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OF THE

PHILIPPINES

FROM

MARCH 10, 2010 TO MARCH 17, 2010

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MANILA
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. 05-10-20-SC. March 10, 2010]

IN RE: EXEMPTION OF THE NATIONAL POWER CORPORATION FROM PAYMENT OF FILING/ DOCKET FEES

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PAYMENT OF FILING/ DOCKET FEES; THE NATIONAL POWER CORPORATION (NPC) IS NOT EXEMPT FROM PAYMENT OF FILING FEES; THE 1987 CONSTITUTION TOOK AWAY THE POWER OF CONGRESS TO REPEAL, ALTER OR SUPPLEMENT RULES CONCERNING PLEADING, PRACTICE AND PROCEDURE; THE POWER TO PROMULGATE RULES IS NO LONGER SHARED BY THE COURT WITH CONGRESS AND THE EXECUTIVE.— Section 22 of Rule 141 reads: Sec. 22. *Government exempt*. – The Republic of the Philippines, its agencies and instrumentalities are exempt from paying the legal fees provided in this rule. Local government units and government-owned or controlled corporations with or without independent charters are **not** exempt from paying such fees. Section 70 of Republic Act No. 9136 (Electric Power Industry Reform Act of 2001), on privatization of NPC assets, expressly states that the NPC "shall remain as a national government-owned and controlled corporation." Thus, NPC is not exempt from payment of filing fees. The non-exemption of NPC is further fortified by the promulgation on February 11, 2010 of A.M. No.

08-2-01-0, *In re: Petition for Recognition of the Exemption of the Government Service Insurance System (GSIS) from Payment of Legal Fees.* In said case, the Court, citing *Echegaray v. Secretary of Justice*, stressed that the 1987 Constitution took away the power of Congress to repeal, alter or supplement rules concerning pleading, practice, and procedure; and that the power to promulgate these rules is no longer shared by the Court with Congress and the Executive.

R E S O L U T I O N

MENDOZA, *J.*:

The National Power Corporation (NPC) seeks clarification from the Court on whether or not it is exempt from the payment of filing fees, appeal bonds and supersedeas bonds.

On December 6, 2005, the Court issued A.M. No. 05-10-20-SC, *In re: Exemption of the National Power Corporation from the Payment of Filing/Docket Fees,* on the basis of Section 13, Republic Act No. 6395 (An Act Revising the Charter of the National Power Corporation). It reads:

> The Court Resolved, upon the recommendation of the Office of the Court Administrator, to DECLARE that the National Power Corporation (NPC) is still exempt from the payment of filing fees, appeals bond, and supersedeas bonds.

On October 27, 2009, however, the Court issued A.M. No. 05-10-20-SC stating that:

> The Court Resolved, upon recommendation of the Committee on the Revision of the Rules of Court, to DENY the request of the National Power Corporation (NPC) for exemption from the payment of filing fees pursuant to Section 10 of Republic Act No. 6395, as amended by Section 13 of Presidential Decree No. 938. The request appears to run counter to Section 5(5), Article VIII of the Constitution, in the rule-making power of the Supreme Court over the rules on pleading, practice and procedure in all courts, which includes the sole power to fix the filing fees of cases in courts.

Hence, the subject letter of NPC for clarification as to its exemption from the payment of filing fees and court fees.

Section 22 of Rule 141 reads:

> Sec. 22. *Government exempt*. – The Republic of the Philippines, its agencies and instrumentalities are exempt from paying the legal fees provided in this rule. Local government units and government-owned or controlled corporations with or without independent charters are **not** exempt from paying such fees. (emphasis supplied)

Section 70 of Republic Act No. 9136 (Electric Power Industry Reform Act of 2001), on privatization of NPC assets, expressly states that the NPC "shall remain as a national government-owned and controlled corporation."

Thus, NPC is not exempt from payment of filing fees.

The non-exemption of NPC is further fortified by the promulgation on February 11, 2010 of A.M. No. 08-2-01-0, *In re: Petition for Recognition of the Exemption of the Government Service Insurance System (GSIS) from Payment of Legal Fees.* In said case, the Court, citing *Echegaray v. Secretary of Justice*,[1] stressed that the 1987 Constitution took away the power of Congress to repeal, alter or supplement rules concerning pleading, practice, and procedure; and that the power to promulgate these rules is no longer shared by the Court with Congress and the Executive, thus:

> Since the payment of legal fees is a vital component of the rules promulgated by this Court concerning pleading, practice and procedure, it cannot be validly annulled, changed or modified by Congress. As one of the safeguards of this Court's institutional independence, the power to promulgate rules of pleading, practice and procedure is now the Court's exclusive domain. That power is no longer shared by this Court with Congress, much less the Executive.
>
> Speaking for the Court, then Associate Justice (now Chief Justice) Reynato S. Puno traced the history of the rule-making power of this Court and highlighted its evolution and development in *Echegaray v. Secretary of Justice*:

[1] 361 Phil. 76 (1999).

Under the 1935 Constitution, the power of this Court to promulgate rules concerning pleading, practice and procedure was granted but it appeared to be co-existent with legislative power for it was subject to the power of Congress to repeal, alter or supplement. Thus, its Section 13, Article VIII provides:

> Sec.13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Court, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law in the Philippines.

x x x x x x x x x

[T]he **1973 Constitution reiterated** the power of this Court "to promulgate rules concerning pleading, practice, and procedure in all courts, x x x which, however, may be repealed, altered or supplemented by the Batasang Pambansa x x x." More completely, Section 5(2) [sic] 5 of its Article X provided:

x x x x x x x x x

> Sec. 5. The Supreme Court shall have the following powers

x x x x x x x x x

> (5) Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered, or supplemented by the Batasang Pambansa. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of case, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.

x x x x x x x x x

The **1987 Constitution** molded an even **stronger and more independent judiciary.** Among others, **it enhanced the rule making power of this Court.** Its Section 5(5), Article VIII provides:

> x x x x x x x x x
>
> Section 5. The Supreme Court shall have the following powers.
>
> x x x x x x x x x
>
> (5) **Promulgate rules concerning the protection and enforcement of constitutional rights,** pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. **Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.**

The rule making power of this Court was expanded. This Court for the **first time** was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the **first time** the power to disapprove rules of procedure of special courts and quasi-judicial bodies. **But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure.** In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive.

The separation of powers among the three co-equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by this Court. Viewed from this perspective, the claim of a legislative grant of exemption from the payment of legal fees under Section 39 of RA 8291 necessarily fails.

With the foregoing categorical pronouncement of the Court, it is clear that NPC can no longer invoke Republic Act No. 6395 (NPC Charter), as amended by Presidential Decree No. 938, as its basis for exemption from the payment of legal fees.

WHEREFORE, it is hereby *CLARIFIED* that the National Power Corporation is not exempt from the payment of legal fees.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-09-2686. March 10, 2010]
(Formerly OCA I.P.I. No. 06-2441-P)

PRISCILLA L. HERNANDO, *complainant, vs.* **JULIANA Y. BENGSON, Legal Researcher, RTC, Branch 104, Quezon City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SIMPLE MISCONDUCT; RESPONDENT'S COMPLICITY IN THE FAILED TITLING OF THE PROPERTY EYED BY COMPLAINANT IS MANIFEST; HER MISREPRESENTATION PRECIPITATED THE TRANSACTION THAT EVENTUALLY DEFRAUDED COMPLAINANT.— In *Janette P. Gabatin v. Marilou M. Quirino*, the Court held that while the private transaction between the complainant and the court employee concerned could be fully ascertained and resolved in an appropriate criminal or civil proceeding, it found the respondent guilty of Simple

Misconduct, because her "handling of the entire affair had not been exemplary." There, the Court noted how the respondent gave the complainant the run-around instead of being forthright with the latter on her failure to secure the promised franchises. In that case, the respondent was suspended from the service for two (2) months, without pay. In the present case, the OCA found, and we agree, that Bengson's complicity in the failed titling of the property eyed by Hernando was manifest. Based on the trial judge's investigation and that of the OCA, Bengson offered to help Hernando find a surveyor for a fee, and she was the very same one who directly received the money intended for the titling of the property. To Hernando's dismay, Villacorte did not turn out to be the "expert" that she was made to believe. To our mind, it was the very misrepresentation that precipitated the transaction that eventually defrauded Hernando. Complainant would not have parted with her hard-earned money were it not for Bengson's misrepresentation with respect to Villacorte's capacity to facilitate the titling of the property. Respondent cannot extricate herself by claiming that she had no direct participation in the negotiations. The yardstick laid down by the Court in *Gutierrez v. Quitalig* and reiterated in *Gabatin v. Quirino* is enlightening, thus: Employees of the judiciary… should be living examples of uprightness not only in the performance of official duties but also in their personal and private dealings with other people so as to preserve at all times the good name and standing of the courts in the community. The image of the court, as being a true temple of justice, is aptly mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowliest of its personnel.

2. ID.; ID.; ID.; ID.; RESPONDENT'S ACT OF OFFERING HER SERVICES TO FACILITATE TITLING OF COMPLAINANT'S PROPERTY, WHETHER DIRECTLY OR THROUGH ANOTHER, FELL SHORT OF THE YARDSTICK OR STANDARD FOR COURT EMPLOYEES AND PERSONNEL; SHE HAD NO BUSINESS INDULGING, EVEN INDIRECTLY, IN THE PROCESSING OR TITLING OF THE PROPERTY.— Still in *Tiples, Jr. v. Montoyo,* we restated the rule that the conduct of an employee "must always be beyond reproach at all times and circumscribed with the heavy burden of

responsibility as to let them be free from any suspicion that may taint the judiciary." Court personnel are expected to exhibit the highest sense of honesty and integrity not only in the performance of their official duties, but also in their personal and private dealings with other people in order to preserve the court's good name and standing. Bengson's act of dealing with Hernando, more particularly of offering her services to facilitate the titling of Hernando's property, whether directly or through another, certainly fell short of the above yardstick or standard for court employees and personnel. She definitely had no business indulging, even indirectly, in the processing or the titling of the property. Now, in *Dela Cruz v. Zapico,* this Court reiterated that misconduct generally means wrongful, unlawful conduct, motivated by a premeditated, obstinate or intentional purpose. Thus, any transgression or deviation from the established norm, whether it be work-related or not, amounts to misconduct. Undeniably, Bengson's solicitation and misrepresentation amounted to Simple Misconduct. Pursuant to Section 52(B)(2) of the Revised Uniform Rules on Administrative Cases in the Civil Service, the penalty for her misconduct is suspension for one (1) month and one (1) day to six (6) months.

3. ID.; ID.; ID.; ID.; COMPLAINANT'S CLAIM FOR THE RETURN OF MONEY SHE PAID TO RESPONDENT WHICH THE LATTER ADMITTED HAVING RECEIVED THE AMOUNT BUT INTERPOSED THE DEFENSE THAT IT WAS IMMEDIATELY TURNED OVER TO THE SURVEYOR SHOULD BE THRESHED OUT BEFORE A COURT OF LAW; THE JUSTNESS OF THE DEBT CLAIMED MUST STILL BE PROVED AND ESTABLISHED IN THE PROPER COURT PROCEEDINGS.— As to Hernando's claim for the return of the money she paid to Bengson, we agree with the position of the Investigating Judge and the OCA that the issue as to who is ultimately liable should be duly threshed out before a court of law. "Just debt" applies or refers to claims, the existence of which is admitted by the debtor. While Bengson had admitted having received said amount, she interposed the defense that it was immediately turned over to Villacorte. Thus, it cannot be said to be a settled "just debt," which we can simply order to be returned. The justness of the debt claimed must still be proved and established in the proper court proceedings.

APPEARANCES OF COUNSEL

Pacifico C. Yadao for respondent.

R E S O L U T I O N

MENDOZA, *J.*:

This is an administrative case instituted by Priscilla L. Hernando (Hernando) against Juliana Y. Bengson (Bengson), a Legal Researcher of the Regional Trial Court, Branch 104, Quezon City, for Grave Misconduct, Willful Failure to Pay Just Debt and Conduct Unbecoming a Court Personnel.

From the Evaluation, Report and Recommendation of the Office of the Court Administrator (OCA), it appears that sometime in September 2002, Hernando was scouting for a surveyor who could assist her in the titling of a property that her family was planning to buy. According to Hernando, Bengson offered her services for Ten Thousand (₱10,000.00) Pesos, exclusive of the actual amount that would be spent for the titling. Bengson succeeded in obtaining the total amount of Seventy-Six Thousand (₱76,000.00) Pesos. Upon inquiry with the Bureau of Lands, however, Hernando found out that no such transfer of title was being processed. Thus, she made several demands on Bengson for the return of the aggregate amount of ₱76,000.00 but to no avail.[1]

In denying any indebtedness to Hernando, Bengson submits that she merely received the claimed amount on behalf of her half-sister, Maritess Villacorte, who was to serve as the surveyor. Further, she denies being privy to the negotiations between Hernando and Villacorte. Her only fault was accepting the money for her half-sister. In fact, she already filed charges of *Estafa* against Villacorte.[2]

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[1] OCA Memorandum, *rollo*, pp. 516-520.

[2] *Id*.

In *Janette P. Gabatin v. Marilou M. Quirino*,[3] the Court held that while the private transaction between the complainant and the court employee concerned could be fully ascertained and resolved in an appropriate criminal or civil proceeding, it found the respondent guilty of Simple Misconduct, because her "handling of the entire affair had not been exemplary." There, the Court noted how the respondent gave the complainant the run-around instead of being forthright with the latter on her failure to secure the promised franchises. In that case, the respondent was suspended from the service for two (2) months, without pay.

In the present case, the OCA found, and we agree, that Bengson's complicity in the failed titling of the property eyed by Hernando was manifest. Based on the trial judge's investigation and that of the OCA, Bengson offered to help Hernando find a surveyor for a fee, and she was the very same one who directly received the money intended for the titling of the property. To Hernando's dismay, Villacorte did not turn out to be the "expert" that she was made to believe. To our mind, it was the very misrepresentation that precipitated the transaction that eventually defrauded Hernando. Complainant would not have parted with her hard-earned money were it not for Bengson's misrepresentation with respect to Villacorte's capacity to facilitate the titling of the property. Respondent cannot extricate herself by claiming that she had no direct participation in the negotiations.

The yardstick laid down by the Court in *Gutierrez v. Quitalig*[4] and reiterated in *Gabatin v. Quirino*[5] is enlightening, thus:

> Employees of the judiciary… should be living examples of uprightness not only in the performance of official duties but also in their personal and private dealings with other people so as to preserve at all times the good name and standing of the courts in the community. The image of the court, as being a true temple of

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[3] A.M. No. CA-08-23-P, December 16, 2008, 574 SCRA 1, 8.

[4] *Gutierrez v. Quitalig*, 448 Phil. 469 (2003).

[5] A.M. No. CA-08-23-P, December 16, 2008.

justice, is aptly mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowliest of its personnel.

Still in *Tiples, Jr. v. Montoyo,*[6] we restated the rule that the conduct of an employee "must always be beyond reproach at all times and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary." Court personnel are expected to exhibit the highest sense of honesty and integrity not only in the performance of their official duties, but also in their personal and private dealings with other people in order to preserve the court's good name and standing.

Bengson's act of dealing with Hernando, more particularly of offering her services to facilitate the titling of Hernando's property, whether directly or through another, certainly fell short of the above yardstick or standard for court employees and personnel. She definitely had no business indulging, even indirectly, in the processing or the titling of the property.

Now, in *Dela Cruz v. Zapico,*[7] this Court reiterated that misconduct generally means wrongful, unlawful conduct, motivated by a premeditated, obstinate or intentional purpose. Thus, any transgression or deviation from the established norm, whether it be work-related or not, amounts to misconduct. Undeniably, Bengson's solicitation and misrepresentation amounted to Simple Misconduct.

Pursuant to Section 52(B)(2) of the Revised Uniform Rules on Administrative Cases in the Civil Service,[8] the penalty for her misconduct is suspension for one (1) month and one (1) day to six (6) months.

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[6] *Tiples, Jr. v. Montoyo*, A.M. No. P-05-2039, May 31, 2006, 490 SCRA 38, 4.

[7] A.M. No. 2007-25-SC, September 18, 2008, 565 SCRA 658, 666.

[8] CSC Memorandum, Circular No. 19, August 31, 1999.

As to Hernando's claim for the return of the money she paid to Bengson, we agree with the position of the Investigating Judge and the OCA that the issue as to who is ultimately liable should be duly threshed out before a court of law. "Just debt" applies or refers to claims, the existence of which is admitted by the debtor.[9] While Bengson had admitted having received said amount, she interposed the defense that it was immediately turned over to Villacorte. Thus, it cannot be said to be a settled "just debt," which we can simply order to be returned. The justness of the debt claimed must still be proved and established in the proper court proceedings.

WHEREFORE, finding Juliana Y. Bengson, Legal Researcher, Regional Trial Court, Branch 104, Quezon City, *GUILTY* of Simple Misconduct, the Court hereby orders her *SUSPENDED* from the service, without pay for one (1) month and one (1) day, with a *WARNING* that a repetition of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

FIRST DIVISION

[G.R. No. 149552. March 10, 2010]

GENERAL MILLING CORPORATION, *petitioner, vs.* **ERNESTO CASIO, ROLANDO IGOT, MARIO FAMADOR, NELSON LIM, FELICISIMO BOOC, PROCOPIO OBREGON, JR., and ANTONIO ANINIPOK,** *respondents,*

and

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[9] *Villasenor v. De Leon,* A.M. No.P-03-1685, March 20, 2003, 399 SCRA 342, 346.

VIRGILIO PINO, PAULINO CABREROS, MA. LUNA P. JUMAOAS, DOMINADOR BOOC, FIDEL VALLE, BARTOLOME AUMAN, REMEGIO CABANTAN, LORETO GONZAGA, EDILBERTO MENDOZA and ANTONIO PANILAG, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; GENERALLY LIMITED TO QUESTIONS OF LAW; EXCEPTIONS TO THE RULE; APPLICABLE IN CASE AT BAR.—** In general, in a "petition for review on *certiorari* as a mode of appeal under Rule 45 of the Rules of Court, the petitioner can raise only questions of law – the Supreme Court is not the proper venue to consider a factual issue as it is not a trier of facts. A departure from the general rule may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the trial court [or quasi-judicial agency, as the case may be], or when the same is unsupported by the evidence on record." Whether Casio, *et al*. were illegally dismissed without any valid reason is a question of fact better left to quasi-judicial agencies to determine. In this case, the Voluntary Arbitrator was convinced that Casio, *et al*. were legally dismissed; while the Court of Appeals believed the opposite, because even though the dismissal of Casio, *et al*. was made by GMC pursuant to a valid closed shop provision in the CBA, the company still failed to observe the elementary rules of due process. The Court is therefore constrained to take a second look at the evidence on record considering that the factual findings of the Voluntary Arbitrator and the Court of Appeals are contradictory.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; TWO ASPECTS WHICH CHARACTERIZE THE CONCEPT OF DUE PROCESS UNDER THE LABOR CODE; SUBSTANTIVE AND PROCEDURAL DUE PROCESS NOT COMPLIED WITH IN CASE AT BAR.—** There are two aspects which characterize the concept of due process under the Labor Code: one is substantive – whether the termination of employment was based on the provision of the Labor Code or in accordance with the prevailing jurisprudence; the other

is procedural – the manner in which the dismissal was effected. After a thorough review of the records, the Court agrees with the Court of Appeals. The dismissal of Casio, *et al*. was indeed illegal, having been done without just cause and the observance of procedural due process. In *Alabang Country Club, Inc. v. National Labor Relations Commission*, the Court laid down the grounds for which an employee may be validly terminated, thus: Under the Labor Code, an employee may be validly terminated on the following grounds: (1) just causes under Art. 282; (2) authorized causes under Art. 283; (3) termination due to disease under Art. 284, and (4) termination by the employee or resignation under Art. 285. **Another cause for termination is dismissal from employment due to the enforcement of the union security clause in the CBA**. x x x.

3. ID.; ID.; UNFAIR LABOR PRACTICES OF EMPLOYERS; UNION SECURITY CLAUSES ARE RECOGNIZED AND EXPLICITLY ALLOWED UNDER ARTICLE 248(e) OF THE LABOR CODE.— "Union security" is a generic term, which is applied to and comprehends "closed shop," "union shop," "maintenance of membership," or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated. A closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part. Union security clauses are recognized and explicitly allowed under Article 248(e) of the Labor Code.

4. ID.; ID.; ID.; REQUISITES BEFORE AN EMPLOYER MAY TERMINATE THE EMPLOYMENT OF AN EMPLOYEE BY

ENFORCING THE UNION SECURITY CLAUSE.— It is State policy to promote unionism to enable workers to negotiate with management on an even playing field and with more persuasiveness than if they were to individually and separately bargain with the employer. For this reason, the law has allowed stipulations for "union shop" and "closed shop" as means of encouraging workers to join and support the union of their choice in the protection of their rights and interest *vis-à-vis* the employer. Moreover, a stipulation in the CBA authorizing the dismissal of employees are of equal import as the statutory provisions on dismissal under the Labor Code, since "a CBA is the law between the company and the union and compliance therewith is mandated by the express policy to give protection to labor." In terminating the employment of an employee by enforcing the union security clause, the employer needs only to determine and prove that: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union. These requisites constitute just cause for terminating an employee based on the union security provision of the CBA.

5. **ID.; ID.; ID.; THE FAILURE OF THE PETITIONER EMPLOYER TO MAKE A DETERMINATION OF THE SUFFICIENCY OF EVIDENCE SUPPORTING THE DECISION OF THE LOCAL LABOR UNION TO EXPEL RESPONDENTS IS A DIRECT CONSEQUENCE OF THE NON-OBSERVANCE BY PETITIONER OF DUE PROCESS IN THE DISMISSAL OF EMPLOYEES.—** It is apparent from the aforequoted letter that GMC terminated the employment of Casio, *et al*. relying upon the Resolution dated February 29, 1992 of Pino, *et al*. expelling Casio, *et al*. from IBM-Local 31; Gabiana's Letters dated March 10 and 19, 1992 demanding that GMC terminate the employment of Casio, *et al*. on the basis of the closed shop clause in the CBA; and the threat of being sued by IBM-Local 31 for unfair labor practice. The letter made no mention at all of the evidence supporting the decision of IBM-Local 31 to expel Casio, *et al*. from the union. GMC never alleged nor attempted to prove that the company actually looked into the evidence of IBM-Local 31 for expelling Casio, *et al*. and made a determination on the sufficiency thereof. Without such a determination, GMC

cannot claim that it had terminated the employment of Casio, *et al.* for just cause. The failure of GMC to make a determination of the sufficiency of evidence supporting the decision of IBM-Local 31 to expel Casio, *et al.* is a direct consequence of the non-observance by GMC of procedural due process in the dismissal of employees.

6. ID.; ID.; ID.; ALLEGATIONS MUST BE PROVEN BY SUFFICIENT EVIDENCE; MERE ALLEGATION IS NOT EVIDENCE.— As a defense, GMC contends that as an employer, its only duty was to ascertain that IBM-Local 31 accorded Casio, *et al.* due process; and, it is the finding of the company that IBM-Local 31 did give Casio, *et al.* the opportunity to answer the charges against them, but they refused to avail themselves of such opportunity. This argument is without basis. The Court has stressed time and again that allegations must be proven by sufficient evidence because mere allegation is definitely not evidence. Once more, in *Great Southern Maritime Services Corporation v. Acuña*, the Court declared: Time and again we have ruled that in illegal dismissal cases like the present one, the *onus* of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, rests on the employer and failure to discharge the same would mean that the dismissal is not justified and therefore illegal. **Thus, petitioners must not only rely on the weakness of respondents' evidence but must stand on the merits of their own defense. A party alleging a critical fact must support his allegation with substantial evidence for any decision based on unsubstantiated allegation cannot stand as it will offend due process**. x x x.

7. ID.; ID.; ID.; THE RECORDS ARE ABSOLUTELY BEREFT OF ANY SUPPORTING EVIDENCE TO SUBSTANTIATE THE BARE ALLEGATION OF PETITIONER EMPLOYER THAT RESPONDENTS WERE ACCORDED DUE PROCESS BY THE LOCAL LABOR UNION.— The records of this case are absolutely bereft of any supporting evidence to substantiate the bare allegation of GMC that Casio, *et al.* were accorded due process by IBM-Local 31. There is nothing on record that would indicate that IBM-Local 31 actually notified Casio, *et al.* of the charges against them or that they were given the chance to explain their side. All that was stated in the IBM-Local 31 Resolution dated February 29, 1992, expelling Casio,

et al. from the union, was that "a copy of the said letter complaint [dated February 24, 1992] was dropped or left in front of E. Casio." It was not established that said letter-complaint charging Casio, *et al*. with acts inimical to the interest of the union was properly served upon Casio, that Casio willfully refused to accept the said letter-notice, or that Casio had the authority to receive the same letter-notice on behalf of the other employees similarly accused. It's worthy to note that Casio, *et al*. were expelled only five days after the issuance of the letter-complaint against them. The Court cannot find proof on record when the three-day period, within which Casio, *et al*. was supposed to file their answer or counter-affidavits, started to run and had expired. The Court is likewise unconvinced that the said three-day period was sufficient for Casio, *et al*. to prepare their defenses and evidence to refute the serious charges against them.

8. **ID.; ID.; ID.; THE TWIN REQUIREMENTS OF NOTICE AND HEARING CONSTITUTE THE ESSENTIAL ELEMENTS OF PROCEDURAL DUE PROCESS; REQUIRED TWO WRITTEN NOTICES BEFORE TERMINATION OF EMPLOYMENT CAN BE LEGALLY EFFECTED BY THE EMPLOYER IS MANDATORY AND ITS ABSENCE TAINTS THE DISMISSAL WITH ILLEGALITY.—** The twin requirements of notice and hearing constitute the essential elements of procedural due process. The law requires the employer to furnish the employee sought to be dismissed with two written notices before termination of employment can be legally effected: (1) a written notice apprising the employee of the particular acts or omissions for which his dismissal is sought in order to afford him an opportunity to be heard and to defend himself with the assistance of counsel, if he desires, and (2) a subsequent notice informing the employee of the employer's decision to dismiss him. This procedure is mandatory and its absence taints the dismissal with illegality.

9. **ID.; ID.; ID.; THE RIGHTS OF AN EMPLOYEE TO BE INFORMED OF THE CHARGES AGAINST HIM AND TO A REASONABLE OPPORTUNITY TO PRESENT HIS SIDE IN A CONTROVERSY WITH EITHER THE COMPANY OR HIS OWN UNION ARE NOT WIPED AWAY BY A UNION SECURITY CLAUSE OR A UNION SHOP CLAUSE IN A COLLECTIVE BARGAINING AGREEMENT.—** Irrefragably, GMC cannot dispense with the

requirements of notice and hearing before dismissing Casio, *et al*. even when said dismissal is pursuant to the closed shop provision in the CBA. The rights of an employee to be informed of the charges against him and to reasonable opportunity to present his side in a controversy with either the company or his own union are not wiped away by a union security clause or a union shop clause in a collective bargaining agreement. An employee is entitled to be protected not only from a company which disregards his rights but also from his own union the leadership of which could yield to the temptation of swift and arbitrary expulsion from membership and hence dismissal from his job. In the case at bar, Casio, *et al*. did not receive any other communication from GMC, except the written notice of termination dated March 24, 1992. GMC, by its own admission, did not conduct a separate and independent investigation to determine the sufficiency of the evidence supporting the expulsion of Casio, *et al*. by IBP-Local 31. It straight away acceded to the demand of IBP-Local 31 to dismiss Casio, *et al*. The very same circumstances took place in *Liberty Cotton Mills*, wherein the Court held that the employer-company acted in bad faith in dismissing its workers without giving said workers an opportunity to present their side in the controversy with their union. xxx In sum, the Court finds that GMC illegally dismissed Casio, *et al*. because not only did GMC fail to make a determination of the sufficiency of evidence to support the decision of IBM-Local 31 to expel Casio, *et al*., but also to accord the expelled union members procedural due process, *i.e.*, notice and hearing, prior to the termination of their employment.

10. **ID.; ID.; ID.; RIGHTS OF ILLEGALLY DISMISSED EMPLOYEES; FULL BACKWAGES AND REINSTATEMENT OR SEPARATION PAY IF REINSTATEMENT IS NO LONGER POSSIBLE; ATTORNEY'S FEES ALSO JUSTIFIED IF DISMISSED EMPLOYEES ARE COMPELLED TO LITIGATE TO SEEK REDRESS FOR THEIR DISMISSAL; CASE AT BAR.—** An employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee. In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to one month salary for every year of service. Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances

and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision. Thus, Casio, *et al*. are entitled to backwages and separation pay considering that reinstatement is no longer possible because the positions they previously occupied are no longer existing, as declared by GMC. Casio, *et al*., having been compelled to litigate in order to seek redress for their illegal dismissal, are entitled to the award of attorney's fees equivalent to 10% of the total monetary award.

APPEARANCES OF COUNSEL

Baduel Espina & Associates for petitioner.
Grengia & Malate Law Office for Ernesto Casio, *et al.*
Socrates B. Nodado for Virgilio Pino, *et al.*

D E C I S I O N

LEONARDO-DE CASTRO, *J*.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated March 30, 2001 and Resolution[2] dated July 18, 2001 of the Court of Appeals in CA-G.R. SP No. 40280, setting aside the Voluntary Arbitration Award[3] dated August 16, 1995 of the National Conciliation and Mediation Board (NCMB), Cebu City, in VA Case No. AC 389-01-01-95. Voluntary Arbitrator Alice K. Canonoy-Morada (Canonoy-Morada) dismissed the Complaint filed by respondents Ernesto Casio, Rolando Igot, Mario Famador, Nelson Lim, Felicisimo Booc, Procopio Obregon,

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[1] Penned by Associate Justice Cancio C. Garcia with Associate Justices Oswaldo D. Agcaoili and Elvi John S. Asuncion, concurring; *rollo*, pp. 25-35.

[2] *Rollo,* p. 37.

[3] *Id.* at 45-49.

Jr. and Antonio Aninipok (Casio, *et al.*) against petitioner General Milling Corporation (GMC) for unfair labor practice, illegal suspension, illegal dismissal, and payment of moral and exemplary damages.

The labor union Ilaw at Buklod ng Mangagawa (IBM)-Local 31 Chapter (Local 31) was the sole and exclusive bargaining agent of the rank and file employees of GMC in Lapu-Lapu City. On November 30, 1991, IBM-Local 31, through its officers and board members, namely, respondents Virgilio Pino,[4] Paulino Cabreros, Ma. Luna P. Jumaoas, Dominador Booc, Bartolome Auman, Remegio Cabantan, Fidel Valle, Loreto Gonzaga, Edilberto Mendoza and Antonio Panilag (Pino, *et al.*), entered into a Collective Bargaining Agreement (CBA) with GMC. The effectivity of the said CBA was retroactive to August 1, 1991.[5]

The CBA contained the following union security provisions:

> Section 3. MAINTENANCE OF MEMBERSHIP – All employees/ workers employed by the Company with the exception of those who are specifically excluded by law and by the terms of this Agreement must be members in good standing of the Union within thirty (30) days upon the signing of this agreement and shall maintain such membership in good standing thereof as a condition of their employment or continued employment.
>
> Section 6. The Company, upon written request of the Union, shall terminate the services of any employee/worker who fails to fulfill the conditions set forth in Sections 3 and 4 thereof, subject however, to the provisions of the Labor Laws of the Philippines and their Implementing Rules and Regulations. The Union shall absolve the Company from any and all liabilities, pecuniary or otherwise, and responsibilities to any employee or worker who is dismissed or terminated in pursuant thereof.[6]

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[4] As the Acting President of IBM-Local 31.

[5] *Rollo*, p. 26.

[6] *Id.* at 26-27.

Casio, *et al.* were regular employees of GMC with daily earnings ranging from ₱173.75 to ₱201.50, and length of service varying from eight to 25 years.[7] Casio was elected IBM-Local 31 President for a three-year term in June 1991, while his co-respondents were union shop stewards.

In a letter[8] dated February 24, 1992, Rodolfo Gabiana (Gabiana), the IBM Regional Director for Visayas and Mindanao, furnished Casio, *et al*. with copies of the Affidavits of GMC employees Basilio Inoc and Juan Potot, charging Casio, *et al*. with "acts inimical to the interest of the union." Through the same letter, Gabiana gave Casio, *et al*. three days from receipt thereof within which to file their answers or counter-affidavits. However, Casio, *et al*. refused to acknowledge receipt of Gabiana's letter.

Subsequently, on February 29, 1992, Pino, *et al*., as officers and members of the IBM-Local 31, issued a Resolution[9] expelling Casio, *et al*. from the union. Pertinent portions of the Resolution are reproduced below:

> Whereas, Felicisimo Booc, Rolando Igot, Procopio Obregon, Jr., Antonio Aninipok, Mario Famador, Nelson Lim and Ernesto Casio, through Ernesto Casio have refused to acknowledge receipt of the letter-complaint dated February 24, 1992, requiring them to file their answer[s] or counter-affidavits as against the charge of "acts inimical to the interest of the union" and that in view of such refusal to acknowledge receipt, a copy of said letter complaint was dropped or left in front of E. Casio;
>
> Whereas, the three (3)[-]day period given to file their answer or counter-affidavit have already lapsed prompting the union Board to investigate the charge *ex parte*;
>
> Whereas, after such *ex parte* investigation the said charge has been more than adequately substantiated by the affidavits/witnesses and documentary exhibits presented.

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[7] CA *rollo*, pp. 108-110.

[8] *Id.* at 188.

[9] *Rollo*, p. 40.

NOW, THEREFORE, RESOLVED as it is hereby RESOLVED, that Ernesto Casio, Felicisimo Booc, Rolando Igot, Procopio Obregon, Jr., Antonio Aninipok, Mario Famador and Nelson Lim be expelled as union member[s] of good standing effectively immediately.

RESOLVED FURTHER, to furnish copy of this Resolution to the GMC Management for their information and guidance with the recommendation as it is hereby recommended to dismiss the above-named employees from work.

Gabiana then wrote a letter[10] dated March 10, 1992, addressed to Eduardo Cabahug (Cabahug), GMC Vice-President for Engineering and Plant Administration, informing the company of the expulsion of Casio, *et al*. from the union pursuant to the Resolution dated February 29, 1992 of IBM-Local 31 officers and board members. Gabiana likewise requested that Casio, *et al*. "be immediately dismissed from their work for the interest of industrial peace in the plant."

Gabiana followed-up with another letter[11] dated March 19, 1992, inquiring from Cabahug why Casio, *et al*. were still employed with GMC despite the request of IBM-Local 31 that Casio, *et al*. be immediately dismissed from service pursuant to the closed shop provision in the existing CBA. Gabiana reiterated the demand of IBM-Local 31 that GMC dismiss Casio, *et al*., with the warning that failure of GMC to do so would constitute gross violation of the existing CBA and constrain the union to file a case for unfair labor practice against GMC.

Pressured by the threatened filing of a suit for unfair labor practice, GMC acceded to Gabiana's request to terminate the employment of Casio, *et al*. GMC issued a Memorandum dated March 24, 1992 terminating the employment of Casio, *et al*. effective April 24, 1992 and placing the latter under preventive suspension for the meantime.

On March 27, 1992, Casio, *et al*., in the name of IBM-Local 31, filed a Notice of Strike with the NCMB-Regional Office

[10] *Id.* at 41.

[11] *Id.* at 42.

No. VII (NCMB-RO). Casio, *et al*. alleged as bases for the strike the illegal dismissal of union officers and members, discrimination, coercion, and union busting. The NCMB-RO held conciliation proceedings, but no settlement was reached among the parties.[12]

Casio, *et al.* next sought recourse from the National Labor Relations Commission (NLRC) Regional Arbitration Branch VII by filing on August 3, 1992 a Complaint against GMC and Pino, *et al*. for unfair labor practice, particularly, the termination of legitimate union officers, illegal suspension, illegal dismissal, and moral and exemplary damages. Their Complaint was docketed as NLRC Case No. RAB-VII-08-0639-92.[13]

Finding that NLRC Case No. RAB-VII-08-0639-92 did not undergo voluntary arbitration, the Labor Arbiter dismissed the case for lack of jurisdiction, but endorsed the same to the NCMB-RO. Prior to undergoing voluntary arbitration before the NCMB-RO, however, the parties agreed to first submit the case to the grievance machinery of IBM-Local 31. On September 7, 1994, Casio, *et al*. filed their Complaint with Pino, the Acting President of IBM-Local 31. Pino acknowledged receipt of the Complaint and assured Casio, *et al*. that they would be "seasonably notified of whatever decision and/or action the Board may have in the instant case."[14] When the IBM-Local 31 Board failed to hold grievance proceedings on the Complaint of Casio, *et al.*, NCMB Voluntary Arbitrator Canonoy-Morada assumed jurisdiction over the same. The Complaint was docketed as VA Case No. AC 389-01-01-95.

Based on the Position Papers and other documents submitted by the parties,[15] Voluntary Arbitrator Canonoy-Morada rendered on August 16, 1995 a Voluntary Arbitration Award dismissing

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[12] CA *rollo*, p. 9.

[13] *Id.* at 9, 108.

[14] *Id.* at 107.

[15] Except Pino, *et al*., who did not submit Position Papers or any other documentary evidence.

the Complaint in VA Case No. AC 389-01-01-95 for lack of merit, but granting separation pay and attorney's fees to Casio, *et al*. The Voluntary Arbitration Award presented the following findings: (1) the termination by GMC of the employment of Casio, *et al.* was in valid compliance with the closed shop provision in the CBA; (2) GMC had no competence to determine the good standing of a union member; (3) Casio, *et al*. waived their right to due process when they refused to receive Gabiana's letter dated February 24, 1992, which required them to submit their answer to the charges against them; (4) the preventive suspension of Casio, *et al*. by GMC was an act of self-defense; and (5) the IBM-Local 31 Resolution dated February 29, 1992 expelling Casio, *et al*. as union members, also automatically ousted them as union officers.[16] The dispositive portion of the Voluntary Arbitration Award reads:

WHEREFORE, above premises considered, this case filed by [Casio, *et al*.] is hereby ordered DISMISSED for lack of merit.

Since the dismissal is not for a cause detrimental to the interest of the company, respondent General Milling Corporation is, nonetheless, ordered to pay separation pay to all [Casio, *et al*.] within seven (7) calendar days upon receipt of this order at the rate of one-half month per year of service reckoned from the time of their employment until the date of their separation on March 24, 1992, thus:

Employee	Date Hired	Rate/Month (1/2 mo/yr of service)		Service		Total
Casio	April 24/74	₱2,636.29	x	18 years	=	P47,453.22
Igot	May 1980	₱2,472.75	x	12 years	=	₱29,673.00
Famador	Feb. 1977	₱2,498.92	x	15 years	=	₱37,483.80
Lim	Aug. 1975	₱2,466.21	x	17 years	=	₱41,925.57
Booc	Aug. 1978	₱2,498.92	x	14 years	=	₱34,984.88
Obregon	May 1984	₱2,273.23	x	08 years	=	₱18,185.84
Aninipok	Sept. 1967	₱2,616.01	x	25 years	=	₱65,400.25

The attorney's fees for [Casio, *et al*.'s] counsel shall be ten percent (10%) of the total amount due them; and shall be shared proportionately by all of the same [Casio, *et al*.].

[16] *Rollo*, pp. 47-48.

All other claims are hereby denied.[17]

Dissatisfied with the Voluntary Arbitration Award, Casio, *et al*. went to the Court of Appeals by way of a Petition for *Certiorari* under Rule 65 of the Rules of Court to have said Award set aside.

The Court of Appeals granted the writ of *certiorari* and set aside the Voluntary Arbitration Award. The appellate court ruled that while the dismissal of Casio, *et al*., was made by GMC pursuant to a valid closed shop provision under the CBA, the company, however, failed to observe the elementary rules of due process in implementing the said dismissal. Consequently, Casio, *et al*. were entitled to reinstatement with backwages from the time of their dismissal up to the time of their reinstatement. Nevertheless, the Court of Appeals did not hold GMC liable to Casio, *et al*. for moral and exemplary damages and attorney's fees, there being no showing that their dismissal was attended by bad faith or malice, or that the dismissal was effected in a wanton, oppressive, or malevolent manner, given that GMC merely accommodated the request of IBM-Local 31. The appellate court, instead, made Pino, *et al*. liable to Casio, *et al*., for moral and exemplary damages and attorney's fees, since it was on the basis of the imputations and actuations of Pino, *et al*. that Casio, *et al*. were illegally dismissed from employment. The Court of Appeals thus decreed:

WHEREFORE, the assailed award is hereby SET ASIDE, and private respondent General Milling Corporation is hereby ordered to reinstate [Casio, *et al*.] to their former positions without loss of seniority rights, and to pay their full backwages, solidarily with [Pino, *et al*.]. Further, [Pino, *et al*.] are ordered to indemnify each of [Casio, *et al*.] in the form of moral and exemplary damages in the amounts of ₱50,000.00 and ₱30,000.00, respectively, and to pay attorney's fees.[18]

The Motion for Reconsideration of GMC was denied by the Court of Appeals in the Resolution dated July 18, 2001.

[17] *Id.* at 48.

[18] *Id.* at 35.

Hence, GMC filed the instant Petition for Review, arguing that:

I

THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN IT SET ASIDE THE AWARD OF THE VOLUNTARY ARBITRATOR, AND IN AWARDING REINSTATEMENT AND FULL BACKWAGES TO [Casio, *et al*.].

II

THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT SAID THAT PETITIONER GMC FAILED TO ACCORD DUE PROCESS TO [Casio, *et al*.].

III

THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN IT DID NOT ABSOLVE PETITIONER GMC OF ANY LIABILITY AND INSTEAD RULED THAT IT WAS SOLIDARILY LIABLE WITH THE UNION OFFICERS FOR THE PAYMENT OF FULL BACKWAGES TO [Casio, *et al*.].

At this point, we take note that Pino, *et al*. did not appeal from the decision of the Court of Appeals.

GMC avers that in reviewing and reversing the findings of the Voluntary Arbitrator, the Court of Appeals departed from the principle of conclusiveness of the trial judge's findings. GMC also claims that the findings of the Voluntary Arbitrator as to the legality of the termination from employment of Casio, *et al*. are well supported by evidence. GMC further insists that before IBP-Local 31 expelled Casio, *et al*. from the union and requested GMC to dismiss Casio, *et al*. from service pursuant to the closed shop provision in the CBA, IBP-Local 31 already accorded Casio, *et al*. due process, only that Casio, *et al*. refused to avail themselves of such opportunity. GMC additionally maintains that Casio, *et al*. were expelled by IBP-Local 31 for "acts inimical to the interest of the union," and GMC had no

authority to inquire into or rule on which employee-member is or is not loyal to the union, this being an internal affair of the union. Thus, GMC had to rely on the presumption that Pino, *et al.* regularly performed their duties and functions as IBP-Local 31 officers and board members, when the latter investigated and ruled on the charges against Casio, *et al*.[19] GMC finally asserts that Pino, *et al.*, the IBP-Local 31 officers and board members who resolved to expel Casio, *et al*. from the union, and not GMC, should be held liable for the reinstatement of and payment of full backwages to Casio, *et al*. for the company had acted in good faith and merely complied with the closed shop provision in the CBA.

On the other hand, Casio, *et al*. counters that GMC failed to identify the specific pieces of evidence supporting the findings of the Voluntary Arbitrator. Casio, *et al*. contends that to accord them due process, GMC itself, as the employer, should have held proceedings distinct and separate from those conducted by IBM-Local 31. GMC cannot justify its failure to conduct its own inquiry using the argument that such proceedings would constitute an intrusion by the company into the internal affairs of the union. The claim of GMC that it had acted in good faith when it dismissed Casio, *et al*. from service in accordance with the closed shop provision of the CBA is inconsistent with the failure of the company to accord the dismissed employees their right to due process.

In general, in a "petition for review on *certiorari* as a mode of appeal under Rule 45 of the Rules of Court, the petitioner can raise only questions of law – the Supreme Court is not the proper venue to consider a factual issue as it is not a trier of facts. A departure from the general rule may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the trial court [or quasi-judicial agency, as the case may be], or when the same is unsupported by the evidence on record."[20]

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[19] *Id.* at 13.

[20] *Development Bank of the Philippines v. Perez*, 484 Phil. 843, 845 (2004).

Whether Casio, *et al*. were illegally dismissed without any valid reason is a question of fact better left to quasi-judicial agencies to determine. In this case, the Voluntary Arbitrator was convinced that Casio, *et al*. were legally dismissed; while the Court of Appeals believed the opposite, because even though the dismissal of Casio, *et al*. was made by GMC pursuant to a valid closed shop provision in the CBA, the company still failed to observe the elementary rules of due process. The Court is therefore constrained to take a second look at the evidence on record considering that the factual findings of the Voluntary Arbitrator and the Court of Appeals are contradictory.

There are two aspects which characterize the concept of due process under the Labor Code: one is substantive – whether the termination of employment was based on the provision of the Labor Code or in accordance with the prevailing jurisprudence; the other is procedural – the manner in which the dismissal was effected.[21]

After a thorough review of the records, the Court agrees with the Court of Appeals. The dismissal of Casio, *et al*. was indeed illegal, having been done without just cause and the observance of procedural due process.

In *Alabang Country Club, Inc. v. National Labor Relations Commission*,[22] the Court laid down the grounds for which an employee may be validly terminated, thus:

> Under the Labor Code, an employee may be validly terminated on the following grounds: (1) just causes under Art. 282; (2) authorized causes under Art. 283; (3) termination due to disease under Art. 284, and (4) termination by the employee or resignation under Art. 285.
>
> **Another cause for termination is dismissal from employment due to the enforcement of the union security clause in the CBA.** x x x. (Emphasis ours.)

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[21] *Inguillo v. First Philippine Scales, Inc*., G.R. No. 165407, June 5, 2009.

[22] G.R. No. 170287, February 14, 2008, 545 SCRA 351, 361-362.

"Union security" is a generic term, which is applied to and comprehends "closed shop," "union shop," "maintenance of membership," or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated. A closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part.[23]

Union security clauses are recognized and explicitly allowed under Article 248(e) of the Labor Code, which provides that:

Art. 248. Unfair Labor Practices of Employers. x x x

x x x x x x x x x

(e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. **Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement**. (Emphasis supplied.)

It is State policy to promote unionism to enable workers to negotiate with management on an even playing field and with

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[23] *Inguillo v. First Philippine Scales, Inc., supra* note 21.

more persuasiveness than if they were to individually and separately bargain with the employer. For this reason, the law has allowed stipulations for "union shop" and "closed shop" as means of encouraging workers to join and support the union of their choice in the protection of their rights and interest *vis-à-vis* the employer.[24]

Moreover, a stipulation in the CBA authorizing the dismissal of employees are of equal import as the statutory provisions on dismissal under the Labor Code, since "a CBA is the law between the company and the union and compliance therewith is mandated by the express policy to give protection to labor."[25]

In terminating the employment of an employee by enforcing the union security clause, the employer needs only to determine and prove that: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union. These requisites constitute just cause for terminating an employee based on the union security provision of the CBA.[26]

There is no question that in the present case, the CBA between GMC and IBM-Local 31 included a maintenance of membership and closed shop clause as can be gleaned from Sections 3 and 6 of Article II. IBM-Local 31, by written request, can ask GMC to terminate the employment of the employee/worker who failed to maintain its good standing as a union member.

It is similarly undisputed that IBM-Local 31, through Gabiana, the IBM Regional Director for Visayas and Mindanao, twice requested GMC, in the letters dated March 10 and 19, 1992,

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[24] *Del Monte Philippines, Inc. v. Saldivar*, G.R. No, 158620, October 11, 2006, 504 SCRA 192, 203-204.

[25] *Id.* at 201.

[26] *Alabang Country Club, Inc. v. National Labor Relations Commission, supra* note 22 at 362.

to terminate the employment of Casio, *et al*. as a necessary consequence of their expulsion from the union.

It is the third requisite – that there is sufficient evidence to support the decision of IBM-Local 31 to expel Casio, *et al*. – which appears to be lacking in this case.

The full text of the individual but identical termination letters,[27] served by GMC on Casio, *et al*., is very revealing. They read:

To: [Employee's Name]
From: Legal Counsel
Subject: Dismissal Upon Union Request Thru
CBA Closed Shop Provision

The company is in receipt of two letters dated March 10, 1992 and March 19, 1992 respectively from the union at the Mill in Lapulapu demanding the termination of your employment pursuant to the closed shop provision of our existing Collective Bargaining Agreement. **It appears from the attached resolutions that you have been expelled from union membership and has thus ceased to become a member in good standing.** The resolutions are signed by the same officers who executed and signed our existing CBA, copies of the letters and resolutions are enclosed hereto for your reference.

The CBA in Article II provides the following:

Section 3. MAINTENANCE OF MEMBERSHIP – All employees/workers employed by the Company with the exception of those who are specifically excluded by law and by the terms of this Agreement must be members in good standing of the Union within thirty (30) days upon the signing of this agreement and shall maintain such membership in good standing thereof as a condition of their employment or continued employment.

Section 6. The Company, upon written request of the Union, shall terminate the services of any employee/worker who fails to fulfill the conditions set forth in Sections 3 and 4 thereof, subject however, to the provisions of the Labor Laws of the Philippines and their Implementing Rules and Regulations. The

[27] *Rollo*, pp. 43-44.

Union shall absolve the Company from any and all liabilities, pecuniary or otherwise, and responsibilities to any employee or worker who is dismissed or terminated in pursuant thereof.

The provisions of the CBA are clear enough. The termination of employment on the basis of the closed shop provision of the CBA is well recognized in law and in jurisprudence.

There is no valid ground to refuse to terminate. On the other hand as pointed out in the union's strongly demanding letter dated March 19, 1992, **the company could be sued for unfair labor practice. While we would have wanted not to accommodate the union's request, we are left with no other option.** The terms of the CBA should be respected. To refuse to enforce the CBA would result in the breakdown of industrial peace and the end of harmonious relations between the union and management. The company would face the collective anger and enmity of its employees who are union members.

In the light of the union's very insistent demand, verbal and in writing and to avoid the union accusation of "coddling" you, and considering the explicitly mandatory language of the closed shop provision of the CBA, the company is constrained to terminate your employment, to give you ample time to look and find another employment, and/or exert efforts to become again a member of good standing of your union, effective April 24, 1992.

In the meantime, to prevent serious danger to the life and property of the company and of its employees, we are placing you under preventive suspension beginning today.

It is apparent from the aforequoted letter that GMC terminated the employment of Casio, *et al*. relying upon the Resolution dated February 29, 1992 of Pino, *et al*. expelling Casio, *et al*. from IBM-Local 31; Gabiana's Letters dated March 10 and 19, 1992 demanding that GMC terminate the employment of Casio, *et al*. on the basis of the closed shop clause in the CBA; and the threat of being sued by IBM-Local 31 for unfair labor practice. The letter made no mention at all of the evidence supporting the decision of IBM-Local 31 to expel Casio, *et al*. from the union. GMC never alleged nor attempted to prove that the company actually looked into the evidence of IBM-Local 31 for expelling Casio, *et al*. and made a determination on the sufficiency

thereof. Without such a determination, GMC cannot claim that it had terminated the employment of Casio, *et al*. for just cause.

The failure of GMC to make a determination of the sufficiency of evidence supporting the decision of IBM-Local 31 to expel Casio, *et al*. is a direct consequence of the non-observance by GMC of procedural due process in the dismissal of employees.

As a defense, GMC contends that as an employer, its only duty was to ascertain that IBM-Local 31 accorded Casio, *et al*. due process; and, it is the finding of the company that IBM-Local 31 did give Casio, *et al*. the opportunity to answer the charges against them, but they refused to avail themselves of such opportunity.

This argument is without basis.

The Court has stressed time and again that allegations must be proven by sufficient evidence because mere allegation is definitely not evidence.[28] Once more, in *Great Southern Maritime Services Corporation. v. Acuña*,[29] the Court declared:

> Time and again we have ruled that in illegal dismissal cases like the present one, the *onus* of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, rests on the employer and failure to discharge the same would mean that the dismissal is not justified and therefore illegal. **Thus, petitioners must not only rely on the weakness of respondents' evidence but must stand on the merits of their own defense. A party alleging a critical fact must support his allegation with substantial evidence for any decision based on unsubstantiated allegation cannot stand as it will offend due process**. x x x. (Emphasis supplied.)

The records of this case are absolutely bereft of any supporting evidence to substantiate the bare allegation of GMC that Casio, *et al*. were accorded due process by IBM-Local 31. There is nothing on record that would indicate that IBM-Local 31 actually notified Casio, *et al*. of the charges against them or that they

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[28] *Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation*, G.R. No. 152228, September 23, 2005, 470 SCRA 650, 665.

[29] 492 Phil. 518, 530-531 (2005).

were given the chance to explain their side. All that was stated in the IBM-Local 31 Resolution dated February 29, 1992, expelling Casio, *et al*. from the union, was that "a copy of the said letter complaint [dated February 24, 1992] was dropped or left in front of E. Casio."[30] It was not established that said letter-complaint charging Casio, *et al*. with acts inimical to the interest of the union was properly served upon Casio, that Casio willfully refused to accept the said letter-notice, or that Casio had the authority to receive the same letter-notice on behalf of the other employees similarly accused. It's worthy to note that Casio, *et al*. were expelled only five days after the issuance of the letter-complaint against them. The Court cannot find proof on record when the three-day period, within which Casio, *et al*. was supposed to file their answer or counter-affidavits, started to run and had expired. The Court is likewise unconvinced that the said three-day period was sufficient for Casio, *et al*. to prepare their defenses and evidence to refute the serious charges against them.

Contrary to the position of GMC, the acts of Pino, *et al*. as officers and board members of IBM-Local 31, in expelling Casio, *et al*. from the union, do not enjoy the presumption of regularity in the performance of official duties, because the presumption applies only to public officers from the highest to the lowest in the service of the Government, departments, bureaus, offices, and/or its political subdivisions.[31]

More importantly, in *Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc.,*[32] the Court issued the following reminder to employers:

The power to dismiss is a normal prerogative of the employer. However, this is not without limitations. The employer is bound to exercise caution in terminating the services of his employees especially

[30] *Rollo*, p. 40.

[31] *Marsaman Manning Agency, Inc. v. National Labor Relations Commission*, 371 Phil. 827, 836 (1999).

[32] 179 Phil. 317, 321-322 (1979); *Cariño v. National Labor Relations Commission*, G.R. No. 91086, May 8, 1990, 185 SCRA 177, 189.

so when it is made upon the request of a labor union pursuant to the Collective Bargaining Agreement. x x x. Dismissals must not be arbitrary and capricious. Due process must be observed in dismissing an employee because it affects not only his position but also his means of livelihood. Employers should therefore respect and protect the rights of their employees, which include the right to labor. x x x.

