect to **all** the provisions of the contract. In essence, the contract must be read as a whole. Accordingly, after a careful review of all the provisions of the Partial Compromise Agreement, this Court finds that the term "all actions" found in Sec. 5 of the Partial Compromise Agreement is broad enough to cover all acts in relation to MPC Nos. 0002 and 0004 and is not limited only to legal actions.

3. ID.; ID.; ID.; INTENTION OF PARTIES; CONTEMPORANEOUS AND SUBSEQUENT ACTS TO BE CONSIDERED.— Moreover, in cases of doubt as to the intention of the parties, their contemporaneous and subsequent acts can be considered in ascertaining their intentions. x x x The parties x x x never meant to avoid protracted litigation with respect to MPC Nos. 0002 and 0004. That particular phrase was confined to MPC No. 0001 as unmistakably shown by the subsequent acts of the parties in proceeding with the litigation with respect to MPC Nos. 0002 and 0004 despite the approval of the Partial Compromise Agreement and the rendition of the Partial Decision.

4. ID.; ID.; ID.; A CONTRACT MUST BE INTERPRETED FROM THE LANGUAGE OF THE CONTRACT ITSELF; CASE AT BAR.— More importantly, a contract must be interpreted from the language of the contract itself according to its plain and ordinary meaning. This was elucidated by this Court in *Abad v. Goldloop Properties, Inc*. x x x In the case at bar, the word "action" should be defined according to its plain and ordinary meaning, *i.e.*, as the process of doing something; conduct or behavior; a thing done. It is not limited to actions before a court or a judicial proceeding. Therefore, the only logical conclusion that can be derived from the use of the word "action" in Sec. 5 is that the parties intentionally used it in its plain and ordinary sense and did not limit it to mean any specific legal term. Moreover, a compromise agreement compromises not only those objects definitely stated in it, but also those,

which by necessary implication, should be deemed to have been included in it. Ergo, the term "action" includes the sale of the receivables as a necessary implication. Consequently, any act made by any of the parties with regard to MPC Nos. 0002 and 0004 specified in Section 5 of the Partial Compromise Agreement falls under the generally accepted meaning of the word "action," including the act of Land Bank in transferring or selling the MPCs to a third party.

5. **ID.; OBLIGATIONS; NOVATION; EXTINGUISHMENT OF; DEFINED.—** Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor. For novation to take place, the following requisites must concur: 1) There must be a previous valid obligation. 2) The parties concerned must agree to a new contract. 3) The old contract must be extinguished. 4) There must be a valid new contract.

6. **ID.; ID.; ID.; ID.; MAY BE EXTINCTIVE OR MODIFICATORY. —** Novation may be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new one that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent that it remains compatible with the amendatory agreement.

7. **ID.; ID.; ID.; ID.; MAY BE EXPRESS OR IMPLIED; CASE AT BAR.—** Novation may either be express, when the new obligation declares in unequivocal terms that the old obligation is extinguished; or implied, when the new obligation is on every point incompatible with the old one. The test of incompatibility is whether the two obligations can stand together, each one with its own independent existence. In the instant case, the Court finds that the Partial Compromise Agreement entered into by petitioners and Land Bank constitutes as an implied modificatory novation or amendment to the Loan/Line Agreement. As such, any provision in the Loan/Line Agreement inconsistent with the provisions of the Partial Compromise Agreement is deemed amended or waived by the parties.

8. **ID.; ID.; OBLIGATIONS ARISING FROM CONTRACTS HAVE THE FORCE OF LAW BETWEEN THE CONTRACTING**

PARTIES AND SHOULD BE COMPLIED WITH IN GOOD FAITH; CASE AT BAR.— Furthermore, the Civil Code provides that obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. In the case at bar, the payment made by ACI in the Partial Compromise Agreement was done in good faith. As culled from the facts, Siy did not remit the payments made by ACI to Land Bank. Upon recommendation of its legal counsel and despite the fact that it already paid, ACI, however, settled the loan and paid again. This substantial amount is the consideration for which ACI and Land Bank agreed to suspend all actions. Thus, just as ACI acted in good faith, Land Bank is also expected to act in good faith in following the covenants it entered into in the Partial Compromise Agreement.

APPEARANCES OF COUNSEL

Arturo S. Santos for petitioners.
Legal Services Group (LBP) for respondent.

D E C I S I O N

VELASCO, JR., *J*.:

The Case

Before us is a Petition for Review on *Certiorari* under Rule 45 assailing and seeking to set aside the Decision[1] and Resolution[2] dated October 16, 2008 and May 13, 2009, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 103717. The CA nullified and set aside the Orders dated February 29, 2008, March 5, 2008, March 17, 2008, and April 21, 2008, with the assailed March 5, 2008 Writ of Execution and March 14, 2008 Writ of Preliminary Injunction, issued by the Regional Trial Court (RTC), Branch 51 in Manila, in Civil Case No. 00-97648.

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[1] *Rollo*, pp. 47-62. Penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario.

[2] *Id.* at 64-67.

The Facts

Sometime in 1997, William A. Siy, the president of Adriatico Consortium, Inc. (ACI), applied for a credit line of PhP 200 million with Land Bank of the Philippines as additional funding to finish the construction of the Pan Pacific Hotel and the Adriatico Square, both owned by ACI. The lands on which the buildings were built belonged to Primary Realty Corporation (PRC).

The loan was approved and a Mortgage Trust Indenture (MTI) dated January 15, 1998 was created to secure the loan. Under the MTI, Land Bank was constituted as trustee of the lands of PRC and the buildings of ACI mortgaged to it.

On April 28, 1998, the MTI was amended increasing the maximum amount secured by it from PhP 200 million to PhP 600 million. Metropolitan Bank and Trust Company (Metrobank) and Land Bank participated in the MTI. Land Bank was then issued Mortgage Participation Certificate (MPC) No. 0001 for PhP 200 million, while Metrobank was issued MPC No. 0003 for PhP 100 million.

On July 8, 1998, the MTI was amended for the second time at the initiative of Siy, without the knowledge of other ACI officials and Board of Directors, to include J.V. Williams Realty and Development Corporation (JVWRDC) as borrower. JVWRDC is a majority-owned corporation of Siy. Consequently, Land Bank issued MPC No. 0002 dated July 17, 1998 for PhP 200 million and MPC No. 0004 for PhP 100 million to cover the loans of JVWRDC.

Subsequently, ACI fully paid the PhP 200 million under MPC No. 0001 and PhP 100 million under MPC No. 0003. ACI then requested the cancellation of the MTI but Land Bank refused. At this point, Land Bank revealed it never received any payment from the entire PhP 200 million-loan availed of by Siy sometime in 1997 under MPC No. 0001. This prompted ACI to investigate.

In the course of its investigation, ACI discovered that its former president, Siy, did not remit ACI's payments. What is more, ACI and PRC, with Benito Cu-Uy-Gam, ACI's new president, were obliged by Land Bank to pay the maturing obligations of

JVWRDC. Likewise, it was discovered that the second amendment to the MTI was made possible by the submission of two secretary's certificates from ACI and PRC, which the National Bureau of Investigation (NBI) found to be forged.[3]

On June 6, 2000, petitioners filed a Petition for Declaration of Nullity, Specific Performance, Injunction, and Damages with Prayer for a Temporary Restraining Order (TRO) against Land Bank and Siy with the Manila RTC, docketed as Civil Case No. 00-97648.[4]

On November 14, 2000, the parties entered into a Partial Compromise Agreement. Under the said agreement, ACI agreed, among others, to pay and actually paid to Land Bank the total sum of PhP 289,656,868.97 representing the principal amount of PhP 201,233,891.38 plus interest in the amount of PhP 88,422,977.59 on November 28, 2000 as full and complete payment of MPC No. 0001 for PhP 200 million. Accordingly, the RTC issued a Partial Decision[5] approving the compromise agreement on January 31, 2001.

Trial of the case proceeded in the RTC for the purpose of determining who the parties liable under MPC Nos. 0002 and 0004 are.

On January 15, 2008, Land Bank, however, informed ACI through a letter that the JVWRDC loans were included in a sealed-bid public auction of Land Bank Non-Performing Assets under the Special Purpose Vehicle Act. Petitioners viewed this as a violation of the Partial Compromise Agreement by Land Bank, particularly its Section 5, which states:

> 5. With the submission of this compromise agreement and payment by petitioner Adriatico Consortium, Inc. of the amounts stated in paragraph 2 hereof, the herein parties agree to unconditionally apply said payment in full satisfaction and extinguishment of the loan obligations of petitioner Adriatico Consortium, Inc. with the

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[3] *Id.* at 132-144.

[4] *Id.* at 145-182.

[5] *Id.* at 230-233.

respondent Land Bank of the Philippines and **to suspend all actions against each other** with respect to the liabilities represented by Mortgage Participation Certificate No. 0002 for PhP 200,000,000 dated July 17, 1998 and Mortgage Participation No. 0004 for PhP 100,000,000 dated July 29, 1998 covered under the Second Amendment to the Mortgage Trust Indenture dated July 6, 1998. It is understood, however, that said mortgage participation certificates (Certificate Nos. 0002 and 0004) shall continue to secure the outstanding obligations of J.V. Williams until said outstanding obligations have been fully settled and satisfied or until it is finally adjudged and determined who are the parties liable thereto; **toward this end, the parties herein agree to cooperate with each other** in order for respondent Land Bank of the Philippines to recover the same as against the person/s liable thereon.[6] (Emphasis supplied.)

This prompted petitioners to file a Motion for Execution[7] before the RTC on January 24, 2008.

Likewise, petitioners started to receive verbal demands for payment of the MPCs with a threat to foreclose the MPCs from a supposed highest winning bidder. Hence, on January 30, 2008, petitioners filed a Reiteration of Prayer for TRO and/or Writ of Preliminary Injunction[8] before the RTC to enjoin the threatened foreclosure proceedings.

Despite opposition from Land Bank, the RTC issued an Order[9] granting the Motion for Execution on February 29, 2008. The *fallo* reads:

Wherefore, the Motion for Execution is granted. Let a Writ of Execution be issued directing respondent Land Bank of the Philippines and respondent William Siy to suspend all actions against petitioner and particularly with respect to Mortgage Participation Certificate No. 0002 and 0004 including the transfer of the same to the buyer at the public auction.

SO ORDERED.

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[6] *Id.* at 232.

[7] *Id.* at 235-239.

[8] *Id.* at 241-248.

[9] *Id.* at 267-269.

The corresponding Writ of Execution[10] was issued on March 5, 2008. Subsequently, the Motion for Reconsideration and to Quash Writ of Execution[11] filed by Land Bank was denied by the RTC in an Order[12] dated March 17, 2008. The RTC, in interpreting Sec. 5 of the Partial Compromise Agreement, reasoned as follows:

> The paragraph is clear and does not need further interpretation. It does not [connote] of any other things. Action is viewed by the Court as any action, deed, act, contemplated by the parties as not to disturb the status quo of the terms and condition in the compromise agreement. The provision in the partial decision specifically prohibit[s] the sale at public auction of liabilities represented by MPC No. 0002 and 0004. So, whatever is done to, or disturbed in the terms and condition which is prohibited is a violation of the partial decision. If the parties [refer] to action stated in the partial decision, it is no other, and if it refers to other action it should have specifically placed in the partial decision which the parties did not.

Likewise, on March 5, 2008, the RTC issued an Order[13] granting petitioner's Reiteration of Prayer for TRO and/or Writ of Preliminary Injunction, and accordingly issuing the corresponding Writ of Preliminary Injunction.[14]

Land Bank filed a Motion for Reconsideration, which was later denied by the RTC in its Order[15] dated April 21, 2008.

Dissatisfied, Land Bank filed a Petition for *Certiorari* and Prohibition with Prayer for TRO and/or Preliminary Injunction[16] before the CA docketed as CA-G.R. SP No. 103717. Land Bank argued that the sale of the MPCs is not prohibited by the Partial Compromise Agreement, reasoning that it was well within its legal rights to assign its credits to a third person.

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[10] *Id.* at 270-271.

[11] *Id.* at 272-281.

[12] *Id.* at 282-284.

[13] *Id.* at 285-293.

[14] *Id.* at 294.

[15] *Id.* at 302-303.

[16] *Id.* at 304-347.

Ruling of the Appellate Court

On October 16, 2008, the CA promulgated its Decision as follows:

WHEREFORE, premises considered, the petition is GRANTED and public respondent's Orders dated February 29, 2008, March 5, 2008, March 17, 2008 and April 21, 2008, together with the assailed March 5, 2008 Writ of Execution and March 14, 2008 writ of preliminary injunction are, accordingly, NULLIFIED and SET ASIDE.

SO ORDERED.[17]

Unlike the RTC, the CA found that the compromise agreement sought to prohibit only legal actions, *e.g.*, litigation, and rejected the interpretation of the lower court. Further, it ruled that there is nothing in the said compromise agreement which prohibits Land Bank from transferring or assigning its obligations to third persons, necessarily suggesting that such transfer or assignment does not constitute "action" within the context of the compromise agreement.

Aggrieved by the ruling of the CA, petitioners filed a motion for reconsideration, which was subsequently denied in its likewise assailed resolution dated May 13, 2009.

Hence, this petition is before us.

The Issues

I

The Honorable [CA] seriously erred and committed grave abuse of discretion in not holding [that] the Land Bank's actuation in selling the receivables during the litigation is a violation of its obligation under the partial compromise agreement to cooperate with petitioners to determine the parties liable under Mortgage Participation Nos. 0002 and 0004.

II

The [CA] seriously erred and gravely abused its discretion in holding that the sale of credit or receivables is beyond the scope of the term "action" proscribed under the partial compromise agreement.

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[17] *Id.* at 62.

III

The [CA] seriously erred and gravely abused its discretion in setting aside the writ of execution issued by the trial court due to the violations of the compromise agreement committed by Land Bank.

Our Ruling

The petition is meritorious.

Petitioners contend that the act of Land Bank in selling the receivables during the litigation violates its obligations under the Partial Compromise Agreement to cooperate with petitioners in the determination of the parties ultimately liable under MPC Nos. 0002 and 0004. Furthermore, they maintain that the sale of the receivables falls under the term "action" as found in the Partial Compromise Agreement.

In their Comment,[18] however, respondent argues that the Partial Compromise Agreement aimed to suspend **only** legal actions against each other with respect to the obligations covered by MPC Nos. 0002 and 0004. It invoked its legal and contractual rights to transfer the MPCs and that such transfer cannot be construed as an action against petitioners.

Essentially, the issues in this case can be summed up into one basic question: Whether or not the act of Land Bank in selling the receivables violated the Partial Compromise Agreement, specifically the aforequoted Sec. 5.

This Court believes that it did.

For a better understanding of the Partial Compromise Agreement in question, its entire text is hereby reproduced below:

1. To avoid a protracted litigation for the mutual benefit of the parties herein, the petitioners and the respondent bank enter into the following compromise agreement whereby petitioners Adriatico Consortium, Inc. and Primary Realty Corporation are represented by its President, Benito Cu-Uy-Gam while respondent Land Bank of the Philippines is herein represented by its President and Chief Executive Officer, MARGARITO B. TEVES;

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[18] *Id.* at 418-435.

2. Parties agree that the petitioner Adriatico Consortium, Inc. will pay to respondent Land Bank of the Philippines the total amount [of] PhP 289,656,868.97 representing the principal amount of PhP 201,233,891.38 plus interest in the amount of PhP 88,422,977.59 on November 28, 2000 as full and complete payment of Mortgage Participation Certificate No. 0001 for PhP 200,000,000 issued under Mortgage Trust Indenture dated January 5, 1998; Penalties, fees and other expenses are hereby waived. Within fifteen (15) days from receipt of the aforesaid payment, respondent Land Bank of the Philippines will release to petitioner Adriatico Consortium, Inc. the Mortgage Participation No. 0001 as confirmation that Adriatico Consortium, Inc. has no more obligations to respondent Land Bank of the Philippines with respect thereto;

3. Parties agree that the respondent Land Bank of the Philippines shall furnish to petitioner Adriatico Consortium, Inc. on or before November 28, 2000 the following:

a. Debit memo records for ACI LandBank account 0052-1198-20 as follows:

x x x x x x x x x

b. Microfilm copies of check pertinent to the withdrawal/disbursement of Php139,671,991.00 issued from ACI LandBank account 0052-1198-20. The particulars of which are as follows:

x x x x x x x x x

4. Within fifteen (15) days from submission of the above-mentioned documents, petitioner Adriatico Consortium, Inc. and respondent Land Bank of the Philippines shall reconcile ACI Land bank account under 0052-1198-20 in such a manner and procedure as may be mutually agreed upon by the parties.

5. With the submission of this compromise agreement and payment by petitioner Adriatico Consortium, Inc. of the amounts stated in paragraph 2 hereof, **the herein parties agree to unconditionally apply said payment in full satisfaction and extinguishment of the loan obligations of petitioner Adriatico Consortium, Inc. with the respondent Land Bank of the Philippines and to suspend all actions against each other with respect to the liabilities represented by Mortgage Participation Certificate No. 0002 for PhP 200,000,000 dated July 17, 1998 and Mortgage**

Participation No. 0004 for PhP 100,000,000 dated July 29, 1998 covered under the Second Amendment to the Mortgage Trust Indenture dated July 6, 1998. It is understood, however, that said mortgage participation certificates (Certificate Nos. 0002 and 0004) shall continue to secure the outstanding obligations of J.V. Williams until said outstanding obligations have been fully settled and satisfied **or until it is finally adjudged and determined who are the parties liable thereto; toward this end, the parties herein agree to cooperate with each other in order for respondent Land Bank of the Philippines to recover the same as against the person/s liable thereon.**

6. It is expressly agreed that either party is not precluded from pursuing their legal action against the respondent William Siy or his company, JV Williams, Inc. notwithstanding this compromise agreement.

WHEREFORE, it is respectfully prayed of this Honorable Court that this partial compromise agreement be approved and that a partial judgment based hereon be rendered.[19] (Emphasis supplied.)

The Intent of the Parties Governs in the Interpretation of Contracts

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.[20] It is an agreement intended to terminate a pending suit by making reciprocal concessions.[21]

In the construction or interpretation of a compromise agreement, the Court is guided by the fundamental and cardinal rule that the intention of the parties is to be ascertained from the contract and effect should be given to that intention.[22] Likewise,

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[19] *Id.* at 230-232.

[20] CIVIL CODE, Art. 2028.

[21] *Barreras v. Garcia*, G.R. Nos. 44715-16, January 26, 1989, 169 SCRA 401; *Rovero v. Amparo*, 91 Phil. 228 (1952).

[22] AMJUR Contracts §345; citing *Ryco Const., Inc. v. U.S.*, 55 Fed. Cl. 184 (2002); *Sprucewood Inv. Corp. v. Alaska Housing Finance Corp.*, 33 P.3d 1156 (Alaska 2001); *Liggatt v. Employers Mut. Cas. Co.,* 273 Kan. 915, 46 P.3d 1120 (2002); *Quality Products and Concepts Co. v. Nagel Precision, Inc*., 469 Mich. 362, 666 N.W.2d 251 (2003); *In re Grievance*

it must be construed so as to give effect to **all** the provisions of the contract.[23] In essence, the contract must be read as a whole.

Accordingly, after a careful review of all the provisions of the Partial Compromise Agreement, this Court finds that the term "all actions" found in Sec. 5 of the Partial Compromise Agreement is broad enough to cover all acts in relation to MPC Nos. 0002 and 0004 and is not limited only to legal actions.

First, it should be pointed out that Sec. 1 of the Partial Compromise Agreement talks about a "litigation." As defined, litigation is the process of carrying on a lawsuit or the lawsuit itself.[24] Here, it is evident that the parties intended to use a specific term to describe a legal action.

Likewise, in Section 6 of the Partial Compromise Agreement, the parties stipulated, "It is expressly agreed that either party is not precluded from pursuing their legal action x x x."[25] Again, the parties here purposefully used the phrase "legal action" and not just the word "action."

Evidently, had the parties intended to limit the application of Sec. 5 to legal actions only, they would have written a specific word or phrase to pertain to legal actions and not just the word "actions" alone.

Moreover, in cases of doubt as to the intention of the parties, their contemporaneous and subsequent acts can be considered in ascertaining their intentions.[26]

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of Verderber, 173 Vt. 612, 795 A.2d 1157, 164 Ed. Law Rep. 350 (2002); *Flippo v. CSC Associates III*, L.L.C., 262 Va. 48, 547 S.E.2d 216 (2001); *Rehnberg v. Hirshberg*, 2003 WY 21, 64 P.3d 115 (Wyo. 2003). See also *CIR v. Philippine Airlines, Inc.*, G.R. No. 160528, October 9, 2006, 504 SCRA 90; citing *Inding v. Sandiganbayan*, G.R. No. 143047, July 14, 2004, 434 SCRA 388 and *National Tobacco Administration v. Commission on Audit*, 370 Phil. 793 (1999).

[23] RULES OF COURT, Rule 130, Sec. 11.

[24] *BLACK'S LAW DICTIONARY* (8th ed., 2004).

[25] *Rollo*, p. 232.

[26] CIVIL CODE, Art. 1371; *Agro Conglomerates, Inc. v. Court of Appeals*, G.R. No. 117660, December 18, 2000, 348 SCRA 450, 459; *Matanguihan v. Court of Appeals*, G.R. No. 115033, July 11, 1997, 275 SCRA 380, 389.

In justifying its interpretation of the intention of the parties, the CA reasoned:

Given that the parties' intention to avoid protracted litigation is clearly enunciated in the first paragraph thereof, we find that petitioner [Land Bank] correctly take exception to public respondent's conclusion that the inclusion of the subject obligations in the sealed public auction of petitioner's non-performing assets to be violative of the January 31, 2001 partial decision rendered in Civil Case No. 00-97648.[27] x x x

The parties, however, never meant to avoid protracted litigation with respect to MPC Nos. 0002 and 0004. That particular phrase was confined to MPC No. 0001 as unmistakably shown by the subsequent acts of the parties in proceeding with the litigation with respect to MPC Nos. 0002 and 0004 despite the approval of the Partial Compromise Agreement and the rendition of the Partial Decision.

More importantly, a contract must be interpreted from the language of the contract itself[28] according to its plain and ordinary meaning.[29] This was elucidated by this Court in *Abad v. Goldloop Properties, Inc.*, to wit:

The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." This provision is akin to the "plain meaning rule" applied by Pennsylvania courts, which assumes that the intent of the parties to an instrument is "embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement." It also resembles the "four corners" rule, a principle which allows courts in some cases

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

[28] *Buenz v. Frontline Transp. Co.*, 227 Ill.2d 302, 317 Ill. Dec. 645, 882 N.E.2d 525 (2008); *Powerine Oil Co., Inc. v. Superior Court*, 37 Cal. 4th 337, 33 Cal. Rptr. 3d 562, 118 P.3d 589 (2005).

[29] CIVIL CODE, Art. 1370; *In re Smith Trust*, 480 Mich. 19, 745 N.W.2d 754 (2008); *Amadora v. Court of Appeals*, No. L-47745, April 15, 1988, 160 SCRA 315.

to search beneath the semantic surface for clues to meaning. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.[30]

In the case at bar, the word "action" should be defined according to its plain and ordinary meaning, *i.e.*, as the process of doing something; conduct or behavior; a thing done.[31] It is not limited to actions before a court or a judicial proceeding. Therefore, the only logical conclusion that can be derived from the use of the word "action" in Sec. 5 is that the parties intentionally used it in its plain and ordinary sense and did not limit it to mean any specific legal term.

Moreover, a compromise agreement compromises not only those objects definitely stated in it, but also those, which by necessary implication, should be deemed to have been included in it.[32] Ergo, the term "action" includes the sale of the receivables as a necessary implication.

Consequently, any act made by any of the parties with regard to MPC Nos. 0002 and 0004 specified in Section 5 of the Partial Compromise Agreement falls under the generally accepted meaning of the word "action," including the act of Land Bank in transferring or selling the MPCs to a third party.

Furthermore, Sec. 5 of the Partial Compromise Agreement speaks of cooperation between the parties to determine the person or persons ultimately liable. It states, "x x x until it is

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[30] *Abad v. Goldloop Properties, Inc.*, G.R. No. 168108, April 13, 2007, 521 SCRA 131.

[31] *BLACK'S LAW DICTIONARY* (8th ed., 2004).