The Court reiterated in *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*[33] that:

> While respondent company may validly dismiss the employees expelled by the union for disloyalty under the union security clause of the collective bargaining agreement upon the recommendation by the union, this dismissal should not be done hastily and summarily thereby eroding the employees' right to due process, self-organization and security of tenure. The enforcement of union security clauses is authorized by law, **provided such enforcement is not characterized by arbitrariness, and always with due process.** Even on the assumption that the federation had valid goiunds to expel the union officers, **due process requires that these union officers be accorded a separate hearing by respondent company.** (Emphases supplied.

The twin requirements of notice and hearing constitute the essential elements of procedural due process. The law requires the employer to furnish the employee sought to be dismissed with two written notices before termination of employment can be legally effected: (1) a written notice apprising the employee of the particular acts or omissions for which his dismissal is sought in order to afford him an opportunity to be heard and to defend himself with the assistance of counsel, if he desires, and (2) a subsequent notice informing the employee of the employer's decision to dismiss him. This procedure is mandatory and its absence taints the dismissal with illegality.[34]

Irrefragably, GMC cannot dispense with the requirements of notice and hearing before dismissing Casio, *et al*. even when

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[33] 383 Phil. 329, 365-366 (2000).

[34] *Easycall Communications Phils., Inc. v. King*, G.R. No. 145901, December 15, 2005, 478 SCRA 102, 113-114.

said dismissal is pursuant to the closed shop provision in the CBA. The rights of an employee to be informed of the charges against him and to reasonable opportunity to present his side in a controversy with either the company or his own union are not wiped away by a union security clause or a union shop clause in a collective bargaining agreement. An employee is entitled to be protected not only from a company which disregards his rights but also from his own union the leadership of which could yield to the temptation of swift and arbitrary expulsion from membership and hence dismissal from his job.[35]

In the case at bar, Casio, *et al*. did not receive any other communication from GMC, except the written notice of termination dated March 24, 1992. GMC, by its own admission, did not conduct a separate and independent investigation to determine the sufficiency of the evidence supporting the expulsion of Casio, *et al*. by IBP-Local 31. It straight away acceded to the demand of IBP-Local 31 to dismiss Casio, *et al*.

The very same circumstances took place in *Liberty Cotton Mills*, wherein the Court held that the employer-company acted in bad faith in dismissing its workers without giving said workers an opportunity to present their side in the controversy with their union, thus:

> While respondent company, under the Maintenance of Membership provision of the Collective Bargaining Agreement, is bound to dismiss any employee expelled by PAFLU for disloyalty, upon its written request, this undertaking should not be done hastily and summarily. **The company acted in bad faith in dismissing petitioner workers without giving them the benefit of a hearing. It did not even bother to inquire from the workers concerned and from PAFLU itself about the cause of the expulsion of the petitioner workers**. Instead, the company immediately dismissed the workers on May 30, 1964 after its receipt of the request of PAFLU on May 29, 1964 – in a span of only one day – stating that it had no alternative but to comply with its obligation under the Security Agreement in the Collective Bargaining Agreement, thereby disregarding the right of the workers

[35] *Cariño v. National Labor Relations Commission, supra* note 32 at 189.

to due process, self-organization and security of tenure.[36] (Emphasis ours.)

In sum, the Court finds that GMC illegally dismissed Casio, *et al*. because not only did GMC fail to make a determination of the sufficiency of evidence to support the decision of IBM-Local 31 to expel Casio, *et al*., but also to accord the expelled union members procedural due process, *i.e.*, notice and hearing, prior to the termination of their employment

Consequently, GMC cannot insist that it has no liability for the payment of backwages and damages to Casio, *et al.*, and that the liability for such payment should fall only upon Pino, *et al*., as the IBP-Local 31 officers and board members who expelled Casio, *et al*. GMC completely missed the point that the expulsion of Casio, *et al*. by IBP-Local 31 and the termination of employment of the same employees by GMC, although related, are two separate and distinct acts. Despite a closed shop provision in the CBA and the expulsion of Casio, *et al.* from IBP-Local 31, law and jurisprudence imposes upon GMC the obligation to accord Casio, *et al*. substantive and procedural due process before complying with the demand of IBP-Local 31 to dismiss the expelled union members from service. The failure of GMC to carry out this obligation makes it liable for illegal dismissal of Casio, *et al*.

In *Malayang Samahan ng mga Manggagawa sa M. Greenfield,*[37] the Court held that notwithstanding the fact that the dismissal was at the instance of the federation and that the federation undertook to hold the company free from any liability resulting from the dismissal of several employees, the company may still be held liable if it was remiss in its duty to accord the would-be dismissed employees their right to be heard on the matter.

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[36] *Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc., supra* note 32 at 321.

[37] *Supra* note 33 at 464.

An employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee. In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to one month salary for every year of service. Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision. Thus, Casio, *et al*. are entitled to backwages and separation pay considering that reinstatement is no longer possible because the positions they previously occupied are no longer existing, as declared by GMC.[38]

Casio, *et al*., having been compelled to litigate in order to seek redress for their illegal dismissal, are entitled to the award of attorney's fees equivalent to 10% of the total monetary award.[39]

WHEREFORE, the instant petition is hereby *DENIED*. The assailed decision of the Court of Appeals dated March 30, 2001 in CA-G.R. SP No. 40280 is *AFFIRMED*.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[38] *Rollo*, p. 19.

[39] *Macasero v. Southern Industrial Gases Philippines and/or Neil Lindsay,* G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507.

EN BANC

[G.R. No. 159117. March 10, 2010]

HON. HECTOR B. BARILLO, Acting Presiding Judge, MTC Guihulngan, Negros Oriental, *petitioner, vs.* **HON. RALPH LANTION, HON. MEHOL K. SADAIN and HON. FLORENTINO A. TUASON, JR., The Commissioners of the Second Division, Commission on Elections, Manila; and WALTER J. ARAGONES,** *respondents.*

[A.M. No. MTJ-10-1752. March 10, 2010]
(Formerly OCA IPI No. 03-1353-MTJ)

WALTER J. ARAGONES, *complainant, vs.* **HON. HECTOR B. BARILLO, Municipal Trial Court, Guihulngan, Negros Oriental,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RESPONDENT JUDGE HAS NO LEGAL STANDING TO FILE THE INSTANT PETITION SINCE HE IS BUT A NOMINAL PARTY IN CASE AT BAR.—** Judge Barillo clearly has no legal standing to file the instant petition, since he is but a nominal party in this case. Section 5, Rule 65 of the Rules of Court is quite explicit in stating this rule. xxx **Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein**.

2. **ID.; ID.; ID.; RESPONDENT JUDGE DID NOT MERELY FILE A COMMENT OR AN ANSWER TO THE PETITION BUT HE HIMSELF FILED THE PETITION.—** Judge Barillo cannot find succor in *Montalban v. Canonoy*, which he cites to justify his act of filing the instant petition. In the said case, the Court

considered as justified the act of the respondent judge in filing an answer before the appellate court, wherein the judge's orders were being questioned. The Court ruled that "when the actuations of a judge are assailed on grounds other than legal ones, and imputing to the judge personal motives, the judge cannot be blamed if he takes personal interest in trying to disprove the imputations." In the instant case, Judge Barillo did not merely file a comment or an answer in the petition at bar. He himself filed the petition. Moreover, Judge Barillo failed to make any disputation and/or rebuttal of whatever ill motive that may have been imputed on his part. A close reading of the Petition for *Certiorari* filed before this Court reveals that the grounds invoked therein by Judge Barillo are purely legal ones, which tend to prove the validity and finality of the MTC Decision dated November 27, 2002, as well as the alleged absence of appellate jurisdiction of the COMELEC Second Division in SPR No. 2-2003. As Judge Barillo is not the proper party who should question the Resolution of the COMELEC Second Division, his petition must fail.

3. **ID.; ID.; ID.; EVEN IF RESPONDENT JUDGE HAD THE REQUISITE LEGAL STANDING THE PETITION MUST STILL BE DISMISSED, BECAUSE WHATEVER JUDGMENT IS REACHED, THE SAME CAN NO LONGER HAVE ANY PRACTICAL LEGAL EFFECT OR IN THE NATURE OF THINGS, CAN NO LONGER BE ENFORCED.—** [E]ven if Judge Barillo had the requisite legal standing to file the instant petition, the Court finds that the same must still be dismissed. Ultimately, it is already beyond the jurisdiction of this Court in the present petition to still look into the questions pertaining to the legality and enforceability of the MTC Decision dated November 27, 2002 in Election Case No. 7-2002. The same have since been rendered moot and academic by the expiration of the term of office originally contested in the said case. To recall, Aragones and Lasola vied for the position of *Punong Barangay* of Poblacion, Guihulngan, Negros Oriental during the July 15, 2002 *barangay* elections. Aragones was initially proclaimed the duly elected *Punong Barangay* by the Board of Canvassers, but this proclamation was annulled by Judge Barillo in the MTC Decision dated November 27, 2002 in Election Case No. 7-2002. Aragones challenged the MTC Decision before the COMELEC Second Division in SPR No. 2-2003. In the Resolution dated June 11,

2003, the COMELEC Second Division nullified the MTC Decision, thus, prompting Judge Barillo to file the instant petition. Under Republic Act No. 9164, the term of office of *barangay* officials elected in the July 15, 2002 synchronized *barangay* and *sangguniang kabataan* elections was 3 years, commencing on August 15, 2002, and ending at noon on November 30, 2005. On September 22, 2005, Republic Act No. 9340 was approved, whereby the date for the synchronized *barangay* and *sangguniang kabataan* elections was reset to the last Monday of October 2007 and every three years thereafter. The terms of office of the *barangay* officials elected during the July 15, 2002 *barangay* elections were then extended up to and expired on November 30, 2007. Indeed, in this very situation, *Basmala v. Commission on Elections* fittingly states that "it is an exercise in futility indeed for the Court to still indulge itself in a review of the records and in an academic discussion of the applicable legal principles to determine who really won the elections, because whatever judgment is reached, the same can no longer have any practical legal effect or, in the nature of things, can no longer be enforced."

4. **LEGAL ETHICS; JUDGES; RESPONDENT JUDGE'S DEPORTMENT FELL BELOW THE LEVEL REQUIRED OF THE MEMBERS OF THE BENCH.—** [T]he OCA recommended that Judge Barillo be suspended for gross misconduct and gross ignorance of the law. The Code of Judicial Conduct ordains that a judge should be the embodiment of competence, integrity and independence. Furthermore, a judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary. In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism. In the case at bar, the Court finds that Judge Barillo's deportment fell below the level required of the members of the bench.

5. **ID.; ID.; RESPONDENT JUDGE WAS DECIDEDLY LACKADAISICAL IN THE MANAGEMENT OF THE AFFAIRS OF HIS *SALA*.—** [T]he first RTC Decision purportedly dismissing the petition filed by Aragones could not be established to be an authentic issuance from the RTC. The attitude of Judge Barillo towards the first RTC Decision was both cavalier and careless. What is baffling in the above scenario is that Judge Barillo did not care to question the dubious circumstances

surrounding the first RTC Decision since, in his own words, the same was in his favor. Avowedly, Judge Barillo was candid enough to admit that after he received the first RTC Decision, he immediately promulgated the MTC Decision. With respect to the second RTC Decision, which was in fact certified by the RTC Clerk of Court to be the authentic Decision in Special Civil Action No. 02-01-G, Judge Barillo was equally dismissive. He merely brushed aside the same on the ground of lack of jurisdiction on the part of the RTC over the petition filed by Aragones. The Court, therefore, finds that Judge Barillo was at the very least decidedly lackadaisical in the management of the affairs of his *sala*.

6. **ID.; ID.; THE COURT IS NOT CONVINCED THAT RESPONDENT JUDGE SHOULD BE HELD LIABLE FOR GROSS MISCONDUCT AND GROSS IGNORANCE OF THE LAW ABSENT ANY EVIDENCE OF SHOWING OUTRIGHT BAD FAITH.—** [T]he Court is not convinced that Judge Barillo should be held liable for gross misconduct and gross ignorance of the law absent any evidence showing outright bad faith. To be sure, before any administrative liability may be imposed on an erring judge, *Dadizon v. Asis* instructs that: Any administrative complaint levelled against a judge must always be examined with a discriminating eye, for its consequential effects are by their nature highly penal, such that respondent stands to face the sanction of dismissal and/or disbarment. Mere suspicion, as in this case, that a judge was partial to a party is not enough. Inasmuch as what is imputed against respondent judge connotes a misconduct so grave that, if proven, it would entail dismissal from the service, the quantum of proof required should be more than substantial. Even in an administrative case, the rules demand that, if the respondent judge should be disciplined for grave misconduct or any grave offense, the evidence against him should be competent and should be derived from direct knowledge of the witness. The Judiciary to which herein respondent belongs demands no less. Before any of its members could be faulted, it should only be after due investigation and after the presentation of competent evidence, especially since the charge is penal in character. To warrant a finding of gross ignorance of the law, as a ground for disciplinary action, the error must be so gross and patent as to produce an inference of bad faith or that the judge knowingly rendered an unjust

decision. The error must be so grave and so fundamental to a point as to warrant condemnation of the judge as patently ignorant or negligent. Otherwise, to hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming that the judge erred, would be nothing short of harassment and that would be intolerable.

7. ID.; ID.; MISCONDUCT; DEFINED.— [I]n *Office of the Court Administrator v. Duque*, the term misconduct was characterized as follows: Misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. On the other hand, the term "gross" connotes something "out of all measure; beyond allowance; not to be excused; flagrant; shameful." For administrative liability to attach it must be established that the respondent was moved by bad faith, dishonesty, hatred or some other like motive. As defined – 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 though 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.

8. ID.; ID.; THE VARIOUS *FAUX PAS* COMMITTED BY RESPONDENT JUDGE ARE EXAMPLES OF POOR JUDGMENT AND NEGLIGENCE.— In the instant case, it may truly be said that the various *faux pas* committed by Judge Barillo are examples of poor judgment and negligence. However, equally important to note is the fact that there is no allegation, much less a genuine showing, that Judge Barillo was impelled by bad faith, dishonesty, hatred or some other corrupt motive in committing the acts for which he was charged. Neither were allegations of corruption nor imputations of pecuniary benefit ever asserted against him. Such observation was likewise shared by RTC Judge Baldado in his Report and Recommendations before the Court. Judge Baldado also pointed out that while

there appeared to be haste in the sequence of proceedings before the MTC, Judge Baldado could not conclude that there was undue haste, given that there was no proof that the acts of Judge Barillo were tainted with malice, bad faith or manifest partiality.

9. **ID.; ID.; RESPONDENT JUDGE IS GUILTY OF SIMPLE MISCONDUCT WHICH AS A CONSEQUENCE SUBJECTED THE TRIAL COURT TO DISTRUST AND ACCUSATIONS OF PARTIALITY.—** [W]hat Judge Barillo had been harking on during the entirety of the proceeding before him was the provision of Section 17, Rule 37 of the 1988 COMELEC Rules of Procedure, which mandates that "the court shall decide the protest within fifteen (15) days from its filing and shall declare who among the parties has been elected, or in a proper case, that none of them has been legally elected." Thus, contrary to the findings of the OCA, the transgressions committed by Judge Barillo in this case are not flagrant enough or motivated by any ill motive so as to be classified as grave misconduct or to warrant a finding of gross ignorance of the law. Nevertheless, the Court rules that Judge Barillo is guilty of simple misconduct in view of the commission of the above-enumerated acts, which subjected the MTC to distrust and accusations of partiality. Thus, we find that the penalty of suspension for a period of three months is in order.

APPEARANCES OF COUNSEL

Yap-Siton Law Office for Walter J. Aragones.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This treats of the two consolidated cases now before this Court, which are offshoots of an election protest case first filed before the Municipal Trial Court (MTC) of Guihulngan, Negros Oriental.

G.R. No. 159117 is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court, wherein petitioner Judge Hector B. Barillo

[1] *Rollo* (G.R. No. 159117), pp. 6-24.

(Judge Barillo) seeks the annulment of the Resolution[2] dated June 11, 2003 of the Second Division of the Commission on Elections (COMELEC) in SPR No. 2-2003, finding Judge Barillo, then Acting Presiding Judge at the MTC of Guihulngan, Negros Oriental, guilty of grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the Decision[3] dated November 27, 2002 and the Resolution[4] dated December 9, 2002 in Election Case No. 7-2002.

A.M. No. MTJ-10-1752, on the other hand, is an administrative case, which arose from a Complaint[5] filed with this Court by the private respondent in G.R. No. 159117, Walter J. Aragones (Aragones), charging Judge Barillo with violation of Aragones' constitutional rights, violation of the Code of Judicial Conduct, manifest bias and partiality, gross ignorance of the law and abuse of authority.

The factual and procedural antecedents of the cases are as follows:

Aragones and Oscar C. Lasola (Lasola) vied for the position of Punong Barangay of Poblacion, Guihulngan, Negros Oriental in the July 15, 2002 *Barangay* Elections. After the votes were canvassed during the day of the elections, Aragones was proclaimed the winning candidate, having obtained a total of 1,614 votes, as compared to the 1,593 votes garnered by Lasola.

On July 24, 2002, Lasola duly filed an election protest[6] before the MTC of Guihulngan, which was docketed as **Election Case No. 7-2002**. Lasola accused the Board of Election Tellers in the various election precincts of Barangay Poblacion of illegally adopting their own procedures in the counting and appreciation

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[2] Penned by the then Presiding Commissioner Ralph C. Lantion with Commissioners Mehol K. Sadain and Florentino A. Tuason, Jr., concurring; *rollo* (G.R. No. 159117), pp. 26-34.

[3] *Rollo* (G.R. No. 159117), pp. 35-64.

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

[5] *Rollo* (A.M. No. MTJ-10-1752), pp. 1-26.

[6] *Id.* at 27-30.

of ballots, which led to his defeat. Lasola claimed that the alleged anomalous acts were committed upon the instructions of an election officer who was a nephew of Aragones. Lasola prayed, *inter alia*, for the appointment of as many Committees on Revision as may be necessary that will undertake a recount of the votes, in order that the true will of the electorate of Barangay Poblacion, Guihulngan, Negros Oriental may be finally determined.

On July 25, 2002, Judge Barillo, of the MTC of Guihulngan, issued an Order,[7] directing the Clerk of Court of the MTC to issue summonses to Aragones, the Acting Election Officer Raytheon Roy C. Aragones, the Board of Canvassers and the Board of Election Tellers of Barangay Poblacion, Guihulngan, Negros Oriental, requiring the aforesaid individuals to file their respective answers within five days from receipt of the notice of the above Order. In accordance with Section 12, Rule 35[8] of the COMELEC Rules of Procedure, Judge Barillo likewise directed the Acting Election Officer and the Municipal Treasurer of Guihulngan, Negros Oriental to surrender to the custody of the MTC Clerk of Court all ballot boxes containing ballots and their keys, list of voters with voting records, book of voters, and other documents used in the July 15, 2002 *Barangay* Elections of Barangay Poblacion, Guihulngan, Negros Oriental.

Thereafter, Judge Barillo issued another Order on July 29, 2002,[9] which stated that there was a need for the revision of

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[7] *Rollo* (G.R. No. 159117), pp. 672-673.

[8] Rule 35 of the COMELEC Rules of Procedure pertains to Election Contests Before Courts of General Jurisdiction, Section 12 of which provides:

SEC. 12. *Custody of Ballot Boxes, Election Documents and Paraphernalia*. — Where allegations in a protest, or counter-protest or protest-in-intervention so warrant, or whenever in the opinion of the Court the interest of justice so demands, it shall immediately order the ballot boxes containing ballots and their keys, list of voters with voting records, books of voters, and other documents used in the election to be brought before it. Said election documents and paraphernalia shall be kept and held secure in a place to be designated by the Court in the care and custody of the Clerk of Court.

[9] *Rollo* (G.R. No. 159117), pp. 674-675.

ballots in consonance with Sections 12, 13, 15 and 16 of Rule 35[10] of the COMELEC Rules of Procedure. The protestant was, thus, ordered to deposit in cash the amount of ₱150.00 for every ballot box for the compensation of the revisors in an amount to be fixed by the MTC. Judge Barillo also created a Revision Committee composed of the Provincial Election Officer of Negros Oriental, Atty. Rogelio S. Benjamin, as Chairman, with the Protestant (Lasola) and/or his counsel, the Protestee (Aragones) and/or his counsel, and the MTC Clerk of Court as members.

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[10] Sections 13, 15 and 16 of Rule 35 of the COMELEC Rules of Procedure state:

SEC. 13. *Revision of Ballots.* — For the purpose of revision of ballots, the court shall appoint a committee composed of a chairman and two members, one member and his substitute to be proposed by the protestant, and the other member and his substitute by the protestee.

The revision of the ballots by the Committee on revision shall be made in the office of the Clerk of Court or at such other place as may be designated by it, but in every case under the Court's strict supervision.

The revision of the ballots shall be completed within twenty (20) days from the date of the order, unless otherwise directed by the Court, subject to the time limits prescribed under Sec. 11 and Sec. 17 of this Rule.

SEC. 15. *Report of the Committee on Revision*. — The committee on revision shall make a statement of the condition in which the ballot boxes and their contents were found upon the opening of the same, classify the ballots so examined, and set forth clearly any objection that may have been offered to each ballot in the report to be submitted by it. Disputed ballots shall be numbered consecutively for purposes of identification in the presence and under the direction of the official designated by the Court. After examination, the ballots and other election documents shall be returned to their respective boxes, but disputed ballots shall be placed in a separate envelope duly sealed and signed by the members of the committee, after which said envelope shall then be returned to the box. Thereafter, the boxes shall be locked. For purposes of making the report which shall be submitted in twelve (12) legible copies, the form prescribed by the Commission shall be followed.

SEC. 16. *Prohibited Access*. — During the revision of ballots no person other than the Judge, the Clerk of Court, members of the committee on revision of ballots, the parties, their duly authorized representatives shall have access to the place where said revision is taking place.

On July 31, 2002, the counsel of Aragones, Atty. Francisco D. Yap, filed an Entry of Appearance with Motion to Disqualify Counsel for Protestant[11] (Lasola) in **Election Case No. 7-2002**. Atty. Yap manifested before the MTC that Lasola's counsel, Atty. Justo J. Paras, was suspended from the practice of law by this Court in an administrative case docketed as A.C. No. 5333[12] and the latter has filed a Motion to Lift Suspension, which was yet to be acted upon. Pending a reinstatement, Atty. Yap asserted that Atty. Paras was not legally permitted to appear as counsel in any court in the Philippines. Furthermore, the law firm of Paras and Associates, of which Atty. Paras was a partner, was allegedly owned by the then incumbent Congressman Jacinto V. Paras, such that the law firm was disqualified to appear as counsel, in view of the prohibition found in Section 14, Article VI of the Constitution that "[n]o Senator or Member of the House of Representatives may personally appear as counsel before any court of justice."[13]

On even date, Aragones also filed an Answer with Affirmative Defenses and Counterclaim,[14] which denied the material averments in Lasola's Petition. Aragones argued that the same was based merely on the speculations, surmises and conclusions of a losing candidate, without any supporting affidavits attached thereto. Aragones pointed out that the Petition was not even

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[11] *Rollo* (A.M. No. MTJ-10-1752), pp. 31-35.

[12] *Paras v. Paras*, October 18, 2000, 343 SCRA 414.

[13] The complete provision of Section 14, Article VI of the Constitution reads:

SEC. 14. No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office.

[14] *Rollo* (A.M. No. MTJ-10-1752), pp. 161-168.

based on Lasola's personal knowledge. As special and affirmative defenses, Aragones also claimed that Lasola failed to comply with the requisites for a proper petition for a recount of votes and that there was no allegation that the election returns involved would affect the results of the elections. Aragones prayed for the dismissal of the Petition and, by way of counterclaim, sought damages and attorney's fees.

On August 2, 2002, Judge Barillo issued an Order[15] in **Election Case No. 7-2002**, setting the hearing on the revision of official ballots on August 9, 2002. Likewise, the Order stated that:

> In order not to delay the speedy administration of justice, **Atty. Justo J. Paras (unless this court has received copy of the Supreme Court's Resolution for his suspension or disbarment from the practice of law)**, and/or his associates or any authorized counsel for Protestant Oscar C. Lasola are **directed to appear during the hearing on August 9, 2002 at 8:30 o'clock in the morning and until such time that this case is terminated**. Likewise, said Protestant's counsel and/or his associate are directed to appear on the above date and time of hearing. (Emphases ours.)

On August 7, 2002, Aragones filed a Motion for Reconsideration[16] of the Orders dated July 25, 2002 and July 29, 2002, as well as an Urgent Motion for Reconsideration of the Order dated August 2, 2002.

In an Order dated August 7, 2002, Judge Barillo resolved[17] to deny the above-stated motions of Aragones. As regards the suspension of Lasola's counsel, Atty. Paras, Judge Barillo quoted in his Order the *fallo* of the Decision of the Court dated October 18, 2000 in A.C. No. 5333, which reads:

> In the light of the foregoing, **respondent [Atty. Paras] is hereby SUSPENDED from the practice of law for SIX (6) MONTHS on the charge of falsifying his wife's signature in bank documents and other related loan instruments; and for ONE (1) YEAR from the**

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[15] *Rollo* (G.R. No. 159117), pp. 676-679.

[16] *Id.* at 680-684.

[17] *Rollo* (A.M. No. MTJ-10-1752), pp. 40-43.

practice of law on the charges of immorality and abandonment of his own family, the penalties to be served simultaneously. Let notice of this decision be spread in respondent's record as an attorney, and notice of the same served on the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all the courts concerned. (Emphasis ours.)

Thereafter, Judge Barillo referred to what he described as a self-explanatory letter by then Acting Bar Confidant Atty. Ma. Cristina B. Layusa addressed to Judge Romeo L. Anasario, Acting Municipal Circuit Trial Judge in Bindoy, Negros Oriental. The letter reads:

Per Court resolution dated October 18, 2000, in Adm. Case No. 5333 (formerly CBD No. 371), Atty. Justo de Jesus Paras was ordered suspended from the practice of law for six (6) months on the charge of falsification and for one (1) year on the charge of immorality and abandonment. **The said order of suspension [became] effective on May 23, 2001**, when Atty. Paras received a copy of the resolution dated March 5, 2001, denying with finality his motion for reconsideration of the October 18, 2000 resolution. (Emphasis ours.)

Judge Barillo, however, did not elaborate any further. In quoting the above dispositive portion and letter, Judge Barillo appeared to rely on the fact that more than one year had already lapsed since the effectivity of the suspension order against Atty. Paras on May 23, 2001. Since the two periods of suspension imposed were ordered to be served simultaneously, Judge Barillo seemed to consider the suspension of Atty. Paras to have already been served out by the end of May 2002; and thus, when the election protest was instituted in the MTC by Lasola through Atty. Paras on July 24, 2002, said counsel was supposedly no longer suspended.

Concerning the Motion for Reconsideration questioning the Orders dated July 25, 2002 and July 29, 2002, Judge Barillo ruled that said Orders were consistent with the applicable provisions of the COMELEC Rules of Procedure. Judge Barillo apparently referred to the various sections of Rule 37 of the 1988 COMELEC Rules of Procedure, which were still in force at that time. Finally, Judge Barillo again directed all the parties

and their respective counsels to appear before the MTC on August 9, 2002 for the revision of the official ballots.

Aggrieved by the above Resolution, Aragones instituted a Petition for *Certiorari*, Prohibition, (and) *Mandamus*, with Temporary Restraining Order and/or Preliminary Mandatory Injunction[18] under Rule 65 of the Rules of Court before the Regional Trial Court (RTC) of Negros Oriental, which was docketed as **Special Civil Action No. 02-01-G**. Judge Barillo and Lasola were named as respondents in the petition. Aragones insisted that Judge Barillo committed grave abuse of discretion amounting to lack or excess of jurisdiction when: 1) he allowed a suspended lawyer to appear as counsel; and 2) he denied the Motion for Reconsideration filed by Aragones without any hearing and immediately upon receipt thereof on the same date, August 7, 2002. Aragones prayed that a writ of preliminary injunction be issued, directing Judge Barillo to cease and desist from hearing Election Case No. 7-2002 until further orders from the RTC; that the MTC Order dated August 7, 2002 be set aside; that an order be issued directing the MTC to disqualify Atty. Paras from appearing until the lifting of his suspension by the Court; and that Judge Barillo be ordered to voluntarily inhibit himself from handling the case.

On August 8, 2002, Atty. Paras filed a Comment on Atty. Franciso D. Yap's Motion to Disqualify Protestant's (Lasola) Counsel in **Election Case No. 7-2002**.[19] Therein, Atty. Paras admitted that he was indeed suspended by the Court for a period of one year, which commenced on May 23, 2001 and ended on May 22, 2002. Upon the expiration of the period of his suspension, Atty. Paras confirmed that he also filed a motion to lift the order of suspension, as advised by the Office of the Bar Confidant. Atty. Paras, however, disagreed with the theory of Atty. Yap that a formal reinstatement by the Court was necessary before he could resume his practice of law. Atty. Paras alleged

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[18] *Id.* at 44-59.

[19] Records (A.M. No. MTJ-10-1752), Vol. IV, pp. 123-125.

that the jurisprudence[20] cited by Atty. Yap, in support of the latter's Motion, were applicable only to cases where the penalty imposed upon an erring lawyer was either indefinite suspension or disbarment. Atty. Paras insisted that the cases cited were impertinent where the penalty meted out by the Court has a fixed and definite period of effectivity.

On August 9, 2002, Aragones filed a Motion for Inhibition[21] in **Election Case No. 7-2002** against Judge Barillo on the ground that the latter's demeanor, ruling and pronouncements demonstrated his bias and partiality towards Lasola, thereby violating the rights of Aragones to due process and an impartial tribunal. Aragones further ascribed grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge Barillo, when the latter gave due course to the Petition filed by Lasola despite the deficiency of the cash deposit per ballot box and allowed a suspended lawyer to appear before the MTC.

Aragones also filed on August 9, 2002 a Motion/Manifestation[22] in **Election Case No. 7-2002**, asserting that the Motion for Reconsideration that he filed on August 7, 2002 was set for hearing on August 16, 2002 and yet Judge Barillo promptly denied the motion on the same day it was filed. Aragones stressed that the Order[23] dated August 7, 2002 revealed the manifest bias and partiality of Judge Barillo and denied the parties the chance to elevate to a higher court the issues raised in the motion. Aragones pointed to the lack of jurisdiction of the MTC in view of the nonpayment of the proper docket fees and required expenses, as well as Judge Barillo's alleged act of contempt against this Court for allowing the appearance of Atty. Paras despite his suspension. Lastly, Aragones disclosed

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[20] *Montecillo v. Gica*, G.R. No. L-36800, October 21, 1974, 60 SCRA 234; *Sebastiano v. Ceniza*, A.C. No. 1500, December 14, 1978, 87 SCRA 244; *Artiaga, Jr. v. Villanueva*, A.C. No. 1892, July 7, 1989, 175 SCRA 237; *Laguitan v. Tinio*, A.C. No. 3049, December 4, 1989, 179 SCRA 837.

[21] Records (A.M. No. MTJ-10-1752), Vol. III, pp. 64-68.

[22] *Id.* at 69-73.

[23] *Rollo* (A.M. No. MTJ-10-1752), pp. 40-43.

that he also found out that Judge Barillo was a close relative of Atty. Paras.

In a Resolution[24] dated August 9, 2002, Judge Barillo denied the Motion for Inhibition in **Election Case No. 7-2002**, holding that the period of suspension of Atty. Paras had already expired; and that Lasola was, nevertheless, represented by two other counsels, Atty. Jose M. Estacion, Jr. and Atty. Carlos M. Cainglet. Judge Barillo likewise declared that he was not related to Atty. Paras, either by affinity or consanguinity, and that the applicable provisions of the COMELEC Rules of Procedure had been sufficiently complied with. On August 10, 2002, Judge Barillo issued an Order,[25] stating that the Revision Committee was able to finish its duties and it was, thus, directed to submit its Revision Report. After such submission, the case was deemed submitted for decision.

On August 12, 2002, the RTC of Negros Oriental, Branch 64, through Judge Felix G. Gaudiel, Jr. issued an *Ex-Parte* Order[26] in **Special Civil Action No. 02-01-G**, which required the respondents therein, Judge Barillo and Lasola, to comment on the Petition within ten days from receipt of a copy of the said order. The RTC stated that the Entry of Appearance with Motion to Disqualify Counsel for Protestant (Lasola) filed by Atty. Yap was a motion that was litigious; hence, it should have been heard and not denied outright. Furthermore, Judge Barillo was directed to cease and desist from proceeding with the hearing of Election Case No. 7-2002 within a period of 20 days from receipt of the order, given the perception of the RTC that the continuance of the acts of Judge Barillo complained of would probably work injustice to Aragones. The RTC further cautioned Judge Barillo that any proceeding or action taken by the lower court after the filing of the Petition would be declared null and void.

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[24] *Id.* at 199-209.

[25] Records (A.M. No. MTJ-10-1752), Vol. III, p. 63.

[26] *Rollo* (A.M. No. MTJ-10-1752), pp. 61-63.

On August 20, 2002, Lasola filed a Motion to Dismiss[27] the Petition in **Special Civil Action No. 02-01-G**, contending that the RTC had no appellate jurisdiction over the election case under consideration, since the same was lodged with the COMELEC, in accordance with Section 2(2), Article IX-C[28] of the Constitution and Section 1, Rule 28[29] of the COMELEC Rules of Procedure. Lasola said that the COMELEC Rules of Procedure, not the provisions of the Rules of Court, should govern the proceedings, since the latter rules merely have a suppletory effect.

On August 22, 2002, Judge Barillo likewise manifested[30] before the RTC in **Special Civil Action No. 02-01-G** that Rule 143 of the Rules of Court specifically provides that the said rules "shall not apply to land registration, cadastral and election cases, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient."

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[27] *Id.* at 64-68.

[28] Section 2(2), Article IX-C of the Constitution reads:

SEC. 2. The Commission on Elections shall exercise the following powers and functions:

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2. Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective *barangay* officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and *barangay* offices shall be final, executory, and not appealable.

[29] Section 1, Rule 28 of the COMELEC Rules of Procedure states:

SEC. 1. *When Available.* — In aid of its appellate jurisdiction in election cases before courts of general jurisdiction relating to the elections, returns and qualifications of elective Municipal officials, and before courts of limited jurisdiction in cases relating to the elections, returns and qualifications of elective *barangay* officials, the Commission *en banc* may hear and decide petitions for *certiorari*, prohibition or *mandamus*.

[30] *Rollo* (A.M. No. MTJ-10-1752), pp. 550-554.

Aragones opposed[31] the Motion to Dismiss the Petition in **Special Civil Action No. 02-01-G,** praying that the same be denied outright on the grounds that the said motion was not set for hearing by the applicant and the same was filed by Atty. Paras, who was still suspended from the practice of law. Moreover, Aragones argued that the action filed before the RTC was an independent action for *certiorari* under Rule 65 of the Rules of Court, not a petition for *certiorari* as a mode of appeal. The petition was also not a case filed with the RTC in aid of its appellate jurisdiction. More importantly, Aragones pointed out that the petition involved was not an election matter, but one that involved a violation of constitutional rights; a violation of the order of the Court suspending a lawyer, which suspension was yet to be lifted; and a violation of Section 14, Article VI of the Constitution, which prohibits a member of the Senate or the House of Representatives from personally appearing as counsel in any court of justice.

On September 2, 2002, Judge Barillo filed a Comment/ Answer[32] in **Special Civil Action No. 02-01-G**, wherein he outlined the proceedings undertaken in the MTC and once more pleaded the lack of jurisdiction of the RTC over the Petition filed by Aragones.

On October 28, 2002, the RTC of Negros Oriental, Branch 64, promulgated a Decision[33] in **Special Civil Action No. 02-01-G**, disposing of the same in this wise:

> WHEREFORE, premises considered, the petition is hereby **GRANTED**, let a writ of *certiorari* be issued. **The proceedings had below are hereby declared null and void**. (Emphases ours.)

The RTC adjudged that the issue in the case before it was entirely separate and distinct from the issue in Election Case No. 7-2002. As the authority of the COMELEC to hear and decide petitions for *certiorari*, prohibition and *mandamus* was

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[31] *Id.* at 69-72.

[32] *Id.* at 78-91.

[33] *Rollo* (G.R. No. 159117), pp. 156-161.

limited to cases relating to election, returns and qualifications of *barangay* officials, the RTC, thus, had jurisdiction on matters not related to elections, returns and qualifications of candidates in *barangay* elections. The crux of Aragones' petition was the claim of grave abuse of discretion allegedly committed by Judge Barillo in issuing the Order dated August 2, 2002, which allowed Atty. Paras to appear for Lasola in the MTC; and the subsequent Resolution dated August 7, 2002 of said Judge, which denied the Urgent Motion for Reconsideration. The RTC reiterated that the Entry of Appearance with Motion to Disqualify Counsel for Protestant [Lasola] filed by Atty. Yap contained the requisite Notice of Hearing and specified the date and time of the hearing, which was within ten days after the filing of the said motion. Accordingly, Judge Barillo should not have denied the motion outright without giving the movant an opportunity to be heard.

Although the above RTC Decision in **Special Civil Action No. 02-01-G** was dated October 28, 2002, the same was released only on December 3, 2002.[34]

On November 25, 2002, presumably before he received a copy of the aforementioned RTC Decision, Judge Barillo filed an Urgent Motion for Immediate Resolution[35] of **Special Civil Action No. 02-01-G**. Insisting on the lack of jurisdiction of the RTC, Judge Barillo sought the immediate rendition of the RTC Decision on the said issue, given the impending retirement of RTC Judge Felix G. Gaudiel, Jr. on December 4, 2002 and in order that the decision in Election Case No. 7-2002 may be finally promulgated.

On November 27, 2002, the MTC of Guihulngan, through Judge Barillo, rendered a Decision[36] in **Election Case No. 7-2002**. On the matter of the jurisdiction of the RTC, Judge Barillo held that:

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[34] *Id.* at 161.

[35] *Id.* at 183-187.

[36] *Id.* at 35-64.

This decision is delayed by virtue of the Special Civil Action No. 02-01-G for *Certiorari*, Prohibition, *Mandamus* with Temporary Restraining Order and/or Preliminary Mandatory Injunction filed in the Regional Trial Court, Branch 64, Guihulngan, Negros Oriental by petitioner Walter J. Aragones against undersigned respondent [Judge Barillo].

The Regional Trial Court, Branch 64, Guihulngan, Negros Oriental has no jurisdiction to hear and decide said case involving this *barangay* election case because the same is vested or conferred by law to this Municipal Trial Court pursuant to Section 1, Rule 37 of the Comelec Rules of Procedure as quoted below:

> "Section 1. Jurisdiction – Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall have exclusive original jurisdiction in all contests relating to the elections, returns and qualifications of *barangay* officials."

and the Commission on Elections, Manila under Section 1, Rule 28-*Certiorari*, Prohibition and Mandamus (D. Special Reliefs) that as quoted below:

> "D. SPECIAL RELIEFS
> Rule 28 — *Certiorari*, Prohibition and *Mandamus*
> Section 1. When Available — In aid of its appellate jurisdiction in election cases before courts of general jurisdiction relating to the elections, returns and qualifications of elective Municipal Officials, and before courts of limited jurisdiction in cases relating to the elections, returns and qualifications or elective *barangay* officials, the Commission *en banc* may hear and decide petitions for *certiorari*, prohibition or *mandamus*."

To allow the dilatory and frivolous proceedings or whatever would or will be the decision(s), resolution(s), order(s) and others of the Regional Trial Court who has no jurisdiction would constitute endless litigation and mockery to the speedy administration of justice. The first paragraph of Section 17, Rule 37 of the Comelec Rules of Procedure as quoted below:

> "Sec. 17. Decision – The court shall decide the protest within fifteen (15) days from its filing and shall declare who among the parties has been elected, or in a proper case, that none of them has been legally elected. The party who in the judgment has been declared elected shall have the right to assume office as soon as the judgment becomes final."

Undersigned invoked also the doctrine of primary jurisdiction as cited in the case of *Machete vs. Court of Appeals,* 250 SCRA 176 wherein the Supreme Court pronounced that the "doctrine of primary jurisdiction" does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. Consequently, as already stated, said Regional Trial Court has no jurisdiction to hear and decide said case involving this *barangay* election case as the same is vested in the Municipal Trial Court, Commission on Elections, Manila and Superior Court. x x x.

As regards the proceedings before the MTC and the outcome of the revision of ballots, Judge Barillo declared thus:

This case was filed pursuant to Rule 37 of the Comelec Rules of Procedure. According to the records, the excerpt from the minutes of the regular meeting of the Commission on Elections *en banc* held on May 12, 1994 is partly quoted below:

"94-2894. In the matter of the Memorandum dated 11 May 1994 of Atty. Erlinda C. Echavis, Director IV, Election Contents Adjudication Department, re adoption of Rule 37 (Election Contents) and Rule 38 (*Quo Warranto*) before courts of limited jurisdiction, considering that in the Comelec Rules of Procedure, adopted on 15 February 1993, the same has been omitted which left the litigants and their lawyers in a quandary as to the particular rules of procedure to apply in the cases arising from the just-concluded *barangay* elections.

"RESOLVED that with respect to Rules 37 and 38, Comelec Rules of Procedure of 1988, the same are still enforceable not having been superseded or amended by the Rules on Procedure adopted on 15 February 1993."

To recapitulate, before the filing of said *Barangay* Election protest, the court quoted below paragraph 7 of the Petition:

"7. That protestee [Aragones] had instead been proclaimed as the duly elected Punong Barangay of Barangay Poblacion, Guihulngan, Negros Oriental, in the afternoon of July 15, 2002 by the Board of Canvassers for having obtained a plurality of 1,614 votes as against that of Protestant [Lasola] who garnered the questionable total votes of 1,593 in the twenty-nine (29) voting

precincts" (with a difference of twenty-one (21) votes in favor of protestee [Aragones].)

Based on the foregoing appreciation of official ballots, the Court found out that Protestant Oscar C. Lasola obtained plurality of votes of 1,669. Hence, said protestant won by 54 votes over protestee [Aragones]. Consequently, the official proclamation of the members of the Board of Canvassers of Barangay Poblacion, Guihulngan, Negros Oriental declaring and proclaiming protestee Walter J. Aragones as the winning candidate in the July 15, 2002 *Barangay* Elections is set aside or declared null and void. The winning candidate Oscar C. Lasola is hereby declared and proclaimed as the duly elected Punong Barangay of Brgy. Poblacion, of this Municipality in that *Barangay* Elections and directed him to assume office as Punong Barangay of Brgy. Poblacion, Guihulngan, Negros Oriental pursuant to Rule 37 of the Comelec Rules of Procedure. (Emphasis ours.)

Soon after, on December 2, 2002, Judge Barillo issued an Order[37] in **Election Case No. 7-2002**, disclosing the fact that he allegedly received on November 26, 2002 the Decision[38] of the RTC of Negros Oriental, Branch 64, in Special Civil Action No. 02-01-G, which **dismissed** the petition for lack of factual and legal merits. Judge Barillo then directed the Clerk of Court of the MTC to issue to the parties therein the Notices of Promulgation of the MTC Decision on December 9, 2002, in compliance with Section 19, Rule 37 of the COMELEC Rules of Procedure.[39] As stated in the said provision, Judge Barillo warned that no motion for reconsideration would be entertained.

On December 5, 2002, Aragones filed a Manifestation and Motion[40] in **Election Case No. 7-2002**, praying for the

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[37] *Id.* at 83-84.

[38] *Id.* at 319-325.

[39] The cited provision pertains to Section 19, Rule 37 of the 1988 COMELEC Rules of Procedure, which reads:

SEC. 19. Promulgation and finality of decision. – The decision of the court shall be promulgated on a date set by it of which due notice must be given the parties. It shall become final (5) days after its promulgation.

No motion for reconsideration shall be entertained.

[40] *Rollo* (A.M. No. MTJ-10-1752), pp. 98-100.

cancellation of the scheduled promulgation on December 9, 2002 of the MTC Decision dated November 27, 2002. Aragones declared that he had not yet received the Decision of the RTC of Negros Oriental, Branch 64, in Special Civil Action No. 02-01-G, purportedly dismissing his petition. As regards the prohibition on the filing of a motion for reconsideration, Aragones insisted that his constitutional right to due process should not be undermined by judicial pronouncements, which had no basis in law. Aragones also accused Judge Barillo of being biased and partial, seeing the latter's personal interest in resolving the election protest with undue haste in favor of Lasola.

In a Resolution[41] dated December 9, 2002 in **Election Case No. 7-2002**, Judge Barillo confirmed that the promulgation of the MTC Decision dated November 27, 2002 proceeded on said date.

On December 12, 2002, Judge Barillo filed a Manifestation[42] in **Special Civil Action No. 02-01-G**, notifying the RTC of the fact that on November 26, 2002, a day before the promulgation of the MTC Decision in Election Case No. 7-2002, the Clerk of Court of the MTC allegedly received through personal delivery by RTC personnel the RTC Decision[43] dated October 28, 2002. Said decision contained the following dispositive portion, to wit:

> WHEREFORE, premises considered, the instant petition for *Certiorari*, Prohibition and *Mandamus* is hereby ordered **DISMISSED** for lack of merit. (Emphasis ours.)

Thus, on December 9, 2002, the promulgation of the MTC Decision proceeded as scheduled. On December 10, 2002, however, Judge Barillo received another RTC Decision[44] dated October 28, 2002, which, allegedly to his surprise, had a dispositive portion completely opposite to the decision he previously received, *viz*:

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[41] *Rollo* (G.R. No. 159117), pp. 85-88.

[42] *Id.* at 332-338.

[43] *Id.* at 319-325.

[44] *Id.* at 156-161.

WHEREFORE, premises considered, the petition is hereby **GRANTED**, let a writ of *certiorari* be issued. The proceedings had below are hereby declared null and void. (Emphasis ours.)

Nonetheless, Judge Barillo posited that the above RTC Decisions, whether or not affirmative of his actions, were null and void since the jurisdiction to hear and decide a *barangay* election case is vested in the MTC and the COMELEC. The second RTC Decision granting Aragones' petition, which was received only on December 10, 2002 by Judge Barillo, was already moot and academic and contravened the provisions of the COMELEC Rules of Procedure.

On December 16, 2002, Lasola filed a Motion for Execution[45] of the MTC Decision dated November 27, 2002 in **Election Case No. 7-2002**, given the failure of Aragones to file an appeal thereof within five days after the promulgation of the said Decision on December 9, 2002. In a Resolution[46] dated December 16, 2002, the MTC, through Judge Barillo, declared that Aragones had not yet filed an appeal of the MTC Decision seven days after the promulgation thereof. Judge Barillo, thus, ordered Lasola to assume and take his oath of office as the duly elected *Punong Barangay* of Poblacion, Guihulngan, Negros Oriental.

The next day, on December 17, 2002, the MTC Clerk of Court issued an Entry of Final Judgment,[47] certifying that the MTC Decision dated November 27, 2002 in **Election Case No. 7-2002** became final and executory on December 16, 2002.

Motion for Direct Contempt

On December 27, 2002, Aragones filed a Motion for Direct Contempt[48] against Judge Barillo, which was lodged with the RTC of Negros Oriental, Branch 64, then presided over by

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[45] *Rollo* (A.M. No. MTJ-10-1752), pp. 133-134.

[46] *Rollo* (G.R. No. 159117), pp. 89-90.

[47] *Id.* at 91.

[48] *Rollo* (A.M. No. MTJ-10-1752), pp. 580-592.

Judge Rosendo B. Bandal, Jr.[49] The case was docketed as **Special Civil Action No. 02-03-G**. Aragones maintained that the RTC already declared in the Decision dated October 28, 2002 in Special Civil Action No. 02-01-G that the proceedings carried out before the MTC were null and void, and that neither appeal nor a motion for reconsideration thereof was filed within 15 days from receipt of the Decision by any of the parties involved. Therefore, Aragones asserted that Judge Barillo was guilty of direct contempt for defying and reversing the ruling of the RTC, in utter disregard of the doctrine of hierarchy of courts and in violation of the constitutional rights of Aragones. Aragones also faulted Judge Barillo for filing a Manifestation in the *certiorari* proceedings before the RTC, where the judge was but a nominal party. Likewise, Aragones accused Judge Barillo of interfering with the administration of justice for alleging the existence of a Decision dated October 28, 2002 by the RTC in Special Civil Action No. 02-01-G, which supposedly dismissed Aragones' petition, considering that said Decision did not exist in the records of the case, and no satisfactory explanation was given on how a copy of the same was legally obtained. Finally, Aragones pointed out that the proper remedy to question the RTC Decision dated October 28, 2002 in Special Civil Action No. 02-01-G, which granted Aragones' petition, was for Lasola to file an appeal. Lasola, however, failed to do so.

On March 6, 2003, the RTC of Negros Oriental, Branch 64, through Judge Bandal, issued a Resolution,[50] denying the above motion to cite Judge Barillo for Direct Contempt. Judge Bandal held that the Decision of Judge Felix G. Gaudiel, Jr. in Special Civil Action No. 02-01-G, which granted Aragones' petition and declared null and void the proceedings before the MTC, was without legal basis for absence of jurisdiction. Judge Bandal ruled that Regional Trial Courts have no jurisdiction over election cases involving *barangay* officials, and Judge Gaudiel ought to have

[49] Judge Felix G. Gaudiel, Jr., retired on December 4, 2002.

[50] *Rollo* (G.R. No. 159117), pp. 340-342.

limited his determination of the case to the issue of the propriety of the act of Judge Barillo in allowing a suspended lawyer to represent a litigant before the MTC. Judge Gaudiel was ruled to have exceeded his jurisdiction when he set aside the proceedings before the MTC.

Aragones filed a Notice of Appeal[51] questioning the above Resolution, and the same was given due course[52] by the RTC, and the records of the case were ordered transmitted to the Court of Appeals.[53]

Petition to Declare Null and Void the MTC Decision (SPR No. 2-2003)

On January 8, 2003, Aragones instituted with the Comelec Second Division a Petition to Declare Null and Void the Decision dated November 27, 2002, *Certiorari*, Prohibition, [and] *Mandamus*, with Temporary Restraining Order and/or Preliminary Mandatory Injunction,[54] which was docketed as **SPR No. 2-2003**. Filed in accordance with Sections 1 and 2 of Rule 28 of the COMELEC Rules of Procedure,[55] the Petition

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[51] *Rollo* (A.M. No. MTJ-10-1752), pp. 352-353.

[52] Records (A.M. No. MTJ-10-1752), Vol. II, p. 86.

[53] Before the Court of Appeals, the appeal was docketed as CA-G.R. CR No. 27479. As of 17 June 2004, the appeal was considered submitted for decision. (Records, [A.M. No. MTJ-10-1752], Vol. III, p. 300.)

[54] Records (A.M. No. MTJ-10-1752), Vol. III, pp. 313-341.

[55] Sections 1 and 2 of Rule 28 of the COMELEC Rules of Procedure are as follows:

SEC. 1. *When Available.* — In aid of its appellate jurisdiction in election cases before courts of general jurisdiction relating to the elections, returns and qualifications of elective Municipal officials, and before courts of limited jurisdiction in cases relating to the elections, returns and qualifications of elective *barangay* officials, the Commission *en banc* may hear and decide petitions for *certiorari*, prohibition or *mandamus*.

SEC. 2. *Petition for Certiorari or Prohibition.* — When any court or judge hearing election cases has acted without or in excess of its or his jurisdiction or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a petition for *certiorari* or prohibition with the Commission alleging the facts with certainty and praying that

of Aragones alleged that Judge Barillo acted with grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the Decision dated November 27, 2002 and the Resolution dated December 9, 2002 in Election Case No. 7-2002. Aragones again insisted that the said issuances of Judge Barillo violated the RTC Decision dated October 28, 2002 and the constitutional rights of Aragones to due process and an impartial tribunal. Thus, Aragones opined that the MTC Decision dated November 27, 2002 and the Resolution dated December 9, 2002 in Election Case No. 7-2002 were null and void and should be so declared.

In a Comment/Answer[56] dated February 10, 2003, Judge Barillo again pleaded the lack of jurisdiction of the RTC in Special Civil Action No. 02-01-G, as well as the finality of the MTC Decision in Election Case No. 7-2002, in view of the failure of Aragones to file an appeal.

After the issues were joined, the COMELEC Second Division required Aragones and Lasola (the private respondent therein) to file their respective memoranda, after which the case was submitted for decision.[57] Records disclose that Judge Barillo filed his own Memorandum[58] in SPR No. 2-2003, reiterating the arguments contained in his Comment/Answer.

In a Resolution[59] dated June 11, 2003, the COMELEC Second Division granted the petition filed by Aragones in SPR No. 2-2003, ratiocinating thus:

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judgment be rendered annulling or modifying the proceedings, as the law requires, of such court or judge, or commanding it or him to desist from further proceeding with the action or matter specified therein, as the case may be.

The petition shall be accompanied by a certified true copy of the judgment or order subject thereof, together with all pleadings and documents relevant and pertinent thereto.

[56] *Rollo* (G.R. No. 159117), pp. 70-82.

[57] Records (A.M. No. MTJ-10-1752), Vol. III, pp. 355-356.

[58] *Rollo* (A.M. No. MTJ-10-1752), pp. 470-478.

[59] *Rollo* (G.R. No. 159117), pp. 26-34.

The petition is impressed with merit.

At the outset, the election protest [Election Case No. 7-2002] should have been dismissed for insufficiency in form and substance.

Notably, the instant petition [in Election Case No. 7-2002] failed to allege with specificity the grounds that would justify a re-appreciation of the ballots and only made bare allegations of the misappreciation of ballots and anomalous counting of votes made by the Board of Election Tellers. We cannot allow the election protest to prosper with these unsubstantiated accounts of electoral fraud as the allegations in the petition do not warrant a revision of the contested ballots. Respondent judge [Judge Barillo] even failed to take note that the petition was unverified. Well settled is the rule that a pleading which lacks a proper verification must be treated as an unsigned pleading.

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Moreover, the facts and circumstances clearly demonstrate the court *a quo's* bias and arbitrariness that should have warranted the setting aside of the questioned orders for grave abuse of discretion under Section 1, Rule 28 of the 1993 Comelec Rules of Procedure. Its capricious exercise of judicial prerogative was quite evident when respondent judge [Judge Barillo] allowed a suspended lawyer to appear before its court for the flimsy reason of avoiding delay. The persistent refusal of the trial court to promulgate the earlier Supreme Court decision suspending respondent's lawyer is a clear display of grave abuse of discretion.

Worse, respondent judge [Judge Barillo] allowed the commencement of revision proceedings despite timely motions from the petitioner [Aragones] on the ground of incomplete payment of the revision costs, showing manifest partiality towards private respondent [Lasola].