[32] CIVIL CODE, Art. 2036.

finally adjudged and determined who are the parties liable thereto; toward this end, the parties herein agree to cooperate with each other in order for respondent Land Bank of the Philippines to recover the same as against the person/s liable thereon."

In other words, the parties agreed to cooperate and collaborate with each other in order to determine the person or persons who are ultimately liable. By selling the receivables, Land Bank did not cooperate with petitioners.

Thus, it can be safely concluded that the act of Land Bank is a clear and patent violation of Sec. 5 of the Partial Compromise Agreement.

Partial Compromise Agreement Constitutes Novation to the Loan Agreement

Additionally, respondent Land Bank argues that the transfer of the MPCs is in accordance with the transferability clause in the loan agreement with JVWRDC, which provides that Land Bank has the legal authority to encumber, assign, transfer, or sell any right which it may have under the Loan/Line Agreement.

We do not agree.

Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor.[33]

Novation may be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new one that takes the place of the former; it is merely modificatory

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[33] *Spouses Valenzuela v. Kalayaan Development & Industrial Corporation*, G.R. No. 163244, June 22, 2009; citing *Spouses Cornelio Joel I. Orden and Maria Nympha A. Orden, et al. v. Spouses Arturo and Melodia Aurea, et al.*, G.R. No. 172733, August 20, 2008.

when the old obligation subsists to the extent that it remains compatible with the amendatory agreement.[34]

For novation to take place, the following requisites must concur:

1) There must be a previous valid obligation.
2) The parties concerned must agree to a new contract.
3) The old contract must be extinguished.
4) There must be a valid new contract.[35]

Novation may either be express, when the new obligation declares in unequivocal terms that the old obligation is extinguished; or implied, when the new obligation is on every point incompatible with the old one.[36] The test of incompatibility is whether the two obligations can stand together, each one with its own independent existence.[37]

In the instant case, the Court finds that the Partial Compromise Agreement entered into by petitioners and Land Bank constitutes as an implied modificatory novation or amendment to the Loan/Line Agreement. As such, any provision in the Loan/Line Agreement inconsistent with the provisions of the Partial Compromise Agreement is deemed amended or waived by the parties.

In other words, by entering into the Partial Compromise Agreement and agreeing to "suspend all actions," Land Bank effectively waived all its rights regarding MPC Nos. 0002 and 0004. This necessarily includes its right to assign under the Loan/Line Agreement.

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[34] *Babst v. Court of Appeals*, G.R. No. 99398, January 26, 2001, 350 SCRA 341, 355-356; citing *Quinto v. People*, G.R. No. 126712, April 14, 1999, 305 SCRA 708, 714.

[35] *Agro Conglomerates, Inc. v. Court of Appeals*, *supra* note 26, at 458-459; *Security Bank and Trust Company, Inc. v. Cuenca*, G.R. No. 138544, October 3, 2000, 341 SCRA 781, 796; *Reyes v. Court of Appeals*, G.R. No. 120817, November 4, 1996, 264 SCRA 35, 43.

[36] *Spouses Bautista v. Pilar Development Corporation*, G.R. No. 135046, August 17, 1999, 312 SCRA 611, 618.

[37] *Molino v. Security Diners International Corporation*, G.R. No. 136780, August 16, 2001, 363 SCRA 358, 366; citing *Fortune Motors v. Court of Appeals*, G.R. No. 112191, February 7, 1997, 267 SCRA 653.

Moreover, ACI and Land Bank entered into the Partial Compromise Agreement freely and voluntarily. And this Partial Compromise Agreement was approved by the RTC in its Partial Decision giving it more weight.

Furthermore, the Civil Code provides that obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.[38]

In the case at bar, the payment made by ACI in the Partial Compromise Agreement was done in good faith. As culled from the facts, Siy did not remit the payments made by ACI to Land Bank. Upon recommendation of its legal counsel and despite the fact that it already paid, ACI, however, settled the loan and paid again. This substantial amount is the consideration for which ACI and Land Bank agreed to suspend all actions. Thus, just as ACI acted in good faith, Land Bank is also expected to act in good faith in following the covenants it entered into in the Partial Compromise Agreement.

On a final note, the sale or transfer of the MPCs to a third party, if declared as legal, would allow respondent Land Bank to circumvent its obligations found in the Partial Compromise Agreement and, in turn, diminish the rights of petitioners. Such a move cannot be countenanced. The principle of what cannot be done directly, cannot be done indirectly is applicable.

WHEREFORE, the appeal is *GRANTED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 103717 dated October 16, 2008 and May 13, 2009, respectively are *NULLIFIED* and *SET ASIDE*. The Orders of the RTC dated February 29, 2008, March 17, 2008 and April 21, 2008, together with the March 5, 2008 Writ of Execution are *REINSTATED*.

No costs.

SO ORDERED.

Corona (Chairperson), Nachura, Peralta, and *Del Castillo,*[*] *JJ.,* concur.

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[38] CIVIL CODE, Art. 1159.

[*] Additional member per Special Order No. 805 dated December 4, 2009.

EN BANC

[G.R. No. 188240. December 23, 2009]

MICHAEL L. SAN MIGUEL, *petitioner, vs.* **COMMISSION ON ELECTIONS and CHRISTOPHER V. AGUILAR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND *BARANGAY* OFFICIALS; EXECUTION PENDING APPEAL; PERIOD WITHIN WHICH COURT MAY RESOLVE A MOTION FOR EXECUTION PENDING APPEAL.— Evident from the usage of the word "may," the language of Section 11, Rule 14 of the Rules of Procedure in Election Contests before the Courts involving Elective Municipal and *Barangay* Officials denotes that it is merely directory, and not mandatory, for the trial court to issue the special order before the expiration of the period to appeal. The trial court may still thereafter resolve a motion for execution pending appeal, *provided*; (i) the motion is filed within the five-day reglementary period; and (ii) the special order is issued *prior* to the transmittal of the records to the Comelec.

2. ID.; ID.; ID.; ID.; THE PERMISSIVE NATURE OF THE RULE ALLOWS THE TRIAL JUDGE TO RULE ON THE MOTION *AFTER* THE PERIOD OF APPEAL AS LONG AS IT WAS FILED DURING THE SAID PERIOD.— Indeed, in one case, the Court construed a similarly phrased provision to mean that the ruling on the motion for execution may issue *after* the period of appeal, as long as the motion for execution pending appeal was filed before the expiration of the time to appeal. Keeping in mind that "hurried justice is not always authentic justice," the permissive nature of the rule allows the trial court to apply the same insofar as it is practicable, albeit the rigid compliance therewith is not altogether impossible, such that a motion for execution pending appeal may be **filed** at the latest on the *second* day after notice of the decision, and **heard and**

resolved at the latest on the *fifth* day after notice of the decision, in compliance with the mandatory three-day notice rule, barring any intervening resetting or non-working days.

3. **ID.; ID.; ID.; ID.; THE SPECIAL ORDER DIRECTING THE ISSUANCE OF A WRIT OF EXECUTION PENDING APPEAL MUST BE ISSUED PRIOR TO THE TRANSMITTAL OF THE RECORDS TO THE COMELEC.—** It also appears that the prevailing party need not check first if the losing party *actually* appealed the case before the prevailing party could file a motion for execution *pendente lite*. The setting of the same period of five days for the filing of a motion for execution pending appeal, similar to that for a notice of appeal, allows the trial court to expediently rule on this incident, along with the notice of appeal, before transmitting the records to the Comelec, during which the trial court shall have already lost jurisdiction to resolve pending incidents. In other words, the special order directing the issuance of a writ of execution pending appeal must be issued *prior* to the transmittal of the records to Electoral Contests Adjudication Department of the Comelec.

4. **ID.; ID.; ID.; ID.; ID.; THE WRIT OF EXECUTION ITSELF MAY ISSUE AFTER THE TRANSMITTAL OF THE RECORDS.—** As interpreted by the Court in *Pecson v. Commission on Elections*, the same elements of possession of the records and non-lapse of the appeal period are necessary for the trial court's exercise of its residual jurisdiction to issue a special order. The writ of execution is a mere administrative medium of the special order, and the writ itself cannot and does not assume a life of its own independent from the special order on which it is based. *Pecson* explained that the writ itself may issue *after* the transmittal of the records, upon cessation of the 20-working-day waiting or suspension period without the other party having secured a restraining or status quo order.

5. **ID.; *CERTIORARI* PETITION FROM TRIAL COURT'S DECISION TO THE COMELEC; GRAVE ABUSE OF DISCRETION; TRIAL COURT'S RESETTING THE HEARING OF A MOTION FOR EXECUTION PENDING APPEAL AND USING SUCH CIRCUMSTANCE IN SUBSEQUENTLY DENYING THE SAME DUE TO LAPSE OF THE FIVE-DAY PERIOD TO APPEAL, A CASE OF;**

CASE AT BAR.— In the present case, the Comelec correctly found that the trial court gravely abused its discretion when it *motu proprio* reset the hearing of the Urgent Motion from May 14, 2008 to May 19, 2008, and used such circumstance in denying the grant of a special order on the ground that it had lost its jurisdiction with the lapse of the five-day period. Indeed, the trial court's patent and gross abuse of discretion amounted to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law. The whim is evident from the fact that if indeed the trial court really believed that the five-day period was mandatory, it should have resolved the Urgent Motion either way on the day it was for hearing instead of rescheduling the hearing.

6. **ID.; ID.; ID.; NOT PRESENT IN COMELEC'S FINDING THAT GOOD AND SPECIAL REASONS JUSTIFIED EXECUTION *PENDENTE LITE* OF TRIAL COURT'S DECISION; CASE AT BAR.—** The Court finds no abuse of discretion, much less a grave one, on the part of the Comelec when it found good and special reasons to justify the execution *pendente lite* of the trial court's 419-page decision that "laboriously elucidated the reasons for its invalidation or validation of each ballot." Absent any grave abuse of discretion, the Court will not disturb the Comelec's finding that the trial court's decision was rendered with due basis and substantiation on the computation of the votes.

APPEARANCES OF COUNSEL

George Erwin M. Garcia for petitioner.
The Solicitor General for public respondent.
Bello Law Office for private respondent.

D E C I S I O N

CARPIO MORALES, *J*.:

Challenged via *Certiorari* and Prohibition are the Resolutions of February 25, 2009 and May 25, 2009 of public respondent Commission on Elections (Comelec) in SPR (Brgy.) No. 106-2008 directing the issuance of a writ of execution *pendente lite* and denying the motion for reconsideration, respectively.

Petitioner Michael San Miguel and private respondent Christopher Aguilar vied in the October 29, 2007 elections for the position of *Punong Barangay* of Barangay Marcelo Green in Parañaque City where they obtained 2,969 and 2,867 votes, respectively.

After petitioner's proclamation, private respondent filed an election protest docketed as E.P. Case No. 07-4 before the Metropolitan Trial Court of Parañaque City which, after recount and revision of ballots from the contested precincts, ruled that private respondent garnered 2,898 votes or 12 votes more than the 2,886 votes received by petitioner and accordingly annulled petitioner's proclamation, by Decision of May 9, 2008.

Petitioner filed with the trial court a Notice of Appeal to the Comelec, docketed eventually as EAC No. 208-2008. The appeal is still pending.

Meanwhile, three days after the promulgation of the trial court's Decision or on May 12, 2009, private respondent filed an Urgent Motion for Execution Pending Appeal (Urgent Motion) which was received by petitioner on May 13, 2008 with notice of a May 14, 2008 hearing. The trial court calendared the hearing, however, on May 19, 2008, and eventually denied the Urgent Motion by Order of May 22, 2008.[1]

Private respondent elevated the matter on *certiorari* to the Comelec which reversed the trial court's May 22, 2008 Order, by the first assailed Resolution the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant petition for *certiorari* is hereby GRANTED. Accordingly, the assailed Order of May 22, 2008 in Election Protest Case No. 07-4 (*Christopher Aguilar v. Michael San Miguel*) of the Metropolitan Trial Court of Parañaque City is hereby SET ASIDE. Let a Writ of Execution pending appeal be issued in accordance with Section 11(b), Rule 14 of the Rules of Procedure in Election Contests to implement the May 9, 2008 Decision of the respondent Judge in the above-captioned case, which declared Protestant-CHRISTOPHER V. AGUILAR as the duly

[1] Penned by Presiding Judge Ramsey Domingo G. Pichay (Branch 78).

elected Punong *Barangay* of Marcelo Green, Parañaque City and annulled the proclamation and oath-taking of Protestee-MICHAEL L. SAN MIGUEL.

SO ORDERED.[2] (emphasis and italics in the original),

and denied reconsideration thereof by the second assailed Resolution.

Hence, the present petition, petitioner averring that the Comelec gravely abused its discretion by blatantly misapplying Section 11, Rule 14 of the Rules of Procedure in Election Contests before the Courts involving Elective Municipal and *Barangay* Officials[3] (Rules of Procedure) which reads:

Sec. 11. *Execution Pending Appeal* — On motion of the prevailing party with notice to the adverse party, the court, while still in possession of the original records, ***may,*** at its discretion, **order the execution of the decision** in an election contest **before the expiration of the period to appeal**, subject to the following rules:

(a) There must be a motion by the prevailing party with three-day notice to the adverse party. Execution pending appeal shall not issue without prior notice and hearing. There must be good reasons for the execution pending appeal. The court, in a special order, must state the good or special reasons justifying the execution pending appeal. Such reasons must:

(1) constitute superior circumstances demanding urgency that will outweigh the injury or damage should the losing party secure a reversal of the judgment on appeal; and

(2) be manifest, in the decision sought to be executed, that the defeat of the protestee or the victory of the protestant has been clearly established.

(b) If the court grants an execution pending appeal, an aggrieved party shall have twenty working days from notice of the special order within which to secure a restraining order or *status quo order* from the Supreme Court or the Commission on Elections. The corresponding writ of execution shall issue after twenty

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[2] *Rollo*, p. 67.

[3] A.M. No. 07-4-15-SC (effective May 15, 2007).

> days, if no restraining order or status quo order is issued. During such period, the writ of execution pending appeal shall be stayed. (emphasis, italics and underscoring supplied)

In not granting a special order to execute its decision pending appeal, the trial court explained that it could no longer order execution since the above-quoted rule allows the issuance of a special order only within the five-day period to appeal which, at that time, had already expired.

Echoing that of the trial court, petitioner posits that the Rules of Procedure expressly provide that the special order should be issued before the expiration of the five-day period to file a notice of appeal.

By petitioner's theory, the filing of the motion, the three-day notice to the other party, the hearing on the motion, and the issuance of the order resolving the motion should all take place within five days.

The petition lacks merit.

Evident from the usage of the word "may," the language of the subject provision denotes that it is merely directory, and not mandatory, for the trial court to issue the special order before the expiration of the period to appeal. The trial court may still thereafter resolve a motion for execution pending appeal, *provided*: (i) the motion is filed within the five-day reglementary period; and (ii) the special order is issued *prior* to the transmittal of the records to the Comelec.

Both parties concede that the motion for execution pending appeal must be filed within the five-day period to appeal. In the present case, the Urgent Motion was filed well within the reglementary period.

Indeed, in one case,[4] the Court construed a similarly phrased provision[5] to mean that the ruling on the motion for execution

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[4] *Lindo v. Commission on Elections,* G.R. No. 127311, June 19, 1997, 274 SCRA 511.

[5] 1964 RULES OF COURT, Rule 39, Sec. 2. This interpretation paved

may issue *after* the period of appeal, as long as the motion for execution pending appeal was filed before the expiration of the time to appeal.

Keeping in mind that "hurried justice is not always authentic justice,"[6] the permissive nature of the rule allows the trial court to apply the same insofar as it is practicable, albeit the rigid compliance therewith is not altogether impossible, such that a motion for execution pending appeal may be **filed** at the latest on the *second* day after notice of the decision, and **heard and resolved** at the latest on the *fifth* day after notice of the decision, in compliance with the mandatory three-day notice rule, barring any intervening resetting or non-working days.

It also appears that the prevailing party need not check first if the losing party *actually* appealed the case before the prevailing party could file a motion for execution *pendente lite*. The setting of the same period of five days for the filing of a motion for execution pending appeal, similar to that for a notice of appeal, allows the trial court to expediently rule on this incident, along with the notice of appeal, before transmitting the records to the Comelec, during which the trial court shall have already lost jurisdiction to resolve pending incidents.

In other words, the special order directing the issuance of a writ of execution pending appeal must be issued *prior* to the transmittal[7] of the records to Electoral Contests Adjudication Department of the Comelec.

As interpreted by the Court in *Pecson v. Commission on Elections*,[8] the same elements of possession of the records and

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the way for the 1997 amendment of the same rule on ordering execution pending appeal "**even** before the expiration of the period to appeal," among other amendments.

[6] *Supra* note 4 at 519 citing *Universal Far East Corp. v. CA*, 216 Phil. 598, 603.

[7] The rules provide a 15-day period from the filing of a notice of appeal within which to transmit the records from the trial court to the Comelec (*vide* Rules of Procedure, *supra* note 3, Rule 14, Sec. 10).

[8] G.R. No. 182865, December 24, 2008, 575 SCRA 634. Notably, both

non-lapse of the appeal period are necessary for the trial court's exercise of its residual jurisdiction to issue a special order. The writ of execution is a mere administrative medium of the special order, and the writ itself cannot and does not assume a life of its own independent from the special order on which it is based. *Pecson* explained that the writ itself may issue *after* the transmittal of the records, upon cessation of the 20-working-day waiting or suspension period[9] without the other party having secured a restraining or status quo order.

In the present case, the Comelec correctly found that the trial court gravely abused its discretion when it *motu proprio* reset the hearing of the Urgent Motion from May 14, 2008 to May 19, 2008, and used such circumstance in denying the grant of a special order on the ground that it had lost its jurisdiction with the lapse of the five-day period.

Indeed, the trial court's patent and gross abuse of discretion amounted to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law. The whim is evident from the fact that if indeed the trial court really believed that the five-day period was mandatory, it should have resolved the Urgent Motion either way on the day it was set for hearing instead of rescheduling the hearing.

Petitioner's argument that the Comelec cannot direct the issuance of a writ of execution since no special order was issued by the trial court is specious. It begs the question and trivializes the remedy of *certiorari* available before the Comelec, rendering the latter inutile in annulling or modifying the proceedings to "keep an inferior court within its jurisdiction and to relieve persons from arbitrary acts, meaning acts which courts or judges have no power or authority in law to perform."[10]

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parties in *Jecson* received a copy of the trial court's decision on November 26, 2007, yet the special order was issued only on December 3, 2006. The five-day period to appeal refers to the filing of the motion for execution pending appeal and not to the insurance of the special order [*rollo* (G.R. No. 182865), p. 133].

[9] RULES OF PROCEDURE, *supra* note 3, Rule 14, Sec. 11(b).

[10] *Ong v. People*, G.R. No. 140904, October 9, 2000, 342 SCRA 372, 386.

Petitioner also alleges that the finding of private respondent's electoral victory was based on a faulty arithmetic computation by the trial court, to thus negate the guideline in an execution pending appeal that the defeat of the protestee or the victory of the protestant must have been clearly established.

The Comelec pointed out that the trial court's decision itself made clear reference to the April 8, 2008 Order which formed part of the decision in arriving at the computation of the respective votes garnered by the parties.

The Court finds no abuse of discretion, much less a grave one, on the part of the Comelec when it found good and special reasons to justify the execution *pendente lite* of the trial court's 419-page decision that "laboriously elucidated the reasons for its invalidation or validation of each ballot."[11] Absent any grave abuse of discretion, the Court will not disturb the Comelec's finding that the trial court's decision was rendered with due basis and substantiation on the computation of the votes.

The present disposition is without prejudice, however, to the appeal docketed as EAC No. 208-2008, which could fully ventilate the merits of the parties' claims and defenses that are evidentiary in nature, and to the other issues raised by the parties which the Court finds unnecessary to resolve.

WHEREFORE, the petition is *DISMISSED*. The assailed Resolutions of the Commission on Elections in SPR (Brgy.) No. 106-2008 are *AFFIRMED*.

SO ORDERED.

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

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[11] *Rollo*, p. 103.

INDEX

INDEX

ACT PROHIBITING THE IMPOSITION OF THE DEATH PENALTY IN THE PHILIPPINES (R.A.NO. 9346)

Application — Death penalty was correctly reduced to reclusion perpetua for each count of rape. (People *vs.* Cabral, G.R. No. 179946, Dec. 23, 2009) p. 809

ACTIONS

Dismissal of actions — Lack of cause of action as a ground, when established. (Positos *vs.* Chua, G.R. No. 179328, Dec. 23, 2009) p. 803

Dismissal without prejudice — Does not operate as a judgment on the merits. (Positos *vs.* Chua, G.R. No. 179328, Dec. 23, 2009) p. 803

ADMINISTRATIVE AGENCIES

Adjudicative functions — Administrative agencies are given wide latitude in the evaluation of evidence and in the exercise of their adjudicative functions. (Phil. Economic Zone Authority *vs.* Pearl City Manufacturing Corp., G.R. No. 168668, Dec. 16, 2009) p. 191

A*uthority to appoint and discipline employees* — Basis. (Orbase *vs.* Office of the Ombudsman, G.R. No. 175115, Dec. 23, 2009) p. 764

Quasi-judicial power — Defined. (Tabigue *vs.* Int'l. Copra Export Corp. (INTERCO), G.R. No. 183335, Dec. 23, 2009) p. 866

ADMINISTRATIVE PROCEEDINGS

Administrative due process — Essence is simply an opportunity to be heard. (Orbase *vs.* Office of the Ombudsman, G.R. No. 175115, Dec. 23, 2009) p. 764

Procedural due process — Defects therein may be cured where a party has the opportunity to appeal or seek reconsideration

of the action or ruling complained of. (Phil. Economic Zone Authority *vs*. Pearl City Manufacturing Corp., G.R. No. 168668, Dec. 16, 2009) p. 191

— Essence is embodied in the basic requirement of notice and a real opportunity to be heard. *(Id.)*

— Requirement of notice and hearing does not connote full adversarial or trial type proceedings. *(Id.)*

Substantial evidence — Defined as such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. (Orbase *vs*. Office of the Ombudsman, G.R. No. 175115, Dec. 23, 2009) p. 764

— Proof required in administrative proceedings; construed. *(Id.)*

AFFIDAVITS

Affidavit of recantation — Not given credence. (Mariwasa Siam Ceramics, Inc. *vs*. Sec. of the DOLE, G.R. No. 183317, Dec. 21, 2009) p. 603

AGENCY

Agency by estoppel — Requisites. (Yun Kwan Byung *vs*. PAGCOR, G.R. No. 163553, Dec. 11, 2009) p. 23

Basis — Basis of agency is representation; elucidated. (Yun Kwan Byung *vs*. PAGCOR, G.R. No. 163553, Dec. 11, 2009) p. 23

Implied agency — Distinguished from agency by estoppel. (Yun Kwan Byung *vs*. PAGCOR, G.R. No. 163553, Dec. 11, 2009) p. 23

AGRICULTURAL LAND REFORM CODE OF 1963 (R.A. NO. 3844)

Lack of written notice of sale — Effect thereof on the agricultural lessee. (Po *vs*. Dampal, G.R. No. 173329, Dec. 21, 2009) p. 523

APPEALS

Appeal under Rule 43 of the Rules of Court — Appeals from the Department of Agrarian Reform Adjudication Board

(DARAB) decision should be filed with the Court of Appeals by a verified petition under Rule 43. (Po *vs*. Dampal, G.R. No. 173329, Dec. 21, 2009) p. 523

— Applicable to petitions filed with the Court of Appeals questioning judgments of quasi-judicial agencies exercising quasi-judicial functions. (Tabigue *vs*. Int'l. Copra Export Corp. (INTERCO), G.R. No. 183335, Dec. 23, 2009) p. 866

— Dismissal of petition proper for failure to pay the docket and other lawful fees; exception. *(Id.)*

— National Conciliation and Mediation Board is not considered a quasi-judicial agency; dismissal of appeal under Rule 43, proper. *(Id.)*

Docket fees — Failure to pay docket fees does not automatically result in the dismissal of an appeal. (Barangay Sangalang *vs*. Barangay Maguihan, G.R. No. 159792, Dec. 23, 2009) p. 711

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. (Orbase *vs*. Office of the Ombudsman, G.R. No. 175115, Dec. 23, 2009) p. 764

Factual findings of the Court of Tax Appeals — Generally not disturbed on appeal when supported by substantial evidence. (Kepco Phils. Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 179356, Dec. 14, 2009) p. 121

Factual findings of the trial court — Accorded the highest degree of respect; exceptions. (People *vs*. Palgan, G.R. No. 186234, Dec. 21, 2009) p. 620

(People *vs*. Cruz, G.R. No. 185381, Dec. 16, 2009) p. 261

(Batistis *vs*. People, G.R. No. 181571, Dec. 16, 2009) p. 246

— When affirmed by the Court of Appeals, are accorded great weight and respect by the Supreme Court. (Rep of the Phils. *vs*. Leonor, G.R. No. 161424, Dec. 23, 2009) p. 729

Petition for review on certiorari to the Supreme Court under Rule 45 — Issue as to whether a statute may be applied retroactively is a pure question of law which is directly appealable before the Supreme Court via petition for review on *certiorari*; rules may be relaxed in the interest of justice. (*In re*: Petition for Assistance in the Liquidation of Intercity Savings and Loan Bank, Inc. *vs*. Stockholders of Intercity Savings and Loan Bank, Inc., G.R. No. 181556, Dec. 14, 2009) p. 128

— Does not include claim of dispossession which is a question of fact. (Positos *vs*. Chua, G.R. No. 179328, Dec. 23, 2009) p. 803

— Limited to review of questions of law; exceptions. (GSIS *vs*. Raoet, G.R. No. 157038, Dec. 23, 2009) p. 690

(Heirs of Domingo Hernandez, Sr. *vs*. Mingoa, Sr., G.R. No. 146548, Dec. 18, 2009) p. 303

(Batistis *vs*. People, G.R. No. 181571, Dec. 16, 2009) p. 246

(Phil. Economic Zone Authority *vs*. Pearl City Manufacturing Corp., G.R. No. 168668, Dec. 16, 2009) p. 191

(Olegario *vs*. Mari, G.R. No. 147951, Dec. 14, 2009) p. 48

— Should raise only the errors committed by the Court of Appeals, not the errors of the Regional Trial Court. (Batistis *vs*. People, G.R. No. 181571, Dec. 16, 2009) p. 246

— The mode of review on appeal of a decision in a criminal case wherein the Court of Appeals imposes a penalty other than death, reclusion perpetua or life imprisonment. *(Id.)*

Petition for review under Rule 42 — Proper remedy when the Regional Trial Court tried the case in the exercise of its appellate jurisdiction. (Barangay Sangalang *vs*. Barangay Maguihan, G.R. No. 159792, Dec. 23, 2009) p. 711

Questions of law — Distinguished from question of fact. (Batistis *vs*. People, G.R. No. 181571, Dec. 16, 2009) p. 246

ATTORNEYS

Attorney-client relationship — A client is bound by his counsel's mistakes and negligence; exceptions. (GSIS *vs.* RTC of Pasig City, Br. 71, G.R. No. 175393, Dec. 18, 2009) p. 453

Code of Professional Responsibility — Attorneys are duty-bound to display utmost diligence and competence in protecting the interests of their clients. (Talento *vs.* Atty. Paneda, A.C. No. 7433, Dec. 23, 2009) p. 622

ATTORNEY'S FEES

Award of — The award of attorney's fees to a dismissed employee, upheld. (RTG Construction, Inc. and/or Rolito Go/Russet Construction and Dev't. Corp. *vs.* Facto, G.R. No. 163872, Dec. 21, 2009) p. 511

BANKING LAWS

Republic Act No. 9302 (An Act Amending R.A. No. 3591, Charter of the Phil. Deposit Insurance Corporation) — Has no retroactive effect; statutes are prospective and not retroactive in their operation, unless the contrary is provided; rationale. (*In re*: Petition for Assistance in the Liquidation of Intercity Savings and Loan Bank, Inc. *vs.* Stockholders of Intercity Savings and Loan Bank, Inc., G.R. No. 181556, Dec. 14, 2009) p. 128

BILL OF RIGHTS

Equal protection clause — Explained. (League of Cities of the Phils. *vs.* COMELEC, G.R. No. 176951, Dec. 21, 2009) p. 531

— The enactment of Cityhood laws promoted equality between respondent municipalities and 33 other municipalities, which has already been elevated to city status. *(Id.)*

— The exemption of respondent municipalities from the ₱100 million income requirement under the Cityhood laws is germane to the purpose of said laws. *(Id.)*

— Valid classification; requisites. *(Id.)*

BUILDING CODE (P.D. NO. 1096)

Enforcement of — Enforcement of the provisions of the Building Code is lodged in the Department of Public Works and Highways and not in the MMDA. (MMDA *vs*. Trackworks Rail Transit Advertising, Vending and Promotions, Inc., G.R. No. 179554, Dec. 16, 2009) p. 236

BUREAU OF INTERNAL REVENUE

Revenue Regulation (RR) 7-95 — Purchases held as inventory items cannot qualify as capital goods. (Kepco Phils. Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 179356, Dec. 14, 2009) p. 121

— Purchases of domestic goods and services, when considered as capital goods or properties. *(Id.)*

CADASTRAL MAPS

Validity of — Cadastral map approved by the Director of Lands given more credence than the documents sourced from the tax assessor's office; discussed. (Barangay Sangalang *vs*. Barangay Maguihan, G.R. No. 159792, Dec. 23, 2009) p. 711

CERTIORARI

Grave abuse of discretion as a ground — Connotes capricious, despotic, oppressive, or whimsical exercise of judgment as is equivalent to lack of jurisdiction; the abuse must be of such degree as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law. (NAPOCOR *vs*. Maruhom, G.R. No. 183297, Dec. 23, 2009) p. 844

Petition for — The existence and availability of the right to appeal are antithetical to the availment of the special civil action for *certiorari*; exceptions. (Metropolitan Bank & Trust Co. *vs*. Judge Abad Santos, G.R. No. 157867, Dec. 15, 2009) p. 134

CITYHOOD LAWS

Constitutionality of — Operative fact doctrine, applied. (League of Cities of the Phils. *vs*. COMELEC, G.R. No. 176951, Dec. 21, 2009) p. 531

CIVIL SERVICE

Dishonesty — Act of submitting a bio-data which "enhanced" petitioner's qualifications by attaching the phrase "to present" to her work experience as a consultant to the National Library thereby making it appear that she still held the same position when she applied for the position of Assistant Director in 1996, a case of. (Orbase *vs*. Office of the Ombusman, G.R. No. 175115, Dec.23, 2009) p. 764

— Classified as grave offense punishable by dismissal even for the first offense. *(Id.)*

— Defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. *(Id.)*

— Dishonest conduct prior to entering the service, as a ground for disciplinary action, discussed. *(Id.)*

CIVIL SERVICE COMMISSION (CSC)

Jurisdiction — CSC has jurisdiction over controversies relating to the civil service. (Cabungcal *vs*. Lorenzo, G.R. No. 160367, Dec. 18, 2009) p. 329

COLLECTIVE BARGAINING AGREEMENT

Voluntary arbitration — Ruling valid only between immediate parties. (Temic Automotive Phils., Inc. *vs*. Temic Automotive Phils., Inc. Employees UNION-FFW, G.R. No. 186965, Dec. 23, 2009) p. 986

COMMON CARRIERS

Bill of lading — Instances when a consignee may be bound by the stipulations of the bill of lading. (MOF Co., Inc. *vs*.

Shin Yang Brokerage Corp., G.R. No. 172822, Dec. 18, 2009) p. 424

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Buy-bust operation — A form of entrapment. (People *vs*. Cruz, G.R. No. 185381, Dec. 16, 2009) p. 261

— A legitimate form of catching offenders in the act of committing an offense; warrantless arrest and seizure, lawful. (People *vs*. SPO3 Ara, G.R. No. 185011, Dec. 23, 2009) p. 939

— Evidence admissible since buy-bust operation was within legal bounds. *(Id.)*

— Nature. (People *vs*. Tion, G.R. No. 172092, Dec. 16, 2009) p. 209

— Objective test in scrutinizing buy-bust operations. *(Id.)*

— Presentation of marked money not a requirement in proving legitimacy of drug buy-bust operations. (People *vs*. SPO3 Ara, G.R. No. 185011, Dec. 23, 2009) p. 939

— Prior surveillance of suspected offender, not a prerequisite for the validity of a buy-bust operation. (People *vs*. Cruz, G.R. No. 185381, Dec. 16, 2009) p. 261

Chain of custody rule on seized drugs — Circumstances showing that the chain of custody of the object evidence was never broken, elucidated. (People *vs*. Cruz, G.R. No. 185381, Dec. 16, 2009) p. 261

— Elucidated. (People *vs*. Tion, G.R. No. 172092, Dec. 16, 2009) p. 209

— Non-compliance therewith will not invalidate arrest of an accused nor render inadmissible the items seized; presentation of the integrity and evidentiary value of items seized, essential. (People *vs*. SPO3 Ara, G.R. No. 185011, Dec. 23, 2009) p. 939

Section 21 of the Implementing Rules and Regulations — Non-compliance therewith does not render an accused's arrest illegal or the items seized/confiscated from the accused, inadmissible. (People *vs*. Cruz, G.R. No. 185381, Dec. 16, 2009) p. 261

COMPROMISE AGREEMENTS

Concept — Defined. (Adriatico Consortium, Inc. *vs*. Land Bank of the Phils., G.R. No. 187838, Dec. 23, 2009) p. 1027

CONTRACTS

Contract for advertising services — When considered a valid exercise of ownership. (MMDA *vs*. Trackworks Rail Transit Advertising, Vending and Promotions, Inc., G.R. No. 179554, Dec. 16, 2009) p. 236

Form of — Lack of proper notarization does not necessarily nullify nor render the parties' transaction void *ab initio*. (Rep. Fernandez *vs*. HRET, G. R. No. 187478, Dec. 21, 2009) p. 628

Interpretation of — Contract is the law between the contracting parties; when the language of the contract is clear and plain or readily understandable by the ordinary reader, there is absolutely no room for interpretation or construction and the literal meaning of its stipulations shall control. (Adriatico Consortium, Inc. *vs*. Land Bank of the Phils., G.R. No. 187838, Dec. 23, 2009) p. 1027

— Contract must be read as a whole. *(Id.)*

— Intention of the parties determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties; simulated contract, elaborated; validity of the deed of sale, upheld. *(Id.)*

— To ascertain intention of parties, their contemporaneous and subsequent acts can be considered. *(Id.)*

Obligations arising from contracts — Have the force of law and should be complied with in good faith. (Adriatico Consortium, Inc. *vs*. Land Bank of the Phils., G.R. No. 187838, Dec. 23, 2009) p. 1027

Valid contract — Elements. (Heirs of Domingo Hernandez, Sr. *vs*. Mingoa, Sr., G.R. No. 146548, Dec. 18, 2009) p. 303

Void contracts — Gambling contracts cannot be ratified. (Yun Kwan Byung *vs*. PAGCOR, G.R. No. 163553, Dec. 11, 2009) p. 23

CORPORATE REHABILITATION

2000 Interim Rules of Procedure on Corporate Rehabilitation — Governs corporate rehabilitation and suspension of actions for claims against corporation; jurisdiction of the SEC over all cases enumerated thereunder is transferred to the Regional Trial Court. (Tiangco *vs*. Uniwide Sales Warehouse Club, Inc., G.R. No. 168697, Dec. 14, 2009) p. 89

Reorganization of Securities and Exchange Commission with Additional Powers (P.D. No 902-A, As Amended) — Governs corporate rehabilitation. (Tiangco *vs*. Uniwide Sales Warehouse Club, Inc., G.R. No. 168697, Dec. 14, 2009) p. 89

Stay order — Suspensive effect of the stay order is not time bound. (Tiangco *vs*. Uniwide Sales Warehouse Club, Inc., G.R. No. 168697, Dec. 14, 2009) p. 89

CORPORATIONS

Corporate officers — Distinguished from an employee. (Okol *vs*. Slimmers World Int'l., G.R. No. 160146, Dec. 11, 2009) p. 13

Intra-corporate controversy — A corporate officer's dismissal is an intra-corporate controversy. (Okol *vs*. Slimmers World Int'l., G.R. No. 160146, Dec. 11, 2009) p. 13

— Question of remuneration involving a stockholder and officer is not a simple labor problem, but a corporate controversy. *(Id.)*

— The determination of the rights of a dismissed director and corporate officer, as well as the corresponding liability of a corporation, is an intra-corporate dispute subject to the jurisdiction of the regular courts. *(Id.)*

COURT PERSONNEL

Dishonesty — Making false entries in the daily time records, a case of; penalty. (Judge Guerrero *vs*. Ong, A.M. No. P-09-2676, Dec. 16, 2009) p. 168

Duties — Should behave in a manner that should uphold the honor and dignity of the judiciary. (Judge Guerrero *vs*. Ong, A.M. No. P-09-2676, Dec. 16, 2009) p. 168

— To act and behave with a heavy burden of responsibility. (Civil Service Commission *vs*. Andal, G.R. No. 185749, Dec. 16, 2009) p. 280

Grave misconduct — Distinguished from simple misconduct. (Judge Guerrero *vs*. Ong, A.M. No. P-09-2676, Dec. 16, 2009) p. 168

— Proper penalty. *(Id.)*

— Use of official position to secure benefits, a case of. *(Id.)*

COURTS

Jurisdiction — Determined by the material allegations of the complaint and the law. (Mayor Sampiano *vs*. Judge Indar, A.M. No. RTJ-05-1953, Dec. 21, 2009) p. 495

— Doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court, explained. (Heirs of Simeon Piedad *vs*. Exec. Judge Estrera, A.M. No. RTJ-09-2170, Dec. 16, 2009) p. 178

— The proper court has jurisdiction to defer or suspend the release of Internal Revenue Allotment under Section 286 of the Local Government Code when there is a legal question presented before it. (Mayor Sampiano *vs*. Judge Indar, A.M. No. RTJ-05-1953, Dec. 21, 2009) p. 495

DAMAGES

Attorney's fees — Award of attorney's fees to a dismissed employee, upheld. (RTG Construction, Inc. *vs*. Facto, G.R. No. 163872, Dec. 21, 2009) p. 511

Award of — Damages awarded to the victim of rape. (People *vs*. Albalate, Jr., G.R. No. 174480, Dec. 18, 2009) p. 437

Civil indemnity — Award thereof is mandatory upon the finding of the fact of rape. (People *vs*. Palgan, G.R. No. 186234, Dec. 21, 2009) p. 620

Exemplary damages — Award thereof is proper when crime was committed with one or more aggravating circumstances. (People *vs*. Grande, G.R. No. 170476, Dec. 23, 2009) p. 745

Moral damages — When proper. (People *vs*. Palgan, G.R. No. 186234, Dec. 21, 2009) p. 620

Moral damages and civil indemnity — Correctly awarded in case at bar. (People *vs*. Grande, G.R. No. 170476, Dec. 23, 2009) p. 745

DANGEROUS DRUGS

Actual possession of drug — Accused's actual possession of a prohibited drug which he could not show as duly authorized by law is prima facie evidence of knowledge or animus possidendi. (People *vs*. Cruz, G.R. No. 185381, Dec. 16, 2009) p. 261

Chain of custody of the seized drugs — Circumstances showing that the chain of custody of the object evidence was never broken, elucidated. (People *vs.* Tion, G.R. No. 172092, Dec. 16, 2009) p. 209

(People *vs*. Cruz, G.R. No. 185381, Dec. 16, 2009) p. 261

Drug transactions — Drug transactions have been conducted without much care for an inconspicuous location; the fact that the parties are in a public place and in the presence of other people may not always discourage them from

pursuing their illegal trade as these factors may even serve to camouflage the same. (People *vs*. SPO3 Ara, G.R. No. 185011, Dec. 23, 2009) p. 939

Illegal possession of dangerous drugs — Elements. (People *vs*. Cruz, G.R. No. 185381, Dec. 16, 2009) p. 261

— Imposable penalty. (People *vs*. SPO3 Ara, G.R. No. 185011, Dec. 23, 2009) p. 939

Illegal sale of dangerous drugs — Accused commits the crime as soon as he consummates the sale transaction whether payment precedes or follows delivery of the drugs sold. (People *vs*. Tion, G.R. No. 172092, Dec. 16, 2009) p. 209

— Elements. (People *vs*. Cruz, G.R. No. 185381, Dec. 16, 2009) p. 261

— Imposable penalty. (People *vs*. Tion, G.R. No. 172092, Dec. 16, 2009) p. 209

— In drug cases, the fact of agreement and the act constituting the sale and delivery of prohibited drugs are material. *(Id.)*

— Presentation of marked money, not indispensable in drug cases. *(Id.)*

Illegal sale of shabu — Elements to be established for successful prosecution. (People *vs*. SPO3 Ara, G.R. No. 185011, Dec. 23, 2009) p. 939

— Imposable penalty. *(Id.)*

Prosecution of illegal sale of dangerous drugs — Requisites; illegal sale of marijuana, elements. (People *vs*. Tion, G.R. No. 172092, Dec. 16, 2009) p. 209

DEATH PENALTY

Act Prohibiting the Imposition of the Death Penalty in the Philippines (R.A. No. 9346) — Death penalty was correctly reduced to *reclusion perpetua* for each count of rape. (People *vs.* Cabral, G.R. No. 179946, Dec. 23, 2009) p. 809

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.* Barberos, G.R. No. 187494, Dec. 23, 2009) p. 1008

(People *vs.* Albalate, Jr., G.R. No. 174480, Dec. 18, 2009) p. 437

DOCUMENTARY EVIDENCE

Official or original copy — A document which was neither marked nor certified as a reproduction of the original cannot be considered as an official or original copy. (Rep. of the Phils. *vs.* Dev't. Resources Corp., G.R. No. 180218, Dec. 18, 2009) p. 490

DOCUMENTS

Admissibility — Person who prepared document must be presented in court and subjected to cross-examination. (Resort Hotels Corp. *vs.* DBP Corp., G.R. No. 180439, Dec. 23, 2009) p. 817

DUE PROCESS

Administrative due process — Essence. (Orbase *vs.* Office of the Ombudsman, G.R. No. 175115, Dec. 23, 2009) p. 764

Denial of — No denial of due process where the party fails to appear, despite notice during the preliminary conference; failure of the respondent to submit a position paper entitles the petitioner to a judgment based on the complaint. (Episcopal Diocese of Northern Phils. *vs.* District Engr., Mountain Province Engineering District, G.R. No. 178606, Dec. 15, 2009) p. 149

Procedural due process — Defects in the procedure may be cured where a party has the opportunity to appeal or seek reconsideration of the action or ruling complained of. (Phil. Economic Zone Authority *vs.* Pearl City Manufacturing Corp., G.R. No. 168668, Dec. 16, 2009) p. 191

— Essence is embodied in the basic requirement of notice and a real opportunity to be heard. *(Id.)*

— Requirement of notice and hearing does not connote full adversarial or trial type proceedings. *(Id.)*

ELECTION CONTESTS

Rules of procedure in Election Contest — The permissive nature of the rule on execution pending appeal allows the trial judge to rule on the motion after the period to file appeal as long as it was filed during the said period. (San Miguel *vs.* COMELEC, G.R. No. 188240, Dec. 23, 2009) p. 1045

— The special order directing the issuance of a writ of execution pending appeal must be issued prior to the transmittal of the records to the COMELEC. *(Id.)*

— The writ of execution is a mere administrative medium of the special order, and the writ itself cannot and does not assume a life of its own independent from the special order on which it is based; the writ of execution itself may issue after the transmittal of the records. *(Id.)*

ELECTION LAWS

Interpretation of — Term of office of elective officials; limitation expressed in the negative refers to the term. (Aldovino, Jr. *vs.* COMELEC, G.R. No. 184836, Dec. 23, 2009) p. 876

Right of suffrage — Elucidated. (Kabataan Party-List Representative Palatino *vs.* COMELEC, G.R. No. 189868, Dec. 15, 2009) p. 159

Voter's Registration Act of 1996 (R.A. No. 8189) — Not in conflict with other election laws respecting the authority of the Commission on Elections to fix other dates for pre-election acts. (Kabataan Party-List Representative Palatino *vs.* COMELEC, G.R. No. 189868, Dec. 15, 2009) p. 159

— Registration of voters, when conducted. *(Id.)*

ELECTIONS

Disqualification cases — Cannot be suspended by the pendency of the unconstitutionality issue of R.A. No. 9164 (An Act Providing for Synchronized Barangay and Sangguniang Kabataan Elections). (Monreal *vs.* COMELEC, G.R. No. 184935, Dec. 21, 2009) p. 613

— The subsequent disqualification of a candidate does not result in the nullification of the votes intended for him. *(Id.)*

ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA) (R.A. NO. 9136)

Separation of employees under R.A. No. 9136 — Employees who received separation pay under R.A. No. 9136 cannot claim retirement benefits under C.A. No. 186; reason, discussed. (Herrera *vs.* NAPOCOR, G.R. No. 166570, Dec. 18, 2009; *Brion, J., separate and concurring opinion*) p. 383

— Employees who were separated due to reorganization cannot claim vested rights over their retirement benefits. *(Id.)*

— EPIRA Law did not authorize the grant of both separation pay and retirement benefits. *(Id.)*

— R.A. No. 9136 speaks against the grant of additional compensation. *(Id.)*

EMPLOYEES, KINDS OF

Forwarders' employees — Not considered as regular employees; functions of forwarders vis-à-vis those of regular employees of the company. (Temic Automotive Phils., Inc. *vs.* Temic Automotive Phils., Inc. Employees UNION-FFW, G.R. No. 186965, Dec. 23, 2009) p. 986

EMPLOYEES' COMPENSATION LAW (P. D. NO. 626)

Compensable sickness — Defined as any illness definitely accepted as an occupational disease listed by the Employees Compensation Commission, or any illness caused by employment subject to proof by the employee that the

risk of contracting the same is increased by the working conditions. (GSIS *vs.* Raoet, G.R. No. 157038, Dec. 23, 2009) p. 690

— Peptic ulcer, defined; peptic ulcer as a compensable illness, elucidated. *(Id.)*

Purpose — The primordial purpose of P.D. No. 626 as a social legislation is to provide meaningful protection to the working class against the hazards of disability, illness, and other contingencies resulting in loss of income. (GSIS *vs.* Raoet, G.R. No. 157038, Dec. 23, 2009) p. 690

EMPLOYER-EMPLOYEE RELATIONSHIP

Elements — Cited. (CRC Agricultural Trading *vs.* NLRC, G.R. No. 177664, Dec. 23, 2009) p. 789

EMPLOYMENT, CONDITIONS OF

Contracting and subcontracting — Outsourcing as a legitimate activity; requisites. (Temic Automotive Phils., Inc. *vs.* Temic Automotive Phils., Inc. Employees UNION-FFW, G.R. No. 186965, Dec. 23, 2009) p. 986

EMPLOYMENT, TERMINATION OF

Abandonment as a ground — Defined. (CRC Agricultural Trading *vs.* NLRC, G.R. No. 177664, Dec. 23, 2009) p. 789

— Elements. *(Id.)*

Constructive dismissal — Defined as a cessation of work because continued employment has been rendered impossible, unreasonable, or unlikely, as when there is a demotion in rank or diminution in pay or both or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee. (CRC Agricultural Trading *vs.* NLRC, G.R. No. 177664, Dec. 23, 2009) p. 789

— The test thereof is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances; it is an act amounting to dismissal but is made to appear as if it were not. *(Id.)*

Dismissal — An employee dismissed due to gross and habitual neglect of duty is not entitled to separation pay. (Quiambao *vs*. MERALCO, G.R. No. 171023, Dec. 18, 2009) p. 416

— Award of attorney's fees to a dismissed employee, upheld. (RTG Construction, Inc. and/or Rolito Go/Russet Construction and Dev't. Corp. *vs*. Facto, G.R. No. 163872, Dec. 21, 2009) p. 511

— Benefits granted to a dismissed employee based on a just cause. *(Id.)*

Due process — Effect of non-compliance with the notice and hearing requirements in case at bar. (RTG Construction, Inc.and/or Rolito Go/Russet Construction and Dev't. Corp. *vs.* Facto, G.R. No. 163872, Dec. 21, 2009) p. 511