While public respondent [Judge Barillo] was correct in stating in his December 9, 2002 Resolution that the Regional Trial Court has no jurisdiction over the petition for *certiorari*, its December 16, 2002 Resolution granting the unverified Motion for Execution of Decision by respondent Lasola was issued with grave abuse of discretion, as the same failed to comply with the mandatory three-day notice rule prescribed by the Rules. Following the Supreme Court's pronouncement in *Ardosa vs. Gal-lang* [A.M. No. RTJ-97-1385, January

8, 1998, 284 SCRA 58, 64-65], a judge commits an abuse of discretion in hearing a motion on the same day the motion was filed.

The COMELEC Second Division, thus, decreed:

WHEREFORE, the petition is hereby **GRANTED**. We find respondent judge Hon. Hector B. Barillo, Presiding Judge of the Municipal Trial Court of Guihulngan, Negros Oriental guilty of grave abuse of discretion amounting to lack or excess of jurisdiction. **The records of the case are hereby REMANDED to the lower court for proper disposition of the case with dispatch**.

On August 13, 2003, the COMELEC Second Division issued an Order,[60] stating that the above Resolution dated June 11, 2003 became final and executory on July 9, 2003, as no Motion for Reconsideration thereof was filed by Lasola.

Disagreeing with the ruling of the COMELEC Second Division, Judge Barillo filed with the Court, on July 1, 2003, the instant Petition for *Certiorari* under Rule 65 of the Rules of Court, which was docketed as **G.R. No. 159117**.[61]

On August 5, 2003, another Petition for *Certiorari*[62] was filed with this Court, this time by Lasola, likewise assailing the Resolution dated June 11, 2003 of the COMELEC Second Division. Docketed as **G.R. No. 159114**, the petition contended that Aragones should have filed an appeal to challenge the MTC Decision, instead of a Petition for *Certiorari*. In a Resolution[63] dated August 12, 2003, however, the Court dismissed the petition as the full deposit for costs was not paid and the petition was not accompanied by a legible duplicate original or certified true copy of the questioned resolution. Lasola sought a reconsideration of the aforesaid resolution, but the same was denied[64] with finality on October 21, 2003.

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[60] *Id.* at 374-375.

[61] The COMELEC filed a Comment on the petition (*Rollo,* [G.R. No. 159117, pp. 220-233] but later manifested that it would no longer file a memorandum (*Rollo,* [G.R. No. 159117, pp. 563-566]).

[62] *Id.* at 200-206.

[63] *Id.* at 199.

[64] *Id.* at 265.

A.M. No. MTJ-10-1752

On January 8, 2003, the same day that the petition in SPR No. 2-2003 was filed with the COMELEC Second Division, Aragones likewise filed a Complaint[65] with the Office of the Court Administrator (OCA), charging Judge Barillo with violations of his constitutional rights, violations of the Code of Judicial Conduct, manifest bias and partiality, gross ignorance of the law and abuse of authority. The charges in the complaint pertained to the acts of Judge Barillo of rendering and promulgating the Decision dated November 27, 2002 in Election Case No. 7-2002; allowing Atty. Paras to appear and represent a party in the MTC; and pleading the case of Lasola in Special Civil Action No. 02-01-G.

In his 1st Indorsement[66] dated January 30, 2003, then Court Administrator Presbitero J. Velasco, Jr.,[67] directed Judge Barillo to submit his comment on the Complaint. Judge Barillo, accordingly, filed a 2nd Indorsement,[68] disputing the above charges and containing a Counter-Complaint against Aragones and the latter's counsel, Atty. Yap, for gross ignorance of the law for filing an allegedly malicious and dilatory case; as well as against former RTC Judge Felix G. Gaudiel, Jr., for gross ignorance of the law, inefficiency in the public service, contempt of court and gross usurpation of the powers and jurisdiction of the COMELEC.

Aragones, thereafter, filed a Reply[69] to Judge Barillo's 2nd Indorsement on March 28, 2003, and Judge Barillo accordingly filed his Rejoinder[70] thereto on June 12, 2003.

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[65] *Rollo* (A.M. No. MTJ-10-1752), pp. 1-26.

[66] *Rollo* (G.R. No. 159117), p. 361.

[67] Now a member of this Court.

[68] *Rollo* (A.M. No. MTJ-10-1752), pp. 136-156.

[69] *Id.* at 274-286.

[70] *Id.* at 354-362, 545-548.

Consolidation of G.R. No. 159117 and A.M. No. MTJ-10-1752

On January 30, 2004, Aragones filed in G.R. No. 159117 a Manifestation and/or Motion for Consolidation with Leave of Court,[71] asking for the consolidation of the said petition filed by Judge Barillo with the administrative case (A.M. No. MTJ-10-1752) initiated by Aragones. The Court referred the matter to then Clerk of Court *En Banc* Atty. Luzviminda D. Puno, who recommended that the two cases be consolidated.

On 17 March 2004, the OCA submitted its recommendation[72] that administrative case A.M. No. MTJ-10-1752 be referred to Judge Ismael O. Baldado, the Acting Presiding Judge of the RTC of Bais City, Negros Oriental, Branch 45, for investigation, report and recommendation, in view of the questions of fact involved. On 18 May 2004, the Court issued a Resolution[73] embodying such recommendation.

After conducting an investigation on A.M. No. MTJ-10-1752, Judge Baldado submitted on September 9, 2004 his Report and Recommendations[74] to the Court, identifying the fundamental issues to be resolved in the case as follows:

1. Whether respondent Judge Barillo be administratively faulted for having allowed Atty. Justo Paras, a lawyer who was suspended to practice law by the Supreme Court, to appear as counsel for the petitioner [Lasola] in Election Protest No. 7-2002 which was heard and decided by respondent Judge Barillo, as Acting Presiding Judge of the Municipal Trial Court of Guihulngan;

2. Whether respondent Judge Barillo issued orders and rendered a decision in Election Protest No. 7-2002 and issued execution order of his decision with undue haste and manifest bad faith and without observing due process of law;

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[71] *Id.* at 492-501.

[72] *Id.* at 540-543.

[73] *Rollo* (G.R. No. 159117), p. 478.

[74] Records (A.M. No. MTJ-10-1752), Vol. I, pp. 916-937.

3. Whether respondent Judge Barillo be administratively faulted for filing his comment on Special Civil Action No. 02-01-G for *Certiorari* before Branch 64, RTC, Guihulngan, Negros Oriental, wherein he was only a nominal party as one of the respondents;

4. Whether respondent Judge be administratively faulted for defying the decision of the higher court, RTC, Branch 64, dated October 28, 2002;

5. Whether respondent Judge Barillo be administratively faulted in filing his comments in SPR No. 2-2003 with the Commission on Elections wherein he was a respondent;

6. Whether respondent Judge Barillo be administratively faulted in instituting a petition before the Supreme Court in G.R. No. 159117 wherein he challenged the decision of the COMELEC in SPR No. 2-2003;

7. Whether respondent Judge Barillo be administratively faulted for using a certified copy of the decision of RTC, Branch 64, which is allegedly a false copy, misrepresenting the same as an authentic decision.

As regards the first issue, Judge Baldado noted that the cases cited by Aragones, in support of the latter's claim that an order from the Supreme Court lifting a suspension order is necessary before a suspended lawyer may resume his practice of law, were not applicable to the case against Judge Barillo. Judge Baldado stated that said cases involved the penalty of suspension from the practice of law for indefinite periods. Anent the second issue, Judge Baldado found that there appeared to be haste in the manner in which Judge Barillo conducted the proceedings in Election Case No. 7-2002; but the same could not be characterized as undue haste, as there was no showing that Judge Barillo's actuations were impelled by malice, bad faith, or manifest partiality. On the third issue, Judge Baldado opined that Judge Barillo could not be faulted for filing his Comment in Special Civil Action No. 02-01-G, given that the latter was ordered to do so by the RTC.

Concerning the fourth and seventh issues, Judge Baldado recommended that a further investigation should be conducted

in order to uncover the "unrevealed factors or circumstances" surrounding the conflicting decisions of the RTC.

Apropos the fifth issue, Judge Baldado found that Judge Barillo filed his Answer and Memoranda in SPR No. 2-2003, without being specifically ordered to do so. Judge Baldado, thus, recommended that Judge Barillo be imposed a minimum fine of ₱2,000.00 for the said charge. Similarly, on the sixth issue, Judge Baldado upheld the claim of Aragones that Judge Barillo was apparently "lawyering" for Lasola, inasmuch as the act of Judge Barillo of filing the petition in G.R. No. 159117 tended to protect the interest of the said party. For the said charge, Judge Baldado then recommended that Judge Barillo be imposed a fine of ₱5,000.00.

In its own Memorandum Report,[75] the OCA found merit in the Complaint filed by Aragones. The OCA was of the opinion that Judge Barillo should be held administratively liable for allowing Atty. Paras to represent a party litigant before his *sala*, notwithstanding the absence of a Court order lifting the lawyer's suspension. Citing *Mercado and Sons Agricultural Enterprises, Inc. v. De Vera*,[76] the OCA pointed out that the lifting of a lawyer's suspension is not automatic upon the end of the period of suspension. An order from the Court lifting the suspension is necessary before the lawyer may properly resume the practice of law. The OCA also disregarded the excuse of Judge Barillo that he decided Election Case No. 7-2002 after he received the RTC Decision in Special Election Case No. 02-01-G, dismissing Aragones' Petition for *Certiorari*, given that the existence of said decision could not be found in the records of Election Case No. 7-2002. The OCA concluded that Judge Barillo was guilty of trying to mislead the Court as to the existence of the two conflicting RTC Decisions. Finally, the OCA ascribed error on the part of Judge Barillo for filing a Petition for *Certiorari* before the Court, in violation of Section 5, Rule 65 of the Rules of Court, which mandates that

[75] *Id.* at 938-942.

[76] A.C. No. 3066, July 12, 2000.

the judge whose order is being assailed is a mere nominal party who does not have to appear in court or file any answer, comment or pleading, unless specifically directed to. The OCA recommended that:

> WHEREFORE, IN VIEW OF THE FOREGOING, this Office respectfully recommends that:
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> 1. This matter be **RE-DOCKETED** as an administrative complaint against Judge Hector B. Barillo, former Acting Presiding Judge, MTC, Guihulngan, Negros Oriental; and
>
> 2. Judge Hector B. Barillo be **SUSPENDED** from office for four (4) months for gross misconduct and gross ignorance of the law with WARNING that a repetition of the same or similar act in the future will warrant a more severe penalty.

In G.R. No. 159117, to assail the Resolution dated June 11, 2003 of the COMELEC Second Division in SPR No. 2-2003, Judge Barillo raises the following issues for our consideration:

1. Whether respondent Commissioners, sitting in Division not on Commission on Elections *En Banc* have the appellate jurisdiction to resolve the *Barangay* Decision in Election Case No. 7-2002 entitled *Oscar C. Lasola (Protestant) vs. Walter J. Aragones (Protestee)* for: Recount of Votes docketed in MTC, Guihulngan, Negros Oriental which was already final and executory as there was no appeal from December 9, 2002, the date of the promulgation of the Decision, up to the present time;

2. Whether the failure of aggrieved party Protestee Walter J. Aragones to appeal within five (5) days from the promulgation on December 9, 2002 in the *Barangay* Election Case can be given due course by the filing of the subject appealed COMELEC Case SPR No. 2-2003 entitled *Walter J. Aragones (Petitioner) versus Hon. Judge Hector B. Barillo, Acting Presiding Judge, MTC, Guihulngan, Negros Oriental and Oscar C. Lasola (Respondents)* for: Petition to Declare Null and Void the Decision dated November 22, 2002, *Certiorari*, Prohibition, *Mandamus* with Temporary Restraining Order and/or Mandatory Injunction on January 8, 2003 or twenty-four (24) days had lapsed from the promulgation of the *Barangay* Election Case No. 7-2002;

3. Whether undersigned petitioner judge has committed grave abuse of discretion amounting to lack or excess of jurisdiction as shown in that dispositive portion of the COMELEC Resolution SPR No. 2-2003;

4. Whether the failure of undersigned petitioner to file a Motion for Reconsideration to the subject COMELEC Resolution would make the same legal, final and executory in spite of the filing of this Petition For *Certiorari* within the reglementary period; and

5. Whether the undersigned petitioner Judge has legal standing/ right/duty to file the instant special action for *certiorari*.[77]

Judge Barillo primarily argues that the MTC Decision dated November 27, 2002 in Election Case No. 7-2002 already became final and executory on December 16, 2002, in view of the failure of Aragones to appeal the same within five days after its promulgation on December 9, 2002. Such being the case, Aragones could no longer assail the MTC Decision *via* the Petition filed before the COMELEC Second Division in SPR No. 2-2003. Contrary to the accusations of Aragones that he was guilty of grave abuse of discretion, Judge Barillo insists that he had been faithfully complying with the provisions of Section 17, Rule 37[78] of the COMELEC Rules of Procedure, but the MTC Decision and its promulgation were, nonetheless, delayed by the harassment cases filed by Aragones and his

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[77] *Rollo* (G.R. No. 159117), pp. 766-767.

[78] Judge Barillo was referring to the provisions of Section 17, Rule 37 of the 1988 COMELEC Rules of Procedure that applied to the instant case, which provides:

SEC. 17. Decision. – **The court shall decide the protest within fifteen (15) days from its filing and shall declare who among the parties has been elected, or in a proper case, that none of them has been legally elected.** The party who in the judgment has been declared elected shall have the right to assume office as soon as the judgment becomes final.

In case the court finds that the protestant, protestee or intervenor shall have an equal or highest number of votes, it shall order the drawing of lots by those who have tied and shall proclaim as elected the party who may have been favored by luck, and the party so proclaimed shall have the right to assume office in the same manner as if he had been elected by plurality vote. (Emphasis ours.)

counsel, Atty. Yap. Judge Barillo avers that, despite the fact that he did not file a motion for reconsideration of the Resolution dated June 11, 2003 of the COMELEC Second Division, the instant Petition for *Certiorari* assailing the resolution was timely filed with this Court. Therefore, the said Resolution could not yet become final and executory. As regards his legal standing to file the instant petition, Judge Barillo points to *Montalban v. Canonoy*,[79] wherein the Court held that a judge may file an answer or take an active part in a proceeding in order to belie personal attacks of ignorance of the law and of bias, prejudice, favoritism, vindictiveness and other base motives.

We dismiss the petition in G.R. No. 159117.

Judge Barillo clearly has no legal standing to file the instant petition, since he is but a nominal party in this case. Section 5, Rule 65 of the Rules of Court is quite explicit in stating this rule, thus:

SEC. 5. *Respondents and costs in certain cases.* — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. **If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein**. (Emphasis ours.)

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[79] A.C. No. 179-J, March 15, 1971, 38 SCRA 1, 7-8.

Specifically, the instant case calls to our mind *Calderon v. Solicitor General*,[80] wherein the petitioner in the special civil actions of *certiorari* and *mandamus* was the same judge whose orders were reversed by the appellate court. Being a nominal party, the petitioner therein was declared to be without legal standing to file the petitions involved. In no uncertain terms, the Court stated that:

> Judge Calderon should be reminded of the well-known doctrine that a judge should detach himself from case where his decision is appealed to a higher court for review. The *raison d'etre* for such doctrine is the fact that the judge is not an active combatant in such proceeding and must leave the opposing parties to contend their individual positions and the appellate court to decide the issues without his active participation. By filing this case, petitioner in a way has ceased to be judicial and has become adversarial instead.

Turqueza v. Hernando[81] similarly cautions that "it is the duty of the private respondent to appear and defend, both in his/her behalf and in behalf of the Court or judge whose order or decision is at issue. The judge should maintain a detached attitude from the case and should not waste his time by taking an active part in a proceeding which relates to official actuations in a case but should apply himself to his principal task of hearing and adjudicating the cases in his court. He is merely a nominal party to the case and has no personal interest nor personality therein."

Judge Barillo cannot find succor in *Montalban v. Canonoy*,[82] which he cites to justify his act of filing the instant petition. In the said case, the Court considered as justified the act of the respondent judge in filing an answer before the appellate court, wherein the judge's orders were being questioned. The Court ruled that "when the actuations of a judge are assailed on grounds other than legal ones, and imputing to the judge personal motives,

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[80] G.R. Nos. 103752-53, November 25, 1992, 215 SCRA 876, 881.

[81] 186 Phil. 341 (1980).

[82] *Supra* note 79 at 7-8.

the judge cannot be blamed if he takes personal interest in trying to disprove the imputations."

In the instant case, Judge Barillo did not merely file a comment or an answer in the petition at bar. He himself filed the petition. Moreover, Judge Barillo failed to make any disputation and/or rebuttal of whatever ill motive that may have been imputed on his part. A close reading of the Petition for *Certiorari* filed before this Court reveals that the grounds invoked therein by Judge Barillo are purely legal ones, which tend to prove the validity and finality of the MTC Decision dated November 27, 2002, as well as the alleged absence of appellate jurisdiction of the COMELEC Second Division in SPR No. 2-2003. As Judge Barillo is not the proper party who should question the Resolution of the COMELEC Second Division, his petition must fail.

Additionally, even if Judge Barillo had the requisite legal standing to file the instant petition, the Court finds that the same must still be dismissed. Ultimately, it is already beyond the jurisdiction of this Court in the present petition to still look into the questions pertaining to the legality and enforceability of the MTC Decision dated November 27, 2002 in Election Case No. 7-2002. The same have since been rendered moot and academic by the expiration of the term of office originally contested in the said case.

To recall, Aragones and Lasola vied for the position of *Punong Barangay* of Poblacion, Guihulngan, Negros Oriental during the July 15, 2002 *barangay* elections. Aragones was initially proclaimed the duly elected *Punong Barangay* by the Board of Canvassers, but this proclamation was annulled by Judge Barillo in the MTC Decision dated November 27, 2002 in Election Case No. 7-2002. Aragones challenged the MTC Decision before the COMELEC Second Division in SPR No. 2-2003. In the Resolution dated June 11, 2003, the COMELEC Second Division nullified the MTC Decision, thus, prompting Judge Barillo to file the instant petition.

Under Republic Act No. 9164,[83] the term of office of *barangay* officials elected in the July 15, 2002 synchronized *barangay* and *sangguniang kabataan* elections was 3 years, commencing on August 15, 2002, and ending at noon on November 30, 2005.[84]

On September 22, 2005, Republic Act No. 9340[85] was approved, whereby the date for the synchronized *barangay* and *sangguniang kabataan* elections was reset to the last Monday of October 2007 and every three years thereafter.[86]

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[83] Entitled "AN ACT PROVIDING FOR SYNCHRONIZED BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING REPUBLIC ACT NO. 7160, AS AMENDED,OPTHEERWISE KNOWN AS THE 'LOCAL GOVERNMENT CODE OF 1991; AND FOR OTHER PURPOSES." Aproved on March 19, 2002.

[84] The relevant provisions of Republic Act No. 9164 are as follows:

SEC. 1. Date of Election. — There shall be synchronized *barangay* and sangguniang kabataan elections which shall be held on July 15, 2002. Subsequent synchronized *barangay* and sangguniang kabataan elections shall be held on the last Monday of October and every three (3) years thereafter.

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.

SEC. 4. Assumption of Office. — The term of office of the *barangay* and sangguniang kabataan officials elected under this Act shall **commence on August 15, 2002**. The term of office of the *barangay* and sangguniang kabataan officials elected in subsequent elections shall commence at noon of November 30 next following their election. (Emphasis ours.)

[85] AN ACT AMENDING REPUBLIC ACT NO. 9164, RESETTING THE *BARANGAY* AND SANGGUNIANG KABATAAN ELECTIONS, AND FOR OTHER PURPOSES.

[86] The pertinent portions of Republic Act No. 9340 recite:

The terms of office of the *barangay* officials elected during the July 15, 2002 *barangay* elections were then extended up to and expired on November 30, 2007.

Indeed, in this very situation, *Basmala v. Commission on Elections*[87] fittingly states that "it is an exercise in futility indeed for the Court to still indulge itself in a review of the records and in an academic discussion of the applicable legal principles to determine who really won the elections, because whatever judgment is reached, the same can no longer have any practical legal effect or, in the nature of things, can no longer be enforced."

Therefore, the Court now proceeds to determine the administrative liability of Judge Barillo in A.M. No. MTJ-10-1752.

In its Memorandum Report filed with this Court, the OCA recommended that Judge Barillo be suspended for gross misconduct and gross ignorance of the law.

The Code of Judicial Conduct ordains that a judge should be the embodiment of competence, integrity and independence.[88] Furthermore, a judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.[89]

SEC. 1. - Section 1 of Republic Act No. 9164 is hereby amended to read as follows:

"SECTION 1. Date of Election. There shall be synchronized *barangay* and sangguniang kabataan elections which shall be held on July 15, 2002. Subsequent synchronized *barangay* and sangguniang kabataan elections shall be held on the last Monday of October 2007 and every three (3) years thereafter."

SEC. 2. Section 4 of Republic Act No. 9164 is hereby amended to read as follows:

"SEC. 4. Assumption of Office. - The term of office of the *barangay* and sangguniang kabataan officials elected under this Act shall commence on August 15, 2002, next following their elections. The term of office of the *barangay* and sangguniang kabataan officials elected in the October 2007 election and subsequent elections shall commence at noon of November 30 next following their election."

[87] G.R. No. 176724, October 6, 2008, 567 SCRA 664-668.

[88] Rule 1.01.

[89] Rule 2.01.

In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism.[90]

In the case at bar, the Court finds that Judge Barillo's deportment fell below the level required of the members of the bench.

The Court did not fail to note that the various controversies in the case at bar began immediately after the filing of the election protest before the *sala* of Judge Barillo. Specifically, the conflict first arose when Judge Barillo allowed Atty. Paras to appear and represent Lasola despite the motion for the said counsel's disqualification filed by Aragones. It was manifested that, on October 18, 2000, Atty. Paras was suspended by the Court in the administrative case A.C. No. 5333 for a period of one year and six months, to be served simultaneously. The suspension order became effective on May 23, 2001 when Atty. Paras received a copy of the Court's Resolution denying with finality his Motion for Reconsideration. Thus, his suspension should have lasted until May 23, 2002.

In the Order dated August 2, 2002 in Election Case No. 7-2002, Judge Barillo ordered Atty. Paras to appear during the subsequent scheduled hearings of the case, unless Judge Barillo received a copy of a Supreme Court resolution ordering the latter's suspension or disbarment. Subsequently, Judge Barillo tried to justify the said Order by claiming that the suspension of Atty. Paras was for a period of one year only, which has already lapsed before the filing of Election Case No. 7-2002 on July 24, 2002. Judge Barillo is grievously mistaken.

Verily, in a Resolution dated July 12, 2002 issued in the administrative case A.C. No. 3066, entitled *J.K. Mercado and Sons Agricultural Enterprises Inc. v. De Vera*, the Court had the occasion to state that "the lifting of an order of suspension is not automatic upon the end of the period stated in the Court's decision, and an order from the Court lifting the suspension at

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[90] Rule 3.02.

the end of the period is necessary in order to enable him to resume the practice of his profession."

To aggravate this mistake, there was no showing from Judge Barillo that he exerted any effort at all to ascertain the correct rule or procedure regarding the lifting of suspension of lawyers, or to determine if the suspension of Atty. Paras had indeed already been lifted before the said counsel was allowed to resume his practice of law. Significantly, upon verification by the Court of the status of the suspension of Atty. Paras, it appeared that, based on the records of the Office of the Bar Confidant, the suspension imposed on Atty. Paras in A.C. No. 3066 was yet to be lifted. In our opinion, Judge Barillo was negligent in failing to confirm such fact.

As regards the act of Judge Barillo of filing the Petition for *Certiorari* subject of the instant case, the Court finds the same to be highly irregular. As previously discussed herein, Judge Barillo should be a mere nominal party in the proceedings where his decisions or orders are being assailed. Section 5, Rule 65 of the Rules of Court is simple and straightforward enough in stating that "unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein." In the instant case, Judge Barillo even pre-empted the petition filed by Lasola, the real party aggrieved by the COMELEC Resolution dated June 11, 2003. In so doing, Judge Barillo gave the impression of manifest bias and partiality in favor of Lasola, for which infraction the former should be held liable.

In connection with the two apparently conflicting Decisions of the RTC of Negros Oriental, Branch 64, in Special Civil Action No. 02-01-G, the Court finds, at the outset, that the behavior of Judge Barillo thereon was highly dissatisfactory.

On the hearings conducted by Judge Baldado during his investigation in A.M. No. MTJ-10-1752, Judge Barillo appeared on his own behalf. On the matter of the delivery of the RTC Decision allegedly dismissing the petition filed by Aragones in Special Civil Action No. 02-01-G, Judge Barillo testified that the same was received then delivered to him by MTC Clerk of Court Lucia Tangeres, and that he did not inquire who was the RTC personnel who purportedly personally delivered it.[91] Judge Barillo said that he got hold of the first RTC Decision on November 26, 2002.[92] He likewise admitted that his curiosity was piqued upon noticing that the first RTC Decision was apparently promulgated on October 28, 2002, and yet he received it about one month later. Still, Judge Barillo did not verify the authenticity of the first Decision because the same was in his favor. Thereafter, he immediately scheduled the promulgation of the MTC Decision.[93]

Interestingly, Judge Barillo related that a few days after receiving and photocopying the purported duplicate original of the first RTC Decision dismissing Aragones' petition, the same got lost. All that remained in the records was a photocopy of the decision. Judge Barillo testified that he investigated the matter, but the duplicate original could no longer be found.[94] Nevertheless, after losing the duplicate original of the first RTC Decision, Judge Barillo did not get another certified true copy thereof from the RTC, Branch 64.[95]

On December 10, 2002, Judge Barillo stated that he received the second RTC Decision granting the petition filed by Aragones from a letter carrier from the post office.[96] However, despite the fact that the MTC of Guihulngan and the RTC, Branch 64 were

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[91] TSN, July 12, 2004; records (A.M. No. MTJ-10-1752), Vol. I, p. 708

[92] TSN, July 14, 2004; *id.* at 781.

[93] *Id.* at 782-784.

[94] *Id.* at 785.

[95] *Id.* at 787.

[96] TSN, July 12, 2004; *id.* at 709.

housed in the same building, Judge Barillo did not go to the RTC to verify which of the two alleged decisions the correct one was.[97] Upon being asked what he did with the two conflicting decisions, Judge Barillo replied that he merely filed a manifestation with the RTC stating such fact.[98] In relation to the MTC Decision promulgated on December 9, 2002, Judge Barillo insisted that the two RTC Decisions, whether the same were in his favor or not, were illegal in view of the lack of jurisdiction of the RTC over the petition filed by Aragones.[99]

The subsequent MTC Clerk of Court, Val Alfa Vidal, also testified in the investigation hearing conducted by Judge Baldado in A.M. No. MTJ-10-1752. He declared that he once asked the previous Clerk of Court, Lucia Tangeres, about the missing duplicate original of the first RTC Decision, dismissing Aragones' petition in Special Civil Action No. 02-01-G. She allegedly replied that she gave it to Judge Barillo. When asked about what kind of copy of the first RTC Decision remained in the records of the MTC, Vidal answered that there was none left. Not even a photocopy thereof.[100]

Clearly from the above testimonies, the first RTC Decision purportedly dismissing the petition filed by Aragones could not be established to be an authentic issuance from the RTC. The attitude of Judge Barillo towards the first RTC Decision was both cavalier and careless. What is baffling in the above scenario is that Judge Barillo did not care to question the dubious circumstances surrounding the first RTC Decision since, in his own words, the same was in his favor. Avowedly, Judge Barillo was candid enough to admit that after he received the first RTC Decision, he immediately promulgated the MTC Decision. With respect to the second RTC Decision, which was in fact certified by the RTC Clerk of Court to be the authentic Decision in Special Civil Action No. 02-01-G, Judge Barillo was equally

[97] *Id.* at 711.

[98] *Id.* at 716.

[99] *Id.* at 717-718.

[100] *Id.* at 842-843.

dismissive. He merely brushed aside the same on the ground of lack of jurisdiction on the part of the RTC over the petition filed by Aragones. The Court, therefore, finds that Judge Barillo was at the very least decidedly lackadaisical in the management of the affairs of his *sala*.

The above disquisition notwithstanding, the Court is not convinced that Judge Barillo should be held liable for gross misconduct and gross ignorance of the law absent any evidence showing outright bad faith.

To be sure, before any administrative liability may be imposed on an erring judge, *Dadizon v. Asis*[101] instructs that:

> Any administrative complaint levelled against a judge must always be examined with a discriminating eye, for its consequential effects are by their nature highly penal, such that respondent stands to face the sanction of dismissal and/or disbarment. Mere suspicion, as in this case, that a judge was partial to a party is not enough. Inasmuch as what is imputed against respondent judge connotes a misconduct so grave that, if proven, it would entail dismissal from the service, the quantum of proof required should be more than substantial. Even in an administrative case, the rules demand that, if the respondent judge should be disciplined for grave misconduct or any grave offense, the evidence against him should be competent and should be derived from direct knowledge of the witness. The Judiciary to which herein respondent belongs demands no less. Before any of its members could be faulted, it should only be after due investigation and after the presentation of competent evidence, especially since the charge is penal in character.

To warrant a finding of gross ignorance of the law, as a ground for disciplinary action, the error must be so gross and patent as to produce an inference of bad faith or that the judge knowingly rendered an unjust decision. The error must be so grave and so fundamental to a point as to warrant condemnation of the judge as patently ignorant or negligent. Otherwise, to hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming that the judge erred,

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[101] 464 Phil. 571, 582-583 (2004).

would be nothing short of harassment and that would be intolerable.[102]

Similarly, in *Office of the Court Administrator v. Duque*,[103] the term misconduct was characterized as follows:

Misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. On the other hand, the term "gross" connotes something "out of all measure; beyond allowance; not to be excused; flagrant; shameful."

For administrative liability to attach it must be established that the respondent was moved by bad faith, dishonesty, hatred or some other like motive. As defined –

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 though 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 the instant case, it may truly be said that the various *faux pas* committed by Judge Barillo are examples of poor judgment and negligence. However, equally important to note is the fact that there is no allegation, much less a genuine showing, that Judge Barillo was impelled by bad faith, dishonesty, hatred or some other corrupt motive in committing the acts for which he was charged. Neither were allegations of corruption nor imputations of pecuniary benefit ever asserted against him.

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[102] *Bengzon v. Adaoag*, A.M. No. MTJ-95-1045, November 28, 1995, 250 SCRA 344, 348.

[103] 491 Phil. 128, 133-134 (2005), citing *Office of the Court Administrator v. Judge Octavio A. Fernandez*, 480 Phil. 495, 500 (2004).

Such observation was likewise shared by RTC Judge Baldado in his Report and Recommendations before the Court. Judge Baldado also pointed out that while there appeared to be haste in the sequence of proceedings before the MTC, Judge Baldado could not conclude that there was undue haste, given that there was no proof that the acts of Judge Barillo were tainted with malice, bad faith or manifest partiality.

Indeed, what Judge Barillo had been harking on during the entirety of the proceeding before him was the provision of Section 17, Rule 37 of the 1988 COMELEC Rules of Procedure, which mandates that "the court shall decide the protest within fifteen (15) days from its filing and shall declare who among the parties has been elected, or in a proper case, that none of them has been legally elected."

Thus, contrary to the findings of the OCA, the transgressions committed by Judge Barillo in this case are not flagrant enough or motivated by any ill motive so as to be classified as grave misconduct or to warrant a finding of gross ignorance of the law.

Nevertheless, the Court rules that Judge Barillo is guilty of simple misconduct in view of the commission of the above-enumerated acts, which subjected the MTC to distrust and accusations of partiality. Thus, we find that the penalty of suspension for a period of three months is in order.[104]

Last of all, the Court notes that both Judge Baldado and the OCA did not address in their Report and Recommendations and Memorandum Report, respectively, the Counter-Complaint in A.M. No. MTJ-10-1752 interposed by Judge Barillo against Aragones; the latter's counsel, Atty. Francisco D. Yap; former

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[104] Simple misconduct, classified as a less serious charge, is punishable under paragraph B, Section 11 of Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, as follows:

> B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:
>
> 1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or
>
> 2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

RTC Judge Felix G. Gaudiel, Jr.; RTC Clerk of Court Atty. Jonathan L. Eleco; and the then Commissioners of the COMELEC Second Division Ralph Lantion, Mehol K. Sadain and Florentino A. Tuason, Jr.

In particular, Aragones, Atty. Yap and former RTC Judge Felix G. Gaudiel, Jr. were charged with conspiracy in committing gross ignorance of the law, obstruction of justice and intentional malicious delay in the trial and decision in Election Case No. 7-2002 in view of the allegedly erroneous filing of the Petition for *Certiorari* (Special Civil Action No. 02-01-G) in the RTC, which, nonetheless assumed jurisdiction over the same and inexplicably appeared to have issued two conflicting decisions. Aragones and Atty. Yap were also accused of violating the rule on forum shopping for filing Special Civil Action No. 02-01-G, Special Civil Action No. 02-03-G, A.M. No. MTJ-10-1752 and SPR No. 2-2003 almost simultaneously.

Finally, the then Second Division of the COMELEC was charged with gross ignorance of the law, obstruction of justice and intentional and malicious delay in Election Case No. 7-2002 by taking cognizance of the Petition to Declare Null and Void the MTC Decision (SPR No. 2-2003) despite the fact that the said MTC Decision already became final and executory.

Upon a close reading of the Counter-Complaint, the Court finds that the fundamental issues set forth therein are judicial matters, which should have been raised by the proper parties and addressed in the respective cases in the due course of the proceedings. Such matters are not subject to administrative scrutiny.

WHEREFORE, the Court rules as follows:

In G.R. No. 159117, the Petition for *Certiorari* under Rule 65 of the Rules of Court is hereby *DISMISSED*.

In A.M. No. MTJ-10-1752, Judge Hector B. Barillo is hereby *SUSPENDED* for a period of Three (3) Months and given a *STERN WARNING t*hat a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be entered in Judge Barillo's personal record.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Nachura, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Velasco, Jr., J,. no part due to prior action in OCA.

THIRD DIVISION

[G.R. No. 165273. March 10, 2010]

LEAH PALMA, *petitioner, vs.* **HON. DANILO P. GALVEZ, in his capacity as PRESIDING JUDGE of the REGIONAL TRIAL COURT OF ILOILO CITY, BRANCH 24; and PSYCHE ELENA AGUDO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN PROPER.—** Private respondent's claim that the petition for *certiorari* under Rule 65 is a wrong remedy thus the petition should be dismissed, is not persuasive. A petition for *certiorari* is proper when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, or any plain, speedy, and adequate remedy at law. There is "grave abuse of discretion" when public respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.

2. **ID.; APPEALS; RULE; APPEAL, WHEN NOT ALLOWED.—** Section 1, Rule 41 of the 1997 Rules of Civil Procedure states that an appeal may be taken only from a final order that completely disposes of the case; that no appeal may be taken from (a) an order denying a motion for new trial or reconsideration; (b) an order denying a petition for relief or

any similar motion seeking relief from judgment; (c) an interlocutory order; (d) an order disallowing or dismissing an appeal; (e) an order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent; (f) an order of execution; **(g) a judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom;** or (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 for *certiorari* under Rule 65. In this case, the RTC Order granting the motion to dismiss filed by private respondent is a final order because it terminates the proceedings against her, but it falls within exception (g) of the Rule since the case involves several defendants, and the complaint for damages against these defendants is still pending. Since there is no appeal, or any plain, speedy, and adequate remedy in law, the remedy of a special civil action for *certiorari* is proper as there is a need to promptly relieve the aggrieved party from the injurious effects of the acts of an inferior court or tribunal.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; VERIFICATION NOT AN ABSOLUTE NECESSITY WHERE THE MATERIAL FACTS ALLEGED ARE A MATTER OF RECORD AND THE QUESTIONS RAISED ARE MAINLY OF LAW.— Anent private respondent's allegation that the petition was not properly verified, we find the same to be devoid of merit. The purpose of requiring a verification is to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct, not merely speculative. In this instance, petitioner attached a verification to her petition although dated earlier than the filing of her petition. Petitioner explains that since a draft of the petition and the verification were earlier sent to her in New York for her signature, the verification was earlier dated than the petition for *certiorari* filed with us. We accept such explanation. While Section 1, Rule 65 requires that the petition for *certiorari* be verified, this is not an absolute necessity where the material facts alleged are a matter of record and the questions raised are mainly of law. In this case, the issue raised is purely of law.

4. ID.; CIVIL PROCEDURE; SUMMONS; DEFENDANT-RESIDENT TEMPORARILY OUT OF THE COUNTRY; MODES OF SERVICE OF SUMMONS.— In civil cases, the trial court acquires jurisdiction over the person of the defendant either by the service of summons or by the latter's voluntary appearance and submission to the authority of the former. Private respondent was a Filipino resident who was temporarily out of the Philippines at the time of the service of summons; thus, service of summons on her is governed by Section 16, Rule 14 of the Rules of Court, which provides: Sec. 16. *Residents temporarily out of the Philippines*. – When an action is commenced against a defendant who ordinarily resides within the Philippines, but who is temporarily out of it, service **may,** by leave of court, be **also** effected out of the Philippines, as under the preceding section. xxx In *Montefalcon v. Vasquez,* we said that because Section 16 of Rule 14 uses the words "may" and "also," it is not mandatory. Other methods of service of summons allowed under the Rules may also be availed of by the serving officer on a defendant-resident who is temporarily out of the Philippines. Thus, if a resident defendant is temporarily out of the country, any of the following modes of service may be resorted to: (1) substituted service set forth in Section 7 (formerly Section 8), Rule 14; (2) personal service outside the country, with leave of court; (3) service by publication, also with leave of court; or (4) in any other manner the court may deem sufficient. In *Montalban v. Maximo*, we held that substituted service of summons under the present Section 7, Rule 14 of the Rules of Court in a suit *in personam* against residents of the Philippines temporarily absent therefrom is the normal method of service of summons that will confer jurisdiction on the court over such defendant. xxx Considering that private respondent was temporarily out of the country, the summons and complaint may be validly served on her through substituted service under Section 7, Rule 14 of the Rules of Court xxx.

5. ID.; ID.; ID.; ID.; ID.; SUBSTITUTED SERVICE OF SUMMONS, HOW MADE; COMPLIANCE WITH THE RULES REGARDING THE SERVICE OF SUMMONS IS AS IMPORTANT AS THE ISSUE OF DUE PROCESS AS THAT OF JURISDICTION; SUBSTITUTED SERVICE OF SUMMONS CONSIDERED VALID IN CASE AT BAR.— We have held that a dwelling, house or residence refers to the place where the person named

in the summons is living at the time when the service is made, even though he may be temporarily out of the country at the time. It is, thus, the service of the summons intended for the defendant that must be left with the person of suitable age and discretion residing in the house of the defendant. Compliance with the rules regarding the service of summons is as important as the issue of due process as that of jurisdiction. Section 7 also designates the persons with whom copies of the process may be left. The rule presupposes that such a relation of confidence exists between the person with whom the copy is left and the defendant and, therefore, assumes that such person will deliver the process to defendant or in some way give him notice thereof. In this case, the Sheriff's Return stated that private respondent was out of the country; thus, the service of summons was made at her residence with her husband, Alfredo P. Agudo, acknowledging receipt thereof. Alfredo was presumably of suitable age and discretion, who was residing in that place and, therefore, was competent to receive the summons on private respondent's behalf. Notably, private respondent makes no issue as to the fact that the place where the summons was served was her residence, though she was temporarily out of the country at that time, and that Alfredo is her husband. In fact, in the notice of appearance and motion for extension of time to file answer submitted by private respondent's counsel, he confirmed the Sheriff's Return by stating that private respondent was out of the country and that his service was engaged by respondent's husband. In his motion for another extension of time to file answer, private respondent's counsel stated that a draft of the answer had already been prepared, which would be submitted to private respondent, who was in Ireland for her clarification and/or verification before the Philippine Consulate there. These statements establish the fact that private respondent had knowledge of the case filed against her, and that her husband had told her about the case as Alfredo even engaged the services of her counsel.

6. ID.; ID.; ID.; FILING OF MOTIONS SEEKING AFFIRMATIVE RELIEF, WITHOUT QUALIFICATION AND WITHOUT QUESTIONING THE PROPRIETY OF THE SERVICE OF SUMMONS, CONSIDERED VOLUNTARY SUBMISSION TO THE JURISDICTION OF THE COURT.— [W]e agree with

petitioner that the RTC had indeed acquired jurisdiction over the person of private respondent when the latter's counsel entered his appearance on private respondent's behalf, without qualification and without questioning the propriety of the service of summons, and even filed two Motions for Extension of Time to File Answer. In effect, private respondent, through counsel, had already invoked the RTC's jurisdiction over her person by praying that the motions for extension of time to file answer be granted. We have held that the filing of motions seeking affirmative relief, such as, to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, are considered voluntary submission to the jurisdiction of the court. When private respondent earlier invoked the jurisdiction of the RTC to secure affirmative relief in her motions for additional time to file answer, she voluntarily submitted to the jurisdiction of the RTC and is thereby estopped from asserting otherwise.

APPEARANCES OF COUNSEL

Rico & Associates for petitioner.
Alcantara Law Office for private respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for *certiorari* under Rule 65 of the Rules of Court are the Orders dated May 7, 2004[1] and July 21, 2004[2] of the Regional Trial Court (RTC) of Iloilo City, Branch 24, granting the motion to dismiss filed by private respondent Psyche Elena Agudo and denying reconsideration thereof, respectively.

On July 28, 2003, petitioner Leah Palma filed with the RTC an action for damages against the Philippine Heart Center (PHC),

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[1] Penned by Judge Danilo P. Galvez; *rollo*, pp. 27-28.

[2] *Id.* at 30.

Dr. Danilo Giron and Dr. Bernadette O. Cruz, alleging that the defendants committed professional fault, negligence and omission for having removed her right ovary against her will, and losing the same and the tissues extracted from her during the surgery; and that although the specimens were subsequently found, petitioner was doubtful and uncertain that the same was hers as the label therein pertained that of somebody else. Defendants filed their respective Answers. Petitioner subsequently filed a Motion for Leave to Admit Amended Complaint, praying for the inclusion of additional defendants who were all nurses at the PHC, namely, Karla Reyes, Myra Mangaser and herein private respondent Agudo. Thus, summons were subsequently issued to them.

On February 17, 2004, the RTC's process server submitted his return of summons stating that the *alias* summons, together with a copy of the amended complaint and its annexes, were served upon private respondent thru her husband Alfredo Agudo, who received and signed the same as private respondent was out of the country.[3]

On March 1, 2004, counsel of private respondent filed a Notice of Appearance and a Motion for Extension of Time to File Answer[4] stating that he was just engaged by private respondent's husband as she was out of the country and the Answer was already due.

On March 15, 2004, private respondent's counsel filed a Motion for Another Extension of Time to File Answer,[5] and stating that while the draft answer was already finished, the same would be sent to private respondent for her clarification/ verification before the Philippine Consulate in Ireland; thus, the counsel prayed for another 20 days to file the Answer.

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[3] *Rollo,* p. 144.
[4] *Id.* at 146-147.
[5] *Id.* at 148-149.
[6] *Id.* at 150-154.

On March 30, 2004, private respondent filed a Motion to Dismiss[6] on the ground that the RTC had not acquired jurisdiction over her as she was not properly served with summons, since she was temporarily out of the country; that service of summons on her should conform to Section 16, Rule 14 of the Rules of Court. Petitioner filed her Opposition[7] to the motion to dismiss, arguing that a substituted service of summons on private respondent's husband was valid and binding on her; that service of summons under Section 16, Rule 14 was not exclusive and may be effected by other modes of service, *i.e.*, by personal or substituted service. Private respondent filed a Comment[8] on petitioner's Opposition, and petitioner filed a Reply[9] thereto.

On May 7, 2004, the RTC issued its assailed Order granting private respondent's motion to dismiss. It found that while the summons was served at private respondent's house and received by respondent's husband, such service did not qualify as a valid service of summons on her as she was out of the country at the time the summons was served, thus, she was not personally served a summons; and even granting that she knew that a complaint was filed against her, nevertheless, the court did not acquire jurisdiction over her person as she was not validly served with summons; that substituted service could not be resorted to since it was established that private respondent was out of the country, thus, Section 16, Rule 14 provides for the service of summons on her by publication.

Petitioner filed a motion for reconsideration, which the RTC denied in its Order dated July 21, 2004.

Petitioner is now before us alleging that the public respondent committed a grave abuse of discretion amounting to lack or excess of jurisdiction when he ruled that:

> I. Substituted service of summons upon private respondent, a defendant residing in the Philippines but temporarily outside the country is invalid;

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[7] *Id.* at 155-158.

[8] *Id.* at 159-163.

[9] *Id.* at 164-168.

II. Section 16, Rule 14, of the 1997 Rules of Civil Procedure limits the mode of service of summons upon a defendant residing in the Philippines, but temporarily outside the country, exclusively to extraterritorial service of summons under Section 15 of the same rule;

III. In not ruling that by filing two (2) motions for extension of time to file Answer, private respondent had voluntarily submitted herself to the jurisdiction of respondent court, pursuant to Section 20, Rule 14 of the 1997 Rules of Civil Procedure, hence, equivalent to having been served with summons;

IV. The cases cited in his challenged Order of May 7, 2004 constitute *stare decisis* despite his own admission that the factual landscape in those decided cases are entirely different from those in this case.[10]

Petitioner claims that the RTC committed a grave abuse of discretion in ruling that Section 16, Rule 14, limits the service of summons upon the defendant-resident who is temporarily out of the country exclusively by means of extraterritorial service, *i.e.*, by personal service or by publication, pursuant to Section 15 of the same Rule. Petitioner further argues that in filing two motions for extension of time to file answer, private respondent voluntarily submitted to the jurisdiction of the court.

In her Comment, private respondent claims that petitioner's *certiorari* under Rule 65 is not the proper remedy but a petition for review under Rule 45, since the RTC ruling cannot be considered as having been issued with grave abuse of discretion; that the petition was not properly verified because while the verification was dated September 15, 2004, the petition was dated September 30, 2004. She insists that since she was out of the country at the time the service of summons was made, such service should be governed by Section 16, in relation to Section 15, Rule 14 of the Rules of Court; that there was no voluntary appearance on her part when her counsel filed two motions for extension of time to file answer, since she filed her motion to dismiss on the ground of lack of jurisdiction within the period provided under Section 1, Rule 16 of the Rules of Court.

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

In her Reply, petitioner claims that the draft of the petition and the verification and certification against forum shopping were sent to her for her signature earlier than the date of the finalized petition, since the petition could not be filed without her signed verification. Petitioner avers that when private respondent filed her two motions for extension of time to file answer, no special appearance was made to challenge the validity of the service of summons on her.

The parties subsequently filed their respective memoranda as required.

We shall first resolve the procedural issues raised by private respondent.

Private respondent's claim that the petition for *certiorari* under Rule 65 is a wrong remedy thus the petition should be dismissed, is not persuasive. A petition for *certiorari* is proper when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, or any plain, speedy, and adequate remedy at law.[11] There is "grave abuse of discretion" when public respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.

Section 1, Rule 41 of the 1997 Rules of Civil Procedure states that an appeal may be taken only from a final order that completely disposes of the case; that no appeal may be taken from (a) an order denying a motion for new trial or reconsideration; (b) an order denying a petition for relief or any similar motion seeking relief from judgment; (c) an interlocutory order; (d) an order disallowing or dismissing an appeal; (e) an order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent; (f) an order of execution; **(g) a judgment or final order for or against**

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

one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; or (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 for *certiorari* under Rule 65.

In this case, the RTC Order granting the motion to dismiss filed by private respondent is a final order because it terminates the proceedings against her, but it falls within exception (g) of the Rule since the case involves several defendants, and the complaint for damages against these defendants is still pending.[12] Since there is no appeal, or any plain, speedy, and adequate remedy in law, the remedy of a special civil action for *certiorari* is proper as there is a need to promptly relieve the aggrieved party from the injurious effects of the acts of an inferior court or tribunal.[13]

Anent private respondent's allegation that the petition was not properly verified, we find the same to be devoid of merit. The purpose of requiring a verification is to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct, not merely speculative.[14] In this instance, petitioner attached a verification to her petition although dated earlier than the filing of her petition. Petitioner explains that since a draft of the petition and the verification were earlier sent to her in New York for her signature, the verification was earlier dated than the petition for *certiorari* filed with us. We

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[12] See *Jan-Dec Construction Corporation v. Court of Appeals*, G.R. No. 146818, February 6, 2006, 481 SCRA 556, 565-566.

[13] See *People's Broadcasting (Bombo Radyo Phils., Inc.) v. Secretary of the Department of Labor and Employment*, G.R. No. 179652, May 8, 2009, 587 SCRA 724, 760.

[14] *Sari Sari Group of Companies, Inc. v, Piglas Kamao (Sari Sari Chapter)*, G.R. No. 164624, August 11, 2008, 561 SCRA 569, 579, citing *Torres v. Specialized Packaging Development Corporation*, 433 SCRA 455, 463 (2004).

accept such explanation. While Section 1, Rule 65 requires that the petition for *certiorari* be verified, this is not an absolute necessity where the material facts alleged are a matter of record and the questions raised are mainly of law.[15] In this case, the issue raised is purely of law.

Now on the merits, the issue for resolution is whether there was a valid service of summons on private respondent.

In civil cases, the trial court acquires jurisdiction over the person of the defendant either by the service of summons or by the latter's voluntary appearance and submission to the authority of the former.[16] Private respondent was a Filipino resident who was temporarily out of the Philippines at the time of the service of summons; thus, service of summons on her is governed by Section 16, Rule 14 of the Rules of Court, which provides:

> Sec. 16. *Residents temporarily out of the Philippines*. – When an action is commenced against a defendant who ordinarily resides within the Philippines, but who is temporarily out of it, service **may,** by leave of court, be **also** effected out of the Philippines, as under the preceding section. (Emphasis supplied)

The preceding section referred to in the above provision is Section 15, which speaks of extraterritorial service, thus:

> SEC. 15. *Extraterritorial service*. — When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under Section 6; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which

[15] Herrera, Vol. 1, p. 718 (2007), citing 42 Am. Jur., Sec. 42, p. 177.

[16] *Oaminal v. Castillo*, 459 Phil. 542 (2003).

case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer.

The RTC found that since private respondent was abroad at the time of the service of summons, she was a resident who was temporarily out of the country; thus, service of summons may be made only by publication.

We do not agree.

In *Montefalcon v. Vasquez,*[17] we said that because Section 16 of Rule 14 uses the words "may" and "also," it is not mandatory. Other methods of service of summons allowed under the Rules may also be availed of by the serving officer on a defendant-resident who is temporarily out of the Philippines. Thus, if a resident defendant is temporarily out of the country, any of the following modes of service may be resorted to: (1) substituted service set forth in Section 7 (formerly Section 8), Rule 14; (2) personal service outside the country, with leave of court; (3) service by publication, also with leave of court; or (4) in any other manner the court may deem sufficient.[18]

In *Montalban v. Maximo*,[19] we held that substituted service of summons under the present Section 7, Rule 14 of the Rules of Court in a suit *in personam* against residents of the Philippines temporarily absent therefrom is the normal method of service of summons that will confer jurisdiction on the court over such defendant. In the same case, we expounded on the rationale in providing for substituted service as the normal mode of service for residents temporarily out of the Philippines.

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[17] G.R. No. 165016, June 17, 2008, 554 SCRA 513, 522.

[18] See *Asiavest Limited v. Court of Appeals*, G.R. No. 128803, September 25, 1998, 296 SCRA 539, 553 (1998).

[19] G.R. No. L-22997, March 15, 1968, 22 SCRA 1070.

x x x A man temporarily absent from this country leaves a definite place of residence, a dwelling where he lives, a local base, so to speak, to which any inquiry about him may be directed and where he is bound to return. Where one temporarily absents himself, he leaves his affairs in the hands of one who may be reasonably expected to act in his place and stead; to do all that is necessary to protect his interests; and to communicate with him from time to time any incident of importance that may affect him or his business or his affairs. It is usual for such a man to leave at his home or with his business associates information as to where he may be contacted in the event a question that affects him crops up. If he does not do what is expected of him, and a case comes up in court against him, he cannot just raise his voice and say that he is not subject to the processes of our courts. He cannot stop a suit from being filed against him upon a claim that he cannot be summoned at his dwelling house or residence or his office or regular place of business.

Not that he cannot be reached within a reasonable time to enable him to contest a suit against him. There are now advanced facilities of communication. Long distance telephone calls and cablegrams make it easy for one he left behind to communicate with him.[20]

Considering that private respondent was temporarily out of the country, the summons and complaint may be validly served on her through substituted service under Section 7, Rule 14 of the Rules of Court which reads:

SEC. 7. *Substituted service*. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

We have held that a dwelling, house or residence refers to the place where the person named in the summons is living at the time when the service is made, even though he may be

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[20] *Id.* at 1079-1080.

[21] *Keister v. Navarro*, G.R. No. L-29067, May 31, 1977, 77 SCRA 209, 215.

temporarily out of the country at the time.[21] It is, thus, the service of the summons intended for the defendant that must be left with the person of suitable age and discretion residing in the house of the defendant. Compliance with the rules regarding the service of summons is as important as the issue of due process as that of jurisdiction.[22]

Section 7 also designates the persons with whom copies of the process may be left. The rule presupposes that such a relation of confidence exists between the person with whom the copy is left and the defendant and, therefore, assumes that such person will deliver the process to defendant or in some way give him notice thereof.[23]

In this case, the Sheriff's Return stated that private respondent was out of the country; thus, the service of summons was made at her residence with her husband, Alfredo P. Agudo, acknowledging receipt thereof. Alfredo was presumably of suitable age and discretion, who was residing in that place and, therefore, was competent to receive the summons on private respondent's behalf.

Notably, private respondent makes no issue as to the fact that the place where the summons was served was her residence, though she was temporarily out of the country at that time, and that Alfredo is her husband. In fact, in the notice of appearance and motion for extension of time to file answer submitted by private respondent's counsel, he confirmed the Sheriff's Return by stating that private respondent was out of the country and that his service was engaged by respondent's husband. In his motion for another extension of time to file answer, private respondent's counsel stated that a draft of the answer had already been prepared, which would be submitted to private respondent, who was in Ireland for her clarification and/or verification before the Philippine Consulate there. These statements establish the fact that private respondent had knowledge of the case filed against her, and that her husband

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[22] *Id*.

[23] *Id.* at 216.

had told her about the case as Alfredo even engaged the services of her counsel.

In addition, we agree with petitioner that the RTC had indeed acquired jurisdiction over the person of private respondent when the latter's counsel entered his appearance on private respondent's behalf, without qualification and without questioning the propriety of the service of summons, and even filed two Motions for Extension of Time to File Answer. In effect, private respondent, through counsel, had already invoked the RTC's jurisdiction over her person by praying that the motions for extension of time to file answer be granted. We have held that the filing of motions seeking affirmative relief, such as, to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, are considered voluntary submission to the jurisdiction of the court.[24] When private respondent earlier invoked the jurisdiction of the RTC to secure affirmative relief in her motions for additional time to file answer, she voluntarily submitted to the jurisdiction of the RTC and is thereby estopped from asserting otherwise.[25]

Considering the foregoing, we find that the RTC committed a grave abuse of discretion amounting to excess of jurisdiction in issuing its assailed Orders.