— The requirement of notice is not a mere technicality, but a requirement of due process to which every employee is entitled; the petitioners clearly failed to comply with the two-notice requirement in termination cases. (CRC Agricultural Trading *vs*. NLRC, G.R. No. 177664, Dec. 23, 2009) p. 789

Illegal dismissal — An illegally dismissed employee is entitled to the two reliefs of backwages and reinstatement. (CRC Agricultural Trading *vs*. NLRC, G.R. No. 177664, Dec. 23, 2009) p. 789

Neglect of duties as a ground — When gross neglect of duty becomes serious misconduct. (Quiambao *vs*. MERALCO, G.R. No. 171023, Dec. 18, 2009) p. 416

Retrenchment — Elements that must be present to effect a valid retrenchment. (Anabe vs. Asian Construction [ASIAKONSTRUKT], G.R. No. 183233, Dec. 23, 2009) p. 857

— Financial losses must be supported by sufficient and convincing evidence. *(Id.)*

— It is resorted to during periods of business recession, industrial depression, or seasonal fluctuations or during lulls occasioned by lack of orders, shortage of materials,

conversion of the plant for a new production program or the introduction of new methods. *(Id.)*

— Retrenchment is the termination of employment initiated by the employer through no fault of and without prejudice to the employees. *(Id.)*

ENTRAPMENT

Concept — Defined and distinguished from instigation. (People *vs*. Tion, G.R. No. 172092, Dec. 16, 2009) p. 209

EVIDENCE

Admissibility — Person who prepared document must be presented in court and subjected to cross-examination. (Resort Hotels Corp. *vs*. DBP Corp., G.R. No. 180439, Dec. 23, 2009) p. 817

Burden of proof — He who alleges a fact has the burden of proving it. (MOF Co., Inc. *vs.* Shin Yang Brokerage Corp., G.R. No. 172822, Dec. 18, 2009) p. 424

— The state has the burden to prove the ground for reversion of land to the public domain. (Rep. of the Phils. *vs*. Dev't. Resources Corp., G.R. No. 180218, Dec. 18, 2009) p. 490

Burden of proof and preponderance of evidence in civil cases — Discussed. (Resort Hotels Corp. *vs*. DBP Corp., G.R. No. 180439, Dec. 23, 2009) p. 817

Documentary evidence — A document which was neither marked nor certified as a reproduction of the original cannot be considered as an official or original copy. (Rep. of the Phils. *vs*. Dev't. Resources Corp., G.R. No. 180218, Dec. 18, 2009) p. 490

Foreign law — Resort to foreign jurisprudence, when proper. (*In re*: Petition for Assistance in the Liquidation of Intercity Savings and Loan Bank, Inc. *vs*. Stockholders of Intercity Savings and Loan Bank, Inc., G.R. No. 181556, Dec. 14, 2009) p. 128

Substantial evidence — Required in administrative cases; substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. (Orbase *vs.* Office of the Ombudsman, G.R. No. 175115, Dec. 23, 2009) p. 764

EXEMPLARY DAMAGES

Award of — Proper when crime was committed with one or more aggravating circumstances. (People *vs.* Grande, G.R. No. 170476, Dec. 23, 2009) p. 745

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine of — Rule; exceptions. (Cabungcal *vs.* Lorenzo, G.R. No. 160367, Dec. 18, 2009) p. 329

EXPROPRIATION

Just compensation — The measure of just compensation is the owner's loss. (NAPOCOR *vs.* Maruhom, G.R. No. 183297, Dec. 23, 2009) p. 844

Nature — Expropriation is not limited to the acquisition of real property with a corresponding transfer of title or possession; the right-of-way easement resulting in a restriction or limitation on property rights over the land traversed by transmission lines also falls within the ambit of the term expropriation. (NAPOCOR *vs.* Maruhom, G.R. No. 183297, Dec. 23, 2009) p. 844

EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (ACT NO. 3135)

Writ of possession — Nature of a petition for a writ of possession under Act No. 3135. (Metropolitan Bank & Trust Co. *vs.* Judge Abad Santos, G.R. No. 157867, Dec. 15, 2009) p. 134

— The writ of possession becomes a matter of right and the issuance thereof to a purchaser in an extrajudicial foreclosure is merely a ministerial function after the consolidation of title in the buyer's name for failure to redeem the property. *(Id.)*

FORCIBLE ENTRY

Complaint for — Petitioner is entitled to recover possession of the property in question. (Episcopal Diocese of Northern Phils. *vs*. District Engr., Mountain Province Engineering District, G.R. No. 178606, Dec. 15, 2009) p. 149

— The issue is prior possession de facto; determination of the issue of ownership is only provisional. *(Id.)*

FORECLOSURE OF MORTGAGE

Writ of possession — Defined; when may be raised. (Metropolitan Bank & Trust Co. *vs*. Judge Abad Santos, G.R. No. 157867, Dec. 15, 2009) p. 134

Foreclosure proceedings — Burden of proof that foreclosure proceedings were not validly conducted under Act No. 3135 lies with mortgagor-party litigant claiming such. (Resort Hotels Corp. *vs*. DBP Corp., G.R. No. 180439, Dec. 23, 2009) p. 817

Validity of — Foreclosure of mortgage is valid where the debtor is in default in the payment of an obligation. (Equitable PCI Bank, Inc. *vs*. Fernandez, G.R. No. 163117, Dec. 18, 2009) p. 342

FORUM SHOPPING

Certificate of non-forum shopping — Effect of failure to comply with the requirement of verified certification against forum shopping. (Mayon Estate Corp. and Earthland Developers Corp. *vs*. Beltran, G.R. No. 165387, Dec. 18, 2009) p. 369

Certification and verification — Substantially complied with when the certification is signed by only one of the petitioners where all the petitioners share a common interest and invoke a common cause of action or defense. (Heirs of Domingo Hernandez, Sr. *vs*. Mingoa, Sr., G.R. No. 146548, Dec. 18, 2009) p. 303

Existence of — Requisites. (Sps. Barias *vs*. Heirs of Bartolome Boneo, G.R. No. 166941, Dec. 14, 2009) p. 82

GAMBLING

Illegal gambling — All forms of gambling are illegal; exception. (Yun Kwan Byung *vs.* PAGCOR, G.R. No. 163553, Dec. 11, 2009) p. 23

— The court cannot assist in enforcing debts arising from illegal gambling; petitioner cannot redeem the cash value of the gambling chips from PAGCOR; reasons. *(Id.)*

GOVERNMENT SERVICE INSURANCE SYSTEM

Tax exemption of GSIS properties — Full tax exemption reenacted through R.A. No. 8291 (new GSIS Act); any assessment against the GSIS as of the date of approval of R.A. No. 8291 is considered paid. (GSIS *vs.* City Treasurer, G.R. No. 186242, Dec. 23, 2009) p. 964

— GSIS properties are exempt from any attachment, garnishment, execution, levy, or other legal processes. *(Id.)*

— Pursuant to P.D. No. 1146 (old GSIS Act), the System, its assets, revenues including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds. *(Id.)*

— Section 26 of C.A. No. 186 provided exemption from any legal process and liens but only for insurance policies and their proceeds. *(Id.)*

— Withdrawal of tax exemption pursuant to the Local Government Code of 1991 (R.A. No. 7160). *(Id.)*

GRAVE ABUSE OF DISCRETION

Nature — Implies irrational behavior; the new judge's reexamination and reversal of his predecessor's finding of absence of probable cause against the respondents is not tainted with grave abuse of discretion. (People *vs.* Tan, G.R. No. 182310, Dec. 09, 2009) p. 1

HOUSE OF REPRESENTATIVES

Qualifications of members — Presence in one's home twenty-four (24) hours a day, seven days a week, is not required to fulfill the residency requirement. (Rep. Fernandez *vs*. HRET, G.R. No. 187478, Dec. 21, 2009) p. 628

— Residency requirement does not prohibit ownership of property and exercise of rights of ownership thereto in other places aside from the address indicated as place of residence in the certificate of candidacy. *(Id.)*

— Residency requirement does not require a congressional candidate to be a property owner in the district where he seeks to run; rationale. *(Id.)*

HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET)

Disqualification cases — Burden to prove the very fact of disqualification, before the candidate should be called upon to defend himself, is on the petitioner. (Rep. Fernandez *vs*. HRET, G. R. No. 187478, Dec. 21, 2009) p. 628

Jurisdiction — Exclusive over petition for *quo warranto*. (Rep. Fernandez *vs.* HRET, G. R. No. 187478, Dec. 21, 2009) p. 628

HOUSING AND LAND USE REGULATORY BOARD (HLURB)

HLURB 1996 Rules of Procedure — Effect of failure to comply with the requirement of verified certification against forum shopping. (Mayon Estate Corp. and Earthland Developers Corp. *vs*. Beltran, G.R. No. 165387, Dec. 18, 2009) p. 369

INDETERMINATE SENTENCE LAW (ACT NO. 4103)

Application — Imposition of an indeterminate sentence is mandatory; rationale; exception. (Batistis *vs*. People, G.R. No. 181571, Dec. 16, 2009) p. 246

INSTIGATION

Concept of — Distinguished from entrapment. (People *vs*. Tion, G.R. No. 172092, Dec. 16, 2009) p. 209

INTELLECTUAL PROPERTY CODE (R.A. NO. 8293)

Infringement of trademark — When established. (Batistis *vs.* People, G.R. No. 181571, Dec. 16, 2009) p. 246

INTERLOCUTORY ORDER

Nature — Cannot be the subject of an appeal or a petition for *certiorari*; remedy. (Equitable PCI Bank, Inc. *vs.* Fernandez, G.R. No. 163117, Dec. 18, 2009) p. 342

Recall of — Judge in case at bar who has still full control of the interlocutory orders issued by his predecessor could reconsider and recall the same either motu proprio or on motion when the circumstances warranted it. (People *vs.* Tan, G.R. No. 182310, Dec. 09, 2009) p. 1

JUDGES

Code of Judicial Conduct — Judges must avoid not only impropriety but also the appearance of impropriety in all activities. (Heirs of the Late Rev. Fr. Jose O. Aspiras *vs.* Judge Ganay, A.M. No. RTJ-07-2055, Dec. 17, 2009) p. 290

Gross ignorance of the law — Interference with the order of a co-equal and coordinate court of concurrent jurisdiction in violation of the doctrine of judicial stability, a case of. (Heirs of Simeon Piedad *vs.* Exec. Judge Estrera, A.M. No. RTJ-09-2170, Dec. 16, 2009) p. 178

Undue delay in rendering an order — Imposable penalty. (Heirs of Simeon Piedad *vs.* Exec. Judge Estrera, A.M. No. RTJ-09-2170, Dec. 16, 2009) p. 178

JUDGMENTS

Execution of — Return of writ of execution; rule. (Ramos *vs.* Ragot, A.M. No. P-09-2600, Dec. 23, 2009) p. 673

Final and executory judgment — GSIS cannot claim immunity from the enforcement of the final and executory judgment against it. (GSIS *vs.* RTC of Pasig City, Br. 71, G.R. No. 175393, Dec. 18, 2009) p. 453

Finality of judgment — Doctrine thereof, explained; exceptions. (GSIS *vs*. RTC of Pasig City, Br. 71, G.R. No. 175393, Dec. 18, 2009) p. 453

— Effect. (League of Cities of the Phils. *vs*. COMELEC, G.R. No. 176951, Dec. 21, 2009; *Carpio, J., dissenting opinion*) p. 531

— Once a judgment has become final, the winning party should not be deprived of its execution. (NAPOCOR *vs*. Maruhom, G.R. No. 183297, Dec. 23, 2009) p. 844

Writ of execution — Must conform strictly to the dispositive portion of the decision sought to be executed. (NAPOCOR *vs*. Maruhom, G.R. No. 183297, Dec. 23, 2009) p. 844

JUDGMENTS, ANNULMENT OF

Grounds — Cannot be resorted to when the petitioner has previously availed of the ordinary remedies of new trial, appeal or petition for relief, or has lost the said remedies due to causes attributable to himself. (Heirs of Rodrigo Yacapin *vs*. Balida, G.R. No. 171669, Dec. 14, 2009) p. 99

JUDGMENT ON THE PLEADINGS

Case of — Elucidated. (Leonero *vs*. Sps. Marcelino B. Barba and Fortuna Marcos-Barba, G.R. No. 159788, Dec. 23, 2009) p. 706

JUDICIAL DEPARTMENT

Supreme Court — A tie-vote on a motion for reconsideration does not and cannot supersede the prior majority vote on the main decision. (League of Cities of the Phils. *vs*. COMELEC, G.R. No. 176951, Dec. 21, 2009; *Carpio, J., dissenting opinion*) p. 531

— A tie-vote on the second motion for reconsideration necessarily resulted in the denial thereof. *(Id.)*

— All cases required to be heard by the court en banc shall be decided by a majority vote of the Court en banc; application. *(Id.)*

— Rules on the tie-vote situation in conjunction with Section 4 (2), Article VII of the Constitution applied in view of a deadlock vote on the constitutionality issue of the Cityhood laws. *(Id.)*

— The rules on tie-vote do not contravene the mandate of Section 4 (2), Article VIII of the Constitution. *(Id.)*

— The tie-vote on the second motion for reconsideration does not leave the case undecided since the previous decision/resolution must stand. *(Id.)*

— Three situations contemplated by Section 7, Rule 56 of the Rules of Court governing tie-votes in the en banc. *(Id.)*

— Voting requirement in cases involving the constitutionality of a law, discussed. *(Id.)*

JURISDICTION

Boundary disputes — Determination as to whether the properties in dispute are within a certain jurisdiction is not a decision to be made by the populace; rationale. (Barangay Sangalang *vs.* Barangay Maguihan, G.R. No. 159792, Dec. 23, 2009) p. 711

JUST COMPENSATION

Determination of — The measure is the owner's loss. (NAPOCOR *vs*. Maruhom, G.R. No. 183297, Dec. 23, 2009) p. 844

LABOR CASES

Prescription of actions in labor cases — All money claims arising from employer-employee relations accruing during the effectivity of the Labor Code shall be filed within three (3) years from the time the cause of action accrued, otherwise they shall be barred forever. (Anabe *vs*. Asian Construction [ASIAKONSTRUKT], G.R. No. 183233, Dec. 23, 2009) p. 857

LABOR ORGANIZATIONS

De-certification — Grounds for de-certifying a union, explained. (Mariwasa Siam Ceramics, Inc. *vs*. Sec. of the DOLE, G.R. No. 183317, Dec. 21, 2009) p. 603

Labor dispute between unions and employer — Only disputes involving union and company may be referred to the grievance machinery or voluntary arbitrators. (Tabigue *vs*. Int'l. Copra Export Corp. [INTERCO], G.R. No. 183335, Dec. 23, 2009) p. 866

Legitimacy of — The legitimacy of a labor organization was affirmed despite support withdrawal by members; reason. (Mariwasa Siam Ceramics, Inc. *vs*. Sec. of the DOLE, G.R. No. 183317, Dec. 21, 2009) p. 603

LABOR STANDARDS

Employee benefits — The burden rests on the employer to prove payment of employee's benefits. (RTG Construction, Inc.and/or Rolito Go/Russet Construction and Dev't. Corp. *vs.* Facto, G.R. No. 163872, Dec. 21, 2009) p. 511

LACHES

Principle of — Elucidated. (Heirs of Domingo Hernandez, Sr. *vs*. Mingoa, Sr., G.R. No. 146548, Dec. 18, 2009) p. 303

LAGUNA LAKE DEVELOPMENT AUTHORITY (LLDA)

Jurisdiction — Discussed. (Pacific Steam Laundry, Inc. *vs*. Laguna Lake Dev't. Authority, G.R. No. 165299, Dec. 18, 2009) p. 351

— LLDA has jurisdiction over pollution cases within its area of responsibility. *(Id.)*

Powers — LLDA has the implied authority to issue a "cease and desist order" and the power to impose fines with respect to pollution cases in the Laguna Lake Region. (Pacific Steam Laundry, Inc. *vs.* Laguna Lake Dev't. Authority, G.R. No. 165299, Dec. 18, 2009) p. 351

— LLDA mandated to carry out the development of the Laguna Lake Region. *(Id.)*

— Power to impose fines, restricted by statutory limitations. *(Id.)*

LAND MANAGEMENT BUREAU (LMB)

Functions — LMB is manned by geodetic engineers with sufficient expertise and is the cognizant agency of government charged with the responsibility of matters respecting surveys of land. (Barangay Sangalang *vs.* Barangay Maguihan, G.R. No. 159792, Dec. 23, 2009) p. 711

— LMB is the government agency tasked with the survey of lands, and thus, more weight should be given to the documents relating to its official tasks which are presumed to be done in the ordinary course of business; between a geodetic engineer and a tax assessor, the conclusion is inevitable that it is the former's certification as to the location of properties in dispute that is controlling, absent any finding of abuse of discretion. *(Id.)*

LAND REGISTRATION

Application for registration — The registration of a property in one's name, whether by mistake or fraud, the real owner being another, impresses upon the title so acquired the character of a constructive trust for the real owner. (Luna, Jr. *vs.* Cabales, G.R. No. 173533, Dec. 14, 2009) p. 106

Certificate of title — In a petition for recovery of possession with a counter claim, the counter claim is considered a direct attack on the title; a counter claim is considered an original complaint and, as such, the attack on the title in a case originally for recovery of possession is not considered as a collateral attack on the title. (Luna, Jr. *vs.* Cabales, G.R. No. 173533, Dec. 14, 2009) p. 106

Foreshore land — Burden of proof rests on the petitioner to prove that the property is foreshore land or that the patents were obtained through fraud or misrepresentation. (Rep. of the Phils. *vs.* Leonor, G.R. No. 161424, Dec. 23, 2009) p. 729

— The land's proximity alone to the waters does not necessarily make it a foreshore land. *(Id.)*

Purchaser in good faith — One who deliberately ignores a significant fact which would naturally generate wariness is not an innocent purchaser for value. (Luna, Jr. *vs*. Cabales, G.R. No. 173533, Dec. 14, 2009) p. 106

Tax declaration – Tax declarations coupled with the actual possession of the property, provide incontrovertible proof of possession in the concept of an owner. (Luna, Jr. *vs*. Cabales, G.R. No. 173533, Dec. 14, 2009) p. 106

LEGISLATIVE DEPARTMENT

Powers — The power of Congress to impose criteria or indicators of viability for creation of local government units cannot be limited by the criteria embodied in the Local Government Code (R.A. No. 7160). (League of Cities of the Phils. *vs*. COMELEC, G.R. No. 176951, Dec. 21, 2009) p. 531

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

Amendment of Section 450 — R.A. 9009 amending Section 450 of the Local Government Code of 1991; rationale. (League of Cities of the Phils. *vs*. COMELEC, G.R. No. 176951, Dec. 21, 2009) p. 531

Boundary disputes — Procedures governing boundary disputes; documents to be attached to petition, enumerated. (Barangay Sangalang *vs*. Barangay Maguihan, G.R. No. 159792, Dec. 23, 2009) p. 711

LOCAL GOVERNMENTS

Disqualification of a local official — Cannot be disqualified prior to the finality of the judgment on the sole ground that he has been charged with a criminal or administrative case. (Aldovino, Jr. *vs*. COMELEC, G.R. No. 184836, Dec. 23, 2009; *Carpio, J., dissenting opinion*) p. 876

Term of office of elective local officials — A rest period during which a local official steps down from office and becomes a private citizen is not a necessary element of involuntary

interruption of service of term of office. (Aldovino, Jr. *vs.* COMELEC, G.R. No. 184836, Dec. 23, 2009; *Carpio, J., dissenting opinion*) p. 876

— An elective local official's preventive suspension may be considered a voluntary renunciation of office only upon conviction by final judgment of the official for the offense for which he was preventively suspended. *(Id.)*

— Any involuntary act depriving an elective local official of his office constitutes an interruption in the continuity of service for the full term for which he was elected. *(Id.)*

— Elucidated. *(Id.)*

— Interruption in continuity of service that does not amount to "removal" by operation of law. *(Id.)*

— "Involuntary" renunciation; in reality there is no such thing. *(Id.)*

— Loss of title to the office, a necessary element of involuntary interruption of service of "three consecutive terms." *(Id.)*

— Period of time during which an official has title to office and can serve. *(Id.)*

— "Removal from office" is not the test to determine interruption of service to warrant exception to the three-term limit rule. *(Id.)*

— "Renunciation" vis-à-vis "preventive suspension"; the former connotes an act of abandonment or giving up of a position by a public officer which would result in the termination of his service, whereas the latter means that a public officer is prevented by legal compulsion, not by his own volition, from discharging the functions and duties of his office, but without being removed or separated from his office. *(Id.)*

— The commission of a crime or an administrative infraction which is a ground for the removal from office of a public officer is akin to his "voluntary renunciation" of his office. *(Id.)*

— Three-term limit rule; jurisprudence. *(Id.)*

— Voluntary renunciation of office shall not be considered as an interruption in the continuity of an official's service for the full term for which he was elected. *(Id.)*

— "Voluntary renunciation" *vis-à-vis* "removal from office"; voluntary renunciation is resignation from or abandonment of office; the opposite of "voluntary renunciation" is "removal from office," a sanction imposed by some duly authorized person or body, not an initiative of or a choice freely made by the elected official. *(Id.)*

— When an elected official is suspended, he must be considered as having served a full term during the period of suspension. *(Id.)*

***LOCUS STANDI* IN PUBLIC SUITS**

Application — Liberal approach must be adopted in determining locus standi in public suits; reasons. (Mamba *vs*. Lara, G.R. No. 165109, Dec. 14, 2009) p. 63

Taxpayer's suit — Ordinary citizens and taxpayers are allowed to sue even if they failed to show direct injury where they invoked "transcendental importance," "paramount public interest," or "far-reaching implications." (Mamba *vs*. Lara, G.R. No. 165109, Dec. 14, 2009) p. 63

— Requisites to prosper; a taxpayer need not be a party to the contract to challenge its validity. *(Id.)*

MANDAMUS

Petition for — May be availed of only when there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. (Cabungcal *vs*. Lorenzo, G.R. No. 160367, Dec. 18, 2009) p. 329

METRO MANILA DEVELOPMENT AUTHORITY (MMDA)

Powers — The functions of the MMDA are administrative in nature. (MMDA *vs*. Trackworks Rail Transit Advertising, Vending and Promotions, Inc., G.R. No. 179554, Dec. 16, 2009) p. 236

Prohibition on posting and installation of billboards, signages — When not applicable. (MMDA *vs*. Trackworks Rail Transit Advertising, Vending and Promotions, Inc., G.R. No. 179554, Dec. 16, 2009) p. 236

MORAL DAMAGES

Award of — When proper. (People *vs*. Palgan, G.R. No. 186234, Dec. 21, 2009) p. 620

MORAL DAMAGES AND CIVIL INDEMNITY

Award of — When proper. (People *vs*. Grande, G.R. No. 170476, Dec. 23, 2009) p. 745

MORTGAGES

Foreclosure of mortgage — Valid where the debtor is in default in the payment of an obligation. (Equitable PCI Bank, Inc. *vs*. Fernandez, G.R. No. 163117, Dec. 18, 2009) p. 342

MOTION FOR RECONSIDERATION

Notice requirement — Failure to notify all the parties, not fatal; substantial compliance with requirement, allowed. (Mamba *vs*. Lara, G.R. No. 165109, Dec. 14, 2009) p. 63

MOTIONS

Motion to admit amended petition — When may be denied. (Mamba *vs*. Lara, G.R. No. 165109, Dec. 14, 2009) p. 63

NOVATION

Concept — Defined. (Adriatico Consortium, Inc. *vs*. Land Bank of the Phils., G.R. No. 187838, Dec. 23, 2009) p. 1027

Kinds — Express or implied. (Adriatico Consortium, Inc. *vs*. Land Bank of the Phils., G.R. No. 187838, Dec. 23, 2009) p. 1027

— Extinctive or modificatory. *(Id.)*

OBLIGATIONS, EXTINGUISHMENT OF

Novation — Defined. (Adriatico Consortium, Inc. *vs*. Land Bank of the Phils., G.R. No. 187838, Dec. 23, 2009) p. 1027

OFFICE OF THE OMBUDSMAN (R. A. NO. 6670)

Section 20 (5) — Construed. (Orbase *vs*. Office of the Ombudsman, G.R. No. 175115, Dec. 23, 2009) p. 764