WHEREFORE, the petition is *GRANTED*. The Orders dated May 7, 2004 and July 21, 2004 of the Regional Trial Court of Iloilo City, Branch 24, are hereby *SET ASIDE*. Private respondent is *DIRECTED* to file her Answer within the reglementary period from receipt of this decision.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

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[24] *HongKong and Shanghai Banking Corporation Limited v. Catalan*, 483 Phil. 525 (2004); *Orosa v. Court of Appeals*, 330 Phil. 67 (1996).

[25] *Id.*

THIRD DIVISION

[G.R. No. 166730. March 10, 2010]

SPOUSES FERNANDO TORRES and IRMA TORRES, *petitioners, vs.* **AMPARO MEDINA and the** ***EX-OFFICIO*** **SHERIFF of the RTC of Quezon City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; DOCTRINE.— *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.

2. ID.; ID.; ID.; ELEMENTS.— The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action identity of parties, subject matter, and causes of action.

3. ID.; ID.; ID.; ID.; IDENTITY OF CAUSES OF ACTION, TEST.— This Court has previously employed various tests in determining whether or not there is identity of causes of action as to warrant the application of the principle of *res judicata*. One test of identity is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions. This Court finds that the first three causes of action inevitably deal with the validity of the real estate mortgage. Although the Spouses Torres do not admit it, the conclusion is certain in that any affirmative relief that this Court may grant on said causes of

action would affect the validity of the real estate mortgage; an issue which could no longer be revived, as the same has been settled.

4. **ID.; ID.; ID.; CONCEPTS; CONCLUSIVENESS OF JUDGMENT, EXPLAINED.—** It bears stressing that the doctrine of *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment. The second concept – conclusiveness of judgment – states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required, but merely identity of issues. Based on the foregoing, the validity of the real estate mortgage can no longer be attacked, more so because the decision in Civil Case No. Q-94-18962 has become final and Entry of Judgment has already been entered in our books. It therefore goes without saying that the foreclosure of the mortgage is a right given to Medina as the same is embodied in the Deed of Real Estate Mortgage xxx.

5. **ID.; ID.; ID.; EXISTS IN CASE AT BAR; RATIONALE FOR THE DOCTRINE.—** [T]his Court finds no error in the decisions of the lower court and the appellate court declaring that there exists, in fact, *res judicata*. As succinctly put in *FELS Energy, Inc. v. Province of Batangas, res judicata,* as a ground for dismissal, is based on two grounds, namely: (1) public policy and necessity, which makes it to the interest of the State that there should be an end to litigation — *republicae ut sit litium*; and (2) the

hardship on the individual of being vexed twice for the same cause — *nemo debet bis vexari et eadem causa.* A conflicting doctrine would subject the public peace and quiet to the will and dereliction of individuals and prefer the regalement of the litigious disposition on the part of suitors to the preservation of the public tranquility and happiness.

6. **CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; THE MORTGAGEE'S FILING OF A CASE AGAINST THE MORTGAGOR FOR VIOLATION OF BATAS PAMBANSA BLG. 22 WILL NOT BAR HIM FROM LATER ON ELECTING TO FORECLOSE THE MORTGAGED PROPERTY; REASON; DOCTRINE IN THE CASE OF BANK OF AMERICA (G.R. NO. 133876, DECEMBER 29, 1999) INAPPLICABLE TO CASE AT BAR.—** [T]he Spouses Torres contend that the election of Medina to sue them for violation of B.P. Blg. 22 bars Medina from the remedy of foreclosure of mortgage. The Spouses Torres, [cited] *Bank of America NT & SA v. American Realty Corporation (Bank of America)* xxx. The argument of the Spouses Torres is misplaced. The doctrine found in *Bank of America,* and in related cases, finds no application to the case at bar, as the filing of a B.P. Blg. 22 case is not the "collection suit" contemplated by law and jurisprudence, which bars a mortgagee from later on electing to foreclose the mortgaged property. It bears stressing that in *Que v. People,* this Court stated that the clear intention of the framers of B.P. Blg. 22 is to make the mere act of issuing a worthless check *malum prohibitum*. In prosecutions for violation of B.P. Blg. 22 therefore, prejudice or damage is not a pre-requisite for conviction. In the later case of *People v. Nitafan,* this Court ruled that the agreement surrounding the issuance of the checks need not be first looked into since the law has clearly provided that the mere issuance of any kind of check, regardless of the intent of the parties, *i.e.,* whether the check is intended merely to serve as a guarantee or deposit, but which check is subsequently dishonored, makes the person who issued the check liable. The intent of the law is to curb the proliferation of worthless checks as a means of payment of obligations. That B.P. Blg .22 is not the "collection suit" contemplated by law can be seen by the fact that the law seeks to punish the mere issuance of a "bum" check notwithstanding the presence of damage or prejudice to the offended party.

7. ID.; ID.; ID.; THE EXTRAJUDICIAL FORECLOSURE OF THE MORTGAGE AND THE EVENTUAL CONVICTION OF THE PETITIONERS FOR VIOLATION OF B.P. BLG. 22 DO NOT AMOUNT TO DOUBLE COMPENSATION; INDEMNITY AWARD IS DISTINCT FROM THE UNDERLYING OBLIGATION OF THE CHECK.— [T]he Spouses Torres also argue that the equitable principle of unjust enrichment bars the extrajudicial foreclosure of the mortgage. xxx. Again, these arguments are misplaced. There can be no double compensation as the indemnity award is distinct from the underlying obligation of the check. Thus, a person guilty of violating B.P Blg. 22 may be subject to imprisonment or a fine at the discretion of the court and the fact that the underlying obligation has been paid is of no moment. There will be instances, of course, that the court will also order the guilty party to pay the face value of the check if the underlying obligation has not yet been satisfied; however, the same will not apply to the case at bar, as Medina has already been compensated for the loan after foreclosing the mortgage. The Spouses Torres will, therefore, only have to pay a fine or suffer imprisonment if found guilty in their pending cases for violation of B.P. Blg. 22 subject to the rule of preference embodied in Supreme Court Administrative Circular 12-2000.

8. ID.; JUDGMENTS; *RES JUDICATA*; DOCTRINE APPLIED TO CASE AT BAR; A FINAL DECISION UPHOLDING THE VALIDITY OF THE REAL ESTATE MORTGAGE CAN NO LONGER BE QUESTIONED IN ANOTHER PROCEEDING BY SIMPLY VARYING THE FORM OF THE ACTION, OR ADOPTING A DIFFERENT METHOD OF PRESENTING THE CASE.— The Spouses Torres argue that *res judicata* should not apply if it will sacrifice justice to technicality. Indeed, as cited by the Spouses Torres, this Court has on occasion disregarded the application of *res judicata*, however, this Court finds that the same consideration should not be given in herein petition. In the first place, the Spouses Torres only filed their complaint in Civil Case No. Q-99-38781 after more than two years had already lapsed from the time the *ex-officio* sheriff sold the property in question at public auction. The foreclosure proceeding was an action in *rem*, and therefore, the Spouses Torres cannot feign knowledge thereof. More importantly, the Spouses Torres were not completely left without any remedy

as they still had the right of redemption, which expired one year from and after the date of the registration of the Certificate of Sale. In the absence of evidence to the contrary, this Court must assume that no attempt to redeem the property was undertaken by the Spouses Torres and that they simply allowed their right and remedy to lapse by their inaction. In addition, the Spouses Torres have already lost their right to question the validity of the real estate mortgage, for most part due to the negligence of their counsel. More importantly, the decision upholding the validity of the real estate mortgage is already final; hence, the same can no longer be questioned in another proceeding by simply varying the form of the action, or adopting a different method of presenting their case.

APPEARANCES OF COUNSEL

Teddy C. Macapagal for petitioners.

Ongkiko Kalaw Manhit & Acorda Law Offices for respondents.

D E C I S I O N

PERALTA, *J*.:

Before this Court is a Petition for Review on *certiorari,*[1] under Rule 45 of the Rules of Court, seeking to set aside the August 30, 2004 Decision[2] and January 18, 2005 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 75847.

The facts of the case:

On July 28, 1994, respondent Amparo Medina (Medina) wrote a letter[4] to the Office of the Sheriff, Regional Trial Court (RTC)

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[1] *Rollo*, pp. 8-25.

[2] Penned by Associate Justice Lucenito N. Tagle, with Associate Justices Eloy R. Bello, Jr. and Regalado E. Maambong, concurring; *rollo*, pp. 32-38.

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

[4] Records, pp. 32-34.

of Quezon City, applying for the extrajudicial foreclosure of mortgage of the property of petitioner spouses Fernando and Irma Torres (Spouses Torres) which was covered by Transfer Certificate of Title No. RT-61056 (354973) and which is subject of a Deed of Mortgage[5] dated December 20, 1993.

On May 27, 1997, the Office of the *Ex-Officio* Sheriff issued a Notice of Sheriff's Sale[6] and, on June 30, 1997, sold at public auction the subject property to Medina being the highest bidder thereof. A Certificate of Sale[7] was thereafter issued to Medina.

On September 21, 1999, the Spouses Torres filed a Complaint[8] before the RTC of Quezon City for the declaration of nullity of the extrajudicial foreclosure of mortgage conducted by the *Ex-Officio* Sheriff. The same was docketed as **Civil Case No. Q-99-38781**.

In their Complaint, the Spouses Torres raised the following causes of action, to wit:

a) the December 20, 1993 Deed of Real Estate Mortgage does not contain a period or term; hence, performance of the obligation has not yet become due as there is a need for judicial determination of the period or term;

b) the June 28, 1994 Statement of Account is not the loan contemplated by law; therefore, it cannot serve as basis to foreclose extrajudicially the mortgage;

c) the credit transaction is either void or unenforceable due to breach of Section 6(a) of Republic Act No. 3765, otherwise known as "The Truth in Lending Act";

d) Since appellee sued appellants for violation of Batas Pambansa Blg. 22, there could arise a situation of double recovery of damages which is proscribed by law. If the extrajudicial foreclosure will be allowed and if appellants will

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[5] *Id.* at 35-36.

[6] *Id.* at 41.

[7] *Id.* at 42.

[8] *Id.* at 3-7.

> be made to pay the amount of the checks subject of the criminal suit under B.P. Blg. 22, it would result in the unjust enrichment of appellee.[9]

On July 20, 2000, Medina filed a Motion to Dismiss[10] raising the grounds of *res judicata* and forum shopping. Medina argued that the Spouses Torres had filed an earlier Complaint[11] praying for the annulment of the real estate mortgage involving the same property and which was docketed as **Civil Case No. Q-94-18962** before the RTC of Quezon City, Branch 216. Medina contended that said complaint was already dismissed as evidenced by the RTC's Decision[12] dated March 7, 1997.

On December 27, 2001, the RTC issued an Order[13] granting Medina's motion to dismiss the complaint. The RTC ruled that *res judicata* was present and that the Spouses Torres were guilty of forum shopping, to wit:

> Thus, it is plain from the foregoing that the present action is identical to the case filed by plaintiffs against the defendant before the Regional Trial Court of Quezon City, Branch 216, hence, *res judicata* lies. The decision of the Regional Trial Court of Quezon City, Branch 216, dated March 7, 1997, has become final; the aforesaid court which rendered said decision had jurisdiction over the subject matter and the parties; the decision was on the merits; and there is an identity of parties, subject matter and causes of action between the present action and the case before the Regional Trial Court of Quezon City, Branch 216.
>
> **The Court also notes that while the plaintiffs here alleged separate causes of action in the instant complaint, they are actually using the very same grounds they have brought before Branch 216 of this Court to support their claim to annul the foreclosure proceedings. The validity of the real estate mortgage is again being assailed to ask for the annulment of the foreclosure proceedings conducted over**

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[9] *Rollo*, p. 33.

[10] Records, pp. 63-73.

[11] *Id.* at 74-80.

[12] *Id.* at 81-85.

[13] *Id.* at 172-176.

the mortgaged property. It must be remembered that the validity of the real estate mortgage has been sustained by the decision in Civil Case No. 94-18962 which decision has already attained finality. The test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and present causes of action. Plaintiffs cannot avoid the application of *res judicata* by simply varying the form of their action or by adopting a different method in presenting it.[14]

The Spouses Torres appealed to the CA, which, in similar fashion, ruled that *res judicata* had already set in, the dispositive portion of which reads:

WHEREFORE, the Order dated December 27, 2001 is hereby AFFIRMED and the appeal is DISMISSED. Costs against appellants.

SO ORDERED.[15]

The Spouses Torres then filed a Motion for Reconsideration[16] dated August 30, 2004, which was, however, denied by the CA in the Resolution[17] dated January 18, 2005.

Hence, herein petition, with the Spouses Torres raising the following assignment of errors, to wit:

A. THE COURT OF APPEALS GRAVELY ERRED WHEN IT IGNORED THAT THE CAUSE OF ACTION IN CIVIL CASE NO. Q-99-38781 AROSE MUCH LATER THAN THE CAUSE OF ACTION IN CIVIL CASE NO. Q-94-18962. HENCE, FORUM SHOPPING AND *RES JUDICATA* DO NOT APPLY.

A-1. ASSUMING WITHOUT ADMITTING THAT *RES JUDICATA* EXISTS IN THIS CASE, THE SAME WILL NOT BE HONORED IF ITS APPLICATION WOULD CONSTITUTE A SACRIFICE OF JUSTICE IN FAVOR OF TECHNICALITY;

B. THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO RULE THAT THE CAUSES OF ACTION CANNOT BE

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[14] *Id.* at 175-176. (Emphasis supplied.)

[15] *Rollo*, p. 38.

[16] CA *rollo*, pp. 110-121.

[17] *Id.* at 134-135.

IDENTICAL IF THE CAUSE OF ACTION IN ONE AROSE AFTER THE JUDGMENT IN THE OTHER;

C. THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO RULE THAT THE EXTRAJUDICIAL FORECLOSURE OF MORTGAGE INSTITUTED BY PRIVATE RESPONDENT AMPARO MEDINA CONTRAVENES THE EQUITABLE PRINCIPLE OF UNJUST ENRICHMENT CODIFIED UNDER ARTICLE 22 OF THE NEW CIVIL CODE, AND WOULD AMOUNT TO DOUBLE RECOVERY EVEN AS THE B.P. BLG. 22 VIOLATIONS ARE STILL PENDING IN THE METROPOLITAN TRIAL COURT OF QUEZON CITY;

D. THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO RULE THAT THE PRIVATE RESPONDENT AMPARO MEDINA HAS ELECTED HER REMEDY WHEN SHE SUED PETITIONER FERNANDO TORRES ON A B.P. BLG. 22 VIOLATION, AND ENGAGED THE SERVICES OF A PRIVATE PROSECUTOR TO PROSECUTE THE SAME. THE FILING OF THE B.P. BLG. 22 VIOLATION BARS AND EXCLUDES THE REMEDY OF FORECLOSURE OF MORTGAGE.[18]

The petition is not meritorious.

At the crux of the controversy is the determination of whether or not *res judicata* bars the filing of Civil Case No. Q-99-38781.

Civil Case No. Q-<u>94</u>-18962 *vis-a-vis* Civil Case No. Q-<u>99</u>-38781

As borne from the records of the case, the Spouses Torres first instituted Civil Case No. Q-94-18962 before the RTC of Quezon City, Branch 216, which, among others, prayed for the nullity of the real estate mortgage, dated December 20, 1993.

On March 7, 1997, the RTC issued a Decision[19] dismissing the complaint thereby upholding the validity of the real estate mortgage, the dispositive portion of which reads:

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[18] *Rollo*, pp. 13-14.

[19] Records, pp. 81-85.

WHEREFORE, premises considered, judgment is hereby rendered:

1. DISMISSING the plaintiffs' complaint for lack of merit;

2. Ordering the plaintiffs, spouses Fernando Torres and Irma Torres, to pay defendant Amparo Medina, the sum of FIFTY THOUSAND (₱50,000.00) PESOS as and by way of attorney's fees and to pay the costs of suit.

SO ORDERED.[20]

The Spouses Torres appealed said Decision to the CA.

On February 18, 1998, the CA issued a Resolution[21] dismissing the appeal, the dispositive portion of which reads:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the appellants' motion for extension of time to file appellants' brief is hereby DENIED for being filed out of time. The appeal is hereby DISMISSED.

SO ORDERED.[22]

The Spouses Torres then filed a Motion for Reconsideration, which was, however, denied by the CA in the Resolution[23] dated August 6, 1998.

Aggrieved, the Spouses Torres then sought relief from this Court.

On July 5, 1999, the Court's First Division issued a Resolution[24] denying the petition of the Spouses Torres. On August 16, 1999, the First Division issued another Resolution[25] denying the motion for reconsideration. On September 7, 1999, an Entry of Judgment[26] was rendered.

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[20] *Id.* at 85.

[21] *Id.* at 99-100.

[22] *Id.* at 100.

[23] *Id.* at 101-102.

[24] *Id.* at 103-106.

[25] *Id.* at 107.

[26] *Id.* at 108.

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment."[27] *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[28]

The elements of *res judicata* are:

(1) the judgment sought to bar the new action must be final;

(2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties;

(3) the disposition of the case must be a judgment on the merits; and

(4) there must be as between the first and second action identity of parties, subject matter, and causes of action.[29]

In their petition, the Spouses Torres do not dispute the presence of the first three elements. They, however, dispute the presence of the last element, specifically arguing that the evidence necessary to establish the cause of action in Civil Case No. Q-99-38781 is different from that of Civil Case No. Q-94-18962. The Spouses Torres conclude that the evidence is not identical so as to place the causes of action within the prohibition based on *res judicata*.[30]

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[27] *Manila Electric Company v. Philippine Consumers Foundation, Inc.*, 425 Phil. 65, 78, citing 46 Am. Jur. § 514.

[28] *Oropeza Marketing Corporation v. Allied Banking Corporation*, 441 Phil. 551, 563 (2002).

[29] *Republic v. Court of Appeals*, G.R. No. 103412, February 3, 2000, 324 SCRA 560, 565, citing *Casil v. Court of Appeals*, 285 SCRA 264, 276 (1998).

[30] *Rollo*, p. 16.

This Court is not persuaded.

To reiterate, in Civil Case No. Q-99-38781, the Spouses Torres raised the following causes of action:

a) the December 20, 1993 Deed of Real Estate Mortgage does not contain a period or term; hence, performance of the obligation has not yet become due as there is a need for judicial determination of the period or term;

b) the June 28, 1994 Statement of Account is not the loan contemplated by law; therefore, it cannot serve as basis to foreclose extrajudicially the mortgage;

c) the credit transaction is either void or unenforceable due to breach of Section 6(a) of Republic Act No. 3765, otherwise known as "The Truth in Lending Act";

d) Since appellee sued appellants for violation of Batas Pambansa Blg. 22, there could arise a situation of double recovery of damages which is proscribed by law. If the extrajudicial foreclosure will be allowed and if appellants will be made to pay the amount of the checks subject of the criminal suit under B.P. Blg. 22, it would result in the unjust enrichment of appellee.[31]

This Court has previously employed various tests in determining whether or not there is identity of causes of action as to warrant the application of the principle of *res judicata*. One test of identity is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions.[32]

This Court finds that the first three causes of action inevitably deal with the validity of the real estate mortgage. Although the Spouses Torres do not admit it, the conclusion is certain in that any affirmative relief that this Court may grant on said causes of action would affect the validity of the real estate mortgage; an issue which could no longer be revived, as the same has been settled.

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[31] *Id.* at 33.

[32] *Tan v. Valdehueza*, G.R. No. L-38745, August 6, 1975, 66 SCRA 61, 64.

In Civil Case No. Q-94-18962, the Spouses Torres already assailed the validity of the Real Estate Mortgage dated December 20, 1993 as evidenced from the reliefs sought for by them, to *wit*:

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court to render judgment as follows:

1. Declaring the x x x Deed of Real Estate Mortgage dated 20 December 1993 (Exhibit E) void;

2. Declaring that x x x all RCBC checks issued pursuant to the Deed of Real Estate Mortgage dated 20 December 1993 as likewise void;

3. Directing defendant Register of Deeds of Quezon City to cancel the annotation of the real estate mortgage in TCT No. RT-61056; x x x [33]

In dismissing the Complaint, the RTC decision in Civil Case No. 94-18962 was categorical in upholding the validity of the instrument, to wit:

The contention that the Deed of Real Estate Mortgage dated December 20, 1993 should also be annulled being the fruit of the previous voidable contracts deserves scant consideration. The same was found to have the essential elements of a valid contract x x x.

x x x x x x x x x

Corollarily, the Deed of Real Estate Mortgage, dated December 20, 1993, being perfectly valid, defendant Amparo Medina has the right to its registration in her favor. x x x[34]

It bears stressing that the doctrine of *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment.

The second concept – conclusiveness of judgment – states that a fact or question which was in issue in a former suit and

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[33] Records, p. 146.

[34] *Id.* at 84-85.

was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required, but merely identity of issues.[35]

Based on the foregoing, the validity of the real estate mortgage can no longer be attacked, more so because the decision in Civil Case No. Q-94-18962 has become final and Entry of Judgment has already been entered in our books.

It therefore goes without saying that the foreclosure of the mortgage is a right given to Medina as the same is embodied in the Deed of Real Estate Mortgage, to wit:

x x x x x x x x x

That it is further understood that if the MORTGAGOR shall well and truly perform the obligation above contracted then this Mortgage shall be null and void; **otherwise, it shall remain in full force and effect and may be foreclosed extrajudicially under Act 3135 as amended**.[36]

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[35] *Heirs of Clemencia Parasac v. Republic of the Philippines*, G.R. No. 159910, May 4, 2006, 489 SCRA 498, 517-518.

[36] Records, pp. 35-36. (Emphasis supplied.)

Thus, this Court finds no error in the decisions of the lower court and the appellate court declaring that there exists, in fact, *res judicata*. As succinctly put in *FELS Energy, Inc. v. Province of Batangas,*[37] *res judicata,* as a ground for dismissal, is based on two grounds, namely:

(1) public policy and necessity, which makes it to the interest of the State that there should be an end to litigation — *republicae ut sit litium*; and (2) the hardship on the individual of being vexed twice for the same cause — *nemo debet bis vexari et eadem causa.* A conflicting doctrine would subject the public peace and quiet to the will and dereliction of individuals and prefer the regalement of the litigious disposition on the part of suitors to the preservation of the public tranquility and happiness.[38]

Anent the fourth cause of action in Civil Case No. Q-99-38781, this Court finds that the Spouses Torres had already raised, in Civil Case No. 94-18962, the fact that eleven (11) counts of Batas Pambansa Bilang (B.P. Blg.) 22 violations are pending with Branch 36, Metropolitan Trial Court (MeTC), Quezon City.[39] Thus, the RTC is correct in its observation that *res judicata* lies, as the Rizal Commercial Banking Corporation (RCBC) checks referred to in the complaint in Civil Case No. Q-99-38781 are the very same documents subject of Civil Case No. Q-94-18962.[40]

The foregoing findings notwithstanding, the Spouses Torres contend that the election of Medina to sue them for violation of B.P. Blg. 22 bars Medina from the remedy of foreclosure of mortgage. The Spouses Torres, citing *Bank of America NT & SA v. American Realty Corporation (Bank of America),*[41] thus argue:

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[37] G.R. No. 168557, February 19, 2007, 516 SCRA 186.

[38] *Id.* at 201.

[39] Records, p. 144.

[40] *Id.* at 175.

[41] G.R. No. 133876, December 29, 1999, 321 SCRA 659.

x x x the remedies available to the mortgage creditor are deemed alternative and not cumulative. Notably, an election of one remedy operates as a waiver of the other. For this purpose, a remedy is deemed chosen upon the filing of the suit for collection or upon the filing of the complaint in an action for foreclosure of mortgage, pursuant to the provision of Rule 68 of the 1997 Rules of Civil Procedure. As to extrajudicial foreclosure, such remedy is deemed elected by the mortgage creditor upon filing of the petition not with any court of justice but with the Office of the Sheriff of the province where the sale is to be made, in accordance with the provisions of Act No. 3135, as amended by Act No. 4118.[42]

The argument of the Spouses Torres is misplaced. The doctrine found in *Bank of America,* and in related cases, finds no application to the case at bar, as the filing of a B.P. Blg. 22 case is not the "collection suit" contemplated by law and jurisprudence, which bars a mortgagee from later on electing to foreclose the mortgaged property.

Section 1 of B.P. Blg. 22 provides:

Section 1. *Checks without sufficient funds.* — Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, **shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court**.

It bears stressing that in *Que v. People,*[43] this Court stated that the clear intention of the framers of B.P. Blg. 22 is to make the mere act of issuing a worthless check *malum*

[42] *Id.* at 668-669.

[43] G.R. Nos. 75217-18, September 21, 1987, 154 SCRA 160, 165.

prohibitum. In prosecutions for violation of B.P. Blg. 22 therefore, prejudice or damage is not a pre-requisite for conviction. In the later case of *People v. Nitafan,*[44] this Court ruled that the agreement surrounding the issuance of the checks need not be first looked into since the law has clearly provided that the mere issuance of any kind of check, regardless of the intent of the parties, *i.e.,* whether the check is intended merely to serve as a guarantee or deposit, but which check is subsequently dishonored, makes the person who issued the check liable. The intent of the law is to curb the proliferation of worthless checks as a means of payment of obligations.

That B.P. Blg .22 is not the "collection suit" contemplated by law can be seen by the fact that the law seeks to punish the mere issuance of a "bum" check notwithstanding the presence of damage or prejudice to the offended party.

Lastly, the Spouses Torres also argue that the equitable principle of unjust enrichment bars the extrajudicial foreclosure of the mortgage, in the wise:

> If private respondent Amparo Medina were to be allowed the extrajudicial foreclosure that she caused to be conducted, and eventually owned the properties covered by TCT No. RT-61056 (354973) and at the same time is awarded the sum of Php 4,730,000.00 (including interest) in the eleven (11) counts of B.P. Blg. 22 violations now pending at the Metropolitan Trial Court of Quezon City, Branch 36, then she would have recovered twice the same loan transaction that took place in the first quarter of 1993. Private respondent Amparo Medina will be twice richer.[45]

Again, these arguments are misplaced. In *Lazaro v. Court of Appeals,*[46] notwithstanding petitioner Lazaro's claim that she had already paid her obligation, this Court still found her liable for violation of B.P. Blg. 22, thus:

> That the obligation of Marlyn Lazaro to complainant Chua has been extinguished by the conveyance by the former of her car to Chua

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[44] G.R. No. 75954, October 22, 1992, 215 SCRA 79, 84.

[45] *Rollo*, p. 20.

[46] G.R. No. 105461, November 11, 1993, 227 SCRA 723.

does not also justify the cancellation of the indemnity awarded. It should be noted that BP 22 provides that a *fine* of not less than but not more than double the amount of the dishonored check may be imposed by the court. In the case of *Esler vs. Ledesma*, this Court stated that a fine is a pecuniary punishment imposed by a lawful tribunal upon a person convicted of a crime. **Clearly, the fine provided for in BP 22 was intended as an additional penalty for the act of issuing a worthless check. This is the only logical conclusion, since the law does not require that there be damage or prejudice to the individual complainant by reason of the issuance of the worthless check**.[47]

There can be no double compensation as the indemnity award is distinct from the underlying obligation of the check. Thus, a person guilty of violating B.P Blg. 22 may be subject to imprisonment or a fine at the discretion of the court and the fact that the underlying obligation has been paid is of no moment. There will be instances, of course, that the court will also order the guilty party to pay the face value of the check if the underlying obligation has not yet been satisfied; however, the same will not apply to the case at bar, as Medina has already been compensated for the loan after foreclosing the mortgage. The Spouses Torres will, therefore, only have to pay a fine or suffer imprisonment if found guilty in their pending cases for violation of B.P. Blg. 22 subject to the rule of preference embodied in Supreme Court Administrative Circular 12-2000.[48]

The Spouses Torres argue that *res judicata* should not apply if it will sacrifice justice to technicality.[49] Indeed, as cited by

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[47] *Id.* at 727. (Emphasis and underscoring supplied.)

[48] As discussed in *Jao Yu v. People of the Philippines*, G.R. No.134172, September 20, 2004, 438 SCRA 431, 438-439: Thus, Administrative Circular No. 12-2000 establishes a rule of preference in the application of the penal provisions of B.P. Blg. 22 such that where the circumstances of both the offense and the offender clearly indicate good faith or a clear mistake of fact without taint of negligence, the imposition of a fine alone should be considered as the more appropriate penalty. Needless to say, the determination of whether the circumstances warrant the imposition of a fine alone rests solely upon the Judge. Should the Judge decide that imprisonment is the more appropriate penalty, Administrative Circular No. 12-2000 ought not be deemed a hindrance.

[49] *Rollo*, p. 16.

the Spouses Torres, this Court has on occasion disregarded the application of *res judicata*, however, this Court finds that the same consideration should not be given in herein petition.

In the first place, the Spouses Torres only filed their complaint in Civil Case No. Q-99-38781 after more than two years had already lapsed from the time the *ex-officio* sheriff sold the property in question at public auction. The foreclosure proceeding was an action *in rem*, and therefore, the Spouses Torres cannot feign knowledge thereof. More importantly, the Spouses Torres were not completely left without any remedy as they still had the right of redemption, which expired one year from and after the date of the registration of the Certificate of Sale. In the absence of evidence to the contrary, this Court must assume that no attempt to redeem the property was undertaken by the Spouses Torres and that they simply allowed their right and remedy to lapse by their inaction.

In addition, the Spouses Torres have already lost their right to question the validity of the real estate mortgage, for most part due to the negligence of their counsel.[50] More importantly, the decision upholding the validity of the real estate mortgage is already final; hence, the same can no longer be questioned in another proceeding by simply varying the form of the action, or adopting a different method of presenting their case.[51]

WHEREFORE, premises considered, the petition is *DENIED*. The August 30, 2004 Decision and January 18, 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 75847 are *AFFIRMED*.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

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[50] Refer to First Division Resolution dated July 5, 1999, *Spouses Fernando V. Torres and Irma Torres v. Court of Appeals*, *et al.,* G.R. No. 134592.

[51] *Salido v. Court of Appeals*, G.R No. 76671, May 17, 1989, 173 SCRA 429, 435, citing *Penalosa v. Tuason*, 22 Phil. 303, 311-313 (1911).

FIRST DIVISION

[G.R. No. 176123. March 10, 2010]

JOSE CABARAL TIU, *petitioner, vs.* **FIRST PLYWOOD CORPORATION,** *respondent.*

[G.R. No. 185265. March 10, 2010]

JOSE CABARAL TIU, *petitioner, vs.* **TIMBER EXPORTS, INC., ANGEL DOMINGO, COUNTRY BANKERS INSURANCE CORPORATION, PERFECTO MONDARTE, JR. and CESAR DACAL,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTION; ABSENT CONTRARY EVIDENCE, THE SHERIFF IS PRESUMED TO HAVE PERFORMED HIS OFFICIAL DUTY OF POSTING THE NOTICES OF SALE WITHIN THE REGLEMENTARY PERIOD.—** The presumption of regularity in the performance of official function here applies. Conformably, any party alleging irregularities vitiating an auction sale must come forward with clear and convincing proof. In **G.R. No. 176123**, FPC has not discharged its burden of proof. Apart from its bare allegations, it has not come forward with any evidence, let alone a clear and convincing one, of non-compliance with the requirement of a minimum of five days prior notice of sale of property on execution. Hence, in the absence of contrary evidence, the presumption prevails that the sheriff performed his official duty of posting the notices of sale within the reglementary period. In finding otherwise, the Manila RTC placed the burden of proof on the sheriff without jurisprudential basis.

2. **ID.; JUDGMENTS; ANNULMENT OF JUDGMENT ON GROUND OF LACK OF JURISDICTION; PETITIONER NEED NOT ALLEGE THAT THE ORDINARY REMEDIES OF NEW TRIAL, RECONSIDERATION OR APPEAL WERE NO LONGER AVAILABLE THROUGH NO FAULT OF HIS; REASON.—** The

Court finds that petitioner properly availed of the remedy of a petition for annulment of judgment in challenging the Manila RTC Decision. In his petition with the appellate court, he did not limit his ground to extrinsic fraud, as he invoked as well the Manila RTC's lack of jurisdiction to annul the proceedings in the Pagadian RTC which is a court of co-equal and coordinate jurisdiction. Since petitioner's petition raised lack of jurisdiction, he did not have to allege that the ordinary remedies of new trial, reconsideration or appeal were no longer available through no fault of his. This is so because a judgment rendered or final order issued by the RTC without jurisdiction is null and void and may be assailed any time either collaterally or in a direct action, or by resisting such judgment or final order in any action or proceeding whenever it is invoked.

3. ID.; ID.; PRINCIPLE OF JUDICIAL STABILITY; THE JUDGMENT OF A COURT OF COMPETENT JURISDICTION MAY NOT BE INTERFERED WITH BY ANY COURT OF CONCURRENT JURISDICTION; REASON.— Verily, the Manila RTC lacked jurisdiction over the nature of the action filed by FPC. The Pagadian RTC which rendered the decision and ordered the execution sale should settle the whole controversy. Pursuant to the principle of judicial stability, the judgment or order of a court of competent jurisdiction, Pagadian RTC in this case, may not be interfered with by any court of *concurrent* jurisdiction (*i.e.,* another RTC), for the simple reason that the power to open, modify or vacate the said judgment or order is not only possessed by but is restricted to the court in which the judgment or order is rendered or issued.

4. ID.; ID.; EFFECT OF JUDGMENT RENDERED BY A COURT WITHOUT JURISDICTION.— Resultantly, the Manila RTC Decision of July 16, 2001 is void for lack of jurisdiction. As such, it, as well as all subsequent orders proceeding therefrom, should have been annulled by the appellate court. A judgment rendered by a court without jurisdiction is null and void and may be attacked anytime. It creates no rights and produces no effect. It remains a basic fact in law that the choice of the proper forum is crucial, as the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect.

5. **ID.; ID.; THE VARIOUS BRANCHES OF THE REGIONAL TRIAL COURTS SHOULD NOT, CANNOT AND ARE NOT PERMITTED TO INTERVENE WITH THEIR RESPECTIVE CASES, ORDERS OR JUDGMENTS.—** Respecting **G.R. No. 185265**, the Court finds that the action lodged with the Antipolo RTC was essentially the same as that filed with the Manila RTC. The relief sought was also the annulment of the Pagadian case execution sale. Hence, the Antipolo RTC was similarly bereft of jurisdiction over the nature of the action. This should have been its basis for dismissing the complaint. The various branches of the RTC, having as they do have the same or equal authority and exercising as they do concurrent and coordinate jurisdiction, should not, cannot and are not permitted to intervene with their respective cases, much less with their orders or judgments. A contrary rule would lead to confusion and seriously hamper the administration of justice.

6. **ID.; ID.; DOCTRINE OF FINALITY OF JUDGMENT; RATIONALE.—** More than a year after it failed to obtain a reversal of the judgment based on compromise agreement in the Pagadian case, and long after the conclusion of the execution sale pursuant thereto, FPC sought to alter the adverse results of the Pagadian RTC final and executory Decision by filing a complaint for annulment of the Pagadian execution sale with damages with the Manila RTC – a court of concurrent and coordinate jurisdiction. FPC had also previously caused a defunct sister company, TEI, and its so-called "stockholders" to lodge another complaint for annulment of **the same** Pagadian case execution sale with damages with the Antipolo RTC – another court of concurrent and coordinate jurisdiction as the Pagadian RTC. This Court would be the last to sanction such a brazen abuse of remedies and disrespect of judicial stability. What is clear is that FPC is feebly attempting to disturb the effects of a judgment that, by its failure to appeal, had long become final and been the subject of execution. This cannot be allowed without running afoul of the settled doctrine of finality of judgment. Once a judgment attains finality, it becomes immutable and unalterable. A final and executory 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. Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause involved therein should be laid to rest. Utmost respect and adherence to this principle must always be maintained by those who wield the power of adjudication. Any act which violates it must be struck down.

APPEARANCES OF COUNSEL

Jacinto Magtanong Wui Jacinto Esguerra & Uy Law Offices and *Ravanera Olegario Pajarillo-Salcedo and Associates* for petitioner.

Velasquez and Associates for Country Bankers Insurance Corp.

Gonzalez Sinense and Associates for Timber Exports, Inc. and Angel Domingo.

D E C I S I O N

CARPIO MORALES, *J.*:

The following facts spawned the filing of these two consolidated cases:

On January 14, 1990, petitioner Jose Cabral Tiu (petitioner) and First Plywood Corporation (FPC) entered into an Agreement[1] whereby as a settlement of FPC's indebtedness to petitioner in the amount of ₱335,513.70, FPC authorized him to cut and haul 958.61 cubic meters of logs within its timber concession areas in Titay, Zamboanga del Sur and Labason, Zamboanga del Norte. Petitioner was to sell the logs in the name of FPC and keep the proceeds thereof.

Alleging that FPC, through its general manager Edmund Tansengco (Tansengco), prohibited him from entering its timber concession areas in contravention of the aforesaid Agreement, petitioner filed on February 23, 1990 with the Regional Trial

[1] Record, Vol. I, G.R. No. 176123 , pp. 250-251.

Court (RTC) of Pagadian City (Pagadian RTC) a complaint against FPC and Tansengco for specific performance with preliminary mandatory injunction and damages.[2] The complaint was raffled to Branch 19 and docketed as Civil Case No. 3059 (Pagadian case).

On the basis of a March 22, 1990 Compromise Agreement[3] forged by petitioner with FPC, represented by Tansengco, the Pagadian RTC, by Decision of March 26, 1990,[4] rendered a judgment based on the Compromise Agreement, and subsequently issued a writ of execution upon motion of petitioner.[5]

Then Deputy Sheriff Julio G. Tarongoy (Tarongoy) thereupon issued a Notice of Levy and Sale of Personal Properties dated May 18, 1990, levying upon the personal properties of FPC and Tansengco consisting mainly of motor vehicles, and publishing notice of the sale thereof at public auction on May 23, 1990.[6]

Meanwhile, by Omnibus Motion dated May 7, 1990, FPC prayed for an Order –

> a. [D]eclaring that there was no valid service of summons upon complainant FPC, and allowing it to file an Answer to the Complaint within the reglementary period;
>
> b. [N]ullifying and setting aside the Compromise Agreement dated March 26, 1990 (sic), as well as the Decision dated March 26, 1990 issued in approval thereof;
>
> c. [N]ullifying and setting aside the Writ of Execution dated April 17, 1990; and
>
> d. [O]rdering the Sheriff to desist from enforcing the [W]rit of [E]xecution pending the resolution of the motion.[7] (underscoring supplied)

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[2] *Id.* at 244-249.

[3] *Id.* at 125-128.

[4] Record, Vol. II, G.R. No. 176123, pp. 383-387.

[5] *Id.* at 528-531.

[6] *Id.* at 540-541.

[7] *Id.* at 538.

The auction sale pushed through just the same, as scheduled on May 23, 1990 following which, petitioner, who was the highest bidder thereat, was issued a Certificate of Sale.[8]

The Pagadian RTC later denied FPC's Omnibus Motion by Order of June 11, 1990.[9]

G.R. No. 176123

FPC thereupon filed on November 26, 1991 with the Regional Trial Court of Manila (Manila RTC) a complaint against petitioner and sheriff Tarongoy for annulment of execution sale with damages, praying for the nullification of the Pagadian case execution sale, the return of the personal properties purchased by petitioner, and for damages.[10]

FPC argued mainly that the execution sale was held without complying with then Section 18[11] (now Section 15), Rule 39 of the Rules of Court requiring a minimum of five days prior notice. The complaint was raffled to Branch 32 and docketed as Civil Case No. 91-59404.

Petitioner and Tarongoy[12] alleged, in their Answer, that FPC had in fact attempted to prevent the Pagadian case execution sale by causing its counsel to file a third-party claim on behalf of respondent Timber Exports, Inc. (TEI) at the originally

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[8] *Id.* at 542-543.

[9] *Id.* at 544-557.

[10] *Id.* at 583-589.

[11] The applicable rule then read:

Sec. 18. *Notice of sale of property on execution.* – Before the sale of property on execution, notice thereof must be given as follows:

(a) In case of perishable property, by posting written notice of the time and place of the sale in three public places in the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;

(b) In case of other personal property, by posting a similar notice in three public places in the municipality or city where the sale is to take place, for not less than five (5) nor more than ten (10) days; x x x

[12] Record, Vol. II, G.R. No. 176123, pp. 590-593.

scheduled sale on May 18, 1990, implying that FPC was, contrary to its claim, properly notified.

By Decision of July 16, 2001, the Manila RTC ruled in favor of FPC, disposing thus:

> WHEREFORE, JUDGMENT is hereby rendered in favor of the plaintiff corporation, FIRST PLYWOOD CORPORATION, ORDERING defendants JULIO G. TARONGOY and JOSE CABARAL TIU jointly and severally:
>
> 1. But first, annulling and nullifying the Execution Sale conducted on May 23, 1990 described in the Certificate of Sale issued May 23, 1990 (Exhibit C);
>
> 2. Ordering defendant JOSE CABARAL TIU to return to the plaintiff corporation the equipment and items, mostly vehicles and trucks acquired by him by virtue and in consequence of the aforesaid sale or to pay to plaintiff company, jointly and solidarily, the value of the motor vehicles, trucks, crankshaft, and propeller shaft described and listed in par. 8 (Complaint);
>
> 3. Ordering defendants, jointly and solidarily, to indemnify plaintiff as damages for having deprived (sic) of the possession and use of the aforedescribed properties, equipment and items, in the amounts for each as averred in par. 2 (a), (b), (c) and (d) of Complaint;
>
> 4. Ordering defendants, jointly and solidarily, to pay plaintiff ₱150,000 by way of attorney's fees, and costs.[13] (underscoring supplied)

In finding for FPC, the Manila RTC held that no notice of sale of personal property on execution was posted in three public places not less than five days prior to the Pagadian case execution sale held on May 23, 1990, resulting in its nullity.[14]

On FPC's motion, the Manila RTC issued a writ of execution on May 22, 2006,[15] prompting Sheriff Salvador Dacumos to

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[13] *Id.* at 611-612.

[14] *Id.* at 610.

[15] *Id.* at 622-624.

issue a notice of levy on execution on May 25, 2006[16] upon the real properties of petitioner located in Pagadian City.

Petitioner challenged the Manila RTC Decision via a petition for annulment of judgment[17] before the Court of Appeals in Cagayan de Oro City which forwarded the same to the Court of Appeals, Manila for appropriate action.[18]

The appellate court dismissed the petition outright by Resolution of August 23, 2006,[19] holding that petitioner was not able to establish his claim of extrinsic or collateral fraud, which refers to any fraudulent act of the prevailing party committed outside of the trial whereby the unsuccessful party has been prevented from exhibiting his case fully;[20] and that having participated in the proceedings before the Manila RTC in which he claimed the amount of ₱73,739 representing the remaining balance (which was not realized from the Pagadian case execution sale), attorney's fees of ₱50,000 and expenses of litigation, petitioner was estopped from assailing the jurisdiction of the Manila RTC.[21]

His motion for reconsideration having been denied by Resolution dated December 5, 2006,[22] petitioner comes before this Court through the present Petition for Review on *Certiorari*[23] bearing G.R. No. 176123.

Petitioner argues that, among other things, estoppel does not lie against him as the issue of lack of jurisdiction was raised in the Manila RTC through his pleading styled as a *Comment*

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[16] *Id.* at 625-629.

[17] CA *rollo,* G.R. No. 176123, pp. 1-21.

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

[19] Penned by Associate Justice Celia Librea-Leagogo, with the concurrence of Associate Justices Rodrigo Cosico and Edgardo Sundiam; *id.* at 61-68.

[20] *Id.* at 65.

[21] *Id.* at 66.

[22] *Id.* at 101-107.

[23] *Rollo,* G.R. No. 176123, pp. 11-44.

on the Pleadings Relative to the Other Civil Cases Filed by Plaintiff Before Other Courts.

FPC maintains, on the other hand,[24] that a separate action to annul an execution sale which did not comply with the notice requirements is allowed; and that petitioner's petition for annulment of judgment filed with the appellate court was fatally defective, it not having explained how the ordinary remedies of new trial, appeal and petition for relief from judgment were no longer available through no fault of his.

G.R. No. 185265

In the meantime, in January 1991, respondents TEI and Angel Domingo (Domingo), claiming to be the owners of some of the personal properties purchased by petitioner at the Pagadian case execution sale, filed a complaint for annulment of execution sale with damages against petitioner, Sheriff Tarongoy and Country Bankers Insurance Corporation (CBIC) with the RTC of Antipolo City (Antipolo RTC). The complaint was later amended to implead as plaintiffs William Tiosic, Francisco Tansengco, Rafael Tansengco, Guillermo Tansengco, Ma. Angeli Tansengco, Reuben Asuncion, Ma. Teresa San Agustin and Alvin Sebastian, alleged stockholders of TEI.[25]

The plaintiffs in the Antipolo RTC case prayed for the nullification of the sale at the Pagadian case execution sale of the properties which they claimed to belong to them, and the return to them of those properties. The complaint was raffled to Branch 74 and docketed as Civil Case No. 90-1867.

CBIC was impleaded as a defendant allegedly on account of its issuance of the bond filed by petitioner in favor of TEI and Domingo who had filed third-party claims on the properties sold at the Pagadian case execution sale.[26]

For their part, petitioner and Tarongoy contended that TEI and its alleged successors-in-interest/co-plaintiffs had no legal

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[24] *Id.* at 219-230.

[25] Record, Vol. II, G.R. No. 176123, pp. 558-564.

[26] *Id.* at 566.

capacity to sue as TEI's corporate existence had expired; and that the properties in dispute belonged to FPC at the time of the levy.[27]

CBIC, on the other hand, denied having issued the alleged bond, claiming that the same was not even in the prescribed legal form.[28] It also filed a cross-claim against petitioner and a third-party complaint against Perfecto Mondarte, Jr. (Mondarte) and Cesar Dacal (Dacal), petitioner's co-signers in an indemnity agreement wherein they made a joint and several undertaking to reimburse it for whatever amount it may be held liable to pay pursuant to the bond.[29]

The Antipolo RTC dismissed respondents TEI and Domingo's complaint as well as the counterclaim, cross-claim and third-party complaint by Decision of September 19, 2005.[30] It found that while the therein plaintiffs had satisfactorily proven ownership of the questioned properties, TEI and FPC were essentially one and the same entity, it appearing that a majority of the directors and officers of TEI were also directors and officers of FPC; that the plaintiffs' witness, Tansengco, admitted being the Chairman of the Board and Chief Executive Officer of both TEI and FPC; and that FPC cannot be allowed to hide behind TEI to defraud its creditors and work an injustice.

Respondents TEI and Domingo[31] appealed to the CA.

By Decision of November 16, 2007,[32] the appellate court *reversed* the Antipolo RTC Decision, finding that the doctrine of piercing the veil of corporate fiction was incorrectly applied,

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[27] *Rollo,* G.R. No. 185265, pp. 136-138.

[28] *Id.* at 122.

[29] *Id.* at 128-130.

[30] Record, Vol. II, G.R. No. 176123, pp. 565-582.

[31] *Rollo,* G.R. No. 185265, pp. 157-158.

[32] Penned by Associate Justice Mariflor Punzalan Castillo, with the concurrence of Associate Justices Marina Buzon and Rosmari Carandang; *id.* at 52-78.

there being no showing that TEI and Domingo had control over FPC and used it to commit fraud or any dishonest and unjust act; and that as found by the Antipolo RTC, TEI and Domingo sufficiently proved their ownership of the questioned properties.

The appellate court thus ordered herein petitioner to pay TEI and Domingo temperate damages for the questioned properties with legal interest; held CBIC solidarily liable with petitioner to the extent of the amount indicated in the surety bond which was determined to have been regularly issued; and declared petitioner, Mondarte and Dacal solidarily liable to reimburse CBIC pursuant to the indemnity agreement they co-signed, without prejudice to Mondarte and Dacal's right of reimbursement against petitioner.

Petitioner's Motion for Reconsideration having been denied by Resolution dated November 6, 2008,[33] he filed the Petition for Review on *Certiorari*[34] docketed as G.R. No. 185265.

Petitioner posits that, among other things, TEI had no personality to file the complaint with the Antipolo RTC, its corporate life having expired before such filing; that neither did TEI's supposed stockholders have any personality to file the amended complaint as there was no prior conveyance to them of the properties being claimed by TEI; that the invoices and bills of lading presented by TEI and Domingo as evidence were devoid of any particulars to prove that the properties referred to therein were the same ones levied upon in the Pagadian case; and that the appellate court's pronouncements on indemnity in favor of CBIC and right of reimbursement in favor of Mondarte and Dacal were erroneous since they did not appeal from the Antipolo RTC Decision.

TEI and Domingo, in their Comment,[35] contend that the factual questions raised by petitioner cannot be the subject of a petition for review; that the stockholders of TEI had the personality to

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[33] *Id.* at 79-82.

[34] *Id.* at 9-51.

[35] *Id.* at 328-351.

file the complaint with the Antipolo RTC as successors-in-interest and beneficial owners of TEI's assets, without need for any deed of conveyance; that the doctrine of piercing the corporate veil does not apply as there was no wrongdoing for which the veil was used as a shield; and that they have sufficiently proven their ownership of the questioned properties as found by the trial court and affirmed by the appellate court.

CBIC, in turn, avers that the grant of its cross-claim against petitioner and third-party complaint against Mondarte and Dacal was proper as it was impleaded as an appellee before the appellate court.[36]

On petitioner's motion, the Court, by Resolution of March 11, 2009,[37] consolidated G.R. No. 185265 with G.R. No. 176123 since both petitions sprang from the Pagadian case and essentially involve the same issue of validity of the execution sale.

Both petitions are meritorious.

The key to resolving the petitions lies in the validity of the Pagadian case execution sale.

The presumption of regularity in the performance of official function here applies. Conformably, any party alleging irregularities vitiating an auction sale must come forward with clear and convincing proof.[38]

In **G.R. No. 176123**, FPC has not discharged its burden of proof. Apart from its bare allegations, it has not come forward with any evidence, let alone a clear and convincing one, of non-compliance with the requirement of a minimum of five days prior notice of sale of property on execution. Hence, in the absence of contrary evidence, the presumption prevails that the sheriff performed his official duty of posting the notices of

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[36] *Id.* at 356-359.

[37] *Id.* a 317-318.

[38] Vide *Batong Buhay Gold Mines, Inc. v. Dela Serna,* G.R. No. 86963, August 6, 1999, 312 SCRA 22, 42.

sale within the reglementary period.[39] In finding otherwise, the Manila RTC placed the burden of proof on the sheriff without jurisprudential basis.

The Court finds that petitioner properly availed of the remedy of a petition for annulment of judgment in challenging the Manila RTC Decision. In his petition with the appellate court, he did not limit his ground to extrinsic fraud, as he invoked as well the Manila RTC's lack of jurisdiction to annul the proceedings in the Pagadian RTC which is a court of co-equal and coordinate jurisdiction.

Since petitioner's petition raised lack of jurisdiction, he did not have to allege that the ordinary remedies of new trial, reconsideration or appeal were no longer available through no fault of his. This is so because a judgment rendered or final order issued by the RTC without jurisdiction is null and void and may be assailed any time either collaterally or in a direct action, or by resisting such judgment or final order in any action or proceeding whenever it is invoked.[40]

Verily, the Manila RTC lacked jurisdiction over the nature of the action filed by FPC. The Pagadian RTC which rendered the decision and ordered the execution sale should settle the whole controversy.[41] Pursuant to the principle of judicial stability, the judgment or order of a court of competent jurisdiction, Pagadian RTC in this case, may not be interfered with by any court of *concurrent* jurisdiction (*i.e.,* another RTC), for the simple reason that the power to open, modify or vacate the said judgment or order is not only possessed by but is restricted to the court in which the judgment or order is rendered or issued.[42]

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[39] *Baluyut v. Poblete,* G.R. No. 144435, February 6, 2007, 514 SCRA 370, 383; *Development Bank of the Philippines v. Court of Appeals*, 451 Phil. 563, 573 (2003).

[40] *Spouses Galura v. Math-Agro Corporation*, G.R. No. 167230, August 14, 2009.

[41] Vide *Crystal v. Court of Appeals*, G.R. No. L- 35767, April 15, 1988, 160 SCRA 79, 84.

[42] Vide *Philippine Commercial International Bank v. Court of Appeals*, G.R. No. 114951, July 17, 2003, 406 SCRA 575, 602.

Resultantly, the Manila RTC Decision of July 16, 2001 is void for lack of jurisdiction. As such, it, as well as all subsequent orders proceeding therefrom, should have been annulled by the appellate court.

A judgment rendered by a court without jurisdiction is null and void and may be attacked anytime. It creates no rights and produces no effect. It remains a basic fact in law that the choice of the proper forum is crucial, as the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect.[43]

Respecting **G.R. No. 185265**, the Court finds that the action lodged with the Antipolo RTC was essentially the same as that filed with the Manila RTC. The relief sought was also the annulment of the Pagadian case execution sale. Hence, the Antipolo RTC was similarly bereft of jurisdiction over the nature of the action. This should have been its basis for dismissing the complaint.

The various branches of the RTC, having as they do have the same or equal authority and exercising as they do concurrent and coordinate jurisdiction, should not, cannot and are not permitted to intervene with their respective cases, much less with their orders or judgments.[44] A contrary rule would lead to confusion and seriously hamper the administration of justice.[45]

The Court sees through the ruse being peddled by FPC.

More than a year after it failed to obtain a reversal of the judgment based on compromise agreement in the Pagadian case, and long after the conclusion of the execution sale pursuant thereto, FPC sought to alter the adverse results of the Pagadian

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[43] *Calanza v. Paper Industries Corporation of the Philippines,* G.R. No. 146622, April 24, 2009.

[44] Vide *Philippine Commercial International Bank v. Court of Appeals, supra* note 42.

[45] *Atty. Javier v. Court of Appeals,* 467 Phil. 404, 430 (2004).

RTC final and executory Decision by filing a complaint for annulment of the Pagadian execution sale with damages with the Manila RTC – a court of concurrent and coordinate jurisdiction.

FPC had also previously caused a defunct sister company, TEI, and its so-called "stockholders" to lodge another complaint for annulment of **the same** Pagadian case execution sale with damages with the Antipolo RTC – another court of concurrent and coordinate jurisdiction as the Pagadian RTC.

This Court would be the last to sanction such a brazen abuse of remedies and disrespect of judicial stability. What is clear is that FPC is feebly attempting to disturb the effects of a judgment that, by its failure to appeal, had long become final and been the subject of execution. This cannot be allowed without running afoul of the settled doctrine of finality of judgment.

Once a judgment attains finality, it becomes immutable and unalterable. A final and executory 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.[46]

Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause involved therein should be laid to rest.[47] Utmost respect and adherence to this principle must always be maintained by those who wield the power of adjudication. Any act which violates it must be struck down.[48]

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[46] *Dacanay v. Yrastorza, Sr.,* G.R. No. 150664, September 3, 2009.

[47] *Heirs of San Pedro v. Garcia,* G.R. No. 166988, July 3, 2009.

[48] *Vide Sumalo Homeowners Association of Hermosa, Bataan v. Litton*, G.R. No. 146061, August 31, 2006, 500 SCRA 385, 397.

WHEREFORE, the petitions are *GRANTED*.

In G.R. No. 176123, the challenged August 23, 2006 Resolution of the Court of Appeals dismissing petitioner's petition is *SET ASIDE*. The Manila RTC Decision of July 16, 2001 in Civil Case No. 91-59404 is *DECLARED* null and void.

In G.R. No. 185265, the November 16, 2007 Decision of the Court of Appeals which reversed the decision of the Antipolo RTC is *SET ASIDE*. The September 19, 2005 Decision of the Antipolo RTC in Civil Case No. 90-1867 dismissing the complaint is *REINSTATED* but on a different ground — lack of jurisdiction.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 184058. March 10, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MELISSA CHUA,** *appellant.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995; ILLEGAL RECRUITMENT IN LARGE SCALE; ESSENTIAL ELEMENTS.—** [A]ny recruitment activities to be undertaken by non-licensee or non-holder of contracts, or as in the present case, an agency with an *expired* license, shall be deemed illegal and punishable under Article 39 of the Labor Code of the Philippines. And illegal recruitment is deemed committed in large scale if committed against three or more persons

individually or as a group. Thus for illegal recruitment in large scale to prosper, the prosecution has to prove three essential elements, to wit: (1) the accused undertook a recruitment activity under Article 13(b) or any prohibited practice under Article 34 of the Labor Code; (2) the accused did not have the license or the authority to lawfully engage in the recruitment and placement of workers; and (3) the accused committed such illegal activity against three or more persons individually or as a group.

2. **ID.; ID.; ID.; AN EMPLOYEE WHO ACTIVELY AND CONSCIOUSLY PARTICIPATED IN THE RECRUITMENT PROCESS MAY BE HELD LIABLE THEREFOR AS PRINCIPAL BY DIRECT PARTICIPATION, TOGETHER WITH THE EMPLOYER.—** Even if appellant were a mere temporary cashier of Golden Gate, that did not make her any less an employee to be held liable for illegal recruitment as principal by direct participation, together with the employer, as it was shown that she actively and consciously participated in the recruitment process.

3. **ID.; ID.; ID.; A *MALUM PROHIBITUM*; INTENT IS IMMATERIAL; A PERSON CONVICTED OF ILLEGAL RECRUITMENT MAY LIKEWISE BE FOUND GUILTY OF ESTAFA.—** Assuming *arguendo* that appellant was unaware of the illegal nature of the recruitment business of Golden Gate, that does not free her of liability either. Illegal Recruitment in Large Scale penalized under Republic Act No. 8042, or "The Migrant Workers and Overseas Filipinos Act of 1995," is a *special law*, a violation of which is *malum prohibitum,* not *malum in se*. Intent is thus immaterial. And that explains why appellant was, aside from Estafa, convicted of such offense. **[I]llegal recruitment is *malum prohibitum,* while *estafa* is *malum in se.* In the first, the criminal intent of the accused is not necessary for conviction. In the second, such an intent is imperative**. ***Estafa* under Article 315, paragraph 2, of the Revised Penal Code, is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud**.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENT EVIDENCE THAT THE COMPLAINANTS WERE MOTIVATED BY IMPROPER MOTIVES, THE TRIAL COURT'S ASSESSMENT THEREOF SHALL NOT BE INTERFERED WITH BY THE COURT.— Appellant was positively pointed to as one of the persons who enticed the complainants to part with their money upon the fraudulent representation that they would be able to secure for them employment abroad. In the absence of any evidence that the complainants were motivated by improper motives, the trial court's assessment of their credibility shall not be interfered with by the Court.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

Melissa Chua (appellant) was indicted for Illegal Recruitment (Large Scale) and was convicted thereof by the Regional Trial Court (RTC) of Manila. She was also indicted for five counts of Estafa but was convicted only for three. The Court of Appeals, by Decision[1] dated February 27, 2008, affirmed appellant's conviction.

The Information[2] charging appellant, together with one Josie Campos (Josie), with Illegal Recruitment (Large Scale), docketed as Criminal Case No. 04-222596, reads:

The undersigned accuses JOSIE CAMPOS and MELISSA CHUA of violation of Article 38 (a) PD 1413, amending certain provisions of Book

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[1] Penned by Associate Justice Remedios Salazar-Fernando and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas; *rollo*, pp. 2-15.

[2] Records, pp. 2-3.

I, PD 442, otherwise known as the New Labor Code of the Philippines, in relation to Art. 13 (b) and (c) of said Code, as further amended by PD Nos. 1693, 1920 and 2019 and as further amended by Sec. 6 (a), (1) and (m) of RA 8042 committed in a [*sic*] large scale as follows:

That sometime during the month of September, 2002, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, representing themselves to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully, unlawfully and knowingly for a fee, recruit and promise employment/job placement abroad to ERIK DE GUIA TAN, MARILYN O. MACARANAS, NAPOLEON H. YU, JR., HARRY JAMES P. KING and ROBERTO C. ANGELES for overseas employment abroad without first having secured the required license from the Department of Labor and Employment as required by law, and charge or accept directly from:

ERIK DE GUIA TAN	-	₱73,000.00
MARILYN D. MACARANAS	-	83,000.00
NAPOLEON H. YU, JR.	-	23,000.00
HARRY JAMES P. KING	-	23,000.00
ROBERTO C. ANGELES	-	23,000.00

For purposes of their deployment, which amounts are in excess of or greater than that specified in the schedule of allowable fees as prescribed by the POEA, and without valid reasons and without the fault of said complainants, failed to actually deploy them and failed to reimburse expenses incurred in connection with their documentation and processing for purposes of their deployment.

x x x x x x x x x

The five Informations[3] charging appellant and Josie with Estafa, docketed as Criminal Case Nos. 04-222597-601, were similarly worded and varied only with respect to the names of the five complainants and the amount that each purportedly gave to the accused. Thus each of the Information reads:

x x x x x x x x x

That on or about . . . in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping

[3] *Id.* at 61-76.

each other, did then and there willfully, unlawfully and feloniously defraud xxx in the following manner, to wit: the said accused by means of false manifestations which they made to the said . . . to the effect that they had the power and capacity to recruit the latter as factory worker to work in Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing said xxx to give and deliver, as in fact he gave and delivered to the said accused the amount of . . . on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact they did obtain the amount of . . . which amount once in their possession, with intent to defraud, they willfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage of said . . . in the aforesaid amount of . . ., Philippine Currency.

xxx xxx xxx

Appellant pleaded not guilty on arraignment. Her co-accused Josie remained at large. The cases were consolidated, hence, trial proceeded only with respect to appellant.

Of the five complainants, only three testified, namely, Marilyn D. Macaranas (Marilyn), Erik de Guia Tan (Tan) and Harry James King (King). The substance of their respective testimonies follows:

Marilyn's testimony:

After she was introduced in June 2002 by Josie to appellant as capacitated to deploy factory workers to Taiwan, she paid appellant ₱80,000 as placement fee and ₱3,750 as medical expenses fee, a receipt[4] for the first amount of which was issued by appellant.

Appellant had told her that she could leave for Taiwan in the last week of September 2002 but she did not, and despite appellant's assurance that she would leave in the first or second week of October, just the same she did not.

[4] *Vide* Cash Voucher dated September 6, 2002, *id*. at 13.

She thus asked for the refund of the amount she paid but appellant claimed that she was not in possession thereof but promised anyway to raise the amount to pay her, but she never did.

She later learned in June 2003 that appellant was not a licensed recruiter, prompting her to file the complaint against appellant and Josie.

Tan's testimony:

After he was introduced by Josie to appellant at the Golden Gate, Inc., (Golden Gate) an agency situated in Paragon Tower Hotel in Ermita, Manila, he underwent medical examination upon appellant's assurance that he could work in Taiwan as a factory worker with a guaranteed monthly salary of 15,800 in Taiwan currency.

He thus paid appellant, on September 6, 2002, ₱70,000[5] representing placement fees for which she issued a receipt. Appellant welched on her promise to deploy him to Taiwan, however, hence, he demanded the refund of his money but appellant failed to. He later learned that Golden Gate was not licensed to deploy workers to Taiwan, hence, he filed the complaint against appellant and Josie.

King's testimony:

His friend and a fellow complainant Napoleon Yu introduced him to Josie who in turn introduced appellant as one who could deploy him to Taiwan.

On September 24, 2002,[6] he paid appellant ₱20,000 representing partial payment for placement fees amounting to ₱80,000, but when he later inquired when he would be deployed, Golden Gate's office was already closed. He later learned that Golden Gate's license had already expired, prompting him to file the complaint.

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[5] *Vide* Cash Voucher dated September 6, 2002, *id*. at 10.

[6] *Vide* Cash Voucher receipt, *id*. at 19.

Appellant denied the charges. Claiming having worked as a temporary cashier from January to October, 2002 at the office of Golden Gate, owned by one Marilyn Calueng,[7] she maintained that Golden Gate was a licensed recruitment agency and that Josie, who is her godmother, was an agent.

Admitting having received ₱80,000 each from Marilyn and Tan, receipt of which she issued but denying receiving any amount from King, she claimed that she turned over the money to the documentation officer, one Arlene Vega, who in turn remitted the money to Marilyn Calueng whose present whereabouts she did not know.

By Decision of April 5, 2006, Branch 36 of the Manila RTC convicted appellant of Illegal Recruitment (Large Scale) and three counts of Estafa*,* disposing as follows:

> WHEREFORE, the prosecution having established the guilt of accused Melissa Chua beyond reasonable doubt, judgment is hereby rendered convicting the accused as principal of a large scale illegal recruitment and estafa three (3) counts and she is sentenced to life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00) for illegal recruitment.
>
> The accused is likewise convicted of estafa committed against Harry James P. King and she is sentenced to suffer the indeterminate penalty of Four (4) years and Two (2) months of *prision correctional* as minimum, to Six (6) years and One (1) day of *prision mayor* as maximum; in Criminal Case No. 04-22598; in Criminal Case No. 04-222600 committed against Marilyn Macaranas, accused is sentence [*sic*] to suffer the indeterminate penalty of Four (4) years and Two (2) months of *prision correctional* as minimum, to Twelve (12) years and one (1) day of *reclusion temporal* as maximum; and in Criminal Case No. 04-222601 committed against Erik de Guia Tan, she is likewise sentence [*sic*] to suffer an indeterminate penalty of Four (4) years and Two (2) months of *prision correctional* as minimum, to Eleven (11) years and One (1) day of *prision mayor* as maximum.

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[7] Spelled as **GOLDEN GATE INTERNATIONAL CORPORATION** and as **MARILEN L. CALLUENG** per certification dated June 23, 2003 of Atty. Felicitas Q. Bay, Director II, Licensing Branch of the POEA, *id.* at 8.

Accused Melissa Chua is also ordered to return the amounts of ₱20,000.00 to Harry James P. King, ₱83,750.00 to Marilyn D. Macaranas, and ₱70,000.00 to Erik de Guia Tan.

As regards Criminal Cases Nos. 04-222597 and 04-222599, both are dismissed for lack of interest of complainants Roberto Angeles and Napoleon Yu, Jr.

In the service of her sentence, the accused is credited with the full period of preventive imprisonment if she agrees in writing to abide by the disciplinary rules imposed, otherwise only 4/5 shall be credited.

SO ORDERED.

The Court of Appeals, as stated early on, affirmed the trial court's decision by the challenged Decision of February 27, 2008, it holding that appellant's defense that, as temporary cashier of Golden Gate, she received the money which was ultimately remitted to Marilyn Calueng is immaterial, she having failed to prove the existence of an employment relationship between her and Marilyn, as well as the legitimacy of the operations of Golden Gate and the extent of her involvement therein.

Citing *People v. Sagayaga,*[8] the appellate court ruled that an employee of a company engaged in illegal recruitment may be held liable as principal together with his employer if it is shown that he, as in the case of appellant, actively and consciously participated therein.

Respecting the cases for Estafa, the appellate court, noting that a person convicted of illegal recruitment may, in addition, be convicted of Estafa as penalized under Article 315, paragraph 2(a) of the Revised Penal Code, held that the elements thereof were sufficiently established, *viz*: that appellant deceived the complainants by assuring them of employment in Taiwan provided they pay the required placement fee; that relying on such representation, the complainants paid appellant the amount demanded; that her representation turned out to be false because

[8] G.R. No. 143726, February 23, 2004, 423 SCRA 468.

she failed to deploy them as promised; and that the complainants suffered damages when they failed to be reimbursed the amounts they paid.

Hence, the present appeal, appellant reiterating the same arguments she raised in the appellate court.

The appeal is bereft of merit.

The term "recruitment and placement" is defined under Article 13(b) of the Labor Code of the Philippines as follows:

> (b) "Recruitment and placement" **refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not**. Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement. (emphasis supplied)

On the other hand, Article 38, paragraph (a) of the Labor Code, as amended, under which appellant was charged, provides:

> Art. 38. Illegal Recruitment. – (a) **Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code**. The Ministry of Labor and Employment or any law enforcement officer may initiate complaints under this Article.
>
> (b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.
>
> Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. **Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group**. (emphasis supplied)

From the foregoing provisions, it is clear that any recruitment activities to be undertaken by non-licensee or non-holder of contracts, or as in the present case, an agency with an *expired* license, shall be deemed illegal and punishable under Article 39 of the Labor Code of the Philippines. And illegal recruitment is deemed committed in large scale if committed against three or more persons individually or as a group.

Thus for illegal recruitment in large scale to prosper, the prosecution has to prove three essential elements, to wit: (1) the accused undertook a recruitment activity under Article 13(b) or any prohibited practice under Article 34 of the Labor Code; (2) the accused did not have the license or the authority to lawfully engage in the recruitment and placement of workers; and (3) the accused committed such illegal activity against three or more persons individually or as a group.[9]

In the present case, Golden Gate, of which appellant admitted being a cashier from January to October 2002, was initially authorized to recruit workers for deployment abroad. Per the certification from the POEA, Golden Gate's license only expired on February 23, 2002 and it was delisted from the roster of licensed agencies on April 2, 2002.

Appellant was positively pointed to as one of the persons who enticed the complainants to part with their money upon the fraudulent representation that they would be able to secure for them employment abroad. In the absence of any evidence that the complainants were motivated by improper motives, the trial court's assessment of their credibility shall not be interfered with by the Court.[10]

Even if appellant were a mere temporary cashier of Golden Gate, that did not make her any less an employee to be held liable for illegal recruitment as principal by direct participation,

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[9] *People v. Jamilosa*, G.R. No. 169076, January 23, 2007, 512 SCRA 340, 352.

[10] *People v. Saulo*, G.R. No. 125903, November 15, 2000, 344 SCRA 605, 614.

together with the employer, as it was shown that she actively and consciously participated in the recruitment process.[11]

Assuming *arguendo* that appellant was unaware of the illegal nature of the recruitment business of Golden Gate, that does not free her of liability either. Illegal Recruitment in Large Scale penalized under Republic Act No. 8042, or "The Migrant Workers and Overseas Filipinos Act of 1995," is a *special law*, a violation of which is *malum prohibitum,* not *malum in se*. Intent is thus immaterial. And that explains why appellant was, aside from Estafa, convicted of such offense.

> **[I]llegal recruitment is *malum prohibitum,* while *estafa* is *malum in se.* In the first, the criminal intent of the accused is not necessary for conviction. In the second, such an intent is imperative**. ***Estafa* under Article 315, paragraph 2, of the Revised Penal Code, is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud**.[12] (emphasis supplied)

WHEREFORE, the appeal is hereby *DENIED*.

SO ORDERED.

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

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[11] *People v. Nogra,* G.R. No. 170834, August 29, 2008, 563 SCRA 723, 724.

[12] *People v. Comila,* G.R. No. 171448, February 28, 2007, 517 SCRA 153, 167.

SECOND DIVISION

[G.R. No. 163532. March 12, 2010]

YOKOHAMA TIRE PHILIPPINES, INC., *petitioner, vs.* **YOKOHAMA EMPLOYEES UNION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS OF FACT NOT REVIEWABLE THEREIN; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT; CASE AT BAR.—** A petition for review on *certiorari* under Rule 45 of the Rules of Court should include only questions of law — questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts, while a question of fact exists when the doubt centers on the truth or falsity of the alleged facts. There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. Once the issue invites a review of the evidence, the question is one of fact. Whether YEU committed fraud and misrepresentation in failing to remove Pineda's signature from the list of employees who supported YEU's application for registration and whether YEU conducted an election of its officers are questions of fact. They are not reviewable.

2. **ID.; EVIDENCE; ABSENT GRAVE ABUSE OF DISCRETION, FACTUAL FINDINGS OF THE APPELLATE COURT WILL NOT BE DISTURBED.—** Factual findings of the Court of Appeals are binding on the Court. Absent grave abuse of discretion, the Court will not disturb the Court of Appeals' factual findings. In *Encarnacion v. Court of Appeals*, the Court held that, "unless there is a clearly grave or whimsical abuse on its part, findings of fact of the appellate court will not be disturbed. The Supreme Court will only exercise its power of review in known exceptions such as gross misappreciation of evidence or a total void of evidence." YTPI failed to show that the Court of Appeals gravely abused its discretion.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNION; AN EMPLOYER WHO FILED A PETITION TO REVOKE THE UNION REGISTRATION**

ON GROUND OF FRAUD AND MISREPRESENTATION HAS THE BURDEN OF PROVING THE TRUTHFULNESS OF ITS ACCUSATIONS.— YTPI, being the one which filed the petition for the revocation of YEU's registration, had the burden of proving that YEU committed fraud and misrepresentation. YTPI had the burden of proving the truthfulness of its accusations — that YEU fraudulently failed to remove Pineda's signature from the organizational documents and that YEU fraudulently misrepresented that it conducted an election of officers. In *Heritage Hotel Manila v. Pinag-Isang Galing at Lakas ng mga Manggagawa sa Heritage Manila*, the employer filed a petition to revoke the registration of its rank-and-file employees' union, accusing it of committing fraud and misrepresentation. The Court held that the petition was rightfully denied because the employer failed to prove that the labor union committed fraud and misrepresentation. The Court held that: xxx **The charge that a labor organization committed fraud and misrepresentation in securing its registration is a serious charge and deserves close scrutiny**. It is serious because once such charge is proved, the labor union acquires none of the rights accorded to registered organizations. **Consequently, charges of this nature should be clearly established by evidence and the surrounding circumstances**.

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro & Leaño for petitioner.
Pro Labor Legal Assistance Center for respondent.

R E S O L U T I O N

CARPIO, *J.*:

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 16 January 2004 Decision[2] and 12 May 2004 Resolution[3] of the Court of

[1] *Rollo*, pp. 9-31.

[2] *Id.* at 38-46. Penned by Associate Justice Lucas P. Bersamin, with Associate Justices Renato C. Dacudao and Elvi John S. Asuncion concurring.

[3] *Id.* at 48.

Appeals in CA-G.R. SP No. 65460. The Court of Appeals affirmed the 12 March[4] and 3 May[5] 2001 Resolutions of the Bureau of Labor Relations (BLR) in BLR-A-C-7-2-05-01, reversing the 18 December 2000 Decision[6] of the Department of Labor and Employment (DOLE) Regional Office No. 3, San Fernando, Pampanga (Regional Office), in Case No. RO300-0001-CP-002.

Yokohama Employees Union (YEU) is the labor organization of the rank-and-file employees of Yokohama Tire Philippines, Inc. (YTPI). YEU was registered as a legitimate labor labor union on 10 September 1999.

YEU filed before the Regional Office a petition for certification election. YTPI filed before the Regional Office a petition[7] dated 24 January 2000 for the revocation of YEU's registration. YTPI alleged that YEU violated Article 239(a)[8] of the Labor Code: (1) YEU fraudulently included the signature of a certain Ronald O. Pineda (Pineda) in the organizational documents; (2) Pineda was not aware of any election of union officers; (3) YEU fraudulently obtained the employees' signatures by making them believe that they were signing a petition for a 125% increase in the minimum wage, not a petition for registration; (4) the employees did not belong to a single bargaining unit; and (5) YEU fraudulently stated in its organizational meeting minutes that its second vice president was Bernard David, not Bernardo David.

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[4] *Id.* at 139-149. Penned by Director IV Hans Leo J. Cacdac.

[5] *Id.* at 150-153.

[6] *Id.* at 131-138. Penned by Regional Director Ana C. Dione.

[7] *Id.* at 92-98.

[8] Article 239(a) of the Labor Code provides:

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.

In its 18 December 2000 Decision, the Regional Office granted the 24 January 2000 petition. The Regional Office held that YEU committed misrepresentation: (1) YEU failed to remove Pineda's signature from the organizational documents despite instructions to do so; and (2) YEU declared that it conducted an election of union officers when, in truth, it did not.

YEU appealed the 18 December 2000 Decision to the BLR. In its 12 March 2001 Resolution, the BLR reversed the 18 December 2000 Decision. The BLR found that (1) Pineda did not approach any officer of YEU to have his signature removed from the organizational documents; (2) Pineda's affidavit that no election of officers took place was unreliable and inconsistent with his earlier written statement; (3) the affidavit of a certain Rachelle Gonzales (Gonzales) that no election of officers took place was unreliable and inconsistent with her earlier resignation letter; (4) the affidavit of a certain Arthur Calma (Calma) did not state that no election of officers took place; (5) at least 82 other members of YEU did not question the legality of YEU's organization; and (6) 50 YEU members executed a *Sama-Samang Pahayag*[9] stating that:

> 3. *Noong ika*-25 *ng Hulyo* 1999, *kami ay dumalo sa isang pulong para sa pag-oorganisa ng aming Unyon at pagraratipika ng Saligang Batas at Alituntunin nito*. x x x
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> x x x x x x x x x
>
> 5. *Walang katotohanan ang alegasyon ng Yokohama na walang naganap na pagpupulong kaugnay ng pag-oorganisa o pagtatayo namin ng Unyon. Nakakatuwa ring isipin ang alegasyon ng kompanya na hindi namin lubos na naiintindihan ang aming kapasyahang magtayo at sumapi sa aming Unyon.*
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> 6. *Malinaw na ginagawa ng kompanya ang lahat ng paraan upang hadlangan ang aming karapatan sa pag-oorganisa at kilalanin bilang kinatawan ng lahat ng mga regular na manggagawa para sa sama-samang pakikipagtawaran.*

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[9] *Rollo*, pp. 120-130.

7. *Sa kabila ng lahat ng ito, kami ay lubos pa ring naninindigan sa aming Unyon at patuloy na ipaglalaban ang aming karapatan sa pag-oorganisa at sa sama-samang pakikipagtawaran*;[10]

The BLR also held that (1) YTPI was estopped from questioning the fact that the *Sama-Samang Pahayag* was an unsworn document since it filed the 24 January 2000 petition for the revocation of YEU's registration based on unsworn documents; (2) the fact that there was no express mention of an election of union officers in the *Sama-Samang Pahayag* did not necessarily mean that no election occurred; (3) there was an organizational meeting and an organizational meeting may include an election of union officers; (4) any infirmity in the election of union officers may be remedied under the last paragraph[11] of Article 241 of the Labor Code and under Rule XIV of DOLE Department Order No. 9; and (5) cancellation of union registration must be done with great caution.

YTPI filed before the BLR a motion[12] for reconsideration. In its 3 May 2001 Resolution, the BLR denied the motion for lack of merit.

YTPI filed before the Court of Appeals a petition[13] for *certiorari* under Rule 65 of the Rules of Court. In its 16 January 2004 Decision, the Court of Appeals denied the petition and held that the BLR did not commit grave abuse of discretion: (1) Pineda's affidavit that no election of officers took place

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[10] *Id.* at 120.

[11] The last paragraph of Article 241 of the Labor Code provides that:

Any violation of the above rights and conditions of membership shall be a ground for cancellation of union registration or expulsion of officer from office, whichever is appropriate. At least thirty percent (30%) of all the members of a union or any member or members specially concerned may report such violation to the Bureau. The Bureau shall have the power to hear and decide any reported violation to mete the appropriate penalty.

[12] *Rollo*, pp. 154-174.

[13] *Id.* at 49-85.

was unreliable and inconsistent with his earlier written statement; (2) Gonzales' affidavit that no election of officers took place was unreliable and inconsistent with her earlier resignation letter; (3) Calma's affidavit was unreliable because he admitted that he stayed at the organizational meeting for only 20 minutes; (4) the affidavit of a certain Bernardino David (David) that no election of officers took place was unreliable and inconsistent with his earlier *sinumpaang salaysay*; (5) David's affidavit was only filed before the BLR when YTPI filed its motion for reconsideration of the BLR's 12 March 2001 Resolution; (6) Pineda did not approach any officer of YEU to have his signature removed from the organizational documents; (7) the *Sama-Samang Pahayag* was entitled to credit even if it was an unsworn document; (8) the allegation that the signatures of a certain Denry Villanueva (Villanueva) and a certain Apolinar Bognot (Bognot) in the *Sama-Samang Pahayag* were forged was only raised for the first time before the BLR when YTPI filed its motion for reconsideration of the BLR's 12 March 2001 Resolution; (9) Villanueva and Bognot were not signatories to YEU's organizational documents; (10) cancellation of union registration must be done with great caution; (11) YTPI, in filing the petition for revocation of YEU's registration, had the burden of proving that YEU committed fraud and misrepresentation; and (12) YTPI failed to prove that YEU committed fraud and misrepresentation.

YTPI filed before the Court of Appeals a motion[14] for reconsideration. In its 12 May 2004 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the present petition. YTPI raises as issues that (1) the Court of Appeals erred in finding that YEU did not commit fraud or misrepresentation, and (2) the Court of Appeals erred in holding that YTPI had the burden of proving that YEU committed fraud and misrepresentation.

The petition is unmeritorious.

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[14] *Id.* at 180-195.

The Court of Appeals found that YEU did not commit fraud or misrepresentation:

Anent whether an election of officers was conducted or not, the petitioner relied largely on the *affidavit* of Pineda to substantiate its claim that no election of officers was held by the union. However, respondent BLR Director accorded greater credence to Pineda's handwritten statement, wherein he made references to at least 2 meetings he had attended during which he had signed the organizational documents, than to Pineda's later *affidavit*, whereby he denied any knowledge of the holding of an election. A perusal of the affirmative handwritten statement easily explains why the public respondent preferred it to the negating *affidavit*, to wit:

> *Noong unang araw na pumirma ako galing ako sa graveyard. Pagkatapos yung pangalawang* meeting *graveyard din ako, pinapirma ako doon sa siyam* (9) *na pirasong papel noong umagang pag-uwi namin.* x x x
>
> July 25, 99 - *Unang Pirmahan*
> July 26, 99 - *Pinirmahan ko ang siyam na piraso*
> July 27, 99 - *Pinatatanggal ko ang aking pangalan sa listahan*

The petitioner also relied on the *affidavit* of Ma. Rachelle Gonzales attesting that there was no election of officers, but respondent BLR Director dismissed the *affidavit* as nothing but the petitioner's belated attempt to establish its claim about the election being held considering that Gonzales did not even intimate such matter in her handwritten resignation letter to YEU.

Another *affidavit*, that of Arthur Calma, stated that no election was held, but, again, respondent BLR Director gave Calma's *affidavit* scant consideration because the affiant admittedly remained in the YEU office for only 20 minutes. In contrast, the public respondent accorded more weight to the *sama-samang pahayag* executed by 50 YEU members who averred about the holding of an organizational meeting. The public respondent justifiably favored the latter, deeming the meeting to include the holding of an election of officers, for, after all, Art. 234, (b), *Labor Code*, does not itself distinguish between the two.

Respondent BLR Director is further assailed for not taking into consideration the *affidavit* asserting that no election of officers was

ever conducted, which Bernardino David, YEU's second vice president, executed. The omission is not serious enough, however, because the *affidavit* was submitted only when the petitioner moved for the reconsideration of the questioned decision, and because the *affidavit* was even inconsistent with David's earlier *sinumpaang salaysay*, whereby he attested to his attendance at the organizational meeting and to his election thereat as vice president.

As to the inclusion of Pineda's signature in the organizational documents, the BLR Director correctly ruled that evidence to prove the participation of YEU in the failure to delete Pineda's signature from the organizational documents was wanting. It is not deniable that Pineda never approached any officer of YEU; and that Pineda approached a certain *Tonton* whom he knew to be a *union organizer* but who was not an officer of the union nor an employee of the company.

If the petitioner was [sic] sincere and intent on this imputed error, its effort to show so does not [sic] appear in the record. What appears is its abject failure to establish *Tonton's* actual identity. The petitioner seemed content in making the insinuation in the petition for *certiorari* that *Tonton* was widely recognized as the organizer behind the creation of YEU. That was not enough.

In sum, the BLR Director was neither capricious nor whimsical in his exercise of judgment, and, therefore, did not commit grave abuse of discretion. For *certiorari* to lie, more than mere abuse of discretion is required to be established by the petitioner. Herein, no degree of abuse of discretion was attendant.[15]

YTPI claims that the Court of Appeals erred in finding that YEU did not commit fraud or misrepresentation. YTPI stated that:

There was evidence that respondent committed fraud and misrepresentation in its failure to omit the name of Ronald Pineda prior to the filing of the respondents organizational documents with the Department of Labor and Employment. On the other hand, **the Regional Director held that there was no election of officers that had taken place during respondent's alleged organizational meeting as there was no proof of such election**.[16] (Emphasis in the original)

[15] *Id.* at 42-44.
[16] *Id.* at 17-18.

The Court is not convinced. A petition for review on *certiorari* under Rule 45 of the Rules of Court should include only questions of law — questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts, while a question of fact exists when the doubt centers on the truth or falsity of the alleged facts. There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. Once the issue invites a review of the evidence, the question is one of fact.[17]

Whether YEU committed fraud and misrepresentation in failing to remove Pineda's signature from the list of employees who supported YEU's application for registration and whether YEU conducted an election of its officers are questions of fact. They are not reviewable.

Factual findings of the Court of Appeals are binding on the Court. Absent grave abuse of discretion, the Court will not disturb the Court of Appeals' factual findings.[18] In *Encarnacion v. Court of Appeals*,[19] the Court held that, "unless there is a clearly grave or whimsical abuse on its part, findings of fact of the appellate court will not be disturbed. The Supreme Court will only exercise its power of review in known exceptions such as gross misappreciation of evidence or a total void of evidence." YTPI failed to show that the Court of Appeals gravely abused its discretion.

The Court of Appeals held that YTPI had the burden of proving that YEU committed fraud and misrepresentation:

> The cancellation of union registration at the employer's instance, while permitted, must be approached with caution and strict scrutiny

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[17] *Pagsibigan v. People*, G.R. No. 163868, 4 June 2009, 588 SCRA 249, 256.

[18] *Encarnacion v. Court of Appeals*, G.R. No. 101292, 8 June 1993, 223 SCRA 279, 282.

[19] *Id.* at 284.

in order that the right to belong to a legitimate labor organization and to enjoy the privileges appurtenant to such membership will not be denied to the employees. As the applicant for cancellation, the petitioner naturally had the burden to present proof sufficient to warrant the cancellation. The petitioner was thus expected to satisfactorily establish that YEU committed misrepresentations, false statements or fraud in connection with the election of its officers, or with the minutes of the election of officers, or in the list of votes, as expressly required in Art. 239, (c), *Labor Code*. But, as the respondent BLR Director has found and determined, and We fully agree with him, the petitioner simply failed to discharge its burden.[20]

YTPI claims that the Court of Appeals erred in holding that YTPI had the burden of proving that YEU committed fraud and misrepresentation. YTPI stated that:

5.5 In the Decision dated 16 January 2004, the Honorable Court of Appeals upheld the BLR Director's ruling that the petitioner had the burden of proving that subject election of officers never took place.

5.6 However, the petitioner does not have the burden of proof *vis-à-vis* whether or not the said elections took place. **The respondent has the burden of proof in showing that an election of officers took place**.[21] (Emphasis in the original)

The Court is not convinced. YTPI, being the one which filed the petition for the revocation of YEU's registration, had the burden of proving that YEU committed fraud and misrepresentation. YTPI had the burden of proving the truthfulness of its accusations — that YEU fraudulently failed to remove Pineda's signature from the organizational documents and that YEU fraudulently misrepresented that it conducted an election of officers.

In *Heritage Hotel Manila v. Pinag-Isang Galing at Lakas ng mga Manggagawa sa Heritage Manila*,[22] the employer filed

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[20] *Rollo*, p. 45.

[21] *Id.* at 19.

[22] G.R. No. 177024, 30 October 2009.

a petition to revoke the registration of its rank-and-file employees' union, accusing it of committing fraud and misrepresentation. The Court held that the petition was rightfully denied because the employer failed to prove that the labor union committed fraud and misrepresentation. The Court held that:

> Did respondent PIGLAS union commit fraud and misrepresentation in its application for union registration? We agree with the DOLE-NCR and the BLR that it did not. Except for the evident discrepancies as to the number of union members involved as these appeared on the documents that supported the union's application for registration, **petitioner company has no other evidence of the alleged misrepresentation**. But those discrepancies alone cannot be taken as an indication that respondent misrepresented the information contained in these documents.
>
> **The charge that a labor organization committed fraud and misrepresentation in securing its registration is a serious charge and deserves close scrutiny**. It is serious because once such charge is proved, the labor union acquires none of the rights accorded to registered organizations. **Consequently, charges of this nature should be clearly established by evidence and the surrounding circumstances**.[23] (Emphasis supplied)

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 16 January 2004 Decision and 12 May 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 65460.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

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[23] *Id.*

SECOND DIVISION

[G.R. No. 164493. March 12, 2010]

JOCELYN M. SUAZO, *petitioner, vs.* **ANGELITO SUAZO and REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; VOID MARRIAGES; ARTICLE 36 OF THE FAMILY CODE; REQUISITES OF PSYCHOLOGICAL INCAPACITY.— Article 36 of the Family Code provides that *a marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.* A unique feature of this law is its intended open-ended application, as it merely introduced an abstract concept – psychological incapacity that disables compliance with the contractual obligations of marriage – without any concrete definition or, at the very least, an illustrative example. We must therefore apply the law based on how the concept of psychological incapacity was shaped and developed in jurisprudence. *Santos v. Court of Appeals* declared that psychological incapacity must be characterized by (a) **gravity**; (b) **juridical antecedence**; and (c) **incurability**. It should refer to "no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage." It must be confined to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."

2. ID.; ID.; ID.; ID.; APPLICATION THEREOF IS CONFINED TO THE MOST SERIOUS CASES OF PERSONALITY DISORDER, CLEARLY DEMONSTRATIVE OF AN UTTER INSENSITIVITY OR INABILITY TO GIVE MEANING AND SIGNIFICANCE TO MARRIAGE.— xxx Under this evolutionary development, as shown by the current string of cases on Article 36 of the Family Code, *what should not be lost on us* is the intention of the law to confine the application of Article 36 to the most serious

cases of personality disorders, clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage; that the psychological illness that must have afflicted a party at the inception of the marriage should be a malady so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond he or she is about to assume. It is not enough that the respondent, alleged to be psychologically incapacitated, had difficulty in complying with his marital obligations, or was unwilling to perform these obligations. Proof of a natal or supervening disabling factor – an adverse integral element in the respondent's personality structure that effectively incapacitated him from complying with his essential marital obligations – must be shown. Mere difficulty, refusal or neglect in the performance of marital obligations or ill will on the part of the spouse is different from incapacity rooted in some debilitating psychological condition or illness; irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage.

3. **ID.; ID.; ID.; ID.; PSYCHOLOGICAL INCAPACITY; A COMPREHENSIVE EXAMINATION OF THE PARTY ALLEGED TO BE SUFFERING FROM A PSYCHOLOGICAL DISORDER IS REQUIRED; NOT COMPLIED WITH IN CASE AT BAR.—** Both the psychologist's testimony and the psychological report did not conclusively show the root cause, gravity and incurability of Angelito's alleged psychological condition. We first note a critical factor in appreciating or evaluating the expert opinion evidence – the psychologist's testimony and the psychological evaluation report – that Jocelyn presented. Based on her declarations in open court, the psychologist evaluated Angelito's psychological condition only in an indirect manner – she derived all her conclusions from information coming from Jocelyn whose bias for her cause cannot of course be doubted. Given the source of the information upon which the psychologist heavily relied upon, the court must evaluate the evidentiary worth of the opinion with due care and with the application of the more rigid and stringent set of standards outlined above, *i.e.*, that there must be a

thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a psychological incapacity that is grave, severe and incurable. In saying this, we do not suggest that a personal examination of the party alleged to be psychologically incapacitated is mandatory; jurisprudence holds that this type of examination is not a mandatory requirement. While such examination is desirable, we recognize that it may not be practical in all instances given the oftentimes estranged relations between the parties. For a determination though of a party's complete personality profile, information coming from persons intimately related to him (such as the party's close relatives and friends) may be helpful. This is an approach in the application of Article 36 that allows flexibility, at the same time that it avoids, if not totally obliterate, the credibility gaps spawned by supposedly expert opinion based entirely on doubtful sources of information. From these perspectives, we conclude that the psychologist, using meager information coming from a directly interested party, could not have secured a complete personality profile and could not have conclusively formed an objective opinion or diagnosis of Angelito's psychological condition. While the report or evaluation may be conclusive with respect to Jocelyn's psychological condition, this is not true for Angelito's. The methodology employed simply cannot satisfy the required depth and comprehensiveness of examination required to evaluate a party alleged to be suffering from a psychological disorder. In short, this is not the psychological report that the Court can rely on as basis for the conclusion that psychological incapacity exists. Other than this credibility or reliability gap, both the psychologist's report and testimony simply provided a general description of Angelito's purported anti-social personality disorder, supported by the characterization of this disorder as chronic, grave and incurable. The psychologist was conspicuously silent, however, on the bases for her conclusion or the particulars that gave rise to the characterization she gave. These particulars are simply not in the Report, and neither can they be found in her testimony. xxx Additionally, the psychologist merely generalized on the questions of why and to what extent was Angelito's personality disorder grave and incurable, and on the effects of the disorder on Angelito's awareness of and his capability to undertake the duties and responsibilities of marriage. The psychologist

therefore failed to provide the answers to the more important concerns or requisites of psychological incapacity, all of which are critical to the success of Jocelyn's cause.

4. ID.; ID.; ID.; ID.; MUST EXIST AT THE TIME OF THE CELEBRATION OF THE MARRIAGE.— [W]e find Jocelyn's testimony to be insufficient. Jocelyn merely testified on Angelito's habitual drunkenness, gambling, refusal to seek employment and the physical beatings she received from him – all of which occurred *after* the marriage. Significantly, she declared in her testimony that Angelito showed no signs of violent behavior, *assuming this to be indicative of a personality disorder*, during the courtship stage or at the earliest stages of her relationship with him. She testified on the alleged physical beatings after the marriage, not before or at the time of the celebration of the marriage. She did not clarify when these beatings exactly took place – whether it was near or at the time of celebration of the marriage or months or years after. This is a clear evidentiary gap that materially affects her cause, as the law and its related jurisprudence require that the psychological incapacity must exist at the time of the celebration of the marriage.

5. ID.; ID.; ID.; ID.; HABITUAL DRUNKENNESS, GAMBLING AND REFUSAL TO FIND A JOB DOES NOT SHOW PSYCHOLOGICAL INCAPACITY, ABSENT PROOF THAT THEY ARE MANIFESTATIONS OF AN INCAPACITY ROOTED IN SOME DEBILITATING PSYCHOLOGICAL ILLNESS.— Habitual drunkenness, gambling and refusal to find a job, while indicative of psychological incapacity, do not, by themselves, show psychological incapacity. All these simply indicate difficulty, neglect or mere refusal to perform marital obligations that, as the cited jurisprudence holds, cannot be considered to be constitutive of psychological incapacity in the absence of proof that these are manifestations of an incapacity rooted in some debilitating psychological condition or illness.

6. ID.; ID.; ID.; ID.; PHYSICAL VIOLENCE, STANDING ALONE, DOES NOT CONSTITUTE PSYCHOLOGICAL INCAPACITY.— The physical violence allegedly inflicted on Jocelyn deserves a different treatment. While we may concede that physical violence on women indicates abnormal behavioral

or personality patterns, such violence, standing alone, does not constitute psychological incapacity. Jurisprudence holds that there must be evidence showing a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself. The evidence of this nexus is irretrievably lost in the present case under our finding that the opinion of the psychologist cannot be relied upon. Even assuming, therefore, that Jocelyn's account of the physical beatings she received from Angelito were true, this evidence does not satisfy the requirement of Article 36 and its related jurisprudence, specifically the *Santos* requisites.

APPEARANCES OF COUNSEL

Carreon & Associates Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the appeal filed by petitioner Jocelyn Suazo (*Jocelyn*) from the July 14, 2004 Decision of the Court of Appeals (*CA*)[1] in CA-G.R. CV No. 62443, which reversed the January 29, 1999 judgment of the Regional Trial Court (*RTC*), Branch 119, Pasay City in Civil Case No. 97-1282.[2] The reversed RTC decision nullified Jocelyn's marriage with respondent Angelito Suazo (*Angelito*) on the ground of psychological incapacity.

THE FACTS

Jocelyn and Angelito were 16 years old when they first met in June 1985; they were residents of Laguna at that time. After months of courtship, Jocelyn went to Manila with Angelito and

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[1] Penned by Associate Justice Mario L. Guariña III, and concurred in by Associate Justice Marina L. Buzon and Associate Justice Santiago Javier Rañada (both retired).

[2] Penned by Judge Pedro de Leon Gutierrez.

some friends. Having been gone for three days, their parents sought Jocelyn and Angelito and after finding them, brought them back to Biñan, Laguna. Soon thereafter, Jocelyn and Angelito's marriage was arranged and they were married on March 3, 1986 in a ceremony officiated by the Mayor of Biñan.

Without any means to support themselves, Jocelyn and Angelito lived with Angelito's parents after their marriage. They had by this time stopped schooling. Jocelyn took odd jobs and worked for Angelito's relatives as household help. Angelito, on the other hand, refused to work and was most of the time drunk. Jocelyn urged Angelito to find work and violent quarrels often resulted because of Jocelyn's efforts.

Jocelyn left Angelito sometime in July 1987. Angelito thereafter found another woman with whom he has since lived. They now have children.

Ten years after their separation, or on October 8, 1997, Jocelyn filed with the RTC a petition for declaration of nullity of marriage under Article 36 of the Family Code, as amended. She claimed that Angelito was psychologically incapacitated to comply with the essential obligations of marriage. In addition to the above historical narrative of their relationship, she alleged in her complaint:

x x x x x x x x x

8. That from the time of their marriage up to their separation in July 1987, their relationship had been marred with bitter quarrels which caused unbearable physical and emotional pains on the part of the plaintiff because defendant inflicted physical injuries upon her every time they had a troublesome encounter;

9. That the main reason for their quarrel was always the refusal of the defendant to work or his indolence and his excessive drinking which makes him psychologically incapacitated to perform his marital obligations making life unbearably bitter and intolerable to the plaintiff causing their separation in fact in July 1987;

10. That such psychological incapacity of the defendant started from the time of their marriage and became very apparent as time went and proves to be continuous, permanent and incurable;

x x x x x x x x x

Angelito did not answer the petition/complaint. Neither did he submit himself to a psychological examination with psychologist Nedy Tayag (who was presumably hired by Jocelyn).

The case proceeded to trial on the merits after the trial court found that no collusion existed between the parties. Jocelyn, her aunt Maryjane Serrano, and the psychologist testified at the trial.

In her testimony, Jocelyn essentially repeated the allegations in her petition, including the alleged incidents of physical beating she received from Angelito. On cross-examination, she remained firm on these declarations but significantly declared that Angelito had not treated her violently before they were married.

Asst. Sol. Gen. Kim Briguera:

Q. Can you describe your relationship with the respondent before you got married?

A. He always go (*sic*) to our house to court me.

Q. Since you cited violence, after celebration of marriage, will you describe his behavioural (s*ic*) pattern before you got married?

A. He show (*sic*) kindness, he always come (*sic*) to the house.

Q. So you cannot say his behavioral pattern composing of violent nature before you got married (*sic*), is there any signs (*sic)* of violence?

A. None maam (*sic*), because we were not sweethearts.

Q. Even to other people?

A. He also quarrel (*sic*).[3]

Maryjane Serrano corroborated parts of Jocelyn's testimony.

When the psychologist took the witness stand, she declared:

Q. What about the respondent, did you also make clinical interpretation of his behavior?

[3] TSN, March 31, 1998, pp. 16-17.

A. Apparently, the behavior and actuation of the respondent during the time of the marriage the respondent is suffering from anti-social personality Disorder this is a serious and severe apparently incurable (*sic*). This disorder is chronic and long-standing before the marriage.

Q. And you based your interpretation on the report given by the petitioner?

A. Based on the psychological examination wherein there is no pattern of lying when I examined her, the petitioner was found to be very responsive, coherent, relevant to marital relationship with respondent.

Q. And the last page of Exhibit "E" which is your report there is a statement rather on the last page, last paragraph which state: It is the clinical opinion of the undersigned that marriage between the two, had already hit bottom rock (*sic*) even before the actual celebration of marriage. Respondent('s) immature, irresponsible and callous emotionality practically harbors (*sic*) the possibility of having blissful relationship. His general behavior fulfill(s) the diagnostic criteria for a person suffering from Anti Social Personality Disorder. Such disorder is serious and severe and it interferred (*sic*) in his capacity to provide love, caring, concern and responsibility to his family. The disorder is chronic and long-standing in proportion and appear(s) incurable. The disorder was present at the time of the wedding and became manifest thereafter due to stresses and pressure of married life. He apparently grew up in a dysfunctional family. Could you explain what does chronic mean?

A. Chronic is a clinical language which means incurable it has been there long before he entered marriage apparently, it came during early developmental (*sic*) Basic trust was not develop (*sic*).

Q. And this long standing proportion (*sic*).

A. That no amount of psychological behavioral help to cure such because psychological disorder are not detrimental to men but to others particularly and this (*sic*) because the person who have this kind of disorder do not know that they have this kind of disorder.

Q. So in other words, permanent?

A. Permanent and incurable.

Q. You also said that this psychological disorder is present during the wedding or at the time of the wedding or became manifest thereafter?

A. Yes, ma'am."

x x x x x x x x x

Court:

Q. Is there a clinical findings (*sic*)?

A. That is the clinical findings. Personality Disorder labeled on Anti-Social Personality Disorder (*sic*).

Q. How was shown during the marriage (*sic*)?

A. The physical abuses on the petitioner also correlated without any employment exploitative and silent (*sic*) on the part of the respondent is clearly Anti-Social Disorder.

Q. Do the respondent know that he has that kind of psychological disorder (*sic*)?

A. Usually a person suffering that psychological disorder will not admit that they are suffering that kind of disorder (*sic*).

Court:

Q. So because of this Anti-Social Disorder the petitioner suffers a lot (*sic*)?

A. Yes, because the petitioner is a victim of hardships of marital relation to the respondent (*sic*).

Court:

Q. Was the Anti-Social Personality Disorder also shown to the parents (*sic*)?

A. Yes, according to the petitioner, respondent never give due respect more often than not he even shouted at them for no apparent reason (*sic*).

Court:

Q. Did you say Anti-Social Disorder incurable (*sic*)?

A. Yes, sir.

Court:

Q. Is there a physical violence (*sic*)?

A. Actually, I could see the petitioner is tortured mentally of the respondent (*sic*).

Court:

Q. How was the petitioner tortured?

A. She was able to counter-act by the time she was separated by the respondent (*sic*).

Court:

Q. Do you mean to tell us that Anti-Social disorder is incurable?

A. Yes, sir.

Court:

Q. Why did you know?

A. Anti-Social disorder is incurable again because the person itself, the respondent is not aware that this kind of personality affect the other party (*sic*).

Court:

Q. This Anti-Social behavior is naturally affected the petitioner (*sic*)?

A. They do not have children because more often than not the respondent is under the influence of alcohol, they do not have peaceful harmonious relationship during the less than one year and one thing what is significant, respondent allowed wife to work as housemaid instead of he who should provide and the petitioner never receive and enjoy her earning for the five months that she work and it is also the petitioner who took sustainance of the vices. (*sic*)

Q. And because of that Anti-Social disorder he had not shown love to the petitioner?

A. From the very start the respondent has no emotion to sustain the marital relationship but what he need is to sustain his vices thru the petitioner (*sic*).

Court:

Q. What are the vices?

A. Alcohol and gambling.

Court:

Q. And this affected psychological incapacity to perform marital obligation?

A. Not only that up to this time from my clinical analysis of Anti-Social Personality Disorder, he is good for nothing person.[4]

The psychologist also identified the Psychological Report she prepared. The Report pertinently states:[5]

Report on the psychological condition of JOCELYN M. SUAZO, a petitioner for "Nullity of Marriage" versus ANGELITO D. SUAZO

GENERAL DATA

[This pertains to Jocelyn's]

BRIEF MARITAL HISTORY

x x x x x x x x x

Husband is Angelito D. Suazo, 28 years old reached 3rd year high school, a part time tricycle driver, eldest among 4 siblings. Father is a machine operator, described to be an alcoholic, womanizer and a heavy gambler. While mother is a sales agent. It was a common knowledge within their vicinity that she was also involved in an illicit relationship. Familial relationship was described to be stormy, chaotic whose bickering and squabbles were part and parcel of their day to day living.

TEST RESULTS AND EVALUATION

Projective data reveal an introvert person whose impulse life is adequately suppressed so much so that it does not create inner tension and anxiety. She is fully equipped in terms of drives and motivation particularly in uplifting not, only her socio-emotional image but was as her morale. She may be sensitive yet capable of containing the

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[4] TSN, July 16, 1998, pp. 15-22.

[5] Record, pp. 36-39.

effect of such sensitiveness; in order to remain in goodstead (*sic*) with her immediate environment.

She is pictured as a hard-working man (*sic*) who looks forward for a better future in spite of difficulties she had gone through in the past. She is fully aware of external realities of life that she set simple life goals which is (*sic*) commensurate with her capabilities and limitations. However, she needs to prioritize her interest in order to direct her energy toward specific goals. Her tolerance for frustration appears to be at par with her coping mechanism that she is able to discharge negative trends appropriately.

REMARKS :

[Already cited in full in the psychologist's testimony quoted above][6]

The Office of the Solicitor General – representing the Republic of the Philippines – strongly opposed the petition for declaration of nullity of the marriage. Through a Certification filed with the RTC, it argued that the psychologist failed to examine and test Angelito; thus, what she said about him was purely hearsay.

THE RTC RULING

The RTC annulled the marriage under the following reasoning:

While there is no particular instance setforth (*sic*) in the law that a person may be considered as psychologically incapacitated, there as (*sic*) some admitted grounds that would render a person to be unfit to comply with his marital obligation, such as "immaturity, *i.e.,* lack of an effective sense of rational judgment and responsibility, otherwise peculiar to infants (like refusal of the husband to support the family or excessive dependence on parents or peer group approval) and habitual alcoholism, or the condition by which a person lives for the next drink and the next drinks" (The Family Code of the Phils, Alicia Sempio-Diy, p.39, 1988 ed.)

The evidence presented by the petitioner and the testimony of the petitioner and Dr. Tayag, points (*sic*) to one thing – that the petitioner failed to establish a harmonious family life with the respondent. On the contrary, the respondent has not shown love

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[6] Parenthetical notes supplied.

and respect to the petitioner manifested by the former's being irresponsible, immature, jobless, gambler, drunkard and worst of all – a wife beater. The petitioner, unable to bear any longer the misbehavior and attitude of the respondent, decided, after one year and four months of messy days, to leave the respondent.

In this regard, the petitioner was able to prove that right from the start of her married life with the respondent, she already suffered from maltreatment, due to physical injuries inflicted upon her and that she was the one who worked as a housemaid of a relative of her husband to sustain the latter's niece (*sic*) and because they were living with her husband's family, she was obliged to do the household chores – an indication that she is a battered wife coupled with the fact that she served as a servant in his (*sic*) husband's family.

This situation that the petitioner had underwent may be attributed to the fact that at the time of their marriage, she and her husband are still young and was forced only to said marriage by her relatives. The petitioner and the respondent had never developed the feeling of love and respect, instead, the respondent blamed the petitioner's family for said early marriage and not to his own liking.

Applying the principles and the requisites of psychological incapacity enunciated by this Court in *Santos v. Court of Appeals*,[7] the RTC concluded:

The above findings of the psychologist [referring to the psychologist' testimony quoted above] would only tend to show that the respondent was, indeed, suffering from psychological incapacity which is not only grave but also incurable.

Likewise, applying the principles set forth in the case of *Republic vs. Court of Appeals and Molina,* 268 SCRA 198, wherein the Supreme Court held that:

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[7] The RTC enumerated the requisites as follows: (1) that psychological incapacity refers to no less than a mental not physical incapacity; (2) that the law intended psychological incapacity to be confined to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to marriage; and (3) that the psychological condition must exist at the time of the marriage and must be characterized by **gravity**, **juridical antecedence** and **incurability.** See citation at note 9.

x x x [At this point, the RTC cited the pertinent *Molina* ruling]

The Court is satisfied that the evidence presented and the testimony of the petitioner and Dr. Familiar (*sic*) **[the psychologist who testified in this case was Nedy Tayag, not a Dr. Familiar]** attesting that there is psychological incapacity on the part of the respondent to comply with the essential marital obligations has been sufficiently and clearly proven and, therefore, petitioner is entitled to the relief prayed for.

A claim that the marriage is valid as there is no psychological incapacity of the respondent is a speculation and conjecture and without moral certainty. This will enhanced (*sic*) a greater tragedy as the battered wife/petitioner will still be using the surname of the respondent, although they are now separated, and a grim and sad reminder of her husband who made here a slave and a punching bag during the short span of her marriage with him. The law on annulment should be liberally construed in favor of an innocent suffering petitioner otherwise said law will be an instrument to protect persons with mental illness like the serious anti-social behavior of herein respondent.[8]

THE CA RULING

The Republic appealed the RTC decision to the CA. The CA reversed the RTC decision, ruling that:

True, as stated in *Marcos vs Marcos* 343 SCRA 755, the guidelines set in *Santos vs Court of Appeals* and *Republic vs Court of Appeals* do not require that a physician personally examine the person to be declared psychologically incapacitated. The Supreme Court adopted the *totality of evidence* approach which allows the fact of psychological incapacity to be drawn from evidence that medically or clinically identify the root causes of the illness. If the totality of the evidence is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to. Applied in *Marcos*, however, the aggregate testimony of the aggrieved spouse, children, relatives and the social worker were not found to be sufficient to prove psychological incapacity, in the absence of any evaluation of the respondent himself, the person whose mental and psychological capacity was in question.