OMBUDSMAN

Powers — The jurisdiction of the Office of the Ombudsman to take cognizance of the action against the petitioner, who was an Assistant Director of the National Library and an appointive employee of the government, was beyond contestation. (Orbase *vs*. Office of the Ombudsman, G.R. No. 175115, Dec. 23, 2009) p. 764

— The Ombudsman is granted the power to prosecute offenses committed by public officers and employees. *(Id.)*

OWNERSHIP, MODES OF ACQUIRING

Prescription — Mere material possession of land is not adverse possession as against the owner and is insufficient to vest title, unless such possession is accompanied by the intent to possess as an owner. (Olegario *vs*. Mari, G.R. No. 147951, Dec. 14, 2009) p. 48

— Tax declarations prove that the holder has a claim of title over the property. *(Id.)*

— Unless coupled with the element of hostility towards the true owner, occupation and use, however long, will not confer title by prescription or adverse possession. *(Id.)*

PARTIES TO CIVIL ACTIONS

Indispensable party — Persons who are not parties to a case cannot invoke, in their favor, the decision of the court therein. (Episcopal Diocese of Northern Phils. *vs*. District Engr., Mountain Province Engineering District, G.R. No. 178606, Dec. 15, 2009) p. 149

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR)

Legislative franchise — Extent of the grant of legislative franchise of PAGCOR on its authority to operate gambling

casinos. (Yun Kwan Byung *vs*. PAGCOR, G.R. No. 163553, Dec. 11, 2009) p. 23

Republic Act No. 9487 — R.A. No. 9487, which amended the PAGCOR charter, has no retroactive effect. (Yun Kwan Byung *vs*. PAGCOR, G.R. No. 163553, Dec. 11, 2009) p. 23

PHILIPPINE ECONOMIC ZONE AUTHORITY

Director General — Has the primary authority to conduct inquiries and fact-finding investigations. (Phil. Economic Zone Authority *vs*. Pearl City Manufacturing Corp., G.R. No. 168668, Dec. 16, 2009) p. 191

PLEADINGS

Notice — Lack of formal notice to file position paper cannot prevail against the fact of actual notice. (Episcopal Diocese of Northern Phils. *vs*. District Engr., Mountain Province Engineering District, G.R. No. 178606, Dec. 15, 2009) p. 149

— The Office of the Solicitor General has no right to expect the court to wait forever for its position paper. *(Id.)*

POLITICAL QUESTION

Nature — Issues as to the legality of the acts complained of fall within the ambit of judicial review and thus not a political question. (Mamba *vs*. Lara, G.R. No. 165109, Dec. 14, 2009) p. 63

POLLUTION ADJUDICATION BOARD

Powers — Discussed. (Pacific Steam Laundry, Inc. *vs*. Laguna Lake Dev't. Authority, G.R. No. 165299, Dec. 18, 2009) p. 351

POSSESSION

Writ of — Certificate against non-forum shopping is not required in a petition for a writ of possession. (Metropolitan Bank & Trust Co. *vs*. Judge Abad Santos, G.R. No. 157867, Dec. 15, 2009) p. 134

— Intervention is not allowed in a petition for a writ of possession. *(Id.)*

PREJUDICIAL QUESTION

Concept — Prejudicial question is that which arises in a case, the resolution of which is a logical antecedent of the issue involved in that case. (Monreal *vs*. COMELEC, G.R. No. 184935, Dec. 21, 2009) p. 613

PRELIMINARY INJUNCTION

Temporary restraining order — Authority of the courts to issue temporary restraining order (TRO), explained. (Mayor Sampiano *vs.* Judge Indar, A.M. No. RTJ-05-1953, Dec. 21, 2009) p. 495

Writ of — General principles in issuance of writ. (Equitable PCI Bank, Inc. *vs*. Fernandez, G.R. No. 163117, Dec. 18, 2009) p. 342

— Nature. (Buyco *vs*. Baraquia, G.R. No. 177486, Dec. 21, 2009) p. 596

— Object of preliminary injunction. *(Id.)*

— The writ of preliminary injunction is automatically dissolved upon the dismissal of the action in which it has been issued. *(Id.)*

PRESCRIPTION

Extraordinary prescription — Open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period ipso jure and without need of judicial or other sanction, ceases to be public land and becomes private property. (Olegario *vs*. Mari, G.R. No. 147951, Dec. 14, 2009) p. 48

PRESUMPTIONS

Correctness of entries — A duly-registered death certificate is considered a public document and entries found therein are presumed correct. (GSIS *vs*. Raoet, G.R. No. 157038, Dec. 23, 2009) p. 690

Fraud and misrepresentation — Fraud and misrepresentation are never presumed, but must be proved by clear and convincing evidence. (Rep. of the Phils. *vs*. Leonor, G.R. No. 161424, Dec. 23, 2009) p. 729

Presumption of regular performance of official duties — Presumption of regularity in the performance of official duties prevails over denial and alibi. (People *vs.* SPO3 Ara, G.R. No. 185011, Dec. 23, 2009) p. 939

— Sustained in buy-bust operations in the absence of improper motive on the part of the buy-bust team. (People *vs*. Tion, G.R. No. 172092, Dec. 16, 2009) p. 209

PROBABLE CAUSE

Nature – Requires neither absolute certainty nor clear and convincing evidence of guilt. (People *vs.* Tan, G.R. No. 182310, Dec. 09, 2009) p. 1

PROHIBITION

Petition — May be availed of only when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. (Cabungcal *vs*. Lorenzo, G.R. No. 160367, Dec. 18, 2009) p. 329

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

Conjugal partnership of gains — Alienation of conjugal property by the husband without the wife's consent is not null and void but merely voidable when the sale is made before the effectivity of the Family Code. (Heirs of Domingo Hernandez, Sr. *vs*. Mingoa, Sr., G.R. No. 146548, Dec. 18, 2009) p. 303

— Annulment of any contract entered into by the husband without the wife's consent must be filed during the marriage and within ten years from the transaction questioned. *(Id.)*

PROSECUTION OF OFFENSES

Complainant's role — In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution; where accused is acquitted, the offended

party may appeal the civil aspect of the case in his own behalf. (Ong *vs.* Genio, G.R. No. 182336, Dec. 23, 2009) p. 835

Criminal cases — Options available to a Regional Trial Court judge upon filing of the information. (Ong *vs.* Genio, G.R. No. 182336, Dec. 23, 2009) p. 835

PUBLIC LAND ACT (C.A. NO. 141)

Free patent application — List of claimants cannot be taken as evidence that the lots that were not included therein were not cadastrally surveyed or that only the claimants named therein had rights over that particular lot. (Rep. of the Phils. *vs.* Leonor, G.R. No. 161424, Dec. 23, 2009) p. 729

— Section 91 of the Public Land Act, not violated; the mere omission of an information from the patent application, though essential, does not, *per se*, cause the *ipso facto* cancellation of the patent; it must be shown that the information withheld would have resulted in the disapproval of the free patent application had it been disclosed. *(Id.)*

PUBLIC OFFICERS AND EMPLOYEES

Double compensation — Proscription on additional compensation under the Constitution, applied. (Herrera *vs.* NAPOCOR, G.R. No. 166570, Dec. 18, 2009; *Brion, J., separate and concurring opinion*) p. 383

(Herrera *vs.* NAPOCOR, G.R. No. 166570, Dec. 18, 2009) *(Id.)*

Preventive suspension — An interim remedial measure to address the situation of an official who has been charged administratively or criminally, where the evidence preliminarily indicates the likelihood of, or potential for eventual guilt or liability. (Aldovino, Jr. *vs.* COMELEC, G.R. No. 184836, Dec. 23, 2009) p. 876

— Can be used as a tool to frustrate the will of the people. *(Id.)*

— Can cut an elective official's term of office to less than a year. *(Id.)*

— Compared to voluntary renunciation. *(Id.)*

— Not an interruption that allows an elective official's stay in office beyond three terms. *(Id.)*

— While a temporary incapacity in the exercise of power results, no position is vacated when a public official is preventively suspended. *(Id.)*

— Will subject elective local officials to harassment through successive suspensions. *(Id.)*

R.A. NO. 9009 (AN ACT AMENDING SECTION 450 OF R.A. NO. 7160 [LOCAL GOVERNMENT CODE OF 1991])

Legislative intention — Complementary legislative intentions in the enactment of R.A. No. 9009. (League of Cities of the Phils. *vs*. COMELEC, G.R. No. 176951, Dec. 21, 2009) p. 531

RAPE

Commission of — Close physical proximity of other relatives at the scene of the rape does not negate the commission of the crime. (People *vs.* Cabral, G.R. No. 179946, Dec. 23, 2009) p. 809

— Elements. (People *vs*. Grande, G.R. No. 170476, Dec. 23, 2009) p. 745

— Full penile penetration of the penis into vagina is not required for the commission of rape. (People *vs*. Barberos, G.R. No. 187494, Dec. 23, 2009) p. 1008

— Hymenal lacerations are not an element of rape; rape is committed so long as there is enough proof of entry of the male organ into the labia of the pudendum of the female organ. *(Id.)*

— Imposable penalty. (People *vs*. Grande. G.R. No. 170476, Dec. 23, 2009) p. 745

(People *vs*. Barberos, G.R. No. 187494, Dec. 23, 2009) p. 1008

Review of rape cases — Guiding principles. (People *vs*. Barberos, G.R. No. 187494, Dec. 23, 2009) p. 1008

(People *vs*. Grande, G.R. No 170476, Dec. 23, 2009) p. 745

(People *vs.* Palgan, G.R. No. 186234, Dec. 21, 2009) p. 620

Sweetheart defense — A weak defense, the presence of which does not automatically negate the commission of rape. (People *vs*. Grande, G.R. No. 170476, Dec. 23, 2009) p. 745

Violence and intimidation — In rape committed by a father against his daughter, the father's moral ascendancy and influence over the latter substitute for violence and intimidation. (People *vs.* Palgan, G.R. No. 186234, Dec. 21, 2009) p. 620

RELATIONSHIP AND MINORITY

As qualifying circumstances — When appreciated. (People *vs.* Cabral, G.R. No. 179946, Dec. 23, 2009) p. 809

RETIREMENT

Retirement benefits — Two conditions for the right to retirement benefits to accrue; application. (Herrera *vs*. NAPOCOR, G.R. No. 166570, Dec. 18, 2009; *Brion, J., separate and concurring opinion*) p. 383

RULES OF COURT

Construction — Liberal construction of the Rules of Court, elucidated. (Barangay Sangalang *vs*. Barangay Maguihan, G.R. No. 159792, Dec. 23, 2009) p. 711

RULES OF PROCEDURE

Application — Procedural defects or lapses, if negligible, should be excused in the higher interest of justice. (Mamba *vs*. Lara, G.R. No. 165109, Dec. 14, 2009) p. 63

SALES

Contract of sale — Distinguished from contract to sell. (BPI *vs*. SMP, Inc., G.R. No. 175466, Dec. 23, 2009) p. 781

Contract to sell — Elucidated. (BPI *vs*. SMP, Inc., G.R. No. 175466, Dec. 23, 2009) p. 781

— Stipulations in the contract for the reservation of ownership of a thing until full payment of the purchase price and for the loss or destruction of the thing would be on account of the buyer are valid and can exist in conjunction with the other. *(Id.)*

SENATE ELECTORAL TRIBUNAL

Jurisdiction — Sole judge of all contests relating to the election, returns, and qualifications of their respective members; sole emphasizes exclusivity of jurisdiction. (Rep. Fernandez *vs*. HRET, G.R. No. 187478, Dec. 21, 2009) p. 628

SHERIFFS

Administrative Circular No. 35-2004 — Does not allow sheriffs to directly solicit and receive money for expenses relative to the implementation of a writ of execution; elucidated. (Ramos *vs*. Ragot, A.M. No. P-09-2600, Dec. 23, 2009) p. 673

— Sheriffs are under obligation to perform the duties of their office honestly, faithfully and to the best of their ability, and must conduct themselves with propriety and decorum, and above all else, be above suspicion. *(Id.)*

— Sheriffs cannot unilaterally demand sums of money from a party-litigant without observing proper procedure. *(Id.)*

Payment of legal fees — Section 10, Rule 141 of the Rules of Court, as amended mandates sheriffs to comply therewith. (Ramos *vs*. Ragot, A.M. No. P-09-2600, Dec. 23, 2009) p. 673

Simple neglect of duty — Proper penalty. (Ramos *vs*. Ragot, A.M. No. P-09-2600, Dec. 23, 2009) p. 673

SOLICITOR GENERAL

Powers — Office of the Solicitor General is tasked to represent the government in all criminal proceedings in the Supreme Court and the Court of Appeals; when offended party

may pursue criminal action in his behalf without the Solicitor General's participation. (Ong *vs*. Genio, G.R. No. 182336, Dec. 23, 2009) p. 835

SPECIAL ECONOMIC ZONE ACT OF 1995 (R.A. NO. 7916)

Philippine Economic Zone Authority — The Director General has the primary authority to conduct inquiries and fact-finding investigations. (Phil. Economic Zone Authority *vs*. Pearl City Manufacturing Corp., G.R. No. 168668, Dec. 16, 2009) p. 191

STATUTES

Interpretation of — Statutes are prospective and not retroactive in their operation, unless the contrary is provided; rationale. (In re:Petition for Assistance in the Liquidation of Intercity Savings and Loan Bank, Inc. *vs*. Stockholders of Intercity Savings and Loan Bank, Inc., G.R. No. 181556, Dec. 14, 2009) p. 128

SUPREME COURT

A.M. No. 99-1-09-SC — Settles any doubt on how a tie-vote on a motion for reconsideration should be interpreted; it applies to all cases heard by the Court en banc. (League of Cities of the Phils. *vs*. COMELEC, G.R. No. 176951, Dec. 21, 2009; *Carpio, J., dissenting opinion*) p. 531

Decision of — A tie-vote on a motion for reconsideration does not and cannot supersede the prior majority vote on the main decision. (League of Cities of the Phils. *vs*. COMELEC, G.R. No. 176951, Dec. 21, 2009; *Carpio, J., dissenting opinion*) p. 531

— A tie-vote on the second motion for reconsideration necessarily resulted in the denial thereof. *(Id.)*

— All cases required to be heard by the Court en banc shall be decided by a majority vote of the Court en banc; application. *(Id.)*

— Rules on the tie-vote situation in conjunction with Section 4 (2), Article VIII of the Constitution, applied in view of a deadlock vote on the constitutionality issue of the Cityhood laws. *(Id.)*

— The rules on tie-vote do not contravene the mandate of Section 4 (2), Article VIII of the Constitution. *(Id.)*

— The tie-vote on the second motion for reconsideration does not leave the case undecided since the previous decision/resolution must stand. *(Id.)*

— Three situations contemplated by Section 7, Rule 56 of the Rules of Court governing tie-votes in the *en banc*. *(Id.)*

— Voting requirement in cases involving the constitutionality of a law, discussed. *(Id.)*

Powers — Supreme Court is vested with the power of administrative supervision over all courts and the personnel thereof. (Civil Service Commission *vs*. Andal, G.R. No. 185749, Dec. 16, 2009) p. 280

TAX DECLARATIONS

Effect — Tax declarations coupled with the actual possession of the property, provide incontrovertible proof of possession in the concept of an owner. (Luna, Jr. *vs*. Cabales, G.R. No. 173533, Dec. 14, 2009) p. 106

TAX EXEMPTIONS

Interpretation of — Construed *strictissimi juris* against the taxpayer; tax refunds are in the nature of tax exemptions. (Kepco Phils. Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 179356, Dec. 14, 2009) p. 121

UNLAWFUL DETAINER

Complaint for — Sole issue for resolution is physical or material possession; question of ownership may be decided only if it is necessary to decide the question of possession. (Sps. Barias *vs*. Heirs of Bartolome Boneo, G.R. No. 166941, Dec. 14, 2009) p. 82

— The determination of ownership is only initial and will not prejudice the case for annulment of the deed of sale. *(Id.)*

WARRANT OF ARREST

Issuance of — As long as the evidence shows a prima facie case against the accused, the trial court has sufficient ground to issue a warrant of arrest. (People *vs*. Tan, G.R. No. 182310, Dec. 09, 2009) p. 1

WARRANTLESS ARRESTS AND SEARCHES

Validity of — Discussed; probable cause, basis. (People *vs*. SPO3 Ara, G.R. No. 185011, Dec. 23, 2009) p. 939

WITNESSES

Credibility of — Findings of the trial court generally deserve great respect and are accorded finality; exceptions. (People *vs*. Cabral, G.R. No. 179946, Dec. 23, 2009) p. 809

(People *vs*. Grande, G.R. No. 170476, Dec. 23, 2009) p. 745

(People *vs*. Albalate, Jr., G.R. No. 174480, Dec. 18, 2009) p. 437

— Inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declarations, their veracity, or the weight of their testimonies. (People *vs*. Cruz, G.R. No. 185381, Dec. 16, 2009) p. 261

— Positive and candid testimony of a young girl that she has been raped by appellant deserves full faith and credit. (People *vs*. Barberos, G.R. No. 187494, Dec. 23, 2009) p. 1008

— Testimony of rape victims who are young and immature deserve full credence; it is impossible for a girl of complainant's age to fabricate a charge so humiliating to herself and her family had she not been subjected to the painful experience of sexual abuse. (People *vs*. Grande, G.R. No. 170476, Dec. 23, 2009) p. 745

— Testimony of the victim alone, if credible, would render accused-appellant's conviction inevitable. (People *vs*. Palgan, G.R. No. 186234, Dec. 21, 2009) p. 620

Ill-motive — Imputation of ill-motive without corroboration deserves scant consideration. (People *vs*. Cabral, G.R. No. 179946, Dec. 23, 2009) p. 809

Testimony of — Bare testimony is insufficient to establish victim's age. (People *vs*. Albalate, Jr., G.R. No. 174480, Dec. 18, 2009) p. 437

CITATION

Page

I. LOCAL CASES

A.G. Development Corp. *vs.* CA, 346 Phil. 136 (1997) 146
Abad *vs.* Goldloop Properties, Inc., G.R. No. 168108,
April 13, 2007, 521 SCRA 131 1041
Abaya *vs.* Ebdane, Jr., G.R. No. 167919, Feb. 14, 2007,
515 SCRA 720, 758 77-78
Abbas *vs.* Commission on Elections, G.R. Nos. 89651
& 89965, Nov. 10, 1989, 179 SCRA 287 568
Acabal *vs.* Acabal, 494 Phil. 528, 541 (2005) 436
ACWS, Ltd. *vs.* Dumlao, 440 Phil. 787, 803 (2002) 341
Adormeo *vs.* Commission on Elections,
426 Phil. 472 (2002) 898, 932
Adormeo *vs.* Commission on Elections, G.R No. 147927,
Feb. 4, 2002, 376 SCRA 90 933
AG & P United Rank & File Association *vs.* NLRC,
332 Phil. 937 (1996) 863-864
Agabon *vs.* National Labor Relations Commission,
485 Phil. 248 (2004) 520
Agro Conglomerates, Inc. *vs.* CA, G.R. No. 117660,
Dec. 18, 2000, 348 SCRA 450, 459 .... 1039, 1043
Agudo *vs.* Comelec, 144 Phil. 462-463 (1970) 580
Aguilar *vs.* Tan, G.R. No. L-23600, Jun 30, 1970 143
Agujetas *vs.* CA, G.R. No. 106560, Aug. 23, 1996,
261 SCRA 17, 35 166
Air Philippines Corporation *vs.* Bureau of Labor Relations,
G.R. No. 155395, June 22, 2006, 492 SCRA 243 612
Akbayan-Youth *vs.* COMELEC, G.R. Nos. 147066 &147179,
Mar. 26, 2001, 355 SCRA 318 .... 164, 167
Alcantara *vs.* Ponce, G.R. No. 131547, Dec. 15, 2005,
478 SCRA 27 593-594
Alonzo *vs.* Intermediate Appellate Court, G.R. No. 72873,
May 28, 1987, 150 SCRA 259 548
Alvaro *vs.* Ternida, G.R. No. 166183, Jan. 20, 2006,
479 SCRA 288 641
Amadora *vs.* CA, G.R. No. L-47745, April 15, 1988,
160 SCRA 315 1040

Page

Ampong *vs.* Civil Service Commission, CSC-Regional Office No. 11, G.R. No. 167916, Aug. 26, 2008, 563 SCRA 293, 307 .... 288, 780
Ancheta *vs.* Metropolitan Bank and Trust Company, Inc., G.R. No. 163410, Sept. 16, 2005, 470 SCRA 157 147
Angeles *vs.* Philippine National Railways, G.R. No. 150128, Aug. 31, 2006, 500 SCRA 444, 452 44
Antonio, Jr. *vs.* Comelec, 143 Phil. 241, 259-260 (1970) 580
Anyong Hsan *vs.* CA, 59 SCRA 110, 112-113 73
Apo Fruits Corporation *vs.* CA, G.R. No. 164195, Dec. 4, 2009 593
Appari *vs.* CA, G.R. No. L-30057, Jan. 31, 1984, 127 SCRA 231, 240 893
Aquino *vs.* COMELEC, et al., G.R. No. 120265, Sept. 18, 1995, 248 SCRA 400 .... 648, 655
Aquino-Simbulan *vs.* Nicasio Bartolome, AM No. MTJ-05-1588, June 5, 2009 423
Arabesque Industrial Philippines, Inc. *vs.* CA, G.R. No. 101431, Dec. 14, 1992, 216 SCRA 602 348
Arambulo *vs.* Gungab, G.R. No. 156581, Sept. 30, 2005, 471 SCRA 640, 649-650 88
Argoncillo *vs.* CA, G.R. No. 118806, July 10, 1998, 292 SCRA 313, 330-331 259
Arnedo *vs.* Llorente, 18 Phil. 257, 262-263 (1911) 593
Asian Alcohol Corporation *vs.* NLRC, G.R. No. 131108, Mar. 25, 1999, 305 SCRA 416, 428 863
Association of Small Landowners in the Philippines, Inc. *vs.* Secretary of Agrarian Reform, G.R. Nos. 78742, 79310, 79744 & 79777, July 14, 1989, 175 SCRA 343, 377 79
Atlas Farms, Inc. *vs.* National Labor Relations Commission, 440 Phil. 620 (2002) 874
Audi AG *vs.* Mejia, G.R. No. 167533, July 27, 2007, 528 SCRA 378, 385 529
Autencio *vs.* Mañara, G.R. No. 152752, Jan. 19, 2005, 449 SCRA 46, 55-56 204
Avecilla *vs.* Yatcvo, 103 Phil. 666 72
Avisado *vs.* Rumbaua, 406 Phil. 704 (2001) 61
Ayson *vs.* CA, G.R. Nos. L-6501 & 6599, May 21, 1955 73

Page

Babst *vs.* CA, G.R. No. 99398, Jan. 26, 2001,
350 SCRA 341, 355-356 1043
Bacsasar *vs.* Civil Service Commission, G.R. No. 180853,
Jan. 20, 2009, 576 SCRA 787, 794 204
Badoy, Jr. *vs.* Comelec, G.R. No. L-32546, Oct. 17, 1970,
35 SCRA 285, 301 580
Bagatsing *vs.* San Juan, 329 Phil. 8, 13 (1996) 77
Balatbat *vs.* Arias, A.C. No. 1666, April 13, 2007,
521 SCRA 1, 10.. 672
Banco Filipino Savings and Mortgage Bank *vs.*
Intermediate Appellate Court, 225 Phil. 530 (1986) 145
Bañez *vs.* CA, 59 SCRA 15 73
Baron Republic Theatrical *vs.* Peralta, G.R. No. 170525,
Oct. 2, 2009 522
Barreras *vs.* Garcia, G.R. Nos. 44715-16, Jan. 26, 1989,
169 SCRA 401 1038
Bartolata *vs.* Julaton, A.M. No. P-02-1638, 6 July 2006,
494 SCRA 433 287
Basco *vs.* Philippine Amusements and Gaming
Corporation, G.R. No. 91649, May 14, 1991,
197 SCRA 52 548
Batangas Laguna Tayabas Bus Co., Inc. *vs.* Bitanga,
415 Phil. 43, 56 (2001) 600
Bautista, et al. *vs.* Sarmiento, et al., G.R. No. L-45137,
Sept. 23, 1985 143
Bayan (Bagong Alyansang Makabayan) *vs.* Zamora,
396 Phil. 623, 647 (2000) 76
Belgian Overseas Chartering and Shipping N.V. *vs.*
Phil. First Insurance Co., Inc., 383 SCRA 23 430
Belgica *vs.* Belgica, G.R. No. 149738, Aug. 28, 2007,
531 SCRA 331 255
BF Homes Incorporated *vs.* CA, G.R. No. 76879,
Oct. 3, 1990, 190 SCRA 262, 268 97
Biggel *vs.* Pamintuan, A.M. No. RTJ-08-2101,
(Formerly OCA I.P.I. No. 07-2763-RTJ), July 23, 2008,
559 SCRA 344 189
Binay *vs.* Odeña, G.R. No. 163683, June 8, 2007,
524 SCRA 248, 256-257 780