[8] Parenthetical notes supplied.

In the case at bench, there is much scarcer evidence to hold that the respondent was psychologically incapable of entering into the marriage state, that is, to assume the essential duties of marriage due to an underlying psychological illness. Only the wife gave first-hand testimony on the behavior of the husband, and it is inconclusive. As observed by the Court in *Marcos*, the respondent may have failed to provide material support to the family and has resorted to physical abuse, but it is still necessary to show that they were manifestations of a deeper psychological malaise that was clinically or medically identified. The theory of the psychologist that the respondent was suffering from an anti-social personality syndrome at the time of the marriage was not the product of any adequate medical or clinical investigation. The evidence that she got from the petitioner, anecdotal at best, could equally show that the behavior of the respondent was due simply to causes like immaturity or irresponsibility which are not equivalent to psychological incapacity, *Pesca vs Pesca* 356 SCRA 588, or the failure or refusal to work could have been the result of rebelliousness on the part of one who felt that he had been forced into a loveless marriage. In any event, the respondent was not under a permanent compulsion because he had later on shown his ability to engage in productive work and more stable relationships with another. The element of permanence or incurability that is one of the defining characteristic of psychological incapacity is not present.

There is no doubt that for the short period that they were under the same roof, the married life of the petitioner with the respondent was an unhappy one. But the marriage cannot for this reason be extinguished. As the Supreme Court intimates in *Pesca*, our strict handling of Article 36 will be a reminder of the inviolability of the marriage institution in our country and the foundation of the family that the law seeks to protect. The concept of psychological incapacity is not to be a mantra to legalize what in reality are convenient excuses of parties to separate and divorce.

<u>THE PETITION</u>

Jocelyn now comes to us *via* the present petition to challenge and seek the reversal of the CA ruling based on the following arguments:

1. The Court of Appeals went beyond what the law says, as it totally disregarded the legal basis of the RTC in declaring the marriage null and void – *Tuason v. Tuason* (256 SCRA 158; to be accurate,

should be *Tuason v. Court of Appeals*) holds that "the finding of the Trial Court as to the existence or non-existence of petitioner's psychological incapacity at the time of the marriage is final and binding on us (the Supreme Court); petitioner has not sufficiently shown that the trial court's factual findings and evaluation of the testimonies of private respondent's witnesses *vis-à-vis* petitioner's defenses are clearly and manifestly erroneous";

2. Article 36 of the Family Code did not define psychological incapacity; this omission was intentional to give the courts a wider discretion to interpret the term without being shackled by statutory parameters. Article 36 though was taken from Canon 1095 of the New Code of Canon Law, which gives three conditions that would make a person unable to contract marriage from mental incapacity as follows:

> "1095. They are incapable of contracting marriage:
>
> (1) who lack the sufficient use of reason;
>
> (2) who suffer from grave lack of discretion of judgment concerning essential matrimonial rights and duties which are to be mutually given and accepted;
>
> (3) who are not capable of assuming the essential obligations of matrimony due to causes of a psychic nature."

The decision of the RTC, Jocelyn claims, intelligently conforms to these criteria. The RTC, being clothed with discretionary functions, applied its finding of psychological incapacity based on existing jurisprudence and the law itself which gave lower court magistrates enough latitude to define what constitutes psychological incapacity. On the contrary, she further claims, the OSG relied on generalities without being specific on why it is opposed to the dissolution of a marriage that actually exists only in name.

Simply stated, we face the issue of whether there is basis to nullify Jocelyn's marriage with Angelito under Article 36 of the Family Code.

THE COURT'S RULING

We find the petition devoid of merit. The CA committed no reversible error of law in setting aside the RTC decision,

as no basis exists to declare Jocelyn's marriage with Angelito a nullity under Article 36 of the Family Code and its related jurisprudence.

The Law, Molina and Te

Article 36 of the Family Code provides that *a marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.*

A unique feature of this law is its intended open-ended application, as it merely introduced an abstract concept – psychological incapacity that disables compliance with the contractual obligations of marriage – without any concrete definition or, at the very least, an illustrative example. We must therefore apply the law based on how the concept of psychological incapacity was shaped and developed in jurisprudence.

Santos v. Court of Appeals[9] declared that psychological incapacity must be characterized by (a) **gravity**; (b) **juridical antecedence**; and (c) **incurability**. It should refer to "no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage." It must be confined to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."[10]

The Court laid down more definitive guidelines in the interpretation and application of the law in *Republic v. Court of Appeals*[11] (*Molina*) as follows:

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[9] 310 Phil 21 (1995).

[10] *Id.* at 39-40.

[11] 335 Phil. 664 (1997).

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.

(2) The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological – not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties or one of them was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily

to those not related to marriage, like the exercise of a profession or employment in a job. x x x

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. x x x

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.[12]

Molina, subsequent jurisprudence holds, merely expounded on the basic requirements of *Santos*.[13]

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[12] *Id.* at 676-680.

[13] See *Marcos v. Marcos*, 397 Phil. 840, 850 (2000).

A later case, *Marcos v. Marcos,*[14] further clarified that there is no requirement that the defendant/respondent spouse should be personally examined by a physician or psychologist as a condition *sine qua non* for the declaration of nullity of marriage based on psychological incapacity. Accordingly, it is no longer necessary to introduce expert opinion in a petition under Article 36 of the Family Code if the totality of evidence shows that psychological incapacity exists and its **gravity**, **juridical antecedence**, and **incurability** can be duly established.[15]

Pesca v. Pesca[16] clarifies that the *Molina* guidelines apply even to cases then already pending, under the reasoning that *the court's interpretation or construction establishes the contemporaneous legislative intent of the law; the latter as so interpreted and construed would thus constitute a part of that law as of the date the statute is enacted. It is only when a prior ruling of this Court finds itself later overruled, and a different view is adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith in accordance therewith under the familiar rule of "lex prospicit, non respicit."*

On March 15, 2003, the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 08-11-10 SC, *Rules*) promulgated by the Court took effect. Section 2(d) of the Rules pertinently provides:

> (d) *What to allege*. – A petition under Article 36 of the Family Code shall specifically allege the complete facts showing that either or both parties were psychologically incapacitated from complying with the essential marital obligations of marriage at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration.

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[14] *Id*.

[15] *Id.* at 850.

[16] 408 Phil. 713, 720 (2001).

The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage **but expert opinion need not be alleged.**

Section 12(d) of the Rules requires a pre-trial brief containing all the evidence presented, including expert opinion, if any, briefly stating or describing the nature and purpose of these pieces of evidence. Section 14(b) requires the court to consider during the pre-trial conference the advisability of receiving expert testimony and such other matters as may aid in the prompt disposition of the petition. Under Section 17 of the Rules, *the grounds for the declaration of the absolute nullity or annulment of marriage must be proved*.

All cases – involving the application of Article 36 of the Family Code – that came to us were invariably decided based on the principles in the cited cases. This was the state of law and jurisprudence on Article 36 when the Court decided *Te v. Yu-Te*[17] (*Te*) which revisited the *Molina* guidelines.

Te begins with the observation that the Committee that drafted the Family Code did not give any examples of psychological incapacity for fear that by so doing, it would limit the applicability of the provision under the principle of *ejusdem generis*; that the Committee desired that the courts should interpret the provision on a case-to-case basis, guided by experience, by the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals that, although not binding on the civil courts, may be given persuasive effect since the provision itself was taken from the Canon Law.[18] *Te* thus assumes it a basic premise ***that the law is so designed to allow some resiliency in its application***.[19]

Te then sustained *Santos*' doctrinal value, saying that its interpretation is consistent with that of the Canon Law.

Going back to its basic premise, *Te* said:

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[17] G.R. No. 161793, February 13, 2009, 579 SCRA 193.

[18] *Id.* at 213.

[19] *Id.*

Conscious of the law's intention that it is the courts, on a case-to-case basis, that should determine whether a party to a marriage is psychologically incapacitated, the Court, in sustaining the lower court's judgment of annulment in *Tuason v. Court of Appeals*, ruled that the findings of the trial court are final and binding on the appellate courts.

Again, upholding the trial court's findings and declaring that its decision was not a judgment on the pleadings, the Court, in *Tsoi v. Court of Appeals*, explained that when private respondent testified under oath before the lower court and was cross-examined by the adverse party, she thereby presented evidence in the form of testimony. Importantly, the Court, aware of parallel decisions of Catholic marriage tribunals, ruled that the senseless and protracted refusal of one of the parties to fulfill the marital obligation of procreating children is equivalent to psychological incapacity.

With this as backdrop, *Te* launched an attack on *Molina*. It said that *the resiliency with which the concept should be applied and the case-to-case basis by which the provision should be interpreted, as so intended by its framers, had, somehow, been rendered ineffectual by the imposition of a set of strict standards in Molina*. *Molina,* to *Te*, has become a strait-jacket, forcing all sizes to fit into and be bound by it; wittingly or unwittingly, the Court, in conveniently applying *Molina*, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage.

Te then enunciated the principle that each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations, but according to its own facts. Courts should interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals.

As a final note though, *Te* expressly stated that it is not suggesting the abandonment of *Molina*, but that, following *Antonio v. Reyes*, it merely looked at other perspectives that should also govern the disposition of petitions for declaration of nullity under Article 36. The subsequent *Ting v. Velez-*

Ting[20] follows *Te*'s lead when it reiterated that *Te* did not abandon *Molina*; *far from abandoning Molina*, it simply suggested the relaxation of its stringent requirements, cognizant of the explanation given by the Committee on the Revision of the Rules on the rationale of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages:[21]

To require the petitioner to allege in the petition the particular root cause of the psychological incapacity and to attach thereto the verified written report of an accredited psychologist or psychiatrist have proved to be too expensive for the parties. They adversely affect access to justice of poor litigants. It is also a fact that there are provinces where these experts are not available. Thus, the Committee deemed it *necessary to relax this stringent requirement enunciated in the Molina Case*. The need for the examination of a party or parties by a psychiatrist or clinical psychologist and the presentation of psychiatric experts shall now be determined by the court during the pre-trial conference.

Te, therefore, instead of substantially departing from *Molina,*[22] merely stands for a more flexible approach in considering petitions for declaration of nullity of marriages based on psychological incapacity. It is also noteworthy for its evidentiary approach in these cases, which it expounded on as follows:

By the very nature of Article 36, **courts**, despite having the primary task and burden of decision-making, **must not discount but, instead, must consider as decisive evidence the expert opinion on the psychological and mental temperaments of the parties**.

xxx xxx xxx

Hernandez v. Court of Appeals emphasizes the importance of presenting expert testimony to establish the precise cause of a party's psychological incapacity, and to show that it existed at the inception of the marriage. And as *Marcos v. Marcos* asserts, there is no

[20] G.R. No. 166562, March 31, 2009.

[21] A.M. No. 02-11-10-SC.

[22] A step that *Te,* a Third Division case, could not have legally undertaken because the *Molina* ruling is an *En Banc* ruling, in light of Article VIII, Section 4(3) of the Constitution.

requirement that the person to be declared psychologically incapacitated be personally examined by a physician, if the totality of evidence presented is enough to sustain a finding of psychological incapacity. **Verily, the evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself**.

This is not to mention, but we mention nevertheless for emphasis, that the presentation of expert proof presupposes a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity.[23] [Underscoring supplied]

This evidentiary approach is repeated in *Ting v. Velez-Ting*.[24]

Under this evolutionary development, as shown by the current string of cases on Article 36 of the Family Code, *what should not be lost on us* is the intention of the law to confine the application of Article 36 to the most serious cases of personality disorders, clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage; that the psychological illness that must have afflicted a party at the inception of the marriage should be a malady so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond he or she is about to assume.[25] It is not enough that the respondent, alleged to be psychologically incapacitated, had difficulty in complying with his marital obligations, or was unwilling to perform these obligations. Proof of a natal or supervening disabling factor – an adverse integral element in the respondent's personality structure that effectively incapacitated him from complying with his essential marital obligations – must be shown.[26] Mere difficulty, refusal or neglect in the performance of marital

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[23] *Supra* note 16, pp. 231-232.

[24] *Supra* note 19.

[25] See *So v. Valera*, G.R. No. 150677, June 5, 2009, and *Padilla-Rumbaua v. Rumbaua*, G.R. No. 166738, August 14, 2009.

[26] *Id.*, *Padilla-Rumbaua v. Rumbaua*.

obligations or ill will on the part of the spouse is different from incapacity rooted in some debilitating psychological condition or illness; irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage.[27]

If all these sound familiar, they do, for they are but iterations of *Santos'* juridical antecedence, gravity and incurability requisites. This is proof of *Santos'* continuing doctrinal validity.

The Present Case

As the CA did, we find Jocelyn's evidence insufficient to establish Angelito's psychological incapacity to perform essential marital obligations. We so conclude based on our own examination of the evidence on record, which we were compelled to undertake because of the differences in the trial court and the appellate court's appreciation and evaluation of Jocelyn's presented evidence.

a. The Expert Opinion Evidence

Both the psychologist's testimony and the psychological report did not conclusively show the root cause, gravity and incurability of Angelito's alleged psychological condition.

We first note a critical factor in appreciating or evaluating the expert opinion evidence – the psychologist's testimony and the psychological evaluation report – that Jocelyn presented. Based on her declarations in open court, the psychologist evaluated Angelito's psychological condition only in an indirect manner – she derived all her conclusions from information coming from Jocelyn whose bias for her cause cannot of course be doubted. Given the source of the information upon which the

[27] *Navales v. Navales*, G.R. No. 167523, June 27, 2008, 556 SCRA 272, 288-289.

psychologist heavily relied upon, the court must evaluate the evidentiary worth of the opinion with due care and with the application of the more rigid and stringent set of standards outlined above, *i.e.*, that there must be a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a psychological incapacity that is grave, severe and incurable.

In saying this, we do not suggest that a personal examination of the party alleged to be psychologically incapacitated is mandatory; jurisprudence holds that this type of examination is not a mandatory requirement. While such examination is desirable, we recognize that it may not be practical in all instances given the oftentimes estranged relations between the parties. For a determination though of a party's complete personality profile, information coming from persons intimately related to him (such as the party's close relatives and friends) may be helpful. This is an approach in the application of Article 36 that allows flexibility, at the same time that it avoids, if not totally obliterate, the credibility gaps spawned by supposedly expert opinion based entirely on doubtful sources of information.

From these perspectives, we conclude that the psychologist, using meager information coming from a directly interested party, could not have secured a complete personality profile and could not have conclusively formed an objective opinion or diagnosis of Angelito's psychological condition. While the report or evaluation may be conclusive with respect to Jocelyn's psychological condition, this is not true for Angelito's. The methodology employed simply cannot satisfy the required depth and comprehensiveness of examination required to evaluate a party alleged to be suffering from a psychological disorder. In short, this is not the psychological report that the Court can rely on as basis for the conclusion that psychological incapacity exists.

Other than this credibility or reliability gap, both the psychologist's report and testimony simply provided a general description of Angelito's purported anti-social personality disorder, supported by the characterization of this disorder as

chronic, grave and incurable. The psychologist was conspicuously silent, however, on the bases for her conclusion or the particulars that gave rise to the characterization she gave. These particulars are simply not in the Report, and neither can they be found in her testimony.

For instance, the psychologist testified that Angelito's personality disorder is chronic or incurable; Angelito has long been afflicted with the disorder prior to his marriage with Jocelyn or even during his early developmental stage, as basic trust was not developed. However, she did not support this declaration with any factual basis. In her Report, she based her conclusion on the presumption that *Angelito apparently grew up in a dysfunctional family*. Quite noticeable, though, is the psychologist's own equivocation on this point – she was not firm in her conclusion for she herself may have realized that it was simply conjectural. The veracity, too, of this finding is highly suspect, for it was based entirely on Jocelyn's assumed knowledge of Angelito's family background and upbringing.

Additionally, the psychologist merely generalized on the questions of why and to what extent was Angelito's personality disorder grave and incurable, and on the effects of the disorder on Angelito's awareness of and his capability to undertake the duties and responsibilities of marriage.

The psychologist therefore failed to provide the answers to the more important concerns or requisites of psychological incapacity, all of which are critical to the success of Jocelyn's cause.

b. Jocelyn's Testimony

The inadequacy and/or lack of probative value of the psychological report and the psychologist's testimony impel us to proceed to the evaluation of Jocelyn's testimony, to find out whether she provided the court with sufficient facts to support a finding of Angelito's psychological incapacity.

Unfortunately, we find Jocelyn's testimony to be insufficient. Jocelyn merely testified on Angelito's habitual drunkenness,

gambling, refusal to seek employment and the physical beatings she received from him – all of which occurred *after* the marriage. Significantly, she declared in her testimony that Angelito showed no signs of violent behavior, *assuming this to be indicative of a personality disorder*, during the courtship stage or at the earliest stages of her relationship with him. She testified on the alleged physical beatings after the marriage, not before or at the time of the celebration of the marriage. She did not clarify when these beatings exactly took place – whether it was near or at the time of celebration of the marriage or months or years after. This is a clear evidentiary gap that materially affects her cause, as the law and its related jurisprudence require that the psychological incapacity must exist at the time of the celebration of the marriage.

Habitual drunkenness, gambling and refusal to find a job, while indicative of psychological incapacity, do not, by themselves, show psychological incapacity. All these simply indicate difficulty, neglect or mere refusal to perform marital obligations that, as the cited jurisprudence holds, cannot be considered to be constitutive of psychological incapacity in the absence of proof that these are manifestations of an incapacity rooted in some debilitating psychological condition or illness.

The physical violence allegedly inflicted on Jocelyn deserves a different treatment. While we may concede that physical violence on women indicates abnormal behavioral or personality patterns, such violence, standing alone, does not constitute psychological incapacity. Jurisprudence holds that there must be evidence showing a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself. The evidence of this nexus is irretrievably lost in the present case under our finding that the opinion of the psychologist cannot be relied upon. Even assuming, therefore, that Jocelyn's account of the physical beatings she received from Angelito were true, this evidence does not satisfy the requirement of Article 36 and its related jurisprudence, specifically the *Santos* requisites.

On the whole, the CA correctly reversed the RTC judgment, whose factual bases we now find to be clearly and manifestly erroneous. Our ruling in *Tuason* recognizing the finality of the factual findings of the trial court in Article 36 cases (which is Jocelyn's main anchor in her present appeal with us) does not therefore apply in this case. We find that, on the contrary, the CA correctly applied Article 36 and its related jurisprudence to the facts and the evidence of the present case.

WHEREFORE, premises considered, we *DENY* the petition for lack of merit. We *AFFIRM* the appealed Decision of the Court of Appeals in CA-G.R. CV No. 62443. Costs against the petitioner.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Abad, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 183250. March 12, 2010]

WILLIAM UY CONSTRUCTION CORP. and/or TERESITA UY and WILLIAM UY, *petitioners, vs.* **JORGE R. TRINIDAD,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYER AND EMPLOYEE; PROJECT EMPLOYEE; REMAINS AS SUCH REGARDLESS OF THE NUMBER OF YEARS AND THE VARIOUS PROJECTS HE WORKED FOR THE COMPANY.— [T]he test for distinguishing a "project employee" from a "regular employee" is whether or not he has been assigned to carry out a "specific project or undertaking," with the duration and scope of his engagement specified at the time his service is contracted. Here, it is not disputed that petitioner company contracted respondent Trinidad's service by specific projects

with the duration of his work clearly set out in his employment contracts. He remained a project employee regardless of the number of years and the various projects he worked for the company.

2. **ID.; ID.; ID.; LENGTH OF SERVICE IS NOT THE CONTROLLING DETERMINANT OF THE EMPLOYMENT TENURE THEREOF.—** Generally, length of service provides a fair yardstick for determining when an employee initially hired on a temporary basis becomes a permanent one, entitled to the security and benefits of regularization. But this standard will not be fair, if applied to the construction industry, simply because construction firms cannot guarantee work and funding for its payrolls beyond the life of each project. And getting projects is not a matter of course. Construction companies have no control over the decisions and resources of project proponents or owners. There is no construction company that does not wish it has such control but the reality, understood by construction workers, is that work depended on decisions and developments over which construction companies have no say. For this reason, the Court held in *Caseres v. Universal Robina Sugar Milling Corporation* that the repeated and successive rehiring of project employees do not qualify them as regular employees, as length of service is not the controlling determinant of the employment tenure of a project employee, but whether the employment has been fixed for a specific project or undertaking, its completion has been determined at the time of the engagement of the employee.

3. **ID.; ID.; ID.; ID.; INTERVAL OR GAPS SEPARATED ONE EMPLOYMENT CONTRACT FROM ANOTHER.—** [R]espondent Trinidad's series of employments with petitioner company were co-terminous with its projects. When its Boni Serrano-Katipunan Interchange Project was finished in December 2004, Trinidad's employment ended with it. He was not dismissed. His employment contract simply ended with the project for which he had signed up. His employment history belies the claim that he continuously worked for the company. Intervals or gaps separated one contract from another.

4. **ID.; ID.; ID.; REPORTING REQUIREMENT FOR THE TERMINATION OF THE EMPLOYMENT OF PROJECT EMPLOYEE COMPLIED WITH IN CASE AT BAR.—**

[R]espondent Trinidad did not say in his complaint that he had been illegally dismissed after each of the projects for which he had been signed up. His complaint was essentially that he should have been rehired from the last project since he had already acquired the status of a regular employee. Consequently, petitioner company needed only to show the last status of Trinidad's employment, namely, that of a project employee under a contract that had ended and the company's compliance with the reporting requirement for the termination of that employment. Indeed, both the Labor Arbiter and the NLRC were satisfied that the fact of petitioner company's compliance with DOLE Order 19 had been proved in this case.

APPEARANCES OF COUNSEL

Arturo C. De Los Reyes for petitioners.
Public Attorney's Office for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the tenure of project employees in the construction industry.

The Facts and the Case

On August 1, 2006 respondent Jorge R. Trinidad filed a complaint for illegal dismissal and unpaid benefits against petitioner William Uy Construction Corporation. Trinidad claimed that he had been working with the latter company for 16 years since 1988 as driver of its service vehicle, dump truck, and transit mixer. He had signed several employment contracts with the company that identified him as a project employee although he had always been assigned to work on one project after another with some intervals.

Respondent Trinidad further alleged that in December 2004 petitioner company terminated him from work after it shut down operations because of lack of projects. He learned later, however,

that although it opened up a project in Batangas, it did not hire him back for that project.

Petitioner company countered[1] that it was in the construction business. By the nature of such business, it had to hire and engage the services of project construction workers, including respondent Trinidad, whose employments had to be co-terminous with the completion of specific company projects. For this reason, every time the company employed Trinidad, he had to execute an employment contract with it, called *Appointment as Project Worker*.

Petitioner company stressed that employment intervals or gaps were inherent in the construction business. Consequently, after it finished its Boni Serrano-Katipunan Interchange Project in December 2004, Trinidad's work ended as well. In compliance with labor rules, the company submitted an establishment termination report to the Department of Labor and Employment (DOLE).

On December 23, 2006 the Labor Arbiter rendered a decision, dismissing respondent Trinidad's complaint for unjust dismissal. The Labor Arbiter, however, ordered petitioner company to pay Trinidad ₱1,500.00 in unpaid service incentive leave, taking into consideration the three-year prescriptive period for money claims.[2] The Labor Arbiter held that, since Trinidad was a project employee and since his company submitted the appropriate establishment termination report to DOLE, his loss of work cannot be regarded as unjust dismissal. The Labor Arbiter found no basis for granting Trinidad overtime pay, holiday pay, and 13th month pay.

On August 31, 2007 the National Labor Relations Commission (NLRC) affirmed the Labor Arbiter's ruling,[3] prompting

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[1] Position Paper, CA *rollo*, pp. 63- 75.

[2] *Id.* at 77-88.

[3] *Id.* at 122-128.

respondent Trinidad to elevate his case to the Court of Appeals (CA).[4] On April 24, 2008 the latter rendered a decision, reversing the NLRC's findings. Petitioner company moved for a reconsideration of the decision but the CA denied the motion.

The Issue Presented

The core issue presented in the case is whether or not the CA correctly ruled that petitioner company's repeated rehiring of respondent Trinidad over several years as project employee for its various projects automatically entitled him to the status of a regular employee.

The Court's Ruling

The CA held that, although respondent Trinidad initially worked as a project employee, he should be deemed to have acquired the status of a regular employee since petitioner company repeatedly rehired him in its past 35 projects that lasted 16 years. The CA explained that Trinidad's work as driver of the company's service vehicle, dump truck, and transit mixer was vital, necessary, and indispensable to the company's construction business. The intervals between his employment contracts were inconsequential since stoppage in operations at the end of every construction project was a foreseeable interruption of work.

But the test for distinguishing a "project employee" from a "regular employee" is whether or not he has been assigned to carry out a "specific project or undertaking," with the duration and scope of his engagement specified at the time his service is contracted.[5] Here, it is not disputed that petitioner company contracted respondent Trinidad's service by specific projects with the duration of his work clearly set out in his employment contracts.[6] He remained a project employee regardless of the number of years and the various projects he worked for the company.[7]

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[4] Docketed as CA-G.R. SP 101903.

[5] *ALU-TUCP v. National Labor Relations Commission*, G.R. No. 109902, August 2, 1994, 234 SCRA 678, 685.

[6] *Rollo*, pp. 117-119.

[7] *Alcatel Philippines, Inc. v. Relos*, G.R. No. 164315, July 3, 2009.

Generally, length of service provides a fair yardstick for determining when an employee initially hired on a temporary basis becomes a permanent one, entitled to the security and benefits of regularization. But this standard will not be fair, if applied to the construction industry, simply because construction firms cannot guarantee work and funding for its payrolls beyond the life of each project. And getting projects is not a matter of course. Construction companies have no control over the decisions and resources of project proponents or owners. There is no construction company that does not wish it has such control but the reality, understood by construction workers, is that work depended on decisions and developments over which construction companies have no say.

For this reason, the Court held in *Caseres v. Universal Robina Sugar Milling Corporation*[8] that the repeated and successive rehiring of project employees do not qualify them as regular employees, as length of service is not the controlling determinant of the employment tenure of a project employee, but whether the employment has been fixed for a specific project or undertaking, its completion has been determined at the time of the engagement of the employee.

In this case, respondent Trinidad's series of employments with petitioner company were co-terminous with its projects. When its Boni Serrano-Katipunan Interchange Project was finished in December 2004, Trinidad's employment ended with it. He was not dismissed. His employment contract simply ended with the project for which he had signed up. His employment history belies the claim that he continuously worked for the company. Intervals or gaps separated one contract from another.[9]

The CA noted that DOLE Order 19 required employers to submit a report of termination of employees every completion of construction project. And, since petitioner company submitted at the hearing before the Labor Arbiter only the termination

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[8] G.R. No. 159343, September 28, 2007, 534 SCRA 356, 361.

[9] *Rollo*, pp. 102-104.

report covering respondent Trinidad's last project, it failed to satisfy such requirement.

But respondent Trinidad did not say in his complaint that he had been illegally dismissed after each of the projects for which he had been signed up. His complaint was essentially that he should have been rehired from the last project since he had already acquired the status of a regular employee. Consequently, petitioner company needed only to show the last status of Trinidad's employment, namely, that of a project employee under a contract that had ended and the company's compliance with the reporting requirement for the termination of that employment. Indeed, both the Labor Arbiter and the NLRC were satisfied that the fact of petitioner company's compliance with DOLE Order 19 had been proved in this case.

Parenthetically, the Social Security System should be able to alleviate the temporary unemployment of construction workers, a problem that is inherent in the nature of their work.

WHEREFORE, the Court *GRANTS* the petition, *SETS ASIDE* the decision of the Court of Appeals in CA-G.R. SP 101903 dated April 24, 2008, and *REINSTATES* the decision of the National Labor Relations Commission in NLRC-NCR-CA 051703-07(7) dated August 31, 2007, which affirmed the decision of the Labor Arbiter in NLRC-NCR Case 07-05764-06.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Perez, JJ.,* concur.

EN BANC

[A.M. No. 2008-20-SC. March 15, 2010]

RE: COMPLAINT OF MRS. CORAZON S. SALVADOR AGAINST SPOUSES NOEL and AMELIA SERAFICO

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; ACT OF CONTRACTING A SECOND MARRIAGE WHILE THE PARTIES' FIRST MARRIAGES WERE STILL IN PLACE IS CONTRARY TO HONESTY, JUSTICE, DECENCY, AND MORALITY.—** In a catena of cases, the Court has consistently held that a judicial declaration of nullity is required before a valid subsequent marriage can be contracted; or else, what transpires is a bigamous marriage, reprehensible and immoral. Article 40 of the Family Code expressly requires a judicial declaration of nullity of marriage xxx. While the trial court is the proper forum to rule their subsequent marriage as bigamous, from a criminal point of view, Noel and Amelia are nonetheless liable for immorality by the mere fact of living together and contracting a subsequent marriage before their respective first marriages were judicially dissolved. In effect, Noel, who was still married to Rosemarie Jimeno, and Amelia, who was still married to Marc Michael A. Nacianceno, not only contracted an apparently bigamous marriage, but also cohabited as man and wife in violation of their prior marital status and obligations solemnly assumed before God and man. Indeed, we find that Noel and Amelia made a mockery of marriage, which is a sacred institution demanding respect and dignity. Their act of contracting a second marriage while their respective first marriages were still in place is contrary to honesty, justice, decency, and morality.
2. **ID.; ID.; ID.; ID.; IMMORAL CONDUCT, EXPLAINED.—** Immoral conduct is conduct that is "willful, flagrant or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community." What is grossly immoral must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree.

Absent a finding of criminal liability for bigamy, we, however, cannot rule that their subsequent marriage and co-habitation is grossly immoral.

3. **ID.; ID.; ID.; ID.; CONTRACTING SUBSEQUENT MARRIAGE DESPITE THE PARTIES SUBSISTING PRIOR MARRIAGES CONSTITUTES DISGRACEFUL AND IMMORAL CONDUCT; PROPER PENALTY.—** For marrying each other despite their subsisting prior marriages, Noel and Amelia acted reprehensibly and are guilty of disgraceful and immoral conduct. They are, thus, liable to suspension for at least six months under Section 52(A)(15) of the Uniform Rules on Administrative Cases in the Civil Service.

4. **ID.; ID.; ID.; SECTION 1, CANON I OF THE CODE OF CONDUCT FOR COURT PERSONNEL; VIOLATED BY THE RESPONDENTS; RESPONDENTS' ACT OF MISREPRESENTING THAT THEY COULD EITHER INFLUENCE THE OUTCOME OF THE CASE OR HELP SET A CASE FOR AGENDA BY THE COURT *EN BANC* CONSTITUTES GRAVE MISCONDUCT.—** Noel and Amelia are also liable for violation of Sec. 1, Canon I of the Code of Conduct for Court Personnel, which pertinently provides: SECTION 1. **Court personnel shall not use their official position to secure unwarranted benefits**, privileges, or exemption **for themselves** or for others. Corazon provided other pieces of evidence substantially proving her allegations that Noel and Amelia misrepresented that they could help set a case for agenda by the Court *En Banc*. Corroborating her testimony, Corazon presented two checks issued by Rosa to Noel and Amelia, and photographs showing the connection between them and Alderito. This constitutes grave misconduct.

5. **ID.; ID.; ID.; CHARGE OF MISCONDUCT; REQUIRED SUBSTANTIAL EVIDENCE TO PROVE LIABILITY OF RESPONDENTS FOR GRAVE MISCONDUCT MET IN CASE AT BAR; SUBSTANTIAL EVIDENCE, EXPLAINED.—** The checks evidently show and substantially prove payment by Rosa to Noel and Amelia for either setting a case for agenda by the Court *En Banc* or for a favorable outcome of a case. Aside from the general denials of Noel and Amelia, they did not explain the receipt of the checks and the payments totaling PhP 45,000 from Rosa. They likewise did not deny being introduced to

Rosa by Corazon. Thus, it is substantially evident that, absent any proof to the contrary, Noel and Amelia indeed misrepresented to Rosa that they could either influence the outcome of her case or help set a case for agenda by the Court *En Banc*. xxx. The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant. Substantial evidence is such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise. In sum, we find Noel and Amelia guilty of grave misconduct for misrepresenting that they could help in the favorable outcome of a case or for setting a case for agenda by the Court *En Banc*.

6. ID.; ID.; ID.; ID.; MISCONDUCT WHEN CONSIDERED GRAVE; ELEMENT OF CORRUPTION PRESENT IN CASE AT BAR.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer; and the misconduct is grave if it involves any of the additional elements of corruption, such as willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. Corruption, as an element of grave misconduct, includes the act of an official who unlawfully or wrongfully uses his station or character to procure some benefit for himself, contrary to the rights of others. In the instant case, it is clear that by misrepresenting they could help influence either the outcome of a case or set a case for agenda by the Court *En Banc* for which they demanded and received payment, Noel and Amelia committed grave misconduct. It shows the corruption of Noel and Amelia, who used their station or character as Court employees in misrepresenting they could set a case for agenda by the Court *En Banc* and procuring financial benefits for that vicious act.

7. ID.; ID.; ID.; ID.; PROPER PENALTY FOR GROSS MISCONDUCT.— Grave misconduct is punishable with dismissal from the service for the first offense under Sec. 52 (A)(3) of the Revised Uniform Rules on Administrative Cases in the Civil Service. Moreover, under Sec. 55 of said Rules, if the respondent is guilty of two (2) or more charges or counts,

the penalty to be imposed should be the penalty for the most serious charge, and the rest considered as aggravating. It is also worthy to note that the Code of Conduct for Court Personnel provides that "**all provisions of law, Civil Service rules, and issuances of the Supreme Court or regulating the conduct of public officers and employees applicable to the Judiciary are deemed incorporated into this Code**." Conformably, in the instant case, the penalty for grave misconduct, which is the more serious charge, must be applied, and the charge of disgraceful and immoral conduct considered as merely an aggravating circumstance. Thus, Noel must be dismissed from the service with forfeiture of all benefits, except accrued leave credits, with prejudice to reemployment in any branch or instrumentality of government, including GOCCs. For Amelia, for whom dismissal is no longer possible, the Court having approved her resignation on August 3, 2009 subject to the outcome of the instant administrative case, the forfeiture of all her benefits, except accrued leave credits, is in order with prejudice to reemployment in any branch or instrumentality of government, including GOCCs.

D E C I S I O N

***PER CURIAM*:**

The subject matter of the instant administrative proceeding is the formal letter-complaint[1] dated August 20, 2008 filed by Corazon S. Salvador against Noel L. Serafico and Amelia G. Serafico for *Bigamy, Immorality, Falsification, Grave Abuse of Authority, Deceit, Fraud, Conduct Unbecoming a Public Officer, and Violations of the Civil Service Code.*

Corazon and Amelia met each other in January 2006, through an officemate of the latter in this Court. Corazon became very close to Amelia and her husband Noel, who was also working in the Court, because of business deals they got involved in.

On June 11, 2008, Corazon sent a letter,[2] addressed to the Chief Justice and received by the Office of the Clerk of Court

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[1] *Rollo*, pp. 218-221.

[2] *Id.* at 276-278.

on June 18, 2008, requesting a certified copy of the pages of the parking logbook of the Court's Old Building for the period covering May 2006 to May 2007. She wanted to use the data on the dates and times when a red Pajero (Plate No. TAC 232) and a silver Nissan X-Trail (Plate No. ZFE 835) were parked there as evidence to bolster her Counter-Affidavit[3] against the Complaint-Affidavit[4] filed in March 2008 by Amelia against her for *Estafa and BP 22* before the Office of the City Prosecutor of Parañaque City, docketed as I.S. Nos. 08-D-0832/08-D-0834. In her letter, Corazon also requested the Court to investigate and conduct a lifestyle check on Noel and Amelia for alleged ill-gotten wealth and immorality. Without going into specifics—as her lawyers were still collating evidence against the couple—Corazon made general allegations of immorality, fraud/falsification, grave abuse of authority, conduct unbecoming, and deceit.

On July 7, 2008, the Court, through the Office of Administrative Services-Supreme Court (OAS-SC), informed Corazon of the approval of her request[5] and sent her certified copies[6] of the pertinent pages of the parking logbook that she requested, with a summary[7] of the dates the two vehicles were parked in the Old Building parking lot.

On July 9, 2008, the OAS-SC sent Amelia a Memorandum,[8] informing her of the formal initiation of an investigation and for her to comment on the allegations contained in Corazon's letter. In compliance, Amelia gave her letter-comment,[9] which was received by the OAS-SC on July 14, 2008. She denied

[3] *Id.* at 233-237.

[4] *Id.* at 230.

[5] *Id.* at 322.

[6] *Id.* at 326-408.

[7] *Id.* at 323-325.

[8] *Id.* at 275.

[9] *Id.* at 272-273.

the accusations of Corazon, alleging that these were pure harassment and a means of getting back at her for the criminal complaint she filed against Corazon.

In the investigation that it conducted, the OAS-SC found an inconsistency between Amelia's 1994 Statement of Assets, Liabilities, and Networth (SALN)[10] and her Complaint-Affidavit against Corazon relative to the Nissan X-Trail. In the former, Amelia declared the vehicle as an asset, but in the latter, she alleged that Corazon was its real owner. Consequently, on August 27, 2008, the OAS-SC, through a Memorandum,[11] directed Amelia to explain said discrepancy.

On September 1, 2008, Amelia gave her undated letter-comment[12] on the OAS-SC Memorandum. She said that she declared with utmost good faith the Nissan X-Trail as her own after Corazon gave it to her in exchange for her family's Toyota Lite Ace van. She added that Corazon used the Nissan X-Trail as collateral for her financial obligations; Corazon had earlier used the title to the Brookside property of Amelia's family as security for her debts without their knowledge. Thus, Amelia concluded that, for all practical purposes, the said vehicle was hers. She also averred that an officemate, Leilani Recosar, had introduced Corazon to her sometime in January 2006.

Subsequently, Corazon sent another letter, dated August 20, 2008 and received by the Office of the Chief Justice (OCJ) on September 30, 2008, as her formal complaint against Amelia and her husband Noel, which became the subject of the instant case. In her letter-complaint, Corazon alleged that:

1. She helped Amelia obtain a red Pajero by accommodating the latter through the use of her check to comply with the car financing requirement of the bank, and a silver Nissan X-Trail by again accommodating Amelia with a friend at the Nissan Corporation. In

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[10] *Id.* at 26.

[11] *Id.* at 271.

[12] *Id.* at 269-270.

both cases, Amelia failed to pay the monthly amortizations resulting in civil cases filed against Corazon on account of her accommodation.

2. Amelia tried to sell to her real properties located at Canonigo, Paco, Manila (Canonigo property) and at Brookside, Cainta, Rizal (Brookside property), both of which do not legally belong to Amelia but to the wife and family of her father, Virgilio M. Gopilan (Virgilio), whom she defrauded by hiding the titles thereof and selling them for her (Amelia) own benefit, by falsifying the record of sale and relevant documents required for the sale. Corazon paid advances for the Canonigo property to Amelia and her father but the sale did not materialize as it was sold by Amelia to her brother-in-law, Menandro F. Valerio, Jr. (Menandro). Worse, Amelia and her father Virgilio did not return all the money she (Corazon) advanced to them.

3. Amelia and Noel committed immorality and bigamy by marrying each other in a civil ceremony on February 3, 1994 even if Noel had a prior marriage to Rosemarie Jimeno on February 17, 1987. From this subsequent bigamous marriage, Noel and Amelia begot three children.

4.) Amelia violated RA 3019, otherwise known as the *Anti-Graft and Corrupt Practices Act*, and the Code of Conduct for Court Personnel.

On November 3, 2008, Amelia submitted her letter-comment[13] on Corazon's formal complaint. Amelia explained that the Canonigo property was originally owned by her father, Virgilio Gopilan, who decided to sell it, on installment basis, to Menandro, who was then entrusted with its title. Upon learning of the intended sale of said property, Corazon offered to buy it in cash. Amelia then convinced her father to sell it to Corazon instead; whereupon Virgilio retrieved the title from Menandro. Upon receipt of the title, Corazon issued Amelia a check for PhP 50,000 which, when encashed, bounced. Virgilio then demanded from Corazon the full payment for the property, but the latter could not comply. Thereafter, Virgilio died, and after the burial, Corazon informed Amelia that she had used the title of the Canonigo property as security for a loan, compelling

[13] *Id.* at 211-214.

Amelia to redeem it by paying her PhP 65,000. The title was then returned to Menandro.

On the allegation of immorality and bigamy, Amelia contended that she did not know that Noel was previously married and that she came to know of it only when Corazon raised it. She further stated that Noel had a valid legal justification for the matter.

For his part, Noel asserted in his letter-comment[14] dated November 3, 2008 that his first marriage to Rosemarie Jimeno on February 17, 1987 was null and void *ab initio*. He then asked to be excused from divulging details about it for fear that whatever he might say could be used against him later.

In her letter-reply,[15] received by the OCJ on November 11, 2008, Corazon countered that Noel had no authority to declare his previous marriage void *ab initio*, since only competent courts have the authority to do so, citing a line of jurisprudence on the matter. Moreover, she argued that Amelia's defense of lack of knowledge about Noel's previous marriage was a lie and, to substantiate that claim, she attached a reproduction of an application,[16] in Amelia's own handwriting, for a copy of the marriage certificate of Noel and Rosemarie Jimeno from the National Statistics Office (NSO). The application was allegedly given by Amelia to Corazon's sister sometime in 2006 for filing with the NSO.

In her letter,[17] dated December 6, 2008 and received by the OAS-SC on December 9, 2008, Corazon requested a copy of Amelia's letter-comment regarding the discrepancy between her 1994 SALN and her Complaint-Affidavit against Corazon. Consequently, the OAS-SC granted Corazon's request and directed her to submit the required supplemental reply, but Corazon failed to submit any.

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[14] *Id.* at 210.

[15] *Id.* at 198-201.

[16] *Id.* at 203.

[17] *Id.* at 194-195.

Parenthetically, Leilani, Records Officer II of the Records Division in the Office of the Court Administrator (OCA), was invited to appear before the OAS-SC for clarificatory questions relative to Amelia's assertion that Corazon was introduced to her by Leilani. Leilani testified on March 12[18] and April 4,[19] 2009 that Amelia's statement was true and that Corazon became very close to Noel and Amelia with whom she had business dealings.

In the ensuing investigation, Corazon gave sworn statements on April 17[20] and 29,[21] 2009. In gist, Corazon testified that, indeed, she became close to Noel and Amelia; that she was interested in buying two properties offered to her by Amelia, but this fell through because one of them, the Brookside property, was subjected to an adverse claim[22] by Adelina, the first wife of Virgilio, and the other, the Canonigo property, was sold[23] to Menandro after Virgilio's death.

Corazon further testified that, as a good friend, she helped Noel and Amelia purchase a red Pajero via a trade-in of their Toyota Lite Ace van through an accommodation by her issuance of checks to cover the price difference, with the understanding that the checks will be funded by Noel and Amelia. When the red Pajero was repossessed for nonpayment by Noel and Amelia from which a civil suit arose, Corazon helped them in acquiring the silver Nissan X-Trail, with Noel and Amelia providing for the PhP 200,000 down payment. The vehicle, however, was in Corazon's name because Noel and Amelia's credit rating was low.

Corazon explained that she was supposed to shoulder the amortizations for the Nissan X-Trail as commission payment

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[18] *Id.* at 181-186.

[19] *Id.* at 162-180.

[20] *Id.* at 147-161.

[21] *Id.* at 123-146.

[22] *Id.* at 115-116, Affidavit of Loss and Cancellation of Sale dated July 17, 2006.

[23] *Id.* at 108-109, Deed of Absolute Sale dated May 20, 2006.

to Noel and Amelia who represented that they could help her land a contract with the Court for food/canteen concession. Eventually, Corazon was disqualified from the bidding for the concession, and thus could not pay the amortizations. With the nonpayment of the outstanding monthly amortizations, Noel and Amelia, with the consent of Corazon, sold the vehicle to a buyer who was supposed to assume payment of the monthly amortizations. The buyer, however, did not continue the monthly amortization payments, and since the Deed of Sale of the vehicle was not registered, the financing bank (Union Bank) was compelled to run after Corazon in a civil case.[24]

Corazon also testified that she introduced Amelia and Noel to one Rosa Caram who had an interest in some cases, such as G.R. No. 158805 (*Valley Golf & Country Club, Inc. v. Vda. de Caram*),[25] where Rosa was the respondent, and another involving Genbank. She narrated that a meeting took place in Makati in the office of a certain Alderito[26] Yujuico where Noel and Amelia represented that they could help set the Genbank case for agenda by the Court *En Banc* at the price of PhP 1.2 million. Rosa and Alderito were former stockholders of Genbank. Corazon, however, was not included in the deal.

Finally, Corazon admitted that she filed the instant administrative case, as well as the criminal complaint for bigamy against Noel and Amelia, to get back at them for filing harassment and unsubstantiated cases against her.

Subsequently, Noel and Amelia were directed[27] on June 9, 2009 to give their comment on the misrepresentations allegedly made by them: (1) that they could set a case for agenda by the Court *En Banc* for which they allegedly received PhP 1.2 million as consideration; and (2) that they could help Corazon obtain

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[24] *Union Bank of the Philippines v. Sps. Corazon Salvador and Gaudencio Salvador, Jr. and John Doe*, Civil Case No. 07-0150-CFM; *rollo*, p. 5.

[25] April 16, 2009, 585 SCRA 218.

[26] Indicated also as "Adelito" in the transcript of stenographic notes.

[27] *Rollo*, p. 122, OAS-SC Memorandum.

a contract with the Court for food concession in exchange for commissions. They were furnished a copy of the transcript of Corazon's sworn statements taken in April 2009.

In her letter-comment,[28] dated June 10, 2009 and wholly adopted by Noel, Amelia admitted knowing Corazon's interest in joining the bidding for the Court's canteen/food concession, but denied assisting her in any way. She likewise denied their receiving PhP 1.2 million in consideration for a promise to set a case for agenda by the Court *En Banc*, asserting that they were not in a position to do so. Anent the bigamous marriage, she pointed to a Regional Trial Court (RTC) decision rendered on March 17, 2009 declaring the marriage of Noel with Rosemarie Jimeno null and void *ab initio*. On the Brookside property, they claimed no involvement in the transaction, and that Adelina filed an adverse claim only due to the many failed promises of Corazon who, they later found out, used the title to the property as security for some loans.

Subsequently, to bolster her defense of not interfering with Court processes relative to some cases, Amelia submitted copies of the September 6, 2006 Resolution[29] in G.R. No. 158805 and the January 29, 2007 Decision[30] in G.R. No. 168639.

On the other hand, Corazon submitted, as additional evidence, photocopies of two checks issued by Rosa to Noel and Amelia as payment for the promise to set a case for agenda or for a favorable outcome of some cases.

Meanwhile, on August 3, 2009, Amelia resigned from the Court through a letter dated July 29, 2009. Her resignation was accepted by the Court subject to the outcome of the instant administrative case.

On August 17, 2009, the OAS-SC inquired from the Judicial Records Office (JRO) if, at any point, the records of these

[28] *Id.* at 117-121.

[29] *Id.* at 43.

[30] *Id.* at 44-69.

cases were borrowed by any employee of the OCA.[31] The JRO, through its head of office, Atty. Ma. Lourdes G. Perfecto, Deputy Clerk of Court, gave its response[32] dated August 19, 2009, stating that the *rollo*s of both cases were not borrowed by any employee or officer of the OCA but only circulated within the JRO, the Divisions of the Court, and the Court *En Banc*, as evidenced by the entries in their logbooks and monitoring index card records.[33]

Terminating its investigation on November 23, 2009, the OAS-SC submitted its Memorandum[34] with the findings, to wit: (1) Noel and Amelia committed immorality because, when they got married in 1994, both had existing marriages which had not yet been judicially annulled or nullified; and (2) the spouses violated Republic Act No. 3019 and the Code of Conduct for Court Personnel by misrepresenting that they could help set a case for agenda by the Court *En Banc*, which amounted to grave misconduct. Consequently, citing applicable penalties under the Civil Service Rules, it recommended the dismissal from the service of Noel and the forfeiture of all the benefits of Amelia, including accrued leave credits, both with prejudice to reemployment in the government, including government-owned and controlled corporations (GOCCs).

Anent the ownership of the silver Nissan X-Trail, the OAS-SC found no substantial evidence to prove that the monthly amortizations were to be paid by Corazon as commissions to Noel and Amelia from a food/canteen concession with the Court. The mere testimony of Corazon is not enough, although her testimony bears out the fact that she was, indeed, introduced to Tribiana, who was then a member of the Bids and Awards Committee, which tends to show that Amelia did misrepresent that she could influence the bidding process.

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[31] *Id.* at 42.

[32] *Id.* at 32-33.

[33] *Id.* at 34-41, Annexes "A" to "G".

[34] *Id.* at 1-14.

As regards the transactions involving real estate properties, the OAS-SC said that the Canonigo property transaction is the subject of a pending case before the trial court and must be ventilated in that court, while the issues with the Brookside property are best threshed out in a proper adversarial court proceeding. Finally, it stated that administrative liability for alleged fraud and falsification may only prosper after conviction in a proper forum.

This Court finds the recommendation of the OAS-SC to fault respondents well taken, except as to the penalties.

We agree with the assessment of the OAS-SC that the issues raised on the botched deals in the purchase of the two properties by Corazon from Amelia, and the acquisitive transactions relative to the red Pajero and the silver Nissan X-Trail are best ventilated in full-blown adversarial proceedings before the trial courts.

The investigation established that both Noel and Amelia had subsisting marriages when they got married on February 3, 1994[35] before the Rev. Jaime R. Quirabu in Tondo, Manila. It is, thus, apparent that both had legal impediments to marrying when they married each other. It is clear from the records that Noel married Rosemarie Jimeno on February 17, 1987[36] before the Rev. Mario J. Dauz at the YMCA Youth Center in Ermita, Manila. Although in their June 10, 2009 letter-comment on Corazon's testimony/sworn statements they pointed to a purported RTC Decision declaring the marriage of Noel with Rosemarie Jimeno null and void *ab initio*, they failed to submit a copy of said decision. Even granting that Noel's first marriage was indeed nullified in early 2009, Noel was still not capacitated to marry when he married Amelia in 1994.

Also, as aptly noted by the OAS-SC, the lack of knowledge by Amelia of the fact that Noel had a subsisting marriage is not a valid defense, because she herself had a subsisting marriage with Marc Michael A. Nacianceno on February 20, 1991,[37]

[35] *Id.* at 16.
[36] *Id.* at 15.
[37] *Id.* at 22.

which was not yet dissolved when she married Noel in 1994. She was, thus, likewise incapacitated to marry when she married Noel. The eventual dissolution of this marriage on December 20, 1996 by virtue of a judicial declaration of nullity––through a Decision[38] by the RTC, Branch 260 in Parañaque City, Metro Manila in Civil Case No. 96-0426––does not militate against the fact that Amelia was still married to Marc Michael A. Nacianceno when she contracted her second marriage to Noel. In fact, tending to show that both were indeed aware of the bigamous nature of their February 3, 1994 marriage, Noel and Amelia contracted marriage anew on March 6, 1997[39] before Presiding Judge Roberto L. Makalintal of the Metropolitan Trial Court, Branch 77 in Parañaque City.

Moreover, both Noel and Amelia admitted their subsequent marriage. In his 1995 Personal Data Sheet[40] submitted to the Court and his 1995 SALN,[41] Noel indicated Amelia as his wife. Likewise, in her 1994 SALN,[42] Amelia indicated Noel as her husband.

In a catena of cases,[43] the Court has consistently held that a judicial declaration of nullity is required before a valid subsequent marriage can be contracted; or else, what transpires is a bigamous marriage, reprehensible and immoral. Article 40 of the Family Code expressly requires a judicial declaration of nullity of marriage, thus:

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[38] *Id.* at 22-24. Penned by Judge Helen Bautista Ricafort.

[39] *Id.* at 25.

[40] *Id.* at 27.

[41] *Id.* at 28.

[42] *Supra* note 10.

[43] *Morigo v. People*, G.R. No. 145226, February 6, 2004, 422 SCRA 376; *Domingo v. Court of Appeals*, G.R. No. 104818, September 17, 1993, 226 SCRA 572; *Terre v. Terre*, A.C. No. 2349, July 3, 1992, 211 SCRA 7; *Wiegel v. Sempio-Diy*, G.R. No. 53703, August 19, 1986, 143 SCRA 499; *Vda. de Consuegra v. Government Service Insurance System*, G.R. No. L-28093, January 30, 1971, 37 SCRA 315; *Gomez v. Lipana*, G.R. No. L-23214, June 30, 1970, 33 SCRA 614.

Art. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

While the trial court is the proper forum to rule their subsequent marriage as bigamous, from a criminal point of view, Noel and Amelia are nonetheless liable for immorality by the mere fact of living together and contracting a subsequent marriage before their respective first marriages were judicially dissolved. In effect, Noel, who was still married to Rosemarie Jimeno, and Amelia, who was still married to Marc Michael A. Nacianceno, not only contracted an apparently bigamous marriage, but also cohabited as man and wife in violation of their prior marital status and obligations solemnly assumed before God and man. Indeed, we find that Noel and Amelia made a mockery of marriage, which is a sacred institution demanding respect and dignity. Their act of contracting a second marriage while their respective first marriages were still in place is contrary to honesty, justice, decency, and morality.[44]

Immoral conduct is conduct that is "willful, flagrant or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community."[45] What is grossly immoral must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree.[46] Absent a finding of criminal liability for bigamy, we, however, cannot rule that their subsequent marriage and co-habitation is grossly immoral.

In *Marquez v. Clores-Ramos*,[47] we found a court stenographer guilty of disgraceful and immoral conduct in maintaining relations with a married man with whom she begot a child, for which

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[44] *Villasanta v. Peralta*, 101 Phil 313, 314 (1957).

[45] *Elape v. Elape*, A.M. No. P-08-2431, April 16, 2008, 551 SCRA 403, 407; citing *Cojuangco, Jr. v. Palma*, A.C. No. 2474, September 15, 2004, 438 SCRA 306, 314.

[46] *Reyes v. Wong*, A.C. No. 547, January 29, 1975, 63 SCRA 667, 673.

[47] A.M. No. P-96-1182, July 19, 2000, 336 SCRA 122.

she was suspended for a year. In *Castillo-Casiquin v. Cansino*,[48] aptly quoted by the OAS-SC, we again found a court stenographer guilty of disgraceful and immoral conduct in marrying and cohabiting with a married man, for which she was suspended for six months. In *Samaniego v. Ferrer*,[49] we found a married lawyer guilty of disgraceful and immoral conduct in having an extramarital affair by co-habiting with another woman who was not his wife and begetting a child from it, for which he was suspended from the practice of law for six months.

For marrying each other despite their subsisting prior marriages, Noel and Amelia acted reprehensibly and are guilty of disgraceful and immoral conduct. They are, thus, liable to suspension for at least six months under Section 52(A)(15) of the Uniform Rules on Administrative Cases in the Civil Service, which pertinently provides:

> Section 52. *Classification of Offenses*.—Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> A. The following are grave offenses with their corresponding penalties:
>
> x x x x x x x x x
>
> 15. Disgraceful and immoral conduct
>
> 1st offense – Suspension (6 mos., 1 day to 1 year)
> 2nd offense – Dismissal

Noel and Amelia are also liable for violation of Sec. 1, Canon I of the Code of Conduct for Court Personnel, which pertinently provides:

> SECTION 1. **Court personnel shall not use their official position to secure unwarranted benefits**, privileges, or exemption **for themselves** or for others. (Emphasis supplied.)

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48 A.M. No. P-06-2240, April 12, 2007, 520 SCRA 725.

49 A.C. No. 7022, June 18, 2008, 555 SCRA 1.

Corazon provided other pieces of evidence substantially proving her allegations that Noel and Amelia misrepresented that they could help set a case for agenda by the Court *En Banc*. Corroborating her testimony, Corazon presented two checks issued by Rosa to Noel and Amelia, and photographs showing the connection between them and Alderito. This constitutes grave misconduct.

It must be noted that Noel and Amelia were furnished copies of the transcript of the testimony/sworn statements of Corazon and directed to comment on it. Aside from their mere denials, Noel and Amelia did not deny or dispute being introduced to Rosa and Alderito, nor did they comment on or give any explanation for the two checks Rosa issued to them as payment for her pending cases with the Court, which Corazon categorically mentioned in her testimony. Rosa is the respondent in G.R. No. 158805 entitled *Valley Golf & Country Club, Inc. v. Vda. de Caram*,[50] which, incidentally, was decided in her favor by the Second Division of this Court on April 16, 2009. What Rosa and Alderito worked for was the setting for agenda by the Court *En Banc* of the Genbank case.

The two checks presented by Corazon indubitably show that:

(1) the first check,[51] Citibank Check No. 100176 dated May 31, 2007, in the account of Rosa with Current Account No. 000203022105 in the amount of PhP 5,000 and made payable to Cash, was deposited to a Land Bank of the Philippines account; and

(2) the second check,[52] Citibank Check No. 100197 dated August 8, 2007, also issued by Rosa from the same current account, in the amount of PhP 40,000 was made payable to Noel and encashed by him on the same date as shown by his signature at the dorsal side of the check above his written address of "14 Britain St., Better Living, Parañaque."

The checks evidently show and substantially prove payment by Rosa to Noel and Amelia for either setting a case for agenda

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[50] *Supra* note 25.

[51] *Rollo*, p. 19.

[52] *Id.* at 20-21.

by the Court *En Banc* or for a favorable outcome of a case. Aside from the general denials of Noel and Amelia, they did not explain the receipt of the checks and the payments totaling PhP 45,000 from Rosa. They likewise did not deny being introduced to Rosa by Corazon. Thus, it is substantially evident that, absent any proof to the contrary, Noel and Amelia indeed misrepresented to Rosa that they could either influence the outcome of her case or help set a case for agenda by the Court *En Banc*.

Moreover, G.R. No. 168639, entitled *Yujuico v. Quiambao*,[53] which was decided on January 29, 2007, directly involved Alderito as one of the petitioners. That case, however, does not seem to be the subject of the representation for the setting for agenda by the Court *En Banc*, for it neither involved Genbank nor was it adverse to Alderito, for the First Division granted the petition, reversed the assailed Court of Appeals decision and resolution, and set aside the assailed RTC order.

Nonetheless, the investigation showed that Alderito was likewise introduced to Noel and Amelia by Corazon under the behest of Rosa for the Genbank case. This was also not denied by Noel and Amelia. Aside from their mere denial of not being in a position to interfere with court processes, they failed to rebut their connection with Alderito. As shown by the photographs submitted by Corazon, Noel and Amelia came to know Alderito through Rosa and Corazon. The photographs marked as "Annex C," "Annex C-1", and "Annex C-2"[54] show Alderito second from the left, either seated or standing, ostensibly during the birthday party of Amelia's mother. Amelia is shown in all the photos with Alderito. Allegedly, the expenses for the birthday bash of Amelia's mother came from the PhP 1.2 million that Noel and Amelia received from Alderito. No substantial evidence was, however, shown for the alleged payment. But the fact that Alderito had ties with Noel and Amelia bolsters the testimony of Corazon on the misrepresentations by the couple that they

[53] 513 SCRA 243.

[54] *Rollo*, pp. 17-18.

could help set for agenda by the Court *En Banc* the Genbank case, in which Alderito and Rosa had an interest and for which Rosa paid PhP 45,000.

The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant.[55] Substantial evidence is such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[56] In sum, we find Noel and Amelia guilty of grave misconduct for misrepresenting that they could help in the favorable outcome of a case or for setting a case for agenda by the Court *En Banc*.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer; and the misconduct is grave if it involves any of the additional elements of corruption, such as willful intent to violate the law or to disregard established rules, which must be established by substantial evidence.[57] Corruption, as an element of grave misconduct, includes the act of an official who unlawfully or wrongfully uses his station or character to procure some benefit for himself, contrary to the rights of others.[58]

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[55] *Marcelo v. Bungubung*, G.R. No. 175201, April 23, 2008, 552 SCRA 589.

[56] *Bughaw, Jr. v. Treasure Island Industrial Corporation*, G.R. No. 173151, March 28, 2008, 550 SCRA 307.

[57] *In Re: Partial Report on the Results of the Judicial Audit Conducted in the MTCC, Branch 1, Cebu City*, A.M. No. MTJ-05-1572, January 30, 2008, 543 SCRA 105, 128; citing *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589.

[58] *Marohomsalic v. Cole*, G.R. No. 169918, February 27, 2008, 547 SCRA 98, 110; citing *Salazar v. Barriga*, A.M. No. P-05-2016, April 19, 2007, 521 SCRA 449 and *Civil Service Commission v. Belagan*, G.R. No. 132164, October 19, 2004, 440 SCRA 578.

In the instant case, it is clear that by misrepresenting they could help influence either the outcome of a case or set a case for agenda by the Court *En Banc* for which they demanded and received payment, Noel and Amelia committed grave misconduct. It shows the corruption of Noel and Amelia, who used their station or character as Court employees in misrepresenting they could set a case for agenda by the Court *En Banc* and procuring financial benefits for that vicious act.

Grave misconduct is punishable with dismissal from the service for the first offense under Sec. 52 (A)(3) of the Revised Uniform Rules on Administrative Cases in the Civil Service. Moreover, under Sec. 55[59] of said Rules, if the respondent is guilty of two (2) or more charges or counts, the penalty to be imposed should be the penalty for the most serious charge, and the rest considered as aggravating. It is also worthy to note that the Code of Conduct for Court Personnel provides that "**all provisions of law, Civil Service rules, and issuances of the Supreme Court or regulating the conduct of public officers and employees applicable to the Judiciary are deemed incorporated into this Code**." Conformably, in the instant case, the penalty for grave misconduct, which is the more serious charge, must be applied, and the charge of disgraceful and immoral conduct considered as merely an aggravating circumstance.

Thus, Noel must be dismissed from the service with forfeiture of all benefits, except accrued leave credits, with prejudice to reemployment in any branch or instrumentality of government, including GOCCs.[60] For Amelia, for whom dismissal is no longer

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[59] Sec. 55. If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances.

[60] REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Sec. 58(a) provides: The penalty of dismissal shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

possible, the Court having approved her resignation on August 3, 2009 subject to the outcome of the instant administrative case, the forfeiture of all her benefits, except accrued leave credits, is in order with prejudice to reemployment in any branch or instrumentality of government, including GOCCs.

WHEREFORE, premises considered, we hereby resolve to:

(1) *DISMISS from the service, with forfeiture of all benefits except accrued leave credits, Noel L. Serafico,* for Grave Misconduct, Disgraceful and Immoral Conduct, and violation of the Code of Conduct for Court Personnel; and

(2) *FORFEIT all the benefits, except accrued leave credits, of Amelia G. Serafico,* for Grave Misconduct, Disgraceful and Immoral Conduct, and violation of the Code of Conduct for Court Personnel.

Both *Noel L. Serafico* and *Amelia G. Serafico are BARRED* from reemployment in any branch or instrumentality of government, including GOCCs.

This decision is immediately executory.

SO ORDERED.

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

EN BANC

[A.C. No. 4973. March 15, 2010]

SPOUSES MANUEL C. RAFOLS, JR. and LOLITA B. RAFOLS, *complainants, vs.* **ATTY. RICARDO G. BARRIOS, JR.,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; DISBARMENT PROCEEDINGS; BURDEN OF PROOF RESTS ON THE COMPLAINANT; AN ATTORNEY ENJOYS PRESUMPTION OF INNOCENCE AND REGULARITY IN THE PERFORMANCE OF DUTIES UNTIL THE CONTRARY IS PROVED.—** The burden of proof in disbarment and suspension proceedings always rests on the shoulders of the complainant. The Court exercises its disciplinary power only if the complainant establishes the complaint by clearly preponderant evidence that warrants the imposition of the harsh penalty. As a rule, an attorney enjoys the legal presumption that he is innocent of the charges made against him until the contrary is proved. An attorney is further presumed as an officer of the Court to have performed his duties in accordance with his oath. Here, the complainants successfully overcame the respondent's presumed innocence and the presumed regularity in the performance of his duties as an attorney of the complainants. The evidence against him was substantial, and was not contradicted.

2. **ID.; ID.; EXPECTED TO MAINTAIN NOT ONLY LEGAL PROFICIENCY BUT ALSO A VERY HIGH STANDARD OF MORALITY, HONESTY, INTEGRITY, AND FAIR DEALING.—** The practice of law is a privilege heavily burdened with conditions. The attorney is a vanguard of our legal system, and, as such, is expected to maintain not only legal proficiency but also a very high standard of morality, honesty, integrity, and fair dealing in order that the people's faith and confidence in the legal system are ensured. Thus, he must conduct himself, whether in dealing with his clients or with the public at large, as to be beyond reproach at all times. Any violation of the high moral standards of the legal profession justifies the

imposition on the attorney of the appropriate penalty, including suspension and disbarment.

3. **ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; ABSOLUTE ABDICATION OF ANY PERSONAL ADVANTAGE THAT CONFLICTED WITH THE INTEREST OF HIS CLIENTS IS DEMANDED FROM AN ATTORNEY.—** [T]he *Code of Professional Responsibility* enjoins an attorney from engaging in unlawful, dishonest, or deceitful conduct. Corollary to this injunction is the rule that an attorney shall at all times uphold the integrity and dignity of the Legal Profession and support the activities of the Integrated Bar. The respondent did not measure up to the exacting standards of the Law Profession, which demanded of him as an attorney the absolute abdication of any personal advantage that conflicted in any way, directly or indirectly, with the interest of his clients. For monetary gain, he disregarded the vow to "delay no man for money or malice" and to "conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients" that he made when he took the Lawyer's Oath. He also disobeyed the explicit command to him as an attorney "to accept no compensation in connection with his client's business except from him or with his knowledge and approval." He conveniently ignored that the relation between him and his clients was highly fiduciary in nature and of a very delicate, exacting, and confidential character.

4. **ID.; ID.; ANY GROSS MISCONDUCT IN HIS PROFESSIONAL OR PRIVATE CAPACITY SHOWS HIM UNFIT TO MANAGE THE AFFAIRS OF OTHERS AND IS A GROUND FOR SUSPENSION OR DISBARMENT; DISBARMENT OF RESPONDENT, WARRANTED.—** Verily, the respondent was guilty of gross misconduct, which is "improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not mere error of judgment." Any gross misconduct of an attorney in his professional or private capacity shows him unfit to manage the affairs of others, and is a ground for the imposition of the penalty of suspension or disbarment, because good moral character is an essential qualification for the admission of an attorney and for the continuance of such privilege. The conclusion that the

respondent and the disgraced Judge Dizon, Jr. were *conspirators* against the former's own clients, whom he was sworn to protect and to serve with utmost fidelity and morality, is inevitable for the Court to make in this administrative case. And, being conspirators, they both deserve the highest penalty. The disbarment of the respondent is in order, because such sanction is on par with the dismissal of Judge Dizon, Jr.

5. **REMEDIAL LAW; EVIDENCE; DENIAL; NEGATIVE AND SELF-SERVING, WEIGHTLESS IN LAW AND INSUFFICIENT TO OVERCOME THE TESTIMONY OF CREDIBLE WITNESSES ON AFFIRMATIVE MATTER.—** [T]he respondent' denials were worthless and unavailing in the face of the uncontradicted evidence showing that he had not only personally arranged the meeting between Manuel and Judge Dizon, Jr., but had also communicated to the complainants the judge's illegal reason for the meeting. It is axiomatic that any denial, to be accepted as a viable defense in any proceeding, must be substantiated by clear and convincing evidence. This need derives from the nature of a denial as evidence of a negative and self-serving character, weightless in law and insufficient to overcome the testimony of credible witnesses on affirmative matters.

D E C I S I O N

***PER CURIAM*:**

The primary objective of administrative cases against lawyers is not only to punish and discipline the erring individual lawyers but also to safeguard the administration of justice by protecting the courts and the public from the misconduct of lawyers, and to remove from the legal profession persons whose utter disregard of their lawyer's oath has proven them unfit to continue discharging the trust reposed in them as members of the bar. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity and good demeanor or unworthy to continue as an officer of the court.

– *Rivera v. Corral,* A.C. No. 3548, July 4, 2002, 384 SCRA 1.

By its Board Resolution No. 1 dated March 7, 1998, the South Cotabato-Sarangani-General Santos City (SOCSARGEN)

Chapter of the Integrated Bar of the Philippines (IBP) resolved to refer to the IBP Board of Governors in Manila, for appropriate action and investigation, the purported anomaly involving Judge Teodoro Dizon Jr. and Atty. Ricardo G. Barrios, Jr.[1] Thus, on March 24, 1998, Atty. Joeffrey L. Montefrio, the SOCSARGEN IBP Chapter President, transmitted the referral to the Office of the Court Administrator (OCA).

The matter involving Judge Dizon, Jr., which was docketed as Administrative Matter (AM) No. RTJ-98-1426 entitled *Manuel C. Rafols and Lolita C. Rafols v. Judge Teodoro Dizon, Jr., RTC, General Santos City, Branch 37,*[2] was resolved in a *per curiam* decision promulgated on January 31, 2006,[3] whereby the Court *dismissed* Judge Dizon, Jr. from the service, with forfeiture of all benefits, except accrued leave credits, and with prejudice to re-employment in the government or any of its subdivisions, instrumentalities or agencies, including government-owned and government-controlled corporations.

In the same *per curiam* decision, the Court reiterated its resolution of October 21, 1998 for the Office of the Bar Confidant (OBC) to conduct an investigation of the actuations of Atty. Barrios, Jr. (respondent), and to render its report and recommendation.

Hence, this decision.

Antecedents

The anomaly denounced by the SOCSARGEN IBP Chapter was narrated in the joint affidavit dated March 3, 1998 of Spouses Manuel C. Rafols, Jr. and Lolita B. Rafols (complainants),[4] whose narrative was corroborated by the affidavit dated March 11, 1998 of Larry Sevilla;[5] the affidavit dated March 16, 1998

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[1] *Rollo*, pp. 4-5.

[2] Formerly OCA IPI No. 98-579-RTJ.

[3] A.M. No. RTJ-98-1426, January 31, 2006, 481 SCRA 92.

[4] *Rollo*, pp. 6-9.

[5] *Id.*, pp. 10-11.

of Allan Rafols;[6] and the affidavit dated March 16, 1998 of Daisy Rafols,[7] all of which were attached to the letter of the IBP Chapter President. Atty. Erlinda C. Verzosa, then Deputy Clerk of Court and Bar Confidant, referred for appropriate action a copy of the letter and affidavits to then Court Administrator Alfredo L. Benipayo.

In turn, then Senior Deputy Court Administrator Reynaldo L. Suarez filed with the Court an Administrative Matter for Agenda, recommending in relation to Atty. Barrios, Jr., as follows:

x x x x x x x x x

5. The Office of the Bar Confidant be FURNISHED with a copy of the letter-note and its attachments so that it may conduct its own investigation in the matter with respect to the actuations of Atty. Ricardo Barrios, Jr.[8]

x x x x x x x x x

In the resolution dated October 21, 1998, the Court approved the recommendations,[9] and directed the Office of the Bar Confidant to investigate the actuations of the respondent, and to render its report and recommendation thereon.

Proceedings of the OBC

Only the respondent appeared during the hearing before the OBC. Denying the charges against him, he sought the dismissal of the complaint and re-affirmed the contents of his comment. Despite notice, the complainants did not appear before the OBC. However, the complainants and the respondent had testified during the administrative hearing involving Judge Dizon, Jr. before Court of Appeals Associate Justice Jose Sabio Jr. as the Investigating Justice. Also testifying thereat were the complainants' witnesses, namely: Allan Rafols, Daisy Rafols

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

[7] *Id.*, p. 13.

[8] *Id.*, p. 86.

[9] *Id.*, p. 87.

and Larry Sevilla.

A. Evidence for the Complainants

The complainants were the plaintiffs in Civil Case No. 6209 of the Regional Trial Court (RTC) in General Santos City, wherein they sought the cancellation of a deed of sale. Civil Case No. 6209 was assigned to Branch 37 of the RTC, presided by Judge Dizon, Jr. The complainants were represented by the respondent, paying to him ₱15,000.00 as acceptance fee.

On December 22, 1997, at 9:30 a.m., the respondent visited the complainants at their residence and informed complainant Manuel that the judge handling their case wanted to talk to him. The respondent and Manuel thus went to the East Royal Hotel's coffee shop where Judge Dizon, Jr. was already waiting. The respondent introduced Manuel to the judge, who informed Manuel that their case was pending in his *sala*. The judge likewise said that he would resolve the case in their favor, assuring their success up to the Court of Appeals, if they could deliver ₱150,000.00 to him. As he had no money at that time, Manuel told the judge that he would try to produce the amount. The judge then stated that he would wait for the money until noon of that day. Thus, Manuel left the coffee shop together with the respondent, who instructed Manuel to come up with the money before noon because the judge badly needed it. The two of them went to a lending institution, accompanied by Allan Rafols, but Manuel was told there that only ₱50,000.00 could be released the next day. From the lending institution, they went to the complainants' shop to look for Ditas Rafols, Allan's wife, who offered to withdraw ₱20,000.00 from her savings account.

On their way to the bank, Manuel, Allan and Ditas dropped off the respondent at the hotel for the latter to assure Judge Dizon, Jr. that the money was forthcoming. Afterwards, Ditas and Manuel withdrew ₱20,000.00 and ₱30,000.00 from their respective bank accounts, and went back to the hotel with the cash. There, they saw the judge and his driver, who beckoned to them to go towards the judge's Nissan pick-up then parked

along the highway in front of the hotel. Manuel alighted from his car and approached the judge. Manuel personally handed the money to the judge, who told Manuel after asking about the amount that it was not enough. Thereafter, Manuel entered the hotel's coffee shop and informed the respondent that he had already handed the money to the judge.

On December 24, 1997, at about 6:00 a.m., the respondent again visited the complainants. He was on board the judge's Nissan pick-up driven by the judge's driver. The respondent relayed to the complainants the message that the judge needed the balance of ₱100,000.00 in order to complete the construction of his new house in time for the reception of his daughter's wedding. However, the complainants managed to raise only ₱80,000.00, which they delivered to the respondent on that same day.

On January 20, 1998, Judge Dizon, Jr. called up the complainants' residence and instructed their son to request his parents to return his call, leaving his cell phone number. When Manuel returned the call the next day, the judge instructed Manuel to see him in his office. During their meeting in his chambers, the judge demanded the balance of ₱30,000.00. Manuel clarified to the judge that his balance was only ₱20,000.00 due to the previous amount given being already ₱80,000.00. The judge informed him that the amount that the respondent handed was short. Saying that he badly needed the money, the judge insisted on ₱30,000.00, and even suggested that the complainants should borrow in order to raise that amount.

On January 22, 1998, Judge Dizon, Jr. called the complainants to inquire whether the ₱30,000.00 was ready for pick up. After Manuel replied that he was ready with the amount, the judge asked him to wait for 20 minutes. The judge and his driver later arrived on board his Nissan pick-up. Upon instructions of the judge's driver, the complainants followed the Nissan pick-up until somewhere inside the Doña Soledad Estate, Espina, General Santos City. There, the judge alighted and approached the complainants and shook their hands. At that point, Manuel handed ₱30,000.00 to the judge. The judge then told Manuel

that the RTC judge in Iloilo City before whom the perpetuation of the testimony of Soledad Elevencionado-Provido was made should still testify as a witness during the trial in his *sala* in order for the complainants to win. The judge persuaded the complainants to give money also to that judge; otherwise, they should not blame him for the outcome of the case.

The complainants were forced to give money to the judge, because they feared that the judge would be biased against them unless they gave in to his demands. But when they ultimately sensed that they were being fooled about their case, they consulted Larry Sevilla, their mediamen friend, and narrated to Sevilla all the facts and circumstances surrounding the case. They agreed that the details should be released to the media. The exposé was published in the *Newsmaker,* a local newspaper.

Thereafter, the respondent and Judge Dizon, Jr. made several attempts to appease the complainants by sending gifts and offering to return a portion of the money, but the complainants declined the offers.

According to the complainants, the respondent demanded ₱25,000.00 as his expenses in securing the testimony of Soledad Elevencionado-Provido in Iloilo City to be used as evidence in their civil case. In addition, the respondent requested the complainants to borrow ₱60,000.00 from the bank because he wanted to redeem his foreclosed Isuzu Elf, and because he needed to give ₱11,000.00 to his nephew who was due to leave for work abroad.

B. Evidence for the Respondent

In his verified comment dated March 22, 2006,[10] the respondent confirmed that the complainants engaged him as their counsel in Civil Case No. 6209. His version follows.

On December 22, 1997, the respondent introduced Manuel to Judge Dizon, Jr. inside the East Royal Hotel's coffee shop. The respondent stayed at a distance, because he did not want

[10] *Id.* pp. 185-195.

to hear their conversation. Later, Manuel approached the respondent and gave him ₱2,000.00. When the respondent asked what the money was for, Manuel replied that it was in appreciation of the former's introducing the latter to the judge. The respondent stated that Manuel did not mention what transpired between the latter and the judge; and that the judge did not tell him (respondent) what transpired in that conversation.

Two days later, the respondent again visited the complainants at their house in General Santos City on board the judge's Nissan pick-up driven by the judge's driver, in order to receive the ₱80,000.00 from the complainants. The amount was being borrowed by the judge for his swimming pool. Later on, the judge told the respondent to keep ₱30,000.00 as a token of their friendship. After Manuel handed the ₱80,000.00, the respondent and the judge's driver headed towards Davao City, where, according to the judge's instruction, they redeemed the judge's wristwatch for ₱15,000.00 from a pawnshop. The driver brought the remaining amount of ₱35,000.00 to the judge in his home.

On January 27, 1998, Judge Dizon, Jr. visited the respondent at the latter's house to ask him to execute an affidavit. Declining the request at first, the respondent relented only because the judge became physically weak in his presence and was on the verge of collapsing. Nonetheless, the respondent refused to notarize the document.

In that affidavit dated January 27, 1998,[11] the respondent denied that Judge Dizon, Jr. asked money from the complainants; and stated that he did not see the complainants handing the money to the judge. He admitted that he was the one who had requested the judge to personally collect his unpaid attorney's fees from the complainants with respect to their previous and terminated case; and that the judge did not ask money from the complainants in exchange for a favorable decision in their case.

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[11] *Id.,* p. 199.

On January 28, 1998, the respondent returned to the complainants' residence, but was surprised to find complainant Lolita crying aloud. She informed him that the judge was again asking an additional ₱30,000.00 although they had given him ₱30,000.00 only the week before. She divulged that the judge had told her that their case would surely lose because: (a) they had engaged a counsel who was *mahinang klase*; (b) the judge hearing Civil Case No. 5645 in Iloilo and the woman who had testified in Civil Case No. 6029 had not been presented; and (c) they would have to spend at least ₱10,000.00 for said judge's accommodations in General Santos City.[12]

On January 31, 1998, Judge Dizon, Jr. went to the house of the respondent, but the latter was not home. The judge left a note addressed to the complainants, and instructed the respondent's secretary to deliver the note to the complainants along with a gift (imported table clock).[13] According to the respondent, the complainants consistently refused to accept the gift several times; it was later stolen from his house in Cebu City.

On February 1, 1998, the respondent delivered the note and gift to the complainants, but the latter refused to receive it, telling him that they were no longer interested to continue with the case. At the same time, the complainants assured him that they bore no personal grudge against him, because they had a problem only with Judge Dizon, Jr.

On February 24, 1998, the respondent went to the National Bureau of Investigation Regional Office, Region XI, and the Philippine National Police Regional Office, Region XI, both in Davao City, to request the investigation of the matter.[14]

On March 2, 1998, the respondent paid Judge Dizon, Jr. a

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[12] *Id.*, p. 197.

[13] *Id.*, p. 202.

[14] *Id.*, pp. 204-206.

visit upon the latter's request. In that meeting, the respondent told the judge about the refusal of the complainants to accept the judge's gift and about their decision not to continue with the case.[15]

On the next day, Judge Dizon, Jr. sent a note to the respondent to inform him that the judge had raised the amount that he had borrowed from the complainants.[16] The judge requested the respondent to tell the complainants that he (Judge Dizon, Jr.) was going to return whatever he had borrowed from them. However, the complainants informed the respondent that he should tell the judge that they were no longer interested in getting back the money.

The respondent made a follow-up at the NBI and PNP Regional Offices in Davao City of his request for assistance after Manuel mentioned to him that he (Manuel) knew of many armed men ready at any time to help him in his problem with the judge.

Report and Recommendation of the OBC

In its Report and Recommendation dated May 15, 2008,[17] the OBC opined that the administrative case against the respondent could not be dismissed on the ground of failure to prosecute due to the complainants' failure to appear in the scheduled hearing despite due notice.

Based on the facts already established and identified, as rendered in the decision dated January 21, 2006 in *Manuel Rafols and Lolita B. Rafols v. Judge Teodoro A. Dizon*,[18] the OBC rejected the respondent's denial of any knowledge of the transaction between his clients and the judge.

The OBC recommended:

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[15] *Id.*, p. 203.

[16] *Id.*

[17] *Id.*, pp. 241-249.

[18] *Supra* at Note 3.

"WHEREFORE, in the light of the foregoing premises, it is respectfully recommended that respondent ATTY. RICARDO BARRIOS, Jr. be SUSPENDED from the practice of law for three (3) years with a stern warning that a repetition of similar act in the future will be dealt more severely."

Ruling of the Court

We approve and adopt the report and recommendations of the OBC, which we find to be fully and competently supported by the evidence adduced by the complainants and their witnesses, but we impose the supreme penalty of disbarment, which we believe is the proper penalty.

I

Section 27, Rule 138 of the *Rules of Court,* which governs the disbarment and suspension of attorneys, provides:

> Section 27. *Disbarment and suspension of attorneys by the Supreme Court; grounds therefor*. – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction for a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers constitute malpractice.

The burden of proof in disbarment and suspension proceedings always rests on the shoulders of the complainant. The Court exercises its disciplinary power only if the complainant establishes the complaint by clearly preponderant evidence that warrants the imposition of the harsh penalty.[19] As a rule, an attorney enjoys the legal presumption that he is innocent of the charges made against him until the contrary is proved. An attorney is further presumed as an officer of the Court to have performed his duties in accordance with his oath.[20]

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[19] *Arma v. Montevilla*, A.C. No. 4829, July 21, 2008, 559 SCRA 1.

[20] *Id*.

Here, the complainants successfully overcame the respondent's presumed innocence and the presumed regularity in the performance of his duties as an attorney of the complainants. The evidence against him was substantial, and was not contradicted.

To begin with, the respondent's denial of knowledge of the transaction between the complainants and Judge Dizon, Jr. was not only implausible, but also unsubstantiated. It was the respondent himself who had introduced the complainants to the judge. His act of introducing the complainants to the judge strongly implied that the respondent was aware of the illegal purpose of the judge in wanting to talk with the respondent's clients. Thus, we unqualifiedly accept the aptness of the following evaluation made in the OBC's Report and Recommendation, *viz:*

> xxx Being the Officer of the Court, he must have known that meeting litigants outside the court is something beyond the bounds of the rule and that it can never be justified by any reason. He must have known the purpose of Judge Dizon in requesting him to meet the complainants-litigants outside the chamber of Judge Dizon. By his overt act in arranging the meeting between Judge Dizon and complainants-litigants in the Coffee Shop of the East Royal Hotel, it is crystal clear that he must have allowed himself and consented to Judge Dizon's desire to ask money from the complainants-litigants for a favorable decision of their case which was pending before the sala of Judge Dizon.[21]

Secondly, the respondent's insistence that he did not see the complainants' act of handing the money to the judge is unbelievable. In his comment, the respondent even admitted having himself received the ₱80,000.00 from the complainants, and having kept ₱30,000.00 of that amount pursuant to the instruction of the judge as a token of the friendship between him and the judge.[22] The admission proved that the respondent had known all along of the illegal transaction between the judge and the complainants, and belied his feigned lack of knowledge of the delivery of the money to the judge.

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[21] *Rollo,* pp. 247-248.

[22] *Id.*, p. 189.

Thirdly, his attempt to explain that the complainants had given the money to the judge as a loan, far from softening our strong impression of the respondent's liability, confirmed his awareness of the gross impropriety of the transaction. Being the complainants' attorney in the civil case being heard before the judge, the respondent could not but know that for the judge to borrow money from his clients was highly irregular and outrightly unethical. If he was innocent of wrongdoing, as he claimed, he should have desisted from having *any* part in the transaction. Yet, he did not, which rendered his explanation unbelievable. Compounding the unworthiness of his explanation was his admission of having retained ₱30,000.00 of the "borrowed" money upon the judge's instruction.

And, lastly, the OBC has pointed out that the respondent's act of requesting the NBI Regional Office in Davao City to investigate was an afterthought on his part. We agree with the OBC, for the respondent obviously acted in order to anticipate the complainants' moves *against* him and the judge. To be sure, the respondent sensed that the complainants would not simply forgive and forget the mulcting they had suffered at the hands of the judge and their own attorney from the time that the complainants assured him that they were no longer interested to get back their money despite their being very angry at the judge's greed.

Overall, the respondent' denials were worthless and unavailing in the face of the uncontradicted evidence showing that he had not only personally arranged the meeting between Manuel and Judge Dizon, Jr., but had also communicated to the complainants the judge's illegal reason for the meeting. It is axiomatic that any denial, to be accepted as a viable defense in any proceeding, must be substantiated by clear and convincing evidence. This need derives from the nature of a denial as evidence of a negative and self-serving character, weightless in law and insufficient to overcome the testimony of credible witnesses on affirmative matters.[23]

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[23] *Rafols, Jr. v. Dizon*, A.M. RTJ-98-1426, January 31, 2006, 481 SCRA 92; *Orfila v. Arellano*, A.M. Nos. P-06-2110 and P-03-1692, February 23, 2006, 482 SCRA 280; *Mabini v. Raga*, A.M. No. P-06-2150, June

II

The practice of law is a privilege heavily burdened with conditions.[24] The attorney is a vanguard of our legal system, and, as such, is expected to maintain not only legal proficiency but also a very high standard of morality, honesty, integrity, and fair dealing in order that the people's faith and confidence in the legal system are ensured.[25] Thus, he must conduct himself, whether in dealing with his clients or with the public at large, as to be beyond reproach at all times.[26] Any violation of the high moral standards of the legal profession justifies the imposition on the attorney of the appropriate penalty, including suspension and disbarment.[27]

Specifically, the *Code of Professional Responsibility* enjoins an attorney from engaging in unlawful, dishonest, or deceitful conduct.[28] Corollary to this injunction is the rule that an attorney shall at all times uphold the integrity and dignity of the Legal Profession and support the activities of the Integrated Bar.[29]

21, 2006, 491 SCRA 525; *Re: (1) Lost Checks Issued to the Late Roderick Roy P. Melliza, Former Clerk II, MCTC, Zaragga, Iloilo and (2) Dropping from the Rolls of Ms. Esther T. Andres*; A.M. No. 2005-26-SC, November 22, 2006; 507 SCRA 478.

[24] *Dumadag v. Lumaya*, A.C. No. 2614, June 29, 2000, 334 SCRA 513.

[25] *Cham v. Paita-Moya*, A.C. No. 7494, June 27, 2008, 556 SCRA 1.

[26] Rule 7.03, *Code of Professional Responsibility,* to wit:

Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

[27] *Cham v. Paita-Moya*, *supra* at Note 25.

[28] Rule 1.01, which states:

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[29] Canon 7, *Code of Professional Responsibility*.

The respondent did not measure up to the exacting standards of the Law Profession, which demanded of him as an attorney the absolute abdication of any personal advantage that conflicted in any way, directly or indirectly, with the interest of his clients. For monetary gain, he disregarded the vow to "delay no man for money or malice" and to "conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients" that he made when he took the Lawyer's Oath.[30] He also disobeyed the explicit command to him as an attorney "to accept no compensation in connection with his client's business except from him or with his knowledge and approval."[31] He conveniently ignored that the relation between him and his clients was highly fiduciary in nature and of a very delicate, exacting, and confidential character.[32]

Verily, the respondent was guilty of gross misconduct, which is "improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not mere error of judgment."[33] Any gross misconduct of an attorney in his professional or private capacity shows him unfit to manage the affairs of others, and is a ground for the imposition of the penalty of suspension or disbarment, because good moral character is an essential qualification for the admission of an attorney and for the continuance of such privilege.[34]

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[30] In the Lawyer's Oath, the attorney declares that:

x x x I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God.

[31] Rule 138, Section 20 (e), *Rules of Court*.

[32] *Barnachea v. Quiocho*, A.C. No. 5925, March 11, 2003, 399 SCRA 1.

[33] *Whitson v. Atienza*, A.C. No. 5535, August 28, 2003, 410 SCRA 10.

[34] *Id.*

The conclusion that the respondent and the disgraced Judge Dizon, Jr. were *conspirators* against the former's own clients, whom he was sworn to protect and to serve with utmost fidelity and morality, is inevitable for the Court to make in this administrative case. And, being conspirators, they both deserve the highest penalty. The disbarment of the respondent is in order, because such sanction is on par with the dismissal of Judge Dizon, Jr.

WHEREFORE, Atty. Ricardo G. Barrios, Jr. is disbarred.

This decision shall be entered in the records of Atty. Barrios, Jr. as a member of the Philippine Bar.

Copies of the decision shall be furnished to the Bar Confidant and the Integrated Bar of the Philippines for record purposes; and to the Court Administrator, for circulation to all courts nationwide.

SO ORDERED.

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

EN BANC

[A.C. No. 6273. March 15, 2010]

ATTY. ILUMINADA M. VAFLOR-FABROA, *complainant, vs.* **ATTY. OSCAR PAGUINTO,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; LAWYER'S OATH; VIOLATED BY THE LAWYER WHEN HE CONNIVED WITH ANOTHER IN VIOLATING THE LAW.—** The Court finds that by conniving with Gerangco in taking over the Board of Directors and the GEMASCO facilities, respondent violated the provisions of the Cooperative Code of the Philippines and the GEMASCO By-Laws. He also violated the Lawyer's Oath, which provides that a lawyer shall support the Constitution and obey the laws.

2. **ID.; ID.; ID.; THE LAWYER'S FILING OF BASELESS CRIMINAL COMPLAINTS CONSTITUTES A VIOLATION THEREOF.—** When respondent caused the filing of baseless criminal complaints against complainant, he violated the Lawyer's Oath that a lawyer shall "not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid or consent to the same."

3. **ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 12.03 THEREOF; VIOLATED BY THE RESPONDENT; REFUSAL TO COMPLY WITH THE COURT'S ORDER CONSTITUTES UTTER DISRESPECT TO THE JUDICIAL INSTITUTION.—** When, after obtaining an extension of time to file comment on the complaint, respondent failed to file any and ignored this Court's subsequent show cause order, he violated Rule 12.03 of the Code of Professional Responsibility, which states that "A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so." *Sebastian v. Bajar* teaches: x x x Respondent's cavalier attitude in repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution. Respondent's conduct indicates a high degree of

irresponsibility. A Court's Resolution is "not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively." Respondent's obstinate refusal to comply with the Court's orders "not only betrays a recalcitrant flaw in her character; it also underscores her disrespect of the Court's lawful orders which is only too deserving of reproof. Lawyers are called upon to obey court orders and processes and respondent's deference is underscored by the fact that willful disregard thereof will subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well. In fact, graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to their processes.

4. ID.; ID.; ID.; IMPOSITION OF A MORE SEVERE PENALTY WARRANTED WHERE IT APPEARS THAT THE ATTORNEY HAS NOT REFORMED HIS WAYS.— The Court notes that respondent had previously been suspended from the practice of law for six months for violation of the Code of Professional Responsibility, he having been found to have received an acceptance fee and misled the client into believing that he had filed a case for her when he had not. It appears, however, that respondent has not reformed his ways. A more severe penalty this time is thus called for.

D E C I S I O N

CARPIO MORALES, *J.*:

An Information for Estafa[1] was filed on June 21, 2001 against Atty. Iluminada M. Vaflor-Fabroa (complainant) along with others based on a joint affidavit-complaint which Atty. Oscar Paguinto (respondent) prepared and notarized. As the joint affidavit-complaint did not indicate the involvement of complainant, complainant filed a Motion to Quash the Information which the trial court granted.[2] Respondent's Motion for Reconsideration of the quashal of the Information was denied[3]

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[1] *Vide rollo,* Vol. I, pp. 12-13.

[2] *Vide id.* at 18-21.

[3] *Vide id.* at 33-34.

Respondent also filed six other criminal complaints against complainant for violation of Article 31 of Republic Act No. 6938 (Cooperative Code of the Philippines) before the Office of the Provincial Prosecutor, but he eventually filed a Motion to Withdraw them.[4]

On October 10, 2001, complainant, who was Chairperson of the General Mariano Alvarez Service Cooperative, Inc. (GEMASCO), received a Notice of Special General Assembly of GEMASCO on October 14, 2001 to consider the removal of four members of the Board of Directors (the Board), including her and the General Manager.[5] The notice was signed by respondent.

At the October 14, 2001 Special General Assembly presided by respondent and PNP Sr. Supt. Angelito L. Gerangco (Gerangco), who were not members of the then current Board,[6] Gerango, complainant's predecessor, as Chair of the GEMASCO board, declared himself Chair, appointed others to replace the removed directors, and appointed respondent as Board Secretary.

On October 15, 2001, respondent and his group took over the GEMASCO office and its premises, the pumphouses, water facilities, and operations. On even date, respondent sent letter-notices to complainant and the four removed directors informing them of their removal from the Board and as members of GEMASCO, and advising them to cease and desist from further discharging the duties of their positions.[7]

Complainant thus filed on October 16, 2001 with the Cooperative Development Authority (CDA)-Calamba a complaint for annulment of the proceedings taken during the October 14, 2001 Special General Assembly.

The CDA Acting Regional Director (RD), by Resolution of February 21, 2002, declared the questioned general assembly

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[4] *Vide id.* at 35-36.

[5] *Rollo*, Vol. V, p. 4; *id.* at 43.

[6] *Id.* at 42.

[7] *Id.* at 57.

null and void for having been conducted in violation of GEMASCO's By-Laws and the Cooperative Code of the Philippines.[8] The RD's Resolution of February 21, 2002 was later vacated for lack of jurisdiction[9] of CDA.

In her present complainant[10] against respondent for disbarment, complainant alleged that respondent:

X X X PROMOTED OR SUED A GROUNDLESS, FALSE OR UNLAWFUL SUIT, AND GAVE AID AND CONSENT TO THE SAME[11]

X X X DISOBEYED LAWS OF THE LAND, PROMOTE[D] DISRESPECT FOR LAW AND THE LEGAL PROFESSION[12]

X X X DID NOT CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARD HIS PROFESSIONAL COLLEAGUE AND ENGAGED IN HARASSING TACTICS AGAINST OPPOSING COUNSEL[13]

X X X VIOLATED CANON 19 – A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW[14]

X X X RUINED AND DAMAGED NOT ONLY THE GEN. MARIANO ALVAREZ SERVICES COOPERATIVE, INC. (GEMASCO, INC.) BUT THE ENTIRE WATER-CONSUMING COMMUNITY AS WELL[15]

Despite the Court's grant,[16] on respondent's motion,[17] of extension of time to file Comment, respondent never filed any

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[8] *Id.* at 45-56.

[9] *Rollo,* Vol. V, p. 29.

[10] *Rollo,* Vol. I, pp. 2-11.

[11] *Id.* at 3.

[12] *Ibid.*

[13] *Id.* at 6.

[14] *Id.* at 7.

[15] *Id.* at 8.

[16] *Id.* at 103.

[17] *Id.* at 99-100.

comment. The Court thus required him to show cause why he should not be disciplinarily dealt with,[18] but just the same he failed to comply.[19]

The Court thus referred the complaint to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.[20]

It appears that during the mandatory conference before the IBP, complainant proposed the following issues:

1. Whether or not the acts of respondent constitute violations of the Code of Professional Responsibility, particularly the following:

   1.1 Canon 1 – A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal [processes].

   1.2 Canon 8 – A lawyer shall conduct himself with courtesy, fairness, and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.

   1.3 Canon 10 – A lawyer owes candor, fairness and good faith to the court.

   1.4 Canon 19 – A lawyer shall represent his client with zeal within the bounds of the law.

   1.5 Rule 12.03 – A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.

2. Whether or not the above acts of respondent constitute violations of his lawyer's oath, particularly the following:

   2.1 support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein

[18] *Id.* at 104.

[19] *Id.* at 109.

[20] *Id.* at 109.

2.2 will do no falsehood, nor consent to the doing of any in court

2.3 will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same

2.4 will delay no man for money or malice

3. Whether or not the above acts of [respondent] complained of are grounds for disbarment or suspension of attorneys by the Supreme Court as provided for in Section 27, Rule 138 of the Revised Rules of Court.[21]

Respondent's counsel who represented him during the conference proposed the issue of whether, on the basis of the allegations of the complaint, misconduct was committed by respondent.[22]

After the conclusion of the conference, both parties were ordered to submit position papers.[23] Complainant filed hers,[24] but respondent, despite grant, on his motion, of extension of time, did not file any position paper.

In her Report and Recommendation,[25] Investigating Commissioner Lolita A. Quisumbing found respondent guilty of violating the Lawyer's Oath as well as Canons 1, 8, 10, and Rule 12.03 of the Code of Professional Responsibility. Noting that respondent had already been previously suspended for six months, the Commissioner recommended that respondent be suspended for two years.

The IBP Commission on Bar Discipline (CBD) Board of Governors opted for the dismissal of the complaint, however, for lack of merit.[26]

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[21] *Rollo,* Vol. V, pp. 7-8. *Vide rollo,* Vol. III, pp. 45-47.

[22] *Id.* at 48.

[23] *Id.* at 87.

[24] *Id.* at 60-77.

[25] *Rollo,* Vol. V, pp. 2-14.

[26] *Id.* at 1.

On Motion for Reconsideration,[27] the IBP-CBD Board of Governors recommended that respondent be suspended from the practice of law for six months.

The Court finds that by conniving with Gerangco in taking over the Board of Directors and the GEMASCO facilities, respondent violated the provisions of the Cooperative Code of the Philippines and the GEMASCO By-Laws. He also violated the Lawyer's Oath, which provides that a lawyer shall support the Constitution and obey the laws.

When respondent caused the filing of baseless criminal complaints against complainant, he violated the Lawyer's Oath that a lawyer shall "not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid or consent to the same."

When, after obtaining an extension of time to file comment on the complaint, respondent failed to file any and ignored this Court's subsequent show cause order, he violated Rule 12.03 of the Code of Professional Responsibility, which states that "A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so"*Sebastian v. Bajar*[28] teaches:

x x x Respondent's cavalier attitude in repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution. Respondent's conduct indicates a high degree of irresponsibility. A Court's Resolution is "not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively." Respondent's obstinate refusal to comply with the Court's orders "not only betrays a recalcitrant flaw in her character; it also underscores her disrespect of the Court's lawful orders which is only too deserving of reproof.

Lawyers are called upon to obey court orders and processes and respondent's deference is underscored by the fact that willful disregard

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

[28] A.C. No. 3731, September 7, 2007, 532 SCRA 435.

thereof will subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well. In fact, graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to their processes.[29] (Citations omitted).

The Court notes that respondent had previously been suspended from the practice of law for six months for violation of the Code of Professional Responsibility,[30] he having been found to have received an acceptance fee and misled the client into believing that he had filed a case for her when he had not.[31] It appears, however, that respondent has not reformed his ways. A more severe penalty this time is thus called for.

WHEREFORE, respondent, Atty. Oscar P. Paguinto, is *SUSPENDED* for two years from the practice of law for violation of Canons 1, 8, 10, and Rule 12.03 of the Code of Professional Responsibility and the Lawyer's Oath, effective immediately.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as an attorney; the Integrated Bar of the Philippines; and all courts in the country for their information and guidance.

SO ORDERED.

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

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[29] *Id.* at 449.

[30] Vide *Pariñas v. Atty. Paguinto,* 478 Phil. 239, 247 (2004).

[31] Vide *rollo,* Vol. V, p. 14; *Pariñas v. Atty. Paguinto,* 478 Phil. 239, 244-245 (2004).

THIRD DIVISION

[G.R. No. 161137. March 15, 2010]

LYDIA L. ROA, *petitioner, vs.* **HEIRS OF SANTIAGO EBORA: JOSEFA EBORA PACARDO, PACITA EBORA PACARDO, BARTOLOME EBORA, RAYMUNDA EBORA, BERNARDINO DEJULO EBORA, MERCEDES EBORA PABUSLAN, ALEJANDRO EBORA, SABINA EBORA GALASINO and POLICARPIO EBORA, WILSON GAW (CHIN CHIONG), SAMUEL SONNIE LIM, ALFONSO GOKING, ELEAZAR ED. ESPINO, D'ORO LAND REALTY AND DEVELOPMENT CORPORATION, NATIONAL HOUSING AUTHORITY, CONSTANCIO S. MANZANO, PRESCO C. KWONG and ORO CAM ENTERPRISES, INC.,** *respondents.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; TORRENS SYSTEM; A PARTY WHO ACQUIRES A VALID TITLE OVER THE PROPERTY AND HAS NEVER RELINQUISHED SAID TITLE TO ANYBODY ELSE POSSESSES A SUPERIOR TITLE OVER SUBSEQUENT PURCHASERS FOR VALUE.—** In this case, as in *Sanchez*, petitioner's title was validly issued and had been undisturbed for 10 years before the title of respondents' predecessor (the Ebora heirs) was issued. Petitioner never relinquished her title to respondents or to anybody else. She therefore possessed a superior right over those of respondents, notwithstanding the fact that respondents were innocent purchasers for value.

2. **ID.; ID.; ID.; ID.; A TRANSFEREE ACQUIRES NO BETTER RIGHT THAN THAT OF THE TRANSFEROR.—** Moreover, the heirs of Ebora sold and conveyed their rights to and interests in Lot 18026-A to the spouses Pacardo who assigned the property to the husband of petitioner as early as June 3, 1977. From then on, the heirs of Ebora lost all their rights and interest over the

property. Indeed, the heirs of Ebora even confirmed the sale to Josefa and the assignment and waiver of rights in favor of petitioner's husband in an instrument dated January 31, 1983. Thus, the heirs of Ebora had nothing to adjudicate among themselves on October 8, 1987. Neither did they have anything to transfer to the vendees or successors-in-interest. As such, the transferees of the heirs of Ebora acquired no better right than that of the transferors. The spring cannot rise higher than its source.

APPEARANCES OF COUNSEL

Ermitaño Manzano Reodica & Associates for petitioner.
Neil Y. Pacamalan for Heirs of Santiago Ebora and Alfonso Goking.
Bacal Law Office for Manzano and Oro Cam Enterprises, Inc.
Teogenes X. Velez for Samuel Sonnie Lim, D'Oro Land Realty & Development Corp. and Wilson Gaw.
Salcedo Babarin & Babarin Law Office for Alfonso Goking and Presco C. Kwong.

D E C I S I O N

CORONA, *J.*:

This case stemmed from a conflict of ownership (resulting from multiple transactions) over Lot 18026-A, comprising 43,792 sq. m. and covered by Original Certificate of Title (OCT) No. P-47. Although it was continuously, openly and adversely possessed by Santiago Ebora, the property, located in Cagayan de Oro City, was mistakenly included by Chacon Enterprises in its application for original registration. As a result, litigation arose between respondents (the heirs of Ebora) and Chacon Enterprises. This continued until it reached the Supreme Court in G.R. Nos. L-46418-19 entitled *Chacon Enterprises v. The Court of Appeals (Now Intermediate Apellate Court),*

Florentino Galasino, Francisco Gallardo, Porferio Cabacungan, Bernardino Bajulo, et. al.[1]

On June 3, 1977, during the pendency of G.R. Nos. L-46418-19, the heirs of Ebora sold the entire Lot 18026-A to their co-heir Josefa Ebora Pacardo (Josefa) and her husband Rosalio Pacardo for ₱300,000.[2] On the same day, the spouses Pacardo assigned the property to Digno Roa, married to petitioner Lydia Roa.[3] The corresponding deeds of absolute sale and assignment were inscribed on original certificate of title (OCT) No. P-47 on July 5, 1977 under Entry Nos. 55548 and 55549, respectively. On August 11, 1977, transfer certificate of title (TCT) No. T-24488 was issued in the name of Digno Roa. The issuance of TCT No. T-24488 was annotated in OCT P-47 on the same day under Entry No. 56244.

Subsequently, the heirs of Ebora, including Josefa, executed an extrajudicial settlement of the estate with confirmation of sale, assignment and waiver of rights,[4] recognizing the conveyance of Lot 18026-A to Josefa and eventually to Digno Roa.

On September 29, 1983, G.R. Nos L-46418-19 was resolved against Chacon Enterprises and in favor of the heirs of Ebora.

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[1] Chacon Enterprises was granted a free patent to a stretch of public land located in Lapasan, Cagayan de Oro City. The area was 191,011 sq. m. This property was designated as Lot 18026 and issued Original Certificate of Title (OCT) No. P-47. However, Chacon Enterprises mistakenly included Lot 18026-A which was actually the property of respondent Santiago Ebora. Chacon Enterprises filed a complaint for recovery of possession of Lot 18026-A while the Ebora heirs filed their own complaint for reconveyance of the same parcel of land against Chacon, docketed as Civil Case No. 3171 and Civil Case No. 3218, respectively. The cases were consolidated and tried jointly. The RTC ruled in favor of Chacon Enterprises but the CA reversed the RTC decision and ruled in favor of the Ebora heirs. The cases were finally resolved in favor of the Ebora heirs when G.R. Nos. L-46418-19 was decided by the Supreme Court on September 29, 1983. *Rollo,* p. 7.

[2] Deed of Absolute Sale, Annex "E". *Id.*, pp. 77-79.

[3] Deed of Assignment, Annex "F". *Id.*, pp. 80-81.

[4] Dated January 31, 1983, Annex "H". *Id.*, pp. 84-86.

By reason of this decision, TCT No. T-48097 was issued in the name of the heirs of Ebora.[5]

Thereafter, or on October 8, 1987, the heirs of Ebora again adjudicated Lot 18026-A among themselves, *pro indiviso*. The adjudication was inscribed in TCT No. T-48097 on December 29, 1987 under Entry No. 126545. That same day, a deed of confirmation of a prior conveyance[6] by Josefa to respondent Samuel Sonnie Lim of a 4,500 sq. m. portion was likewise inscribed on TCT No. T-48097.[7] The issuance of new TCTs in the name of Alejandro Ebora was likewise inscribed in TCT No. T-48097 on December 29, 1987.[8] The lots were thereafter sold to various respondents which resulted in the issuance of the following new TCTs in the names of the respective vendees.[9]

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[5] Annex "O". *Id.*, pp. 119-123.

[6] Dated November 23, 1987. *Id.*, p. 121.

[7] Under Entry No. 126546.

[8] Under Entry Nos. 126548 to 12655. The following were the transfer certificates of title issued in the name of Alejandro Ebora:

a) T-48445 – for 4,500 sqm of Lot 1 (formerly part of Lot 18026-A of OCT No. 47)

b) T-48446 – for 1,927 sqm of Lot 1 (formerly part of Lot 18026-A of OCT No. 47)

c) T-48447 – for 1,924 sqm of Lot 1 (formerly part of Lot 18026-A of OCT No. 47)

d) T-48448 – for 1,924 sqm of Lot 1 (formerly part of Lot 18026-A of OCT No. 47)

e) T-48449 – for 1,391 sqm of Lot 1 (formerly part of Lot 18026-A of OCT No. 47)

f) T-48450 – for 12,356 sqm of Lot 1 (formerly part of Lot 18026-A of OCT No. 47)

g) T-48451 – for 4,756 sqm of Lot 1 (formerly part of Lot 18026-A of OCT No. 47)

h) T-48452 – for 12,373 sqm of Lot 1 (formerly part of Lot 18026-A of OCT No. 47)

[9] The new TCTs issued to respondents were:

a) T-48559 – to respondent Eleazar Ed. Espino, on January 15, 1988 (for 700 sq. m., transfer from T-48445)

All these transactions occurred without petitioner's knowledge and consent.

In view of the death of her husband, Digno Roa, petitioner filed a petition for annulment and cancellation of TCT No. 48097 and its derivative titles in the RTC of Misamis Oriental, Cagayan de Oro City, Branch 23, against respondents. The case was docketed as Civil Case No. 93492.

On June 27, 2003, the Regional Trial Court (RTC) declared respondents as innocent purchasers for value whose titles to

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b) T-48562 – to respondent Samuel Sonnie Lim, on January 19, 1988 (for 3,500 sq. m., transfer from T-48445)

c) T-48563 – to respondent Samuel Sonnie Lim, on January 19, 1988 (for 300 sq. m., transfer from T-48445)

d) T-48571 – to respondent D'Oro Land Realty & Development Corporation, on January 25, 1988 (for 700 sq. m., transfer from T-48559)

e) T-49380 – to respondent National Housing Authority, on March 30, 1988 (transfer from T-48450)

f) T-49381 – to respondent Constancio S. Manzano, on March 30, 1988 (transfer from T-48452)

g) T-49934 – to respondent Alfonso Goking, on May 16, 1988 (transfer from T-48451)

h) T-49935 – to respondent alfonso Goking, on May 16, 1988 (transfer from T-48449)

i) T-50160– to respondent Presco Kwong, on June 13, 1988 (for 1,000 sq. m., transfer from T-48604)

j) T-50161 – to respondent Luzmin Kwong, on June 3, 1988 (for 924 sq. m., transfer from T-48604)

k) T-50442 – to respondent Alfonso Goking, on July 22, 1988 (transfer from T-48448)

l) T-68769 – to respondent Oro Cam Enterprises, on August 3, 1992 (transfer from T-49381).