Page

Biscarra *vs.* Republic, 184 Phil. 209, 239-240 (1980) 705
Bogo-Medellin Milling Co., Inc. *vs.* CA,
455 Phil. 285, 298-299 (2003) 59
Bolastig *vs.* Sandiganbayan, G.R. No. 110503,
Aug. 4, 1994, 235 SCRA 103 936
Bordador *vs.* Luz, 347 Phil. 654, 662 (1997) 45
Borja *vs.* Commission on Elections, 329 Phil. 409 (1996) 892
Borja, Jr. *vs.* COMELEC, 356 Phil. 467, 478 (1998) 925
Borja, Jr. *vs.* COMELEC, G.R. No. 133495,
Sept. 3, 1998, 295 SCRA 157 916
Bucoy *vs.* Paulino, G.R. No. L-25775, April 26, 1968,
23 SCRA 248 323
Buenaventura *vs.* People, G.R. No. 171578, Aug. 8, 2007,
529 SCRA 500, 510 230
Bugnay Construction and Development Corporation *vs.*
Judge Laron, 257 Phil. 245, 256 (1989) 76
Bunagan *vs.* Ferraren, A.M. No. P-06-2173, Jan. 28, 2008,
542 SCRA 355, 363 .... 686, 688
Bustarga *vs.* Navo II, 214 Phil. 86, 89 (1984) 120
Buston-Arendain *vs.* Gil, G.R. No. 172585, June 26, 2008,
555 SCRA 561, 573 340
C.W. Tan Mfg. *vs.* National Labor Relations Commission,
G.R. No. 79596, Feb. 10, 1989, 170 SCRA 240, 244 872
Cajiuat *vs.* Mathay, Sr., 209 Phil. 579, 583 (1983) 396, 398, 413
Camarines Norte Electric Cooperative, Inc. *vs.* CA,
G.R. No. 109338, Nov. 20, 2000, 345 SCRA 85 .... 854, 856
Cañete *vs.* Genuino Ice Company, Inc., G.R. No. 154080,
Jan. 22, 2008, 542 SCRA 206 710
Cardona *vs.* Municipality of Binangonan,
36 Phil. 547 (1917) 561
Cariño *vs.* de Castro, G.R. No. 176084, April 30, 2008,
553 SCRA 688 841
Casimina *vs.* Legaspi, G.R. No. 147530, June 29, 2005,
462 SCRA 171, 182 341
Casimiro *vs.* Tandog, G.R. No. 146137, June 8, 2005,
459 SCRA 624, 631 201
Castilex Industrial Corporation *vs.* Vasquez, Jr.,
378 Phil. 1009 (1999) 831

Page

Cawalig *vs.* COMELEC, G.R. Nos. 146319 & 146342,
Oct. 26, 2001, 368 SCRA 453 548
Cayat *vs.* Commission on Elections, G.R. Nos. 163776
and 165736, April 24, 2007, 522 SCRA 23, 44 619
Cebu Portland Cement Co. *vs.* Collector of Internal
Revenue, 134 Phil. 735, 740 (1968) 43
Centeno *vs.* Villalon-Pornillos, G.R. No. 113092,
Sept. 1, 1994, 236 SCRA 197, 206 406
Central Philippines Bandag Retreaders, Inc. *vs.* Diasnes,
G.R. No. 163607, July 14, 2008, 558 SCRA 194 423
Cequeña *vs.* Bolante, 386 Phil. 419, 430 (2000) 59-60
Cerebo *vs.* Dictado, 160 SCRA 759 74
Chan *vs.* Majaducon, A.M. No. RTJ-02-1697, Oct. 15, 2003,
413 SCRA 354, 361 300
Chan *vs.* Secretary of Justice, G.R. No. 147065,
Mar. 14, 2008 957
Chavez *vs.* National Labor Relations Commission,
489 Phil. 444 (2005) 798
China Banking Corporation *vs.* CA, G.R. No. 121158,
Dec. 5, 1996, 265 SCRA 327 349-350
Choa *vs.* Choa, 441 Phil. 175 (2002) 143
Chuidian *vs.* Sandiganbayan, G.R. Nos. 156383 &
160723, July 31, 2006, 497 SCRA 327 555
CIR *vs.* Philippine Airlines, Inc., G.R. No. 160528,
Oct. 9, 2006, 504 SCRA 90 1038
Citibank, N.A. (Formerly First National City Bank) *vs.*
Sabeniano, G.R. No. 156132, Oct. 16, 2006,
504 SCRA 378, 409 205
Citizen's Alliance for Consumer Protection *vs.* Energy
Regulatory Board, G.R. No. 78888-90, June 23, 1988 73
City of Davao *vs.* RTC, Branch XII, Davao City,
G.R. No. 127383, Aug. 18, 2005, 467 SCRA 280 975
Civil Service Commission *vs.* Albao, G.R. No. 155784,
Oct. 13, 2005, 472 SCRA 548 285
Belagan, G.R. No. 132164, Oct. 19, 2004,
440 SCRA 578 175-176
Sta. Ana, 450 Phil. 59 (2003) 287

Page

Clarion Printing House, Inc. *vs.* NLRC, G.R. No. 148372,
June 27, 2005, 461 SCRA 272 861
Clavano, Inc. *vs.* Housing and Land Use Regulatory Board,
378 SCRA 172 488
Co *vs.* Electoral Tribunal of the House Of Representatives,
G.R. Nos. 92191-92, July 30, 1991, 199 SCRA 692, 699 648
Co *vs.* Plata, A.M. No. MTJ-03-1501, Mar. 14, 2005,
453 SCRA 326, 340 301
Coconut Oil Refiners Association *vs.* Torres, G.R. No. 132527,
July 29, 2005, 465 SCRA 47 .... 548, 565, 567, 569
Cojuangco *vs.* Villegas, G.R. No. 76838, April 17, 1990,
184 SCRA 374, 378 187
Collantes *vs.* CA, G.R. No. 169604, Mar. 6, 2007,
517 SCRA 561, 568 489
Columbres *vs.* Madronio, A.M. No. MTJ-02-1461,
Mar. 31, 2005, 454 SCRA 185, 192 508
Commissioner of Internal Revenue *vs.* Cebu Toyo Corp.,
G.R. No. 149073, Feb. 16, 2005, 451 SCRA 447 127
Commissioner of Internal Revenue *vs.* Manila Mining
Corporation, G.R. No. 153204, Aug. 31, 2005,
468 SCRA 571, 588-589 127
Concerned Citizen of Maddela *vs.* Dela Torre-Yadao,
A.M. No. RTJ-01-1639, Nov. 29, 2002,
393 SCRA 217, 223 843
Condes *vs.* CA, G.R. No. 161304, July 27, 2007,
528 SCRA 339, 352 436
Constantino, Jr. *vs.* Cuisia, G.R. No. 106064,
Oct. 13, 2005, 472 SCRA 505, 518-519 .... 76, 78
Cruz *vs.* People, G.R. No. 164580, Feb. 6, 2009 .... 271, 276, 955-956
Cruz *vs.* Secretary of Environment and Natural Resources,
400 Phil. 904 (2000) 580
Curata *vs.* Philippine Ports Authority, G.R. Nos. 154211-12,
June 22, 2009 134
Danao *vs.* Franco, Jr., A.M. No. P-02-1569, Nov. 13, 2002,
391 SCRA 515 688
Dandoy *vs.* Maglangit, G.R. No. 144652, Dec. 16, 2005,
478 SCRA 195, 200 506

Page

David *vs.* Macapagal-Arroyo, G.R. Nos. 171396,
171409, 171485, 171483, 171400, 171489 & 171424,
May 3, 2006, 489 SCRA 160 78
Daza *vs.* Singson, G.R. No. 86344, Dec. 21, 1989,
180 SCRA 496, 507 80
De Chavez *vs.* Office of the Ombudsman,
G.R. No. 168830-31, Feb. 6, 2007, 514 SCRA 638, 655 87
De Garcia *vs.* San Jose, 94 Phil. 623 (1954) 145
De la Calzada-Cierras *vs.* CA, G.R. No. 95431,
Aug. 7, 1992, 212 SCRA 390, 396 327
De Liano *vs.* CA, G.R. No. 142316, Nov. 22, 2001,
370 SCRA 349, 361 725
Defensor-Santiago *vs.* COMELEC, G.R. No. 127325,
Mar. 19, 1997 587
Dela Merced *vs.* GSIS, et al., G.R. No. 140393, Sept. 11, 2001,
365 SCRA 1 477
Department of Agrarian Reform *vs.* Samson,
G.R. Nos. 161910 and 161930, June 17, 2008,
554 SCRA 500, 509 .... 201, 207
Development Bank of the Philippines *vs.* CA,
387 Phil. 283, 303 (2000) 117, 120
Commission on Audit, 467 Phil. 62 (2004) 407
West Negros College, Inc., G.R. No. 152359,
Oct. 28, 2002, 391 SCRA 330 (2002) 832
Union Bank of the Phils., 464 Phil. 161 (2004) 853
Domino *vs.* COMELEC, G.R. No. 134015, July 19, 1999,
310 SCRA 546 655
Dulay *vs.* Lelina, Jr., A.M. No. RTJ-99-1516,
July 14, 2005, 463 SCRA 269, 275-276 300
Duque *vs.* Aspiras, A.M. No. P-05-2036, July 15, 2005,
463 SCRA 447, 454 177
Dy *vs.* NLRC, 229 Phil. 234 (1986) 21
Edaño *vs.* Asdala, A.M. No. RTJ-06-1974, July 26, 2007,
528 SCRA 212, 220-221 301
Epie, Jr. *vs.* Ulat-Marredo, G.R. No. 148117, Mar. 22, 2007,
518 SCRA 641, 647 954
Equatorial Realty Development, Inc. *vs.* Mayfair
Theater, Inc., G.R. No. 136221, May 12, 2000,
332 SCRA 139 593

Page

Erectors, Inc. *vs.* National Labor Relations Commission, 326 Phil. 640, 646 (1996) 43
Escosura *vs.* San Miguel Brewery, Inc., 114 Phil. 225 (1962) 548
Espino *vs.* NLRC, 310 Phil. 61 (1995) 21
Esso Standard Eastern, Inc. *vs.* Commissioner of Internal Revenue, G.R. No. 28508, July 7, 1989, 175 SCRA 149 569
Estarija *vs.* Ranada, G.R. No. 159314, June 26, 2006, 492 SCRA 652, 670 .... 175, 775
Estrada *vs.* NLRC, G.R. No. 106722, Oct. 4, 1996, 262 SCRA 709 21-22
Eurotech Industrial Technologies, Inc. *vs.* Cuizon, G.R. No. 167552, 23 April 2007, 521 SCRA 584, 593 46
F.F. Marine Corporation *vs.* National Labor Relations Commission, Second Division, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 168 863
Faeldonia *vs.* Tong Yak Groceries, G.R. No. 182499, Oct. 2, 2009 520
Fortich *vs.* Corona, 371 Phil. 672 (1999) 591
Fortich *vs.* Corona, G.R. No. 131457, April 24, 1998, 289 SCRA 624 593
Fortune Cement Corporation *vs.* NLRC, G.R. No. 79762, Jan. 24, 1991, 193 SCRA 258 21
Fortune Motors *vs.* CA, G.R. No. 112191, Feb. 7, 1997, 267 SCRA 653 1043
Foster-Gallego *vs.* Galang, G.R. No. 130228, July 27, 2004, 435 SCRA 275 710
Francisco *vs.* Herrera, 440 Phil. 841, 849 (2002)............................. 47
Francisco, Jr. *vs.* Nagmamalasakit na mga Manananggol ng Mga Manggagawang Pilipino, Inc., G.R. Nos. 160261-63 & 160277, Nov. 10, 2003, 415 SCRA 44 564
Freedom from Debt Coalition *vs.* Energy Regulatory Commission, 476 Phil. 134 (2004) 403
Frivaldo *vs.* COMELEC, G.R. Nos. 120295 & 123755, June 28, 1996, 257 SCRA 727, 770-771 .... 649, 657
Gallardo-Corro *vs.* Gallardo, G.R. No. 136228, Jan. 30, 2001, 350 SCRA 568, 578 481

Page

Gallego *vs.* Vera, G.R. No. L-48641, Nov. 24, 1941,
73 Phil. 453, 459 657
Gaminde *vs.* Commission on Audit,
401 Phil. 77, 88 (2000) 893
Garcia *vs.* CA, G.R. Nos. L-49644-45, July 16, 1984,
130 SCRA 433 323
Garcia *vs.* Social Security Commission Legal and
Collection, G.R. No. 170735, Dec. 17, 2007,
540 SCRA 456, 472 548
Garcillano *vs.* House of Representatives Committees
on Public Information, Public Order and Safety,
National Defense and Security, Information and
Communications Technology, and Suffrage and
Electoral Reforms, G.R. Nos. 1708338 & 179275,
Dec. 23, 2008, 575 SCRA 170, 185 77-78
Gillamac-Ortiz *vs.* Almeida, Jr., A.M. No. P-07-2401,
Nov. 28, 2007, 539 SCRA 20 177
Ginete *vs.* CA, G.R. No. 127596, Sept. 24, 1998,
296 SCRA 36 593
Golez *vs.* Leonidas, No. 56587, Aug. 31, 1981,
107 SCRA 187, 189 601
Gonzales *vs.* Civil Service Commission, G.R. No. 156253,
June 15, 2006, 490 SCRA 741, 746 204
GSIS *vs.* Santiago, G.R. No. 155206, Oct. 28, 2003,
414 SCRA 563, 570 484
GSIS *vs.* Vicencio, G.R. No. 176832, May 21, 2009 .... 699, 703
Guerrero *vs.* National Labor Relations Commission,
G.R. No. 119842, Aug. 30, 1996, 261 SCRA 301, 305 863
Gustilo *vs.* Wyeth Philippines, Inc., 483 Phil. 69, 78 (2004) 423
Gutib *vs.* CA, G.R. No. 131209, Aug. 13, 1999,
312 SCRA 365 958
Hadji-Sirad *vs.* Civil Service Commission, G.R. No. 182267,
Aug. 28, 2009 201
Hanjin Engineering and Construction Co., Ltd. *vs.* CA,
G.R. No. 165910, April 10, 2006, 487 SCRA 78, 100 529
Heirs of Federico C. Delgado and Annalisa Pesico *vs.*
Luisito Q. Gonzalez and Antonio T. Buenaflor,
G.R. No. 184337, Aug. 7, 2009 841

Page

Heirs of Olarte *vs.* Office of the President, G.R. No. 165821,
June 21, 2005, 460 SCRA 561, 566-567 317
Heirs of Tajonera *vs.* CA, 191 Phil. 55, 63 (1981) 116
Heirs of the Late Jesus Fran *vs.* Salas, G.R. No. 53546,
June 25, 1992, 210 SCRA 303, 316 155
Herbosa *vs.* CA, G.R. No. 119086, Jan. 25, 2002,
374 SCRA 578, 591 205
Homeowners Savings and Loan Bank *vs.* Dailo,
G.R. No. 153802, Mar. 11, 2005, 453 SCRA 283, 292 830
Hon. Joson *vs.* Exec. Sec. Torres, 352 Phil. 888, 927 (1998) 932
Ibañez *vs.* Hongkong & Shanghai Bank, 22 Phil. 572 73
Imperial *vs.* Santiago, A.M. No. P-01-1449, Feb. 24, 2003,
398 SCRA 75, 85 175
In Re: Mino *vs.* Navarro, A.M. No. MTJ-06-1645,
Aug. 28, 2007, 531 SCRA 271, 279 843
Incon Industrial Corporation *vs.* CA, G.R. No. 161871,
July 24, 2007, 528 SCRA 139, 144 81
Inding *vs.* Sandiganbayan, G.R. No. 143047, July 14, 2004,
434 SCRA 388 1038
Inguillo *vs.* First Philippine Scales, Inc., et al.,
G.R. No. 165407, June 5, 2009 .... 518, 520
Isabela Colleges *vs.* Heirs of Nieves-Tolentino,
G.R. No. 132677, Oct. 20, 2000, 344 SCRA 95, 107-108 326
Japzon *vs.* COMELEC, G.R. No. 180088, Jan. 19, 2009 658
Jaworski *vs.* Phil. Amusement and Gaming Corp.,
464 Phil. 375, 385-386 (2004) 40
Jose *vs.* Zulueta, et al., G.R. No. L-16598, May 31, 1961 143
Keng Hua Paper Products Co., Inc. *vs.* CA,
286 SCRA 257 430
Keng Hua Paper Products Co., Inc. *vs.* CA,
349 Phil. 925, 933 (1998) 433
KKK Foundation, Inc. *vs.* Calderon-Bargas, G.R. No. 163785,
Dec. 27, 2007, 541 SCRA 432, 441 81
La Bugal-B'laan Tribal Association, Inc. *vs.* Ramos,
G.R. No. 127882, Dec. 1, 2004, 445 SCRA 1 564
La Campana Development Corporation *vs.* Development
Bank of the Philippines, G.R. No. 146157, Feb. 13, 2009 857

Page

La O *vs.* Employees' Compensation Commission,
186 Phil. 535 (1980) 703
La Rosa *vs.* Ambassador Hotel, G.R. No. 177059,
Mar. 13, 2009 800
La Suerte Cigar and Cigarette Factory *vs.* Director of the
Bureau of Labor Relations, G.R. No. 55674, July 25, 1983,
123 SCRA 679 609
Labo, Jr. *vs.* Commission on Elections, G.R. Nos. 105111
and 105384, July 3, 1992, 211 SCRA 297 618
Laceda, Sr. *vs.* Limena, G.R. No. 182867, Nov. 25, 2008,
571 SCRA 603, 607 618
Lagon *vs.* Hooven Comalco Industries, Inc.,
349 SCRA 363 430
Laguna Lake Development Authority *vs.* CA,
G.R. No. 110120, Mar. 16, 1994, 231 SCRA 292 .... 365, 367
Lambino *vs.* Commission on Elections, G.R. Nos. 174153
& 174299, Oct. 25, 2006, 505 SCRA 160 553
Land Bank of the Philippines *vs.* CA, 456 Phil. 755 (2003) 143
Landtex Industries *vs.* CA, 529 SCRA 631, 652 (2007) 518
Langkaan Realty Development, Inc. *vs.* United Coconut
Planters Bank, G.R. No. 139437, Dec. 8, 2000,
347 SCRA 542, 549 255
Lanot *vs.* Commission on Elections, G.R. No.164858,
507 SCRA 114, 138 166
Laraño *vs.* Commission on Audit, G.R. No. 164542,
Dec. 18, 2007, 540, 546 SCRA 553 .... 402, 408
Larena *vs.* Mapili, 455 Phil. 944, 954-955 (2003) 59
Latasa *vs.* Commission on Elections, 463 Phil. 296 (2003) 934
Latasa *vs.* Commission on Elections, G.R. No. 154829,
Dec. 10, 2003, 417 SCRA 601 .... 899, 902
Lazarte *vs.* Sandiganbayan, G.R. No. 180122, Mar. 13, 2009 959
Ledesma *vs.* CA, G.R. No. 166780, Dec. 27, 2007,
541 SCRA 444, 452 778
Lee *vs.* CA, G.R. No. 147191, July 27, 2006,
496 SCRA 668 .... 600, 602
Legarda *vs.* CA, G.R. No. 94457, Oct. 16, 1997,
280 SCRA 642 593
Leodovica *vs.* CA, 65 SCRA 154-155 73

Page

Letter of Atty. Socorro M. Villamer-Basilla, RTC, Br. 4, Legazpi City on the alleged improper conduct of Manuel L. Arimado, Sheriff IV, A.M. No. P-06-2128 (formerly A.M. No. 04-6-313-RTC), Feb. 16, 2006, 482 SCRA 455, 458 683
Ley Construction and Development Corporation *vs.* Hyatt Industrial Manufacturing Corporation, 393 Phil. 633 (2000) 142
Li Kim Tho *vs.* Sanchez, 82 Phil. 776, 778 (1949) 593
Libres *vs.* National Labor Relations Commission, 367 Phil. 181, 190 (1999) 778
Lindo *vs.* Commission on Elections, G.R. No. 127311, June 19, 1997, 274 SCRA 511 1050
Lingating *vs.* COMELEC, 440 Phil. 308 (2002) 938
Litonjua, Jr. *vs.* Eternit Corporation, G.R. No. 144805, June 8, 2006, 490 SCRA 204, 225 46
Llave *vs.* People, G.R. No. 166040, April 26, 2006, 488 SCRA 376, 400 1023
Long *vs.* Basa, G.R. Nos. 134963-64, Sept. 27, 2001, 366 SCRA 113 593
Lonzanida *vs.* Commission on Elections, 370 Phil. 625, 636 (1999) 933, 925
Lonzanida *vs.* Commission on Elections, G.R. No. 135150, July 28, 1999, 311 SCRA 602 896
Lozon *vs.* NLRC, 310 Phil. 1 (1995) 21
Luxuria Homes, Inc. *vs.* CA, 302 SCRA 315 431
Luzon Development Bank *vs.* Conquilla, G.R. No. 163338, Sept. 21, 2005, 470 SCRA 533 709
Macalintal *vs.* Commission on Elections, 453 Phil. 586, 632 (2003) 618
Macasero *vs.* Southern Industrial Gases Philippines, G.R. No. 178524, Jan. 30, 2009, 577 SCRA 500, 507 802
Maceda *vs.* Vasquez, G.R. No. 102781, April 22, 1993, 221 SCRA 464 288
Mactan Cebu International Airport *vs.* Hontanosa, Jr., A.M. No. RTJ-03-1815, Oct. 25, 2004, 441 SCRA 229, 248 189

Page

Mactan Cebu International Airport Authority *vs.* Marcos, G.R. No. 120082, Sept. 11, 1996, 261 SCRA 667 975
Maguad *vs.* De Guzman, A.M. No. P-94-1015, Mar. 29, 1999, 305 SCRA 469 175
Malillin *vs.* People, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633 278
Mallari *vs.* Alsol, G.R. No. 150866, Mar. 6, 2006, 484 SCRA 148 642
Manila Electric Company *vs.* Barlis, G.R. No. 114231, May 18, 2001, 357 SCRA 832 and June 29, 2004, 433 SCRA 11 983
Manila International Airport Authority *vs.* CA, G.R. No. 155650, July 20, 2006, 495 SCRA 591 978
Manila Railroad Co. *vs.* Workmen's Compensation Commission, 120 Phil. 944 (1964) 703
Mantle Trading Services, Inc. and/or Bobby del Rosario *vs.* NLRC and Pablo S. Madriaga, G.R. No. 166705, July 28, 2009 520-521
Marcelo *vs.* De Guzman, et al., G.R. No. L-29077, June 29, 1982 143
Marcelo Steel Corp. *vs.* CA, 153 Phil. 362 (1973) 145
Mariñas *vs.* Florendo, A.M. No. P-07-2304, Feb. 12, 2009 .... 687, 689
Matanguihan *vs.* CA, G.R. No. 115033, July 11, 1997, 275 SCRA 380, 389 1039
Mayon Estate Corporation *vs.* Altrua, 440 SCRA 377 487
Melchor *vs.* Gironella, 414 Phil. 590 (2001) 777
Melendres, Jr. *vs.* Commission on Elections, 377 Phil. 275, 290 (1999) 155
Mendizabel *vs.* Apao, G.R. No. 143185, 482 SCRA 587, 607 (2006) 120
Mendoza *vs.* National Labor Relations Commission, 350 Phil. 486 (1998) 801
Navarro, A.M. No. P-05-2034, Sept. 11, 2006, 501 SCRA 354, 363 175
Philippine Air Lines, Inc., 90 Phil. 836, 846 (1952) 433
Meralco *vs.* Quisumbing, G.R. No. 127598, Jan. 27, 1999, 302 SCRA 173 .... 992, 1000

Page

Merciales *vs.* CA, 429 Phil. 70 (2002) 841
Metro Manila Development Authority *vs.* Trackworks
Rail Transit Advertising, Vending & Promotions, Inc.,
G.R. No. 167514, Oct. 25, 2005, 474 SCRA 331 241
Metropolitan Bank and Trust Company, Inc. *vs.* National
Wages and Productivity Commission, G.R. No. 144322,
Feb. 6, 2007, 514 SCRA 346 873
Metropolitan Manila Development Authority *vs.*
Bel-Air Village Association, Inc., G.R. No. 135962,
Mar. 27, 2000, 328 SCRA 837 243
Garin, G.R. No. 130230, April 15, 2005, 456 SCRA 176 244
Trackworks Rail Transit Advertising, Vending &
Promotions, Inc., G.R. No. 167514, Oct. 25, 2005,
441 SCRA 331 243
Viron Transportation Co., Inc., G.R. Nos. 170656
and 170657, Aug. 15, 2007, 530 SCRA 341 243
Microsoft Corporation *vs.* Maxicorp, Inc.,
481 Phil. 550 (2004) 698
Mobilia Products, Inc. *vs.* Demecilio, G.R. No. 170669,
Feb. 4, 2009 862
Mobilia Products, Inc. *vs.* Umezawa, G.R. Nos. 149357
and 149403, Mar. 4, 2005, 452 SCRA 736 841
Molino *vs.* Security Diners International Corporation,
G.R. No. 136780, Aug. 16, 2001, 363 SCRA 358, 366 1043
Montebon *vs.* COMELEC, G.R. No. 180444, April 9, 2008,
551 SCRA 50 .... 901, 914, 932
Mt. Carmel College *vs.* Resuena, G.R. No. 173076,
Oct. 10, 2007, 535 SCRA 518, 541 801
Municipality of Pateros *vs.* CA, G.R. No. 157714,
June 16, 2009 133
Narciso *vs.* Sta. Romana-Cruz, G.R. No. 134504,
Mar. 17, 2000, 328 SCRA 505 841
National Police Commission *vs.* De Guzman, Jr.,
G.R. No. 106724, Feb. 9, 1994, 229 SCRA 801 568
National Power Corporation *vs.* Manubay Agro-Industrial
Development Corporation, G.R. No. 150936,
Aug. 18, 2004, 437 SCRA 60, 67 856

Page

San Pedro, G.R. No. 170945, Sept. 26, 2006,
503 SCRA 333, 353 854
Vda. de Capin, G.R. No. 175176, Oct.17, 2008,
569 SCRA 648, 667 855
National Tobacco Administration *vs.* Commission on Audit,
370 Phil. 793 (1999) 1038
Natividad *vs.* Movie and Television Review and
Classification Board (MTRCB), 540 SCRA 124, 135 809
Navarra *vs.* CA, G.R. No. 86237, Dec. 17, 1991,
204 SCRA 850 145-146
New Testament Church of God *vs.* CA,
316 Phil. 330, 333 (1995) 436
Nicolas *vs.* Sandiganbayan, G.R. Nos. 175930-31,
Feb. 11, 2008 958
Nuclear Free Phils. Coalition *vs.* NPC,
141 SCRA 307 (1986) 73
Nunal *vs.* Commission on Audit, G.R. No. 78648,
Jan. 24, 1989, 169 SCRA 356, 361-362 396
Office of the Ombudsman *vs.* De Sahagun, G.R. No. 167982,
Aug. 13, 2008, 562 SCRA 122, 128-129 777
Beltran, G.R. No. 168039, June 5, 2009 779
Sanchez, G.R. No. 179336, April 9, 2008 930
Ong *vs.* Alegre, G.R. Nos. 163295 and 163354, Jan. 23, 2006,
479 SCRA 473, 482-484 .... 897, 933-934
Ong *vs.* People, G.R. No. 140904, Oct. 9, 2000,
342 SCRA 372, 386 1052
Ong Lim Sing, Jr. *vs.* FEB Leasing and Finance Corporation,
G.R. No. 168115, June 8, 2007, 524 SCRA 333 723-724
Ortigas & Company Ltd. Partnership *vs.* Velasco,
G.R. No. 109645, Mar. 4, 1996, 254 SCRA 234 592-594
Paguio *vs.* NLRC, 323 Phil. 203 (1996) 22
Pan *vs.* Peña, G.R. No. 174244, Feb. 13, 2009,
579 SCRA 314 341
Pangasinan Electric Cooperative I (PANELCO I) *vs.*
Montemayor, A.C. No. 5739, Sept. 12, 2007,
533 SCRA 1, 7-8 671
Pangasinan State University *vs.* CA, G.R. No. 162321,
June 29, 2007, 526 SCRA 92, 98 339

Page

Pangilinan *vs.* Maglaya, G.R. No. 104216, Aug. 20, 1993,
225 SCRA 511 ... 574
Papandayan, Jr. *vs.* COMELEC, G.R. No. 147909,
April 16, 2002, 430 Phil. 754, 768-770 ... 658
Pascual *vs.* Coronel, G.R. No. 159292, July 12, 2007,
527 SCRA 474, 482, 484 ... 88
PCIB *vs.* Escolin, et al., G.R. No. L-27860 and 27896,
Mar. 29, 1974 ... 143
Pecson *vs.* Commission on Elections, G.R. No. 182865,
Dec. 24, 2008, 575 SCRA 634 ... 1051
Pelaez *vs.* Auditor General, G.R. No. L-23825, Dec. 24, 1965,
15 SCRA 569, 576 ... 561
Pelayo *vs.* Perez, G.R. No. 141323, June 8, 2005,
459 SCRA 475, 485-486 ... 324
Pelonia *vs.* People, G.R. No. 168997, April 13, 2007,
521 SCRA 207 ... 256
Pentagon Steel Corporation *vs.* CA, G.R. No. 174141,
June 26, 2009 ... 799
People *vs.* Abad, 335 Phil. 712, 722 (1997) ... 626
Abalos, G.R. No. L-029039, Nov. 28, 1968 ... 143
Ahmad, G.R. No. 148048, Jan. 15, 2004,
419 SCRA 677, 694 ... 222
Alcover, 82 Phil. 681, 692 (1949) ... 583
Araojo, G.R. No. 185203, Sept. 17, 2009 ... 452
Arcosiba, G.R. No. 181081, Sept. 4, 2009 ... 452
Aruta, 351 Phil. 868, 880 (1998) ... 12
Aspiras, G.R. Nos. 138382-84, Feb. 12, 2002,
376 SCRA 546, 555-556 ... 231
Astudillo, 440 Phil. 203 (2002) ... 276
Astudillo, G.R. No. 140088, Nov. 13, 2002,
391 SCRA 536, 555 ... 233
Baldo, G.R. No. 175238, Feb. 24, 2009,
580 SCRA 225 ... 754, 1027
Balonzo, G.R. No. 176153, Sept. 21, 2007,
533 SCRA 760, 771 ... 1017, 1025
Bandang, G.R. No. 151314, June 3, 2004,
430 SCRA 570, 579 ... 230

Page

Baway, G.R. No. 130406, Jan. 22, 2001,
350 SCRA 29, 46 1023
Beriarmente, G.R. No. 137612, Sept. 25, 2001,
365 SCRA 747 271
Bidoc, G.R. No. 169430, Oct. 31, 2006, 506 SCRA 481 1023
Boromeo, G.R. No. 150501, June 3, 2004,
430 SCRA 533, 546 1024
Candaza, G.R. No. 170474, June 16, 2006,
491 SCRA 280, 295-296 1023
Canuto, G.R. No. 169083, Aug. 7, 2006,
498 SCRA 198, 216 1023
Casil, 311 Phil. 300, 309 (1995) 626
Ceballos, G.R. No. 169642, Sept. 14, 2007,
533 SCRA 493 1017
Chua, G.R. No. 133789, Aug. 23, 2001,
363 SCRA 562, 583 222
Codilan, G.R. No. 177144, July 23, 2008,
559 SCRA 623, 636 627
Concepcion, G.R. No. 178876, June 27, 2008,
556 SCRA 421 .... 278, 955
Consing, Jr., 443 Phil. 454, 460 (2003) 617
Corpuz, G.R. No. 168101, Feb. 13, 2006,
482 SCRA 435, 444 1017
Cortez, G.R. No. 183819, July 23, 2009 960
Cueno, G.R. No. 128277, Nov. 16, 1998,
298 SCRA 621, 631-632 233
Cura, 310 Phil. 237 (1995) 815
Daria, G.R. No. 186138, Sept. 11, 2009 960
Datun, 338 Phil. 884 (1997) 699
De Guzman, G.R. No. 173197, April 24, 2007,
522 SCRA 207 1026
De Guzman, 423 Phil. 313, 317 (2001) 815
Del Monte, G.R. No. 179940, April 23, 2008,
552 SCRA 627 277
Del Norte, G.R. No. 149462, Mar. 29, 2004,
426 SCRA 383 275
Diunsay-Jalandoni, G.R. No. 174277, Feb. 8, 2007,
515 SCRA 227 1024

Page

Domingcil, G.R. No. 140679, Jan. 14, 2004,
419 SCRA 291, 303 .... 229, 233
Doria, G.R. No. 125299, Jan. 22, 1999,
301 SCRA 668, 698-699 .... 222, 228
Dulay, G.R. No. 150624, Feb. 24, 2004,
423 SCRA 652, 662 .... 222, 229, 279
Elamparo, G.R. No. 121572, Mar. 31, 2000,
329 SCRA 404, 412 228
Encila, G.R. No. 182419, Feb. 10, 2009 953
Espino, Jr., G.R. No. 176742, June 17, 2008,
554 SCRA 682, 696-697 814
Esteves, 438 Phil. 687, 699 (2002) 1024
Eugenio, G.R. No. 146805, Jan. 16, 2003, 395 SCRA 317 271
Gagto, G.R. No. 113345, Feb. 9, 1996,
253 SCRA 455, 467-468 1026
Glivano, G.R. No. 177565, Jan. 28, 2008,
542 SCRA 656, 662 .... 625, 1017
Gonzales, G.R. No. 143805, April 11, 2002,
380 SCRA 689 276
Gragasin, G.R. No. 186496, Aug. 25, 2009 452
Hajili, G.R. Nos. 149872-73, Mar. 14, 2003,
399 SCRA 288 222
Herrera, G.R. No. 93728, Aug. 21, 1995, 247 SCRA 433 271
Iluis, G.R. No. 145995, Mar. 20, 2003,
399 SCRA 396, 406 1024
Jocson, G.R. No. 169875, Dec. 18, 2007,
540 SCRA 585, 592-593 228-229
Jumawid, G.R. No. 184756, June 5, 2009 1027
Lazaro, Jr., G.R. No. 186418, Oct. 16, 2009 960
Leachon, Jr., 357 Phil. 165, 170 (1998) 618
Li Yin Chu, G.R. No. 143793, Feb. 17, 2004,
423 SCRA 158, 170 231
Lim, G.R. No. 187503, Sept. 11, 2009 957
Lizada, 396 SCRA 62 485
Logmao, 414 Phil. 378, 387 (2001) 1024
Lopez, G.R. No. 181441, Nov. 14, 2008 954
Lopez, 78 Phil. 286, 318 (1947) 580

Page

Lopit, G.R. No. 177742, Dec. 17, 2008, 574 SCRA 372 448
Macuto, G.R. No. 80112, Aug. 25, 1989,
176 SCRA 762, 768 228
Malibiran, G.R. No. 173471, Mar. 17, 2009 816
Malones, 469 Phil. 301, 318 (2004) 625
Malones, G.R. Nos. 124388-90, Mar. 11, 2004,
425 SCRA 318, 329 1017
Manalili, G.R. No. 184598, June 23, 2009 .... 446-448, 450, 452
Mangompit, Jr., G.R. Nos. 139962-66, Mar. 7, 2001,
353 SCRA 833, 853 763
Mariano, G.R. No. 168693, June 19, 2009 816
Mateo, G.R. Nos. 147678-87, July 7, 2004,
433 SCRA 640 .... 220, 752, 950, 1015
Molleda, 463 Phil. 461, 471 (2003) 627
Nang Kay, 88 Phil. 515, 520 (1951) 260
Napudo, G.R. No. 168448, Oct. 8, 2008,
568 SCRA 213, 224-225 757
Naquita, G.R. No. 180511, July 28, 2008,
560 SCRA 430, 448 277
Nazareno, G.R. No. 174771, Sept. 11, 2007,
532 SCRA 631, 636 230
Pacina, G.R. No. 123150, Aug. 16, 2000,
338 SCRA 195, 207 626
Paco, G.R. No. 76893, Feb. 27, 1989, 170 SCRA 681 956
Plurad, G.R. Nos. 138361-63, Dec. 2, 2002,
393 SCRA 306 1025
Pruna, 439 Phil. 440, 471 (2002) 449
Punto, 68 Phil. 481, 482 (1939) 38
Purisima, G.R. Nos. L-42050-66, L-46229-32, L-46313-16
& L-46997, Nov. 20, 1978, 86 SCRA 542 547
Razul, G.R. No. 146470, Nov. 22, 2002,
392 SCRA 553, 560 230
Remerata, G.R. No. 147230, April 29, 2003,
401 SCRA 753, 757 229
Rodriguez, G.R. No. 144399, Mar. 20, 2002,
379 SCRA 607, 620 233
Roldan, G.R. No. 98398, July 6, 1993,
224 SCRA 536, 548 956

Page

Sambrano, G.R. No. 143708, Feb. 24, 2003,
398 SCRA 106 1024
San Antonio, Jr., G.R. No. 176633, Sept. 5, 2007,
532 SCRA 411, 424 .... 753-754, 762
Santiago, G.R. No. 80778, June 20, 1989,
174 SCRA 143 841
Santos, Jr., G.R. No. 175593, Oct. 17, 2007,
536 SCRA 489, 501 230
Soriano, G.R. No. 172373, Sept. 25, 2007,
534 SCRA 140, 145 1025
Tabanggay, 390 Phil. 67, 91 (2000) 448
Tadepa, G.R. No. 100354, May 26, 1995, 244 SCRA 339 271
Tan, G.R. No. 133001, Dec. 14, 2000, 348 SCRA 116 272
Uy, G.R. No. 129019, Aug. 16, 2000, 338 SCRA 232 276
Wu Tuan Yuan, G.R. No. 150663, Feb. 5, 2004,
422 SCRA 182, 191 228
Yang, G.R. No. 148077, Feb. 16, 2004, 423 SCRA 82, 93 233
Zheng Bai Hui, G.R. No. 127580, Aug. 22, 2000,
338 SCRA 420 272
Peralta *vs.* COMELEC, G.R. Nos. L-47771, L-47803,
L-47816, L-47767, L-47791 & L-47827, Mar. 11, 1978,
82 SCRA 30 .... 548, 568
Peralta *vs.* Mathay, 148 Phil. 261 (1971) 410
Perez *vs.* COMELEC, G.R. No. 133944, Oct. 28, 1999,
317 SCRA 641 651
Dela Cruz, 137 Phil. 393, 410 (1969) 579
Falcatan, G.R. No. 139536, Sept. 26, 2005,
471 SCRA 21, 31 156
Hagonoy Rural Bank, Inc., G.R. No. 126210,
Mar. 9, 2000, 327 SCRA 588 841
Pesongco *vs.* Estoya, A.M. No. P-06-2131, Mar. 10, 2006,
484 SCRA 239 688
Phil. Judges Association *vs.* Prado, G.R. No. 105371,
Nov. 11, 1993, 227 SCRA 703 570
Philip Morris, Inc. *vs.* Fortune Tobacco Corporation,
G.R. No. 158589, June 27, 2006, 493 SCRA 333, 345 255
Philippine Airlines, Inc. *vs.* CA, G.R. No. 54470,
May 8, 1990, 185 SCRA 110, 121 134

Page

NLRC, G.R. No. 123294, Sept. 4, 2000 94
Philippine Airlines Employees Association (PALEA), G.R. No. 142399, June 19, 2007, 525 SCRA 29 94
Zamora, G.R. No. 166996, Feb. 6, 2007, 514 SCRA 584 ...... 94, 97
Philippine American Life Insurance Company *vs.* CA, 398 Phil. 559 (2000) 699
Philippine Commercial & Industrial Bank *vs.* CA, G.R. No. 120739, July 20, 2000, 336 SCRA 258, 265 480
Philippine Export and Foreign Loan Guarantee Corporation *vs.* Philippine Infrastructures, Inc., G.R. No. 120384, Jan. 13, 2004, 419 SCRA 6 808
Philippine Geothermal, Inc. *vs.* National Labor Relations Commission, G.R. No. 106370, Sept. 8, 1994, 236 SCRA 371 .... 420, 422
Philippine Global Communications, Inc. *vs.* De Vera, G.R. No. 157214, June 7, 2005, 459 SCRA 260 996
Philippine Long Distance Company *vs.* The Late Romeo F. Bolso, G.R. No. 159701, Aug. 17, 2007, 530 SCRA 550, 560 .... 423, 611
Philippine National Bank *vs.* CA, G.R. No. 81524, Feb. 4, 2000, 324 SCRA 714, 726 480
Philippine National Bank *vs.* Paneda, G.R. No. 149236, Feb. 14, 2007, 515 SCRA 639, 652 81
Philippine Phosphate Fertilizer *vs.* Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005, 461 SCRA 369, 381 127
Philippine Phosphate Fertilizer Corporation *vs.* Kamalig Resources, Inc., G.R. No. 165608, Dec. 13, 2007, 540 SCRA 139, 151 56
Piczon *vs.* CA, G.R. Nos. 76378-81, Sept. 24, 1990, 190 SCRA 31, 38 555
Piedad *vs.* Lanao del Norte Electric Cooperative, Inc., 237 Phil. 481, 488 (1987) 423
Pimentel *vs.* COMELEC, 352 Phil. 424 (1998) 406
Pinlac *vs.* CA, G.R. No. 91486, Jan. 19, 2001, 349 SCRA 635 710
Pitargue *vs.* Sorilla, 92 Phil. 5 (1952) 86

Page

Planas *vs.* Reyes, A.M. No. RTJ-05-1905, Feb. 23, 2005,
452 SCRA 146, 160 510
Pontejos *vs.* Hon. Aniano A. Desierto and Restituto
Aquino, G.R. No. 148600, July 7, 2009 204
Producers Bank of the Philippines *vs.* CA,
417 Phil. 646 (2001) 350
Province of North Cotabato *vs.* Government of the
Republic of the Philippines Peace Panel on Ancestral
Domain (GRP), G.R. Nos. 183591, 183752, 183893,
183951 & 183962, Oct. 14, 2008, 568 SCRA 402 78
Prudential Bank *vs.* Lim, G.R. No. 136371, Nov. 11, 2005,
474 SCRA 485, 491 738
Quelnan *vs.* VHF Philippines, G.R. No. 138500,
Sept. 16, 2005, 470 SCRA 73 474
Quevada *vs.* Glorioso, 294 SCRA 608 475
Quezon City *vs.* ABS-CBN Broadcasting Corporation,
G.R. No. 166408, Oct. 6, 2008, 567 SCRA 496, 507 133
Quiambao *vs.* Osorio, G.R. No. L-48157, Mar. 16, 1988,
158 SCRA 674, 678 617
Quinicot *vs.* People, G. R. No. 179700, June 22, 2009 953
Quinto *vs.* People, G.R. No. 126712, April 14, 1999,
305 SCRA 708, 714 1043
Quintos *vs.* Commission on Elections,
440 Phil. 1045, 1064 (2002) 907
Ramos *vs.* Ramos, G.R. No. 144294, Mar. 11, 2003,
399 SCRA 43 593
Rava Development Corporation *vs.* CA, G.R. No. 96825,
July 3, 1992, 211 SCRA 144, 154 601
RBC Cable Master System *vs.* Baluyot, G.R. No. 172670,
Jan. 20, 2009, 576 SCRA 668, 679 801
Republic of the Phils. *vs.* Alagad, 251 Phil. 406 (1989) 740
CA, 476 Phil. 693, 701 (2004) 740
CA, 328 Phil. 238, 248 (1996) 60
Candy Maker Inc., G.R. No. 163766, June 22, 2006,
492 SCRA 272, 296 116
City of Kidapawan, G.R. No. 166651, Dec. 9, 2005,
477 SCRA 324 983

Page

Enriquez, G.R. No. 160990, Sept. 11, 2006,
501 SCRA 436, 442 56
Express Telecommunication Co., Inc.,
424 Phil. 372, 399 (2002) 340
Marcopper Mining Corp., 390 Phil. 708 (2000) 365
Regional Trial Court, Branch 18, G.R. No. 172931,
June 18, 2009 493
Reyes *vs.* CA, G.R. No. 120817, Nov. 4, 1996,
264 SCRA 35, 43 1043
Reyes *vs.* COMELEC, 324 Phil. 813 (1996) 938
Ringor *vs.* Ringor, 480 Phil. 141, 161 (2004) 120
Rivera *vs.* COMELEC, G.R.Nos. 167591 and 170577,
May 9, 2007, 523 SCRA 41 .... 897, 933
Rivera *vs.* del Rosario, 464 Phil. 783 (2004) 786-787
Roa *vs.* Collector of Customs, 23 Phil. 315 (1912) 547-548
Rodriguez *vs.* Gadiane, G.R. No. 152903, July 17, 2006,
495 SCRA 368, 374 842
Romago, Inc. *vs.* Siemens Building Technologies, Inc.,
G.R. No. 181969, Oct. 2, 2009 489
Rovero *vs.* Amparo, 91 Phil. 228 (1952) 1038
Rualo *vs.* Pitargue, G.R. No. 140284, Jan. 21, 2005,
449 SCRA 121, 141 600
Rubberworld Phils., Inc. *vs.* NLRC, 391 Phil. 318 (2000) 94
Rubberworld (Phils.), Inc. *vs.* NLRC, 365 Phil. 273 (1999) 93-94
Rubia *vs.* GSIS, G.R. No. 151439, June 21, 2004,
432 SCRA 529 470
SAAD Agro-Industries, Inc. *vs.* Republic of the Philippines,
G.R. No. 152570, Sept. 27, 2006, 503 SCRA 522, 528-529 493
Sadueste *vs.* Municipality of Surigao, 72 Phil. 485 (1941) 413
Sahali *vs.* Commission on Elections, 381 Phil. 505 (2002) 907
Salas *vs.* Jarencio, G.R. No. L-29788, Aug. 30, 1972,
46 SCRA 734 568
Salazar *vs.* Barriga, A.M. No. P-05-2016, April 19, 2007,
521 SCRA 449, 455 176
Salcedo-Ortañez *vs.* CA, G.R. No. 110662, Aug. 4, 1994,
235 SCRA 111 348
Salvadades *vs.* Pajarillo, et al., 78 Phil. 77 143

Page

Samarca *vs.* Arc-Men Industries, Inc.,
459 Phil. 506, 516 (2003) 799
Sampayan *vs.* CA, G.R. No. 156360, Jan. 14, 2005,
448 SCRA 220 255
San Miguel Corporation *vs.* CA, G.R. No. 57667,
May 28, 1990, 185 SCRA 722, 724-725 60
Santiago *vs.* Comelec, 336 Phil. 848 (1997) 588
Guadiz, Jr., G.R. No. 85923, Feb. 26, 1992,
206 SCRA 590, 597 155
Vasquez, G.R. Nos. 99289-90, Jan. 27, 1993,
217 SCRA 633, 645-646 601
Santos *vs.* CA, 399 Phil. 282 (2000) 412
Sea-Land Service *vs.* Intermediate Appellate Court,
237 Phil. 531, 535-536 (1987) 433
Security Bank and Trust Company, Inc. *vs.* Cuenca,
G.R. No. 138544, Oct. 3, 2000, 341 SCRA 781, 796 1043
Segue *vs.* Triumph International (Phils.), Inc.,
G.R. No. 164804, Jan. 30, 2009, 577 SCRA 323, 333 800
Sema *vs.* COMELEC, G.R. Nos. 177597 & 178628,
July 16, 2008, 558 SCRA 700 559
Senarillos *vs.* Hermosisima, 100 Phil. 501 (1956) 565
Serrano *vs.* National Labor Relations Commission,
380 Phil. 416 (2000) 520
Seven Brothers Shipping Corporation *vs.* Oriental
Assurance Corporation, G.R. No. 140613, Oct. 15, 2002,
391 SCRA 67 593
Simon *vs.* Canlas, G.R. No. 148273, April 19, 2006,
487 SCRA 433, 444-445 319
Sinaca *vs.* Mula, G.R. No. 135691, Sept. 27, 1999,
315 SCRA 266, 282 661
Smith, Bell & Co. *vs.* Natividad, 40 Phil. 136 (1919) 570
Sobrejuanite *vs.* ASB Development Corporation,
G.R. No. 165675, Sept. 30, 2005, 471 SCRA 763 98
Social Security Commission *vs.* Judge Bayona,
115 Phil. 106, 110 (1962) 618
Social Security System *vs.* Isip, G.R. No. 165417,
April 4, 2007, 520 SCRA 310 593
Socrates *vs.* Commission on Elections,
440 Phil. 106 (2002) 898, 932-933

Page

Socrates *vs.* Commission on Elections, G.R. No. 154512, Nov. 12, 2002, 391 SCRA 457, 467 912
Solid Homes *vs.* Tan, G.R. Nos. 145156-57, July 29, 2005, 465 SCRA 137 565
Southern Cross Cement Corporation *vs.* Cement Manufacturers Association of the Philippines, G.R. No. 158540, Aug. 3, 2005, 465 SCRA 532 565
Spouses Alfredo *vs.* Sps. Borras, G.R. No. 144225, June 17, 2003, 404 SCRA 145, 159 324
Spouses Arcega *vs.* CA, 341 Phil. 166 (1997) 349
Spouses Arquiza *vs.* CA, 498 Phil. 793 (2005) 145-146
Spouses Bacar *vs.* Judge de Guzman, Jr., A.M. No. RTJ-96-1349, April 18, 1997, 271 SCRA 328 258
Spouses Bautista *vs.* Pilar Development Corporation, G.R. No. 135046, Aug. 17, 1999, 312 SCRA 611, 618 1043
Spouses Buenaflor *vs.* CA, 400 Phil. 395 (2000) 722
Spouses Dijamco *vs.* CA, 483 Phil. 203 (2004) 786
Spouses Gomez *vs.* Correa, et al., G.R. No. 153923, Oct. 2, 2009 479
Spouses Morandarte *vs.* CA, 479 Phil. 870 (2004) 741
Spouses Ong *vs.* CA, 388 Phil. 857 (2000) 144
Spouses Cornelio Joel I. Orden and Maria Nympha A. Orden, et al. *vs.* Spouses Arturo and Melodia Aurea, et al., G.R. No. 172733, Aug. 20, 2008 1042
Spouses Valenzuela *vs.* Kalayaan Development & Industrial Corporation, G.R. No. 163244, June 22, 2009 1042
Spouses Yulienco *vs.* CA, 441 Phil. 397 (2002) 146
Springsun Management Systems Corporation *vs.* Camerino, 449 SCRA 65 488
St. Peter Memorial Park, Inc. *vs.* Campos, et al., G.R. No. L-38280, Mar. 21, 1975 143
Sta. Clara Homeowner's Association *vs.* Gaston, 374 SCRA 396 430
Sta. Monica Industrial and Development Corporation *vs.* CA, G.R. No. 83290, Sept. 21, 1990, 189 SCRA 792, 800 494
Stanfilco Employees Agrarian Reform Beneficiaries Multi-Purpose Cooperative *vs.* Dole Philippines, Inc. (Stanfilco Division), G.R. No. 154048, Nov. 27, 2009 998

Page

State Investment House, Inc. *vs.* CA, G.R. No. 99308, Nov. 13, 1992, 215 SCRA 734 349
Suico Industrial Corporation *vs.* CA, 361 Phil. 160 (1999) 349
Tabang *vs.* NLRC, G.R. No. 121143, Jan. 21, 1997, 266 SCRA 462, 467 19
Tacloban II Neighborhood Association, Inc. *vs.* Office of the President, G.R. No. 168561, Sept. 26, 2008, 566 SCRA 493, 510 81
Talisay-Silay Milling Company, Inc. *vs.* CFI of Negros Occidental, et al. 42 SCRA 577, 582 75
Tamayo *vs.* Gsell, 35 Phil. 953 (1916) 565
Tan *vs.* Department of Public Works and Highways, G.R. No. 143289, Nov. 11, 2004, 442 SCRA 192, 202 910
Tañada *vs.* Cuenco, 103 Phil. 1051 73
Tecnogas Philippines Manufacturing Corporation *vs.* Philippine National Bank, G.R. No. 161004, April 14, 2008, 551 SCRA 183 349
The Alexandra Condominium Corporation *vs.* Laguna Lake Development Authority, G.R. No. 169228, Sept. 11, 2009 366
The Director of Lands *vs.* CA, 367 Phil. 597 (1999) 59
The Insular Life Assurance Company, Ltd. *vs.* CA, G.R. No. 126850, April 28, 2004, 428 SCRA 79 255
Toledo-Banaga *vs.* CA, G.R. No. 127941, Jan. 28, 1999, 302 SCRA 331, 341 480
Tomawis *vs.* Tabao-Caudang, G.R. No. 166547, Sept. 12, 2007, 533 SCRA 68 555
Torayno, Sr. *vs.* COMELEC, G.R. No. 137329, Aug. 9, 2000, 337 SCRA 574, 577 658
Torralba *vs.* Municipality of Sibagat, No. 59180, Jan. 29, 1987, 147 SCRA 390, 394 559
Torres *vs.* Abundo, Sr., G.R. No. 174263, Jan. 24, 2007, 512 SCRA 556, 568-569 856
Gonzales, 152 SCRA 272 73
Limjap, 56 Phil. 141 (1931) 565, 568
Tuazon *vs.* Heirs of Bartolome Ramos, G.R. No. 156262, July 14, 2005, 463 SCRA 408, 415 44
UCPB *vs.* Reyes, G.R. No. 95095, Feb. 7, 1991, 193 SCRA 756 145

Page

Ulang *vs.* CA, 225 SCRA 637 74
Union Bank of the Philippines *vs.* CA,
370 Phil. 837 (1999) 350, 601
United States *vs.* Salaveria, 39 Phil. 102, 112 (1918) 38
Universal Far East Corp. *vs.* CA, 216 Phil. 598, 603 1051
Uniwide Holdings, Inc. *vs.* Jandecs Transportation Co., Inc.,
G.R. No. 168522, Dec. 19, 2007, 541 SCRA 158, 163 95
Uniwide Sales Warehouse Club *vs.* National Labor
Relations Commission, G.R. No. 154503, Feb. 29, 2008,
547 SCRA 220, 236 800
Urbanes, Jr. *vs.* CA, 407 Phil. 856 (2001) 347
U.S. *vs.* Bandoc, 23 Phil. 14 (1912) 275
Co Chico, 14 Phil. 128 (1909) 548
Tamparong, 31 Phil. 321 (1915) 565
Uy *vs.* Land Bank of the Philippines, G.R. No. 136100,
July 24, 2000, 336 SCRA 419 555
Vda. De Enriquez *vs.* San Jose, A.C. No. 3569, Feb. 23, 2007,
516 SCRA 486, 489-490 671
Vda. de Gualberto *vs.* Go, G.R. No. 139843, July 21, 2005,
463 SCRA 671 710
Vda. De Ramones *vs.* Agbayani, G.R. No. 137808,
Sept.30, 2005, 471 SCRA 307, 309-311 326
Vera-Cruz *vs.* Calderon, G.R. No. 160748, July 14, 2004,
434 SCRA 534, 539 .... 316, 324
Victorias Milling Co., Inc. *vs.* CA, 389 Phil. 184, 196 (2000) 46
Victory Liner, Inc. *vs.* Race, G.R. No. 164820, Mar. 28, 2007,
519 SCRA 356, 373 799
Villanueva *vs.* City of Iloilo, G.R. No. L-26521, Dec. 28, 1968,
26 SCRA 578 547
Vlason Enterprises Corporation *vs.* CA,
369 Phil. 269, 299 (1999) 81
Wallem Phils. Shipping Inc. *vs.* Prudential Guarantee
& Assurance, Inc., 445 Phil. 136, 149 (2003) 433
Webb *vs.* De Leon, 317 Phil. 759, 779 (1995) 12
Wolfson *vs.* Estate of Martinez, 20 Phil. 340 73
Woodchild Holdings, Inc. *vs.* Roxas Electric and
Construction Company, Inc., 479 Phil. 896, 914 (2004) 44
Yambao *vs.* CA, 399 Phil. 712, 718-719 (2000) 721

Page

Yau *vs.* The Manila Banking Corporation,
G.R. No. 126731, July 11, 2002, 384 SCRA 340, 349-350 188
Young *vs.* CA, 169 SCRA 213 73
Yu Cong Eng *vs.* Trinidad, 47 Phil. 387 (1925) 548, 568

II. FOREIGN CASES

Buenz *vs.* Frontline Transp. Co., 227 Ill.2d 302,
317 Ill. Dec. 645, 882 N.E.2d 525 (2008) 1040
Cooper *vs.* Telfair, 4 Dall. 14 568
Flippo *vs.* CSC Associates III, L.L.C., 262 Va. 48,
547 S.E.2d 216 (2001) 1038
Heller *vs.* Doe by Doe, 509 US 312, 113 S. Ct. 2637,
125 L. Ed. 2d 257 (1993) 568
In re Grievance of Verderber, 173 Vt. 612, 795 A.2d 1157,
164 Ed. Law Rep. 350 (2002) 1038
In re Smith Trust, 480 Mich. 19, 745 N.W.2d 754 (2008) 1040
Liggatt *vs.* Employers Mut. Cas. Co., 273 Kan. 915,
46 P.3d 1120 (2002) 1038
Powerine Oil Co., Inc. *vs.* Superior Court, 37 Cal. 4th 337,
33 Cal. Rptr. 3d 562, 118 P.3d 589 (2005) 1040
Quality Products and Concepts Co. *vs.*
Nagel Precision, Inc., 469 Mich. 362,
666 N.W.2d 251 (2003) 1038
Rehnberg *vs.* Hirshberg, 2003 WY 21,
64 P.3d 115 (Wyo. 2003) 1038
Ryco Const., Inc. *vs.* U.S., 55 Fed. Cl. 184 (2002) 1038
Sprucewood Inv. Corp. *vs.* Alaska Housing Finance Corp.,
33 P.3d 1156 (Alaska 2001) 1038

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

1987 Constitution
Art. II, Sec. 1 165
Art. III, Sec. 1 570
Art. V, Sec. 1 640
Art. VI, Sec. 6 .... 637, 644, 649
Sec. 17 .... 643, 648
Art. VIII, Sec. 1 80
Sec. 4 (2) 552-554, 579, 584-585
Sec. 5 (2)(d) 1016
Sec. 6 .... 284, 286-287
Sec. 10 582
Art. IX-B, Sec. 2 (1) 338
Sec. 3 .... 285, 338
Sec. 8 .... 403, 409, 415, 897
Art. X, Sec. 3 562
Sec. 8 .... 891, 893, 907-910, 912
Sec. 10 .... 558-559, 563-564
Art. XII, Sec. 2 580
1973 Constitution
Art. XI, Sec. 3 560

B. STATUTES

Act
Act No. 496, Sec. 17 144
Act No. 3135 .... 139, 144, 829-830
Sec. 7 .... 141, 144, 146-147
Act No. 4103 258
Act No. 4118 144
Act No. 4225 258-259
Administrative Code of 1987
Book IV, Title III, Chapter 12, Sec. 35 (1) 840

Page

Book V, Title I, Subtitle A, Chapter 7, Sec. 47 285
Sec. 46 (18) 775
Administrative Code, Revised
Sec. 1916 413
Sec. 2692 260
Batas Pambansa
B.P. Blg. 22 677
B.P. Blg. 129 872
Sec. 21 506
B.P. Blg. 179 234
B.P. Blg. 337 562
Sec. 164 564
B.P. Blg. 881 659
Civil Code, New
Art. 4 133
Art. 173 325
Art. 538 58
Arts. 649-650 598
Art. 1137 60
Art. 1139 864
Art. 1150 865
Art. 1159 1044
Art. 1311 436
Art. 1370 1040
Art. 1371 1039
Art. 1409 .... 47, 322
Art. 1456 120
Art. 1478 787
Art. 1869 44
Art. 1883 36
Art. 2014 41
Art. 2028 1038
Art. 2036 1041
Art. 2152 37
Art. 2208, par. 7 522
Art. 2230 .... 452, 763

Page

Code of Conduct for Court Personnel
Canon 1, Sec. 1 175
Code of Judicial Conduct
Canon 2, Rule 2.01 301
Canon 3, Rule 3.05 190
Code of Professional Responsibility
Canon 17 .... 669, 672
Canon 18, Rules 18.02-18.03 .... 669, 672
Commonwealth Act
C.A. No. 56 260
C.A. No. 186 .... 389, 392, 395-396, 400
Sec. 9 401
Sec. 12 (c), as amended 392, 405
Sec. 24 981
Sec. 26 973
Corporation Code
Sec. 25 19
Sec. 87 979
Executive Order
E.O. No. 126, Sec. 22 873
E.O. No. 192 360
Sec. 16 365
Sec. 19 .... 361, 364
E.O. No. 286, Sec. 6 409
E.O. No. 292, Book IV, Chapter VI, Sec. 30 778
Book V, Title 1 (A), Secs. 12, 47 286
E.O. No. 927 363
Sec. 4 (h) 367
Intellectual Property Code
Art. 155 256
Indeterminate Sentence Law
Sec. 1 258
Judiciary Reorganization Act
Sec. 9 (3) 872
Labor Code
Art. 4 704
Art. 95 521
Art. 106 .... 994, 1000-1001

Page

Arts. 107-109 994
Art. 111 522
Art. 184 704
Art. 217 96
Art. 234 .... 606, 611
Art. 239 606
Art. 255 875
Art. 279 801
Art. 282 419
Art. 282 (b) 420, 799
Art. 283 862
Art. 291 864
Local Government Code
Sec. 40 937
Sec. 40 (b) 938
Sec. 43 618
Sec. 43 (b) 924
Sec. 64 910
Sec. 118 (e) 722
Sec. 119 .... 718, 723
Sec. 133 978
Sec. 133 (o) 974, 981-982
Sec. 193 .... 974, 979
Sec. 199 (b) 983
Sec. 234 (a) 981-982
Sec. 285 558
Sec. 286 .... 502, 506
Secs. 408, 416 670
Sec. 450 .... 556, 560, 564-565, 575
National Internal Revenue Code (Tax Code)
Sec. 34 (F) 126
New Code of Judicial Conduct for the Philippine Judiciary
Canon 4, Secs. 13-14 298-299
Sec. 15 299
Omnibus Election Code
Sec. 68 659
Penal Code, Revised
Arts. 195-199 38-39

Page

Art. 266-A 451, 1012, 1017
Art. 266-A (1-a) 627
Art. 266-B 451, 1017
par. 1 627
Art. 335 .... 754, 762
Presidential Decree
P.D. No. 4, Sec. 26 414
Sec. 26, par. 3 398
P.D. No. 626 .... 696, 698, 704
P.D. No. 699 398
P.D. No. 704, Sec. 33 259
P.D. No. 813 362-363
P.D. No. 851 521
P.D. No. 902-A, Sec. 5 22
Sec. 5 (c) 21
Sec. 6 (c) 94
P.D. No. 984 367
Sec. 6, pars. (e), (f), (g), (j), (k), (p) 361
Sec. 10 365
P.D. No. 1058 259
P.D. Nos. 1067-A, 1067-B, 1067-C 32
P.D. No. 1096 245
P.D. No. 1146 .... 972, 975, 979, 984
Sec. 8 981
Sec. 33 .... 973, 976-977
Sec. 34 974
P.D. No. 1399 32
P.D. No. 1485 398
P.D. No. 1602 38
P.D. No. 1632 32
P.D. No. 1708 234
P.D. No. 1869 .... 32, 39, 43
Sec. 3 (h) 42
Proclamation
Proc. No. 78 980
Proc. No. 835 .... 970, 980

Page

Property Registration Decree (P.D. No. 1529)
Sec. 32 115
Public Land Act (C.A. No. 141)
Sec. 91 741
Republic Act
R.A. No. 4 260
R.A. No. 660 .... 392, 403
R.A. No. 910 412
R.A. No. 1616 .... 392, 403, 405, 409
R.A. No. 3019 .... 769, 927
Sec. 9 (a) 914
Sec. 13 .... 903-904, 910, 927
R.A. No. 3844, Sec. 12 530
R.A. No. 4850 .... 362, 365
Sec. 1 363
Sec. 4-A 366
R.A. No. 6132, Sec. 12 (F) 582
R.A. No. 6389 530
R.A. No. 6425, Sec. 2 (e), (i) 234
Art. II, Sec. 4 .... 214, 234-235
Sec. 20 234
R.A. No. 6646, Sec. 29 .... 163, 166
R.A. No. 6656 336
Sec. 9 .... 339, 397
R.A. No. 6657 528
R.A. No. 6735 588
R.A. No. 6770, Sec. 20 (5) 774, 777
Sec. 24 .... 903-904, 927
Sec. 25 .... 903, 927
R.A. No. 6957 239
R.A. No. 7160 .... 805-806, 910, 926, 972
Sec. 2 79
Sec. 40 (b) 914
Sec. 43 (b) 891, 893
Sec. 44 915
Sec. 63 903-904
Sec. 64 903

Page

Sec. 69 914
Sec. 450 556
R.A. No. 7294 412
R.A. No. 7305, Sec. 2 337
Sec. 8 339
R.A. No. 7659 234
R.A. No. 7916, Sec. 14 (g) 202
Sec. 14 (h) 203
R.A. No. 7924 .... 244, 412
Sec. 3 (b) 242
R.A. No. 8041 402
Sec. 6 408
Sec. 7 409
R.A. No. 8189 163
Sec. 8 165-167
Sec. 12 641
R.A. No. 8291 .... 401, 463, 484, 971-972
Sec. 8 981
Sec. 39 .... 460-461, 470, 976, 978
R.A. No. 8293 (Intellectual Property Code), Sec. 155 250
Sec. 168 250
Sec. 170 258
R.A. No. 8353 .... 451, 754, 1012
R.A. No. 8371 .... 580-582, 590
R.A. No. 8436, Sec. 28 .... 164, 166
R.A. No. 8799 18
Sec. 5, Subsection 5.2 .... 22, 94
R.A. No. 9009 .... 556-557, 560, 562-563
R.A. No. 9136 .... 389, 393, 396, 406, 408
Secs. 2 (i), 3, 62 390
Sec. 63 .... 390, 395, 400, 403-404
R.A. No. 9164, Sec. 2 615-618
R.A. No. 9165 .... 233, 270, 946, 950, 952
Art. II, Sec. 5 .... 265, 269, 962
Sec. 11 .... 265, 269, 961
Sec. 21 960
Sec. 21 (2), (3) 232

Page

R.A. No. 9302 132
Sec. 12 .... 130-131, 133
R.A. No. 9346 .... 235, 962
Sec. 3 816
R.A. Nos. 9389-9394, 9398, 9404-9405, 9407-9408 .... 549, 577
R.A. Nos. 9409, 9434-9436 .... 550, 577
R.A. No. 9487 42-43
R.A. No. 9491 .... 550, 577
Revised Rule on Summary Procedure
Sec. 7 155
Rules of Court, Revised
Rule 7, Sec. 5 139
Rule 15, Sec. 5 .... 75, 80-81
Rule 18, Sec. 6 666
Rule 39, Sec. 2 1050
Sec. 14 686
Rule 41 722
Sec. 1 808
Sec. 2 723
Rule 42 .... 719, 723
Rule 43 .... 124, 358, 994
Sec. 1 .... 528, 873
Sec. 7 872
Rule 45 .... 28, 91, 101, 154, 198
Sec. 1 254
Sec. 4 844
Sec. 9 254
Rule 47, Secs. 1-2 105
Rule 51, Sec. 10 554
Rule 56, Sec.7 579
Sec. 11 582
Rule 58, Sec. 1 600
Sec. 5 .... 505, 507, 510
Rule 65 .... 93, 462, 635, 891
Secs. 2-3 341
Rule 70, Sec. 8 155
Sec. 16 156
Rule 112, Sec. 6 (a) 837

Page

Rule 113, Sec. 5 (a) 954
Rule 122, Sec. 3 254
Rule 130, Sec. 3 787
Sec. 4 788
Sec. 11 1039
Sec. 36 833
Rule 131, Sec. 1 .... 639, 830
Rule 140, Sec. 9 190
Rule 141, Sec. 10 684-685
Rules on Civil Procedure, 1997
Rule 45 .... 15, 67, 354, 694, 837
Sec. 4 303
Sec. 4 (a) 319
Rule 58, Sec. 5 505
Rules on Criminal Procedure
Rule 112, Sec. 6 (a) 838, 843

C. OTHERS

Amended Rules on Employees' Compensation
Rule III, Sec. 1 (b) 698
COMELEC Rules of Procedure
Rule 19, Sec. 2 500
CSC Memorandum Circular No. 19-99
Sec. 4 338
DARAB Revised Rules of Procedure
Rule XIV, Sec. 1 .... 526, 528
Rule XV, Sec. 1 527-528
HLURB Rules of Procedure
Rule XII, Sec. 3 (b) 380
Rule XIV, Sec. 1 380
Implementing Rules and Regulations of R.A. No. 9165
Sec. 21 277
Implementing Rules and Regulations of R.A. No. 9136
Rule 33, Sec. 3 (f) 400
2000 Interim Rules of Procedure on Corporate Rehabilitation
Rule 2, Sec. 1 95
Rule 4, Secs. 6(b), 11, 27 93

Page

Rule 9, Sec. 2 98
Omnibus Civil Services Rules and Regulations
Rule XIV, Sec. 28 284
Omnibus Rules Implementing the Labor Code
Book VI, Rule 1, Sec. 2 (d) 519
Rules and Regulations Implementing R.A. No. 7916
Part VI, Rule X, Sec. 3 208
Part VI, Rule XI, Sec. 2 208
Part XI, Rule XXV, Sec. 8 (c) 207-208
Rules and Regulations Implementing the Local Government Code of 1991
Rule III, Art. 17 726
Rules of Procedure in Election Contests
Rule 14, Sec. 11 1049
Uniform Rules on Administrative Cases in the Civil Sevice
Rule IV, Sec. 52 780
Sec. 52 (A) 176-177
Sec. 53 177

D. BOOKS
(Local)

Agpalo, Ruben, Statutory Construction
(5th Ed., 2003), p. 355 43
Bernas S.J., Joaquin. The 1987 Constitution of the Republic of the Philippines: A Commentary,
2003 Ed., pp. 1092-1093 916
Bernas, S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary, 1996 Ed., p. 925 409
Bernas, The 1987 Constitution of the Republic of the Philippines, A Commentary 124 (1996) 561, 571
De Leon, Hector S., Comments and Cases on Partnership, Agency and Trusts, 5th Ed., 1999, p. 411 44
Paras, Civil Code of the Philippines, 14th Ed.,
Vol. IV, p. 60 865
Regalado, Remedial Law Compendium, Vol. 1
(7th Ed.), p. 606 601

Page

II. FOREIGN AUTHORITIES

A. BOOKS

Black's Law Dictionary (8th Ed., 2004) 1039, 1041
Black's Law Dictionary, 5th Ed., 1979, p. 1444 144
Dodd, Cases on Constitutional Law 56 (3rd Ed., 1942) 568
Miller, Benjamin & Keane, Claire. Encyclopedia and
Dictionary of Medicine and Nursing (1972), pp. 995-996...... 701
Alice Sturgis, The Standard Code of Parliamentary
Procedure, Revised by the American Institute of
Parliamentarians, 4th Ed., pp. 136-137 585
Sutherland, Statutory Construction, Vol. II, pp. 693-695 568
Webster's New World College Dictionary,
Third Edition, p. 1137 913
Webster's Third New International Dictionary 1363.................. 553
Webster's Third New International Dictionary (1993),
p. 1922 894
Webster's Third New International Dictionary 2564 (1986) 935