A 2,500 sq. m. portion of the lot, still covered by TCT No. T-48097, was sold to respondent Alfonso Goking. The sale was inscribed in TCT No. T-48097 under Entry No. 127109 on February 8, 1988. *Id.*, pp. 124, 125, 127-128, 130-131, 149-150, 152-153.

their respective lots should be respected, and ordered the cancellation of petitioner's title, TCT No. T-24488.[10]

Hence, this petition for review on *certiorari*.[11] Petitioner imputes error to the RTC which declared TCT No. T-48097 as void but upheld the validity of its derivative titles.[12]

Essentially, what petitioner seeks is that respondents be declared as not innocent purchasers for value and that the subject properties be adjudicated in her favor.

We agree with the RTC that respondents are innocent purchasers for value.[13]

Nonetheless, without undermining the reason behind this doctrine (of protecting innocent purchasers for value), we hold

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[10] Annex "A". *Rollo*, pp. 45-54. The dispositive portion of the decision read:

"PREMISES CONSIDERED, [t]his Court hereby declares VOID the TCT No. T-48097 as well as the transfer certificates of title including TCT Nos. T-48446, T-48447, T-48448, T-48449, T-48451 and T-48452 all of which were derived from TCT No. T-48097 issued in the name of respondent Heirs of Santiago Ebora. The TCT Nos. T-24773, T-24774, T-24787 and T-24788 all issued in the name of Wilson Gaw (Chin Chiong are likewise hereby declared VOID and are hereby ordered CANCELLED.

However, so as to fully significantly give effect to the rights of innocent purchasers for valid, TCT Nos. T-48695, T-48559, T-48562, T-48563, T-48571, T-48694, T-48380, T-49381, T-49934, T-49935, T-50160, T-50161, T-50442 and T-68769 are hereby declared VALID for all legal purposes, and TCT No. T-24488 is hereby ordered cancelled insofar as the areas and lots covered by the foregoing TCTs are concerned.

Costs *de oficio*.

SO ORDERED."

[11] Filed under Rule 45 of the Rules of Court.

[12] TCT Nos. T-48695, T-48559, T-48562, T-48563, T-48571, T-48694, T-48380, T-49381, T-49934, T- 49935, T-50160, T-50161, T-50442 and T-68769.

[13] It is settled that a void title may be the root of a valid title. (*Tan v. De la Vega*, G.R. No. 168809, 10 March 2006, 484 SCRA 538, 552). That specially holds true where the transferee of the title is an innocent purchaser

that petitioner is entitled to the property following *Sanchez v. Quinio.*[14] In *Sanchez*, a 300 sq. m. parcel of land, registered under the name of one Celia P. Santiago and covered by TCT No. 391688, was sold by Santiago herself to therein respondents Rodolfo M. Quinio and Ismael M. Quinio. Respondents thereafter duly registered the deed of sale resulting in the issuance of TCT No. S-89991, in their (Quinios') names, on July 13, 1979.

Thirteen years later, TCT No. 70372 was issued in the name of one Renato Sanding after the land was sold to him by Santiago. Sanding thereafter sold the subject land to Romeo Abel resulting in the issuance of TCT No. 72406. Abel thereafter sold the property to Renato Sanchez, the petitioner in this case. The sale by Abel to Sanchez was registered and on May 17, 1994, TCT No. 81125 was issued in Sanchez's name.

In view of the multiple transactions concerning the subject lot, the Quinios filed a complaint for quieting of title and cancellation of titles against Sanchez and Abel.[15] The RTC held that Sanchez was an innocent purchaser for value, and therefore had a better right to the property over the Quinios.

The CA reversed the RTC decision and ordered the cancellation of Abel's title and all titles and deeds derived therefrom, including Sanchez's title.

On Sanchez's appeal to this Court, we affirmed the CA decision:

> It cannot be over-emphasized that Santiago sold the subject land in July 1979 to respondents, who lost no time in registering the conveying deed of sale and securing title in their names. From that

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for value, one who buys the property from the registered owner by merely relying on the certificate of title, without notice that some other person has a right to, or interest in such property and pays a full and fair price for the same at the time of such purchase or before he has notice of the claim or interest of some other person in the property. (*San Roque Realty and Development Corporation v. Republic of the Philippines*, G.R. No. 163130, 7 September 2007, 532 SCRA 493, 511-512).

[14] G.R. No. 133545, 15 July 2005, 463 SCRA 471, 477-479.

[15] Docketed as Civil Case No. 94-1736 filed in the Regional Trial Court of Makati City, Branch 147.

time on, ownership and other rights flowing therefrom over the land in question pertained to respondents. In other words, Santiago was no longer possessed of transmissible rights over such property when she executed on 22 February 1993 a deed of sale in favor of Renato Sanding. The aforesaid deed, in fine, could not have conveyed valid title over the land.

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It may be held that one dealing with property brought under the Torrens system of land registration may rely, as petitioner did with respect to the land in question, on what appears on the face of the covering certificate without inquiring further as to the title of the seller or mortgagor. But the guarantee generally accorded a Torrens title holder to be secured in his ownership as long as he has not voluntarily disposed of any right over the covered property admits of a couple of exceptions. *C.N. Hodges v. Dy Buncio & Co., Inc.*, deals with one of them, thus:

> The claim of indefeasibility of the petitioner's title under the Torrens land title system would be correct if previous valid title to the same parcel of land did not exist. The respondent had a valid title xxx It never parted with it; it never handed or delivered to anyone its owner's duplicate of the transfer certificate of title; it could not be charged with negligence in the keeping of its duplicate certificate of title or with any act which could have brought about the issuance of another certificate upon which a purchaser in good faith and for value could rely. **If the petitioner's contention as to indefeasibility of his title should be upheld, then registered owners without the least fault on their part could be divested of their title and deprived of their property. Such disastrous results which would shake and destroy the stability of land titles had not been foreseen by those who had endowed with indefeasibility land titles issued under the Torrens system.** (emphasis in the original)

At bottom then, the present petition basically features an instance where two (2) different persons acquired by purchase at different time from the same owner (Santiago), the same piece of registered land. And although the records do not provide clear answer on how the second vendee, Renato Sanding, in this case, was able to secure a certificate of title despite the existence of an outstanding valid certificate of title in the hands and name of the first vendee, herein respondents, who appear to have never relinquished the document,

the stubborn reality is that such a second title was issued and whence two (2) other titles eventually descended.

Following the lessons imparted by *Margolles, Baltazar, Torres* and *C.N. Hodges, supra*, however, whatever right Renato Sanding may have acquired over the disputed property cannot prevail over, but must yield to, the superior right thereon of respondents, as the appellate court rightfully held. And inasmuch as his title is traceable to that of Romeo S. Abel, who in turn derived his right and title from Renato Sanding, petitioner cannot plausibly have better rights than either Romeo S. Abel or Renato Sanding, since no one can acquire a right greater than what the transferor himself has.

In this case, as in *Sanchez*, petitioner's title was validly issued and had been undisturbed for 10 years before the title of respondents' predecessor (the Ebora heirs) was issued. Petitioner never relinquished her title to respondents or to anybody else. She therefore possessed a superior right over those of respondents, notwithstanding the fact that respondents were innocent purchasers for value.

Moreover, the heirs of Ebora sold and conveyed their rights to and interests in Lot 18026-A to the spouses Pacardo who assigned the property to the husband of petitioner as early as June 3, 1977. From then on, the heirs of Ebora lost all their rights and interest over the property. Indeed, the heirs of Ebora even confirmed the sale to Josefa and the assignment and waiver of rights in favor of petitioner's husband in an instrument dated January 31, 1983.

Thus, the heirs of Ebora had nothing to adjudicate among themselves on October 8, 1987. Neither did they have anything to transfer to the vendees or successors-in-interest. As such, the transferees of the heirs of Ebora acquired no better right than that of the transferors. The spring cannot rise higher than its source.

WHEREFORE, the petition is hereby *GRANTED*. The decision of the Regional Trial Court dated June 27, 2003 is hereby *REVERSED*. The derivative titles of TCT No. T-48097, namely, TCT Nos. T-48695, T-48559, T-48562, T-48563, T-48571, T-48380

48571, T-48694, T-48380, T-49381, T-49934, T-49935, T-50160, T-50161, T-50442 and T-68769 are hereby ordered *CANCELLED*. TCT No. T-24488 is hereby declared *VALID*.

SO ORDERED.

Velasco, Jr., Nachura, Peralta, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 164016. March 15, 2010]

RENO FOODS, INC., and/or VICENTE KHU, *petitioners, vs.* ***Nagkakaisang Lakas ng Manggagawa*** **(NLM)-KATIPUNAN on behalf of its member, NENITA CAPOR,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ACQUITTAL OF EMPLOYEE IN A CRIMINAL CASE WILL NOT PRECLUDE A DETERMINATION IN A LABOR CASE THAT HE IS GUILTY OF ACTS INIMICAL TO THE EMPLOYER'S INTERESTS.—** In *Nicolas v. National Labor Relations Commission,* we held that a criminal conviction is not necessary to find just cause for employment termination. Otherwise stated, an employee's acquittal in a criminal case, especially one that is grounded on the existence of reasonable doubt, will not preclude a determination in a labor case that he is guilty of acts inimical to the employer's interests. Criminal cases require proof beyond reasonable doubt while labor disputes require only substantial evidence, which means such relevant evidence as a reasonable mind might accept as adequate to justify a conclusion.

2. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES ARE GENERALLY ACCORDED**

RESPECT AND FINALITY, IF SUPPORTED BY SUBSTANTIAL EVIDENCE.— The evidence in this case was reviewed by the appellate court and two labor tribunals endowed with expertise on the matter – the Labor Arbiter and the NLRC. They all found substantial evidence to conclude that Capor had been validly dismissed for dishonesty or serious misconduct. It is settled that factual findings of quasi-judicial agencies are generally accorded respect and finality so long as these are supported by substantial evidence. In the instant case, we find no compelling reason to doubt the common findings of the three reviewing bodies.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; SEPARATION PAY; AN EMPLOYEE DISMISSED FOR JUST CAUSE IS NOT ENTITLED TO AN AWARD THEREOF.—** We find no justification for the award of separation pay to Capor. This award is a deviation from established law and jurisprudence. The law is clear. Separation pay is only warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 283 and 284 of the Labor Code, as well as in cases of illegal dismissal in which reinstatement is no longer feasible. It is *not* allowed when an employee is dismissed for just cause, such as serious misconduct. Jurisprudence has classified theft of company property as a serious misconduct and denied the award of separation pay to the erring employee. We see no reason why the same should not be similarly applied in the case of Capor. She attempted to steal the property of her long-time employer. For committing such misconduct, she is definitely not entitled to an award of separation pay.

4. **ID.; ID.; ID.; AWARD OF FINANCIAL ASSISTANCE SHALL NOT BE GIVEN TO VALIDLY TERMINATED EMPLOYEE, WHOSE OFFENSES ARE INIQUITOUS OR REFLECTIVE OF SOME DEPRAVITY IN HIS MORAL CHARACTER.—** It is true that there have been instances when the Court awarded financial assistance to employees who were terminated for just causes, on grounds of equity and social justice. The same, however, has been curbed and rationalized in *Philippine Long Distance Telephone Company v. National Labor Relations Commission.* In that case, we recognized the harsh realities faced by employees that forced them, despite their good intentions, to

violate company policies, for which the employer can rightfully terminate their employment. For these instances, the award of financial assistance was allowed. But, in clear and unmistakable language, we also held that the award of financial assistance shall not be given to validly terminated employees, whose offenses are iniquitous or reflective of some depravity in their moral character. When the employee commits an act of dishonesty, depravity, or iniquity, the grant of financial assistance is misplaced compassion. It is tantamount not only to condoning a patently illegal or dishonest act, but an endorsement thereof. It will be an insult to all the laborers who, despite their economic difficulties, strive to maintain good values and moral conduct.

5. **ID.; ID.; ID.; LENGTH OF SERVICE AND A PREVIOUSLY CLEAN EMPLOYMENT RECORD CANNOT SIMPLY ERASE THE GRAVITY OF THE BETRAYAL EXHIBITED BY A MALFEASANT EMPLOYEE.—** We are not persuaded by Capor's argument that despite the finding of theft, she should still be granted separation pay in light of her long years of service with petitioners. xxx Indeed, length of service and a previously clean employment record cannot simply erase the gravity of the betrayal exhibited by a malfeasant employee. Length of service is not a bargaining chip that can simply be stacked against the employer. After all, an employer-employee relationship is symbiotic where both parties benefit from mutual loyalty and dedicated service. If an employer had treated his employee well, has accorded him fairness and adequate compensation as determined by law, it is only fair to expect a long-time employee to return such fairness with at least some respect and honesty. Thus, it may be said that betrayal by a long-time employee is more insulting and odious for a fair employer.

6. **ID.; ID.; ID.; ID.; AWARD OF FINANCIAL ASSISTANCE TO A DISHONEST EMPLOYEE IS NOT ONLY AGAINST THE LAW BUT ALSO A RETROGRESSIVE PUBLIC POLICY.—** While we sympathize with Capor's plight, being of retirement age and having served petitioners for 39 years, we cannot award any financial assistance in her favor because it is not only against the law but also a retrogressive public policy. We have already explained the folly of granting financial assistance in the guise of compassion in the following pronouncements: x x x Certainly, a

dishonest employee cannot be rewarded with separation pay or any financial benefit after his culpability is established in two decisions by competent labor tribunals, which decisions appear to be well-supported by evidence. To hold otherwise, even in the name of compassion, would be to send a wrong signal not only that "crime pays" but also that one can enrich himself at the expense of another in the name of social justice. And courts as well as quasi-judicial entities will be overrun by petitioners mouthing dubious pleas for misplaced social justice. Indeed, before there can be an occasion for compassion and mercy, there must first be justice for all. Otherwise, employees will be encouraged to steal and misappropriate in the expectation that eventually, in the name of social justice and compassion, they will not be penalized but instead financially rewarded. Verily, a contrary holding will merely encourage lawlessness, dishonesty, and duplicity. These are not the values that society cherishes; these are the habits that it abhors.

APPEARANCES OF COUNSEL

Daniel Co Law Office for petitioners.
R.L. Caabay & Associates for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

There is no legal or equitable justification for awarding financial assistance to an employee who was dismissed for stealing company property. Social justice and equity are not magical formulas to erase the unjust acts committed by the employee against his employer. While compassion for the poor is desirable, it is not meant to coddle those who are unworthy of such consideration.

This Petition for Review on *Certiorari*[1] assails the June 3, 2004 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 76789

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[1] *Rollo*, pp. 3-20.

[2] *Id.* at 65-75; penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Jose C. Reyes, Jr.

which denied the petition for *certiorari* filed by the petitioners and affirmed the award of financial assistance to respondent Nenita Capor.

Factual Antecedents

Petitioner Reno Foods, Inc. (Reno Foods) is a manufacturer of canned meat products of which Vicente Khu is the president and is being sued in that capacity. Respondent Nenita Capor (Capor) was an employee of Reno Foods until her dismissal on October 27, 1998.

It is a standard operating procedure of petitioner-company to subject all its employees to reasonable search of their belongings upon leaving the company premises. On October 19, 1998, the guard on duty found six Reno canned goods wrapped in nylon leggings inside Capor's fabric clutch bag. The only other contents of the bag were money bills and a small plastic medicine container.

Petitioners accorded Capor several opportunities to explain her side, often with the assistance of the union officers of *Nagkakaisang Lakas ng Manggagawa* (NLM) – *Katipunan.* In fact, after petitioners sent a Notice of Termination to Capor, she was given yet another opportunity for reconsideration through a labor-management grievance conference held on November 17, 1999. Unfortunately, petitioners did not find reason to change its earlier decision to terminate Capor's employment with the company.

On December 8, 1998, petitioners filed a complaint-affidavit against Capor for qualified theft in the Office of the City Prosecutor, Malabon-Navotas Substation. On April 5, 1999, a Resolution[3] was issued finding probable cause for the crime charged. Consequently, an Information was filed against Capor docketed as Criminal Case No. 207-58-MN.

Meanwhile, the *Nagkakaisang Lakas ng Manggagawa* (NLM) – *Katipunan* filed on behalf of Capor a complaint[4] for

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[3] CA *rollo*, p. 60.

[4] *Id.* at 27.

illegal dismissal and money claims against petitioners with the Head Arbitration Office of the National Labor Relations Commission (NLRC) for the National Capital Region. The complaint prayed that Capor be paid her full backwages as well as moral and exemplary damages. The complaint was docketed as NLRC NCR Case No. 00-01-00183-99.

Ruling of the Labor Arbiter

In the proceedings before the Labor Arbiter, Capor alleged that she was unaware that her clutch bag contained the pilfered canned products. She claimed that petitioners might have planted the evidence against her so it could avoid payment of her retirement benefits, as she was set to retire in about a year's time.

After the submission of the parties' respective position papers, the Labor Arbiter rendered his Decision[5] dated November 16, 1999 finding Capor guilty of serious misconduct which is a just cause for termination.

The Labor Arbiter noted that Capor was caught trying to sneak out six cans of Reno products without authority from the company. Under Article 232 of the Labor Code, an employer may terminate the services of an employee for just cause, such as serious misconduct. In this case, the Labor Arbiter found that theft of company property is tantamount to serious misconduct; as such, Capor is not entitled to reinstatement and backwages, as well as moral and exemplary damages.

Moreover, the Labor Arbiter ruled that consistent with prevailing jurisprudence, an employee who commits theft of company property may be validly terminated and consequently, the said employee is not entitled to separation pay.[6]

Ruling of the National Labor Relations Commission

On appeal, the NLRC affirmed the factual findings and monetary awards of the Labor Arbiter but added an award of

[5] *Rollo*, pp. 21-37.

[6] *Id.* at 29-36.

financial assistance. The decretal portion of the September 20, 2002 Decision[7] reads:

> WHEREFORE, premises considered, the decision under review is hereby MODIFIED by granting an award of financial assistance in the form of separation pay equivalent to one-half month pay for every year of service. In all other respects the decision stands affirmed. All other claims of the complainant are dismissed for lack of merit.[8]

Both parties moved for a reconsideration of the NLRC Decision. Petitioners asked that the award of financial assistance be deleted, while Capor asked for a finding of illegal dismissal and for reinstatement with full backwages.[9]

On February 28, 2003, the NLRC issued its Resolution[10] denying both motions for reconsideration for lack of merit.

Ruling of the Court of Appeals

Aggrieved, petitioners filed a Petition for *Certiorari*[11] before the CA imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC for awarding financial assistance to Capor.

Citing *Philippine Long Distance Telephone Company v. National Labor Relations Commission*,[12] petitioners argued that theft of company property is a form of serious misconduct under Article 282(a) of the Labor Code for which no financial assistance in the form of separation pay should be allowed.

Unimpressed, the appellate court affirmed the NLRC's award of financial assistance to Capor. It stressed that the laborer's welfare should be the primordial and paramount consideration when

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[7] *Rollo*, pp. 38-44.

[8] *Id*. at 43.

[9] *Id*. at 45-61; CA *rollo,* pp. 169-185.

[10] *Rollo*, pp. 62-63.

[11] CA *rollo*, pp. 2-25.

[12] G.R. No. 80609, August 23, 1988, 164 SCRA 671, 679-680.

carrying out and interpreting provisions of the Labor Code. It explained that the mandate laid down in *Philippine Long Distance Telephone Company v. National Labor Relations Commission*[13] was not absolute, but merely directory.

Hence, this petition.

Issue

The issue before us is whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting financial assistance to an employee who was validly dismissed for theft of company property.

Our Ruling

We grant the petition.

Conviction in a criminal case is not necessary to find just cause for termination of employment.

On the date that the appellate court issued its Decision, Capor filed a Manifestation[14] informing the CA of her acquittal in the charge of qualified theft. The dispositive portion of said Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered acquitting Nenita Capor of the crime charged against her in this case on the ground of reasonable doubt with costs *de oficio*.

Capor thus claims that her acquittal in the criminal case proves that petitioners failed to present *substantial evidence* to justify her termination from the company. She therefore asks for a finding of illegal dismissal and an award of separation pay equivalent to one month pay for every year of service.

On the other hand, petitioners argue that the dismissal of a criminal action should not carry a corresponding dismissal of

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[13] *Id*.

[14] CA *rollo*, pp. 225-228.

the labor action since a criminal conviction is unnecessary in warranting a valid dismissal for employment.

Petitioners further maintain that the ruling in *Philippine Long Distance Telephone Company v. National Labor Relations Commission*[15] regarding the disallowance of separation pay for those dismissed due to serious misconduct or moral turpitude is mandatory. Petitioners likewise argue that in *Zenco Sales, Inc. v. National Labor Relations Commission*,[16] the Supreme Court found grave abuse of discretion on the part of the NLRC when it ignored the principles laid down in the *Philippine Long Distance Telephone Company v. National Labor Relations Commission*. Thus, petitioners pray for the reversal of the CA Decision and reinstatement of the Labor Arbiter's Decision dated November 16, 1999.

Capor was acquitted in Criminal Case No. 207-58-MN based on reasonable doubt. In his Decision, the trial judge entertained doubts regarding the guilt of Capor because of two circumstances: (1) an ensuing labor dispute (though it omitted to state the parties involved), and (2) the upcoming retirement of Capor. The trial judge made room for the *possibility* that these circumstances *could* have motivated petitioners to plant evidence against Capor so as to avoid paying her retirement benefits. The trial court did not categorically rule that the acts imputed to Capor did not occur. It did not find petitioners' version of the event as fabricated, baseless, or unreliable. It merely acknowledged that seeds of doubt have been planted in the juror's mind which, in a criminal case, is enough to acquit an accused based on reasonable doubt. The pertinent portion of the trial court's Decision reads:

> During the cross examination of the accused, she was confronted with a document that must be related to a labor dispute. x x x The Court noted very clearly from the transcript of stenographic notes that it must have been submitted to the NLRC. This is indicative of a labor dispute which, although not claimed directly by the accused, *could be*

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[15] *Supra* note 12.

[16] G.R. No. 111110, August 2, 1994, 234 SCRA 689.

one of the reasons why she *insinuated* that evidence was planted against her in order to deprive her of the substantial benefits she will be receiving when she retires from the company. Incidentally, this document was never included in the written offer of evidence of the prosecution.

Doubt has, therefore, crept into the mind of the Court concerning the guilt of accused Nenita Capor which in this jurisdiction is mandated to be resolved in favor of her innocence.

Pertinent to the foregoing doubt being entertained by this Court, the Court of Appeals citing *People v. Bacus,* G.R. No. 60388, November 21, 1991: "the phrase 'beyond reasonable doubt' means not a single iota of doubt remains present in the mind of a reasonable and unprejudiced man that a person is guilty of a crime. Where doubt exists, even if only a shred, the Court must and should set the accused free." (*People v. Felix,* CA-G.R. No. 10871, November 24, 1992)

WHEREFORE, premises considered, judgment is hereby rendered acquitting accused Nenita Capor of the crime charged against her in this case on the ground of reasonable doubt, with costs *de oficio*.

SO ORDERED.[17]

In *Nicolas v. National Labor Relations Commission,*[18] we held that a criminal conviction is not necessary to find just cause for employment termination. Otherwise stated, an employee's acquittal in a criminal case, especially one that is grounded on the existence of reasonable doubt, will not preclude a determination in a labor case that he is guilty of acts inimical to the employer's interests.[19]

Criminal cases require proof beyond reasonable doubt while labor disputes require only substantial evidence, which means such relevant evidence as a reasonable mind might accept

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[17] *Rollo*, pp. 129-130.

[18] 327 Phil. 883, 886-887 (1996).

[19] *Vergara v. National Labor Relations Commission,* 347 Phil. 161, 173-174 (1997); *Chua v. National Labor Relations Commission*, G.R. No. 105775, February 8, 1993, 218 SCRA 545, 548; See *MGG Marine Services, Inc. v. National Labor Relations Commission,* 328 Phil. 1047, 1068 (1996).

as adequate to justify a conclusion.[20] The evidence in this case was reviewed by the appellate court and two labor tribunals endowed with expertise on the matter – the Labor Arbiter and the NLRC. They all found substantial evidence to conclude that Capor had been validly dismissed for dishonesty or serious misconduct. It is settled that factual findings of quasi-judicial agencies are generally accorded respect and finality so long as these are supported by substantial evidence. In the instant case, we find no compelling reason to doubt the common findings of the three reviewing bodies.

The award of separation pay is not warranted under the law and jurisprudence.

We find no justification for the award of separation pay to Capor. This award is a deviation from established law and jurisprudence.[21]

The law is clear. Separation pay is only warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 283 and 284 of the Labor Code, as well as in cases of illegal dismissal in which reinstatement is no longer feasible.[22] It is *not* allowed when an employee is dismissed for just cause,[23] such as serious misconduct.

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[20] See *Patna-an v. National Labor Relations Commission,* G.R. No. 92878, March 6, 1992, 207 SCRA 106; *Iriga Telephone Co., Inc. v. National Labor Relations Commission,* 350 Phil. 245, 253 (1998).

[21] See *Philippine Long Distance Telephone Company v. National Labor Relations Commission, supra* note 12; *Zenco Sales, Inc. v. National Labor Relations Commission*, *supra* note 16; *Philippine National Construction Corporation v. National Labor Relations Commission,* 252 Phil. 211 (1989).

[22] Section 4(b), Rule I, Book VI of the Implementing Rules and Regulations of the Labor Code.

[23] Article 282 of the Labor Code and Section 7, Rule I, Book VI of the Implementing Rules and Regulations of the Labor Code.

Jurisprudence has classified theft of company property as a serious misconduct and denied the award of separation pay to the erring employee.[24] We see no reason why the same should not be similarly applied in the case of Capor. She attempted to steal the property of her long-time employer. For committing such misconduct, she is definitely not entitled to an award of separation pay.

It is true that there have been instances when the Court awarded financial assistance to employees who were terminated for just causes, on grounds of equity and social justice. The same, however, has been curbed and rationalized in *Philippine Long Distance Telephone Company v. National Labor Relations Commission.*[25] In that case, we recognized the harsh realities faced by employees that forced them, despite their good intentions, to violate company policies, for which the employer can rightfully terminate their employment. For these instances, the award of financial assistance was allowed. But, in clear and unmistakable language, we also held that the award of financial assistance shall not be given to validly terminated employees, whose offenses are iniquitous or reflective of some depravity in their moral character. When the employee commits an act of dishonesty, depravity, or iniquity, the grant of financial assistance is misplaced compassion. It is tantamount not only to condoning a patently illegal or dishonest act, but an endorsement thereof. It will be an insult to all the laborers who, despite their economic difficulties, strive to maintain good values and moral conduct.

In fact, in the recent case of *Toyota Motors Philippines, Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*,[26] we ruled that separation pay shall

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[24] *Philippine Long Distance Telephone Company v. National Labor Relations Commission, supra* note 12; *Zenco Sales, Inc. v. National Labor Relations Commission, supra* note 16.

[25] *Supra* note 12.

[26] G.R. Nos. 158798-99, October 19, 2007, 537 SCRA 171, 219-223.

not be granted to all employees who are dismissed on any of the four grounds provided in Article 282 of the Labor Code. Such ruling was reiterated and further explained in *Central Philippines Bandag Retreaders, Inc. v. Diasnes*:[27]

> 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.

We are not persuaded by Capor's argument that despite the finding of theft, she should still be granted separation pay in light of her long years of service with petitioners. We held in *Central Pangasinan Electric Cooperative, Inc. v. National Labor Relations Commission*[28] that:

> Although long years of service might generally be considered for the award of separation benefits or some form of financial assistance to mitigate the effects of termination, this case is not the appropriate instance for generosity x x x. The fact that private respondent served petitioner for more than twenty years with no negative record prior to his dismissal, in our view of this case, does not call for such award of benefits, since his violation reflects a regrettable lack of loyalty and worse, betrayal of the company. If an employee's length of service is to be regarded as justification for moderating the penalty of dismissal, such gesture will actually become a prize for disloyalty, distorting the

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[27] G.R. No. 163607, July 14, 2008, 558 SCRA 194, 207.

[28] G.R. No. 163561, July 24, 2007, 528 SCRA 146, 151-152.

meaning of social justice and undermining the efforts of labor to clean its ranks of undesirables.

Indeed, length of service and a previously clean employment record cannot simply erase the gravity of the betrayal exhibited by a malfeasant employee.[29] Length of service is not a bargaining chip that can simply be stacked against the employer. After all, an employer-employee relationship is symbiotic where both parties benefit from mutual loyalty and dedicated service. If an employer had treated his employee well, has accorded him fairness and adequate compensation as determined by law, it is only fair to expect a long-time employee to return such fairness with at least some respect and honesty. Thus, it may be said that betrayal by a long-time employee is more insulting and odious for a fair employer. As stated in another case:

> x x x The fact that [the employer] did not suffer pecuniary damage will not obliterate respondent's betrayal of trust and confidence reposed by petitioner. Neither would his length of service justify his dishonesty or mitigate his liability. His length of service even aggravates his offense. He should have been more loyal to petitioner company from which he derived his family bread and butter for seventeen years.[30]

While we sympathize with Capor's plight, being of retirement age and having served petitioners for 39 years, we cannot award any financial assistance in her favor because it is not only against the law but also a retrogressive public policy. We have already explained the folly of granting financial assistance in the guise of compassion in the following pronouncements:

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[29] See *Philippine Long Distance Telephone Company v. The Late Romeo F. Bolso,* G.R. No. 159701, August 17, 2007, 530 SCRA 550, 563-564; *Central Pangasinan Electric Cooperative, Inc. v. NationalLabor Relations Commission, supra; Philippine Long Distance Telephone Company v. National Relations Commission, supra* note 12; *United South Dockhandlers, Inc. v. National Labor Relarions Commissionn,* 335 Phil. 76, 81-82 (1997)

[30] *United South Dockhandlers, Inc. v. National Labor Relations Commission*, *supra* note 29.

x x x Certainly, a dishonest employee cannot be rewarded with separation pay or any financial benefit after his culpability is established in two decisions by competent labor tribunals, which decisions appear to be well-supported by evidence. To hold otherwise, even in the name of compassion, would be to send a wrong signal not only that "crime pays" but also that one can enrich himself at the expense of another in the name of social justice. And courts as well as quasi-judicial entities will be overrun by petitioners mouthing dubious pleas for misplaced social justice. Indeed, before there can be an occasion for compassion and mercy, there must first be justice for all. Otherwise, employees will be encouraged to steal and misappropriate in the expectation that eventually, in the name of social justice and compassion, they will not be penalized but instead financially rewarded. Verily, a contrary holding will merely encourage lawlessness, dishonesty, and duplicity. These are not the values that society cherishes; these are the habits that it abhors.[31]

WHEREFORE, the petition is *GRANTED*. The assailed June 3, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 76789 affirming the September 20, 2002 Decision of the National Labor Relations Commission is *ANNULLED and SET ASIDE*. The November 16, 1999 Decision of the Labor Arbiter is *REINSTATED* and *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

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[31] *San Miguel Corporation v. National Labor Relations Commission*, 325 Phil. 940, 952 (1996).

EN BANC

[G.R. No. 164785. March 15, 2010]

ELISEO F. SORIANO, *petitioner, vs.* **MA. CONSOLIZA P. LAGUARDIA, in her capacity as Chairperson of the Movie and Television Review and Classification Board, MOVIE AND TELEVISION REVIEW AND CLASSIFICATION BOARD, JESSIE L. GALAPON, ANABEL M. DELA CRUZ, MANUEL M. HERNANDEZ, JOSE L. LOPEZ, CRISANTO SORIANO, BERNABE S. YARIA, JR., MICHAEL M. SANDOVAL, and ROLDAN A. GAVINO,** *respondents.*

[G.R. No. 165636. March 15, 2010]

ELISEO F. SORIANO, *petitioner, vs.* **MOVIE AND TELEVISION REVIEW AND CLASSIFICATION BOARD, ZOSIMO G. ALEGRE, JACKIE AQUINO-GAVINO, NOEL R. DEL PRADO, EMMANUEL BORLAZA, JOSE E. ROMERO IV, and FLORIMONDO C. ROUS, in their capacity as members of the Hearing and Adjudication Committee of the MTRCB, JESSIE L. GALAPON, ANABEL M. DELA CRUZ, MANUEL M. HERNANDEZ, JOSE L. LOPEZ, CRISANTO SORIANO, BERNABE S. YARIA, JR., MICHAEL M. SANDOVAL, and ROLDAN A. GAVINO, in their capacity as complainants before the MTRCB,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF SPEECH AND RELIGION; SANCTION IMPOSED ON THE TV PROGRAM IN QUESTION DOES NOT CONSTITUTE PRIOR RESTRAINT.—** Suffice it to reiterate that the sanction imposed on the TV program in question does not, under the factual milieu of the case, constitute prior restraint,

but partakes of the nature of subsequent punishment for past violation committed by petitioner in the course of the broadcast of the program on August 10, 2004. To be sure, petitioner has not contested the fact of his having made statements on the air that were contextually violative of the program's "G" rating. To merit a "G" rating, the program must be "suitable for all ages," which, in turn, means that the "material for television [does not], in the judgment of the [MTRCB], x x x contain anything unsuitable for children and minors, and may be viewed without adult guidance or supervision." As previously discussed by the Court, the vulgar language petitioner used on prime-time television can in no way be characterized as suitable for all ages, and is wholly inappropriate for children.

2. ID.; ID.; ID.; ID.; THE EXERCISE OF RELIGIOUS BELIEFS AND PROFESSION *VIS-À-VIS* THE RIGHT AND DUTY OF THE STATE AS *PARENS PATRIAE*.— Petitioner next harps on the primacy of his freedoms, referring particularly to the exercise of his religious beliefs and profession, as presiding minister of his flock, over the right and duty of the state as *parens patriae*. Petitioner's position may be accorded some cogency, but for the fact that it fails to consider that the medium he used to make his statements was a television broadcast, which is accessible to children of virtually all ages. As already laid down in the Decision subject of this recourse, the interest of the government in protecting children who may be subjected to petitioner's invectives must take precedence over his desire to air publicly his dirty laundry. The public soapbox that is television must be guarded by the state, which purpose the MTRCB serves, and has served, in suspending *Ang Dating Daan* for petitioner's statements. As emphasized in *Gonzalez v. Kalaw Katigbak*, the freedom of broadcast media is, in terms of degree of protection it deserves, lesser in scope, especially as regards television, which reaches every home where there is a set, and where children will likely be among the avid viewers of the programs shown. The same case also laid the basis for the classification system of the MTRCB when it stated, "It cannot be denied though that the State as *parens patriae* is called upon to manifest an attitude of caring for the welfare of the young."

3. ID.; ID.; ID.; ID.; INSULTS DIRECTED AT ANOTHER PERSON CANNOT BE ELEVATED TO THE STATUS OF RELIGIOUS

SPEECH; PENALTY OF SUSPENSION IMPOSED ON THE TELEVISION PROGRAM FOR VIOLATION OF THE "G" RATING.— Contrary to petitioner's impression, the Court has, in fact, considered the factual antecedents of and his motive in making his utterances, and has found those circumstances wanting as defense for violating the program's "G" rating. Consider the following excerpts from the Court's Decision: There is nothing in petitioner's statements subject of the complaints expressing any particular religious belief, nothing furthering his avowed evangelical mission. The fact that he came out with his statements in a televised bible exposition program does not automatically accord them the character of a religious discourse. Plain and simple insults directed at another person cannot be elevated to the status of religious speech. Even petitioner's attempts to place his words in context show that he was moved by anger and the need to seek retribution, not by any religious conviction. His claim, assuming its veracity, that some INC ministers distorted his statements respecting amounts *Ang Dating Daan* owed to a TV station does not convert the foul language used in retaliation as religious speech. We cannot accept that petitioner made his statements in defense of his reputation and religion, as they constitute no intelligible defense or refutation of the alleged lies being spread by a rival religious group. They simply illustrate that petitioner had descended to the level of name-calling and foul-language discourse. Petitioner could have chosen to contradict and disprove his detractors, but opted for the low road. And just to set things straight, the penalty imposed is on the program, not on petitioner.

4. **ID.; ID.; ID.; ID.; EXERCISE OF RELIGIOUS FREEDOM, WHEN MAY BE REGULATED BY THE STATE; RELIGIOUS PROGRAM NOT BEYOND THE MTRCB'S REVIEW AND REGULATORY AUTHORITY.—** Petitioner's invocation of *Iglesia ni Cristo* to support his hands-off thesis is erroneous. Obviously, he fails to appreciate what the Court stated in that particular case when it rejected the argument that a religious program is beyond MTRCB's review and regulatory authority. We reproduce what the Court pertinently wrote in *Iglesia ni Cristo*: We thus reject petitioner's postulate that its religious program is *per se* beyond review by the respondent [MTRCB]. Its public broadcast on TV of its religious program brings it out of the bosom of internal belief. Television is a medium that

reaches even the eyes and ears of children. The Court iterates the rule that **the exercise of religious freedom can be regulated by the State** when it will bring about the clear and present danger of some substantive evil which the State is duty bound to prevent, *i.e.* serious detriment to the more overriding interest of public health, public morals, or public welfare. A *laissez faire* policy on the exercise of religion can be seductive to the liberal mind but history counsels the Court against its blind adoption as religion is and continues to be a volatile area of concern in our country today. Across the sea and in our shore, the bloodiest and bitterest wars fought by men were caused by irreconcilable religious differences. Our country is still not safe from the recurrence of this stultifying strife considering our warring religious beliefs and the fanaticism with which some of us cling and claw to these beliefs. x x x ***For when religion divides and its exercise destroys, the State should not stand still***.

5. **ID.; ID.; ID.; DUE PROCESS; NO VIOLATION THEREOF IN CASE AT BAR.—** As per petitioner's admission in his petition for *certiorari* filed with the Court, he is "the Executive Producer of *Ang Dating Daan*, a televised bible exposition program produced by the Philippine-based religious organization, Church of God International." It is unclear, then, which producer the movant is referring to in claiming that there was no representation before the MTRCB. He was and is the representative of *Ang Dating Daan*, and the claim that there was no due process of law is simply bereft of merit.

6. **ID.; ID.; ID.; ID.; THE STANDARDS TO BE EMPLOYED IN JUDGING THE HARMFUL EFFECTS OF THE STATEMENTS USED BY THE TELEVISION HOST WOULD BE THOSE FOR THE AVERAGE CHILD, NOT THOSE FOR THE AVERAGE ADULT.—** As stressed at every possible turn in the challenged Court's Decision, the defining standards to be employed in judging the harmful effects of the statements petitioner used would be those for the average child, not those for the average adult. We note that the ratings and regulation of television broadcasts take into account the protection of the child, and it is from the child's narrow viewpoint that the utterances must be considered, if not measured. The ratings "G," "PG" (parental guidance), "PG-13," and "R" (restricted or for adults only) suggest as much. The concern was then, as now, that the

program petitioner hosted and produced would reach an unintended audience, the average child, and so it is how this audience would view his words that matters. The average child would not be concerned with colorful speech, but, instead, focus on the literal, everyday meaning of words used. It was this literal approach that rendered petitioner's utterances obscene.

7. ID.; ID.; ID.; ID.; CASE OF "*ACTION FOR CHILDREN'S TELEVISION V. FCC*" INAPPLICABLE IN OUR JURISDICTION; INDECENT PROGRAMMING, ABSOLUTELY NOT PERMITTED; PETITIONER VIOLATED THE SYSTEM OF CLASSIFICATION OF TELEVISION PROGRAMS.— The Court has taken stock of *Action for Children's Television v. FCC*, but finds this U.S. case not to be of governing application to this jurisdiction under the present state of things. The so-called "safe harbor" of 10:00 p.m. to 6:00 a.m., adverted to in *Action for Children's Television* as the time wherein broadcast of indecent material may be permitted, is believed inapplicable here. As it were, there is no legislative enactment or executive issuance setting a similar period in the Philippines wherein indecent material may be broadcast. Rather than fix a period for allowing indecent programming, what is used in this jurisdiction is the system of classification of television programs, which the petitioner violated. His program was rated "G," purported to be suitable for all ages. We cannot lose sight of the violation of his program's classification that carried with it the producer's implied assurance that the program did not contain anything unsuitable for children and minors. The hour at which it was broadcasted was of little moment in light of the guarantee that the program was safe for children's viewing.

8. ID.; ID.; ID.; ID.; EXERCISE OF THE FREEDOM OF SPEECH AND RELIGION IS NOT ABSOLUTE.— The suspension of the program has not been arrived at lightly. Taking into account all the factors involved and the arguments pressed on the Court, the suspension of the program is a sufficiently limited disciplinary action, both to address the violation and to serve as an object lesson for the future. The likelihood is great that any disciplinary action imposed on petitioner would be met with an equally energetic defense as has been put up here. The simple but stubborn fact is that there has been a violation of government regulations that have been put in place with a laudable purpose, and this violation must accordingly be dealt

with. We are not unmindful of the concerns on the restriction of freedoms that may occur in imposing sanctions upon erring individuals and institutions, but it cannot be over-emphasized that the freedoms encased in the Bill of Rights are far from absolute. Each has its own limits, responsibilities, and obligations. Everyone is expected to bear the burden implicit in the exercise of these freedoms. So it must be here.

CARPIO, *J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF SPEECH AND EXPRESSION; ACCORDED THE STATUS OF A PREFERRED FREEDOM; RATIONALE FOR THE RIGHT.— Among the cherished liberties in a democracy such as ours is freedom of expression. A democracy needs a healthy public sphere where the people can exchange ideas, acquire knowledge and information, confront public issues, or discuss matters of public interest, without fear of reprisals. Free speech must be protected so that the people can engage in the discussion and deliberation necessary for the successful operation of democratic institutions. Thus, no less than our Constitution mandates full protection to freedom of speech, of expression, and of the press. All of the protections expressed in the Bill of Rights are important, but the courts have accorded to free speech the status of a preferred freedom. This qualitative significance of freedom of expression arises from the fact that it is the indispensable condition of nearly every other freedom. The freedom of expression clause is precisely a guarantee against both prior restraint and subsequent punishment. It protects from any undue interference by the government the people's right to freely speak their minds. The guarantee rests on the principle that freedom of expression is essential to a functioning democracy and suppression of expression leads to authoritarianism.

2. ID.; ID.; ID.; ID.; PRIOR RESTRAINT, ELABORATED; MERE PROHIBITION OF GOVERNMENT INTERFERENCE BEFORE WORDS ARE SPOKEN IS NOT AN ADEQUATE PROTECTION OF THE FREEDOM OF EXPRESSION IF THE GOVERNMENT COULD ARBITRARILY PUNISH AFTER WORDS HAVE BEEN SPOKEN.— Prior restraint has been defined as official governmental restrictions on any form of expression in advance of actual dissemination. But the mere prohibition of government

interference *before* words are spoken is not an adequate protection of the freedom of expression if the government could arbitrarily punish *after* the words have been spoken. The threat of subsequent punishment itself would operate as a very effective prior restraint. Any form of prior restraint bears a presumption against its constitutional validity. The burden is on the censor to justify any imposition of prior restraint, not on the censored to put up a defense against it. In the case of print media, it has been held that just because press freedom may sometimes be abused does not mean that the press does not deserve immunity from prior restraint. The settled rule is that any such abuse may be remedied by subsequent punishment.

3. **ID.; ID.; ID.; ID.; THE MEDIA IS ENTITLED TO THE PROTECTION OF THE FREEDOM OF SPEECH AND EXPRESSION CLAUSE; "CLEAR AND PRESENT DANGER" TEST, ELUCIDATED; CENSORSHIP, WHEN ALLOWABLE.—** This Court, in *Eastern Broadcasting Corporation v. Dans, Jr*., laid down the following guideline: All forms of media, whether print or broadcast, are entitled to the broad protection of the freedom of speech and expression clause. The test for limitations on freedom of expression continues to be the **clear and present danger rule** – that words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the lawmaker has a right to prevent. Chief Justice Fernando expounded on the meaning of the "clear and present danger" test in *Gonzalez v. Chairman Katigbak*, to wit: The test, to repeat, to determine whether freedom of expression may be limited is the clear and present danger of an evil of a substantive character that the State has a right to prevent. Such danger must not only be clear but must also be present. There should be no doubt that what is feared may be traced to the expression complained of. The causal connection must be evident. Also, there must be reasonable apprehension about its imminence. The time element cannot be ignored. Nor does it suffice if such danger be only probable. There is the requirement of its being well-nigh inevitable. Where the medium of a television broadcast is concerned, as in the case at hand, well-entrenched is the rule that censorship is allowable only under the clearest proof of a clear and present

danger of a substantive evil to public safety, public morals, public health, or any other legitimate public interest.

4. ID.; ID.; ID.; ID.; TEST FOR OBSCENITY; ROTH AND MILLER TEST APPLIED IN OUR JURISPRUDENCE.— The leading test for determining what material could be considered obscene was the famous *Regina v. Hicklin* case wherein Lord Cockburn enunciated thus: I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall. Judge Learned Hand, in *United States v. Kennerly*, opposed the strictness of the *Hicklin* test even as he was obliged to follow the rule. He wrote: I hope it is not improper for me to say that the rule as laid down, however consonant it may be with mid-Victorian morals, does not seem to me to answer to the understanding and morality of the present time. *Roth v. United States* laid down the more reasonable and thus, more acceptable test for obscenity: "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." Such material is defined as that which has "a tendency to excite lustful thoughts," and "prurient interest" as "a shameful or morbid interest in nudity, sex, or excretion." *Miller v. California* merely expanded the *Roth* test to include two additional criteria: "the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and the work, taken as whole, lacks serious literary, artistic, political, or scientific value." The basic test, as applied in our jurisprudence, extracts the essence of both *Roth* and *Miller* – that is, **whether the material appeals to prurient interest**.

5. ID.; ID.; ID.; ID.; TO BE CONSIDERED OBSCENE, THE SPEECH MUST APPEAL TO PRURIENT INTEREST; FINDING THAT THE SUBJECT SPEECH IS OBSCENE IS UNTENABLE.— Well-settled is the rule that speech, to be considered obscene, must appeal to prurient interest as defined in *Roth* and firmly adopted in our jurisdiction. The subject speech cannot, by any stretch of the imagination, be said to appeal to any prurient interest. The highlighted portion of the verbal exchange between the two feuding religious groups is utterly bereft of any tendency to excite lustful thoughts as to be deemed obscene. The majority's

finding of obscenity is clearly untenable. In contrast, a radio broadcast of a monologue replete with indecent words such as shit, piss, fuck, cunt, cocksucker, motherfucker, and tits, has been held protected speech depending on the context relating to the time of broadcast. However, in this case before us, the words "*putang babae*" (female prostitute), and the descriptive action phrases "*ang gumagana lang doon yung ibaba*" and "*kay Michael ang gumagana ang itaas*" were enough to constitute outright obscenity for the majority. The majority opinion simply forced these words and phrases into a strained standard formula for censorship. But such overbroad standard must be struck down for it indiscriminately infringes upon free speech.

6. ID.; ID.; ID.; ID.; CONCEPT OF INDECENT SPEECH.— The subject speech in this case may, at most, be considered indecent speech. Indecent speech conveyed through the medium of broadcast is a case of first impression in our jurisdiction. However, this issue has been settled in American case law, which has persuasive influence in our jurisprudence. There, the rule is that indecent speech is protected depending on the context in which it is spoken. The concept of what is "indecent" is intimately connected with the exposure of children to language that describes, in terms patently offensive, as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, at times of the day when there is a reasonable risk that children may be in the audience. xxx.

7. ID.; ID.; ID.; ID.; INDECENT SPEECH ENJOYS CONSTITUTIONAL PROTECTION AND MAY NOT BE SANCTIONED; SPEECH MAY NOT BE PROHIBITED JUST BECAUSE GOVERNMENT OFFICIALS DISAPPROVE OF THE SPEAKER'S VIEW.— *FCC v. Pacific Foundation* is the landmark U.S. case on the regulation of indecent speech in broadcast. The case involved a radio broadcast of "Filthy Words," a 12-minute monologue by American stand-up comedian and social critic, George Carlin. xxx The station was not suspended for the broadcast of the monologue, which the U.S. Supreme Court merely considered indecent speech based on the context in which it was delivered. According to the U.S. Supreme Court, the monologue would have been protected were it delivered in another context. The monologue was broadcast

at 2:00 p.m., when children were presumptively in the audience. A later case, *Action for Children's Television v. FCC*, establishes the safe harbor period to be from 10:00 in the evening to 6:00 in the morning, when the number of children in the audience is at a minimum. In effect, between the hours of 10:00 p.m. and 6:00 a.m., the broadcasting of material considered indecent is permitted. Between the hours of 6:00 a.m. and 10:00 p.m., the broadcast of any indecent material may be sanctioned. In this case, the subject speech by petitioner was broadcast starting 10:00 p.m. onwards, clearly within the safe harbor period as established in *Action for Children's Television*. Correctly applying *Pacifica*'s context-based ruling, petitioner's speech, if indeed indecent, enjoys constitutional protection and may not be sanctioned. The rule on this matter, as laid down by *Pacifica* in relation to *Action for Children's Television*, is crystal-clear. But should the majority still have any doubt in their minds, such doubt should be resolved in favor of free speech and against any interference by government. The suspension of "Ang Dating Daan" by the MTRCB was a content-based, not a content-neutral regulation. Thus, the suspension should have been subjected to strict scrutiny following the rule in *Chavez v. Gonzales*. The test should be strict because the regulation went into the very heart of the rationale for the right to free speech – that speech may not be prohibited just because government officials disapprove of the speaker's views.

8. **ID.; ID.; ID.; ID.; THE RESTRICTION ON FREEDOM NEED NOT BE GREATER THAN IS NECESSARY TO FURTHER THE GOVERNMENTAL INTEREST.—** The majority's ruling in this case sets a dangerous precedent. This decision makes it possible for any television or radio program, on the slightest suspicion of being a danger to national security or on other pretexts, to likewise face suspension. The exacting "clear and present danger" test is dispensed with to give way to the "balancing of interests" test in favor of the government's exercise of its regulatory power. Granting without conceding that "balancing of interests" is the appropriate test in setting a limitation to free speech, suspension of a television program is a measure way too harsh that it would be inappropriate as the most reasonable means for averting a perceived harm to

society. The restriction on freedom need not be greater than is necessary to further the governmental interest.

9. **ID.; ID.; ID.; ID.; "BALANCING OF INTERESTS" TEST, EXPLAINED.—** The "balancing of interests" test requires that a determination must first be made whether the necessary safeguarding of the public interest involved may be achieved by some other measure less restrictive of the protected freedom. The majority immediately resorted to outright suspension without first exploring other measures less restrictive of freedom of speech. It cites *MTRCB v. ABS-CBN Broadcasting Corporation* in justifying the government's exercise of regulatory power. But the *ABS-CBN* case involved a mere fine as punishment, not a prior restraint in the form of suspension as in this case. In the cited case, one of the episodes of "The Inside Story," a television program of ABS-CBN, was aired without prior review and approval by the MTRCB. For this omission, the MTRCB subsequently fined ABS-CBN in the amount of ₱20,000. However, even as the television station was fined, the program continued to be aired and was never suspended.

10. **ID.; ID.; ID.; ID.; PRIOR RESTRAINT BY SUSPENSION, WHEN MAY BE IMPOSED; PRIOR RESTRAINT UNWARRANTED FOR INDECENT UTTERANCES.—** Indeed, prior restraint by suspension is an extreme measure that may only be imposed after satisfying the "clear and present danger" test, which requires the perceived danger to be both grave and imminent. Prior restraint is simply uncalled for in this case where what is involved is not even obscene speech, but mere indecent speech. Note too, that the subject utterances in this case were broadcast starting 10:00 p.m. onwards, well within the safe harbor period for permissible television broadcast of speech which may be characterized as indecent.

11. **ID.; ID.; ID.; ID.; FREEDOM OF SPEECH INCLUDES THE EXPRESSION OF THOUGHTS THAT WE DO NOT APPROVE OF, NOT JUST THOUGHTS THAT ARE AGREEABLE.—** Suspension of the program stops not only petitioner, but also the other leaders of his congregation from exercising their constitutional right to free speech through their medium of choice, which is television. The majority opinion attempts to assuage petitioner's misery by saying that petitioner can still exercise his right to speak his mind using other venues. But

this proposition assumes that petitioner has access to other venues where he may continue his interrupted exercise of free speech using his chosen mode, television broadcast. While we may not agree with petitioner's choice of language in expressing his disgust in this word war between two feuding religious groups, let us not forget that freedom of speech includes the expression of thoughts that we do not approve of, not just thoughts that are agreeable. To paraphrase Voltaire: We may disapprove of what petitioner has said, but we must defend to the death his right to say it.

12. **ID.; ID.; ID.; ID.; THREE-MONTH SUSPENSION IMPOSED ON THE SUBJECT TELEVISION PROGRAM CONSIDERED A PRIOR RESTRAINT ON EXPRESSION; CONGRESS HAS NO POWER TO SUSPEND OR SUPPRESS THE PEOPLE'S RIGHT TO FREEDOM OF EXPRESSION FOR OFFENSIVE UTTERANCES IN THE PAST.—** The three-month suspension cannot be passed off merely as a preventive suspension that does not partake of a penalty. The actual and real effect of the three-month suspension is a prior restraint on expression in violation of a fundamental constitutional right. Even Congress cannot validly pass a law imposing a three-month preventive suspension on freedom of expression for offensive or vulgar language uttered in the past. Congress may punish such offensive or vulgar language after their utterance, with damages, fine, or imprisonment; but Congress has no power to suspend or suppress the people's right to speak freely because of such utterances. In short, Congress may pass a law punishing defamation or tortious speech but the punishment cannot be the suspension or suppression of the constitutional right to freedom of expression. **Otherwise, such law would be abridging the freedom of speech, of expression, or of the press**. If Congress cannot pass such a law, neither can respondent MTRCB promulgate a rule or a decision suspending for three months petitioner's constitutional right to freedom of speech. And of course, neither can this Court give its stamp of imprimatur to such an unconstitutional MTRCB rule or decision.

ABAD, *J.*, *dissenting opinion*:

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF SPEECH; OBSCENITY ON TELEVISION IS NOT PROTECTED BY THE GUARANTEE OF FREEDOM OF SPEECH; TEST OF OBSCENITY.—** Primarily, it is obscenity

on television that the constitutional guarantee of freedom of speech does not protect. As the Court's decision points out, the test of obscenity is whether the average person, applying contemporary standards, would find the speech, taken as a whole, appeals to the prurient interest. A thing is prurient when it arouses lascivious thoughts or desires or tends to arouse sexual desire.A quarter-of-a-year suspension would probably be justified when a general patronage program intentionally sneaks in snippets of lewd, prurient materials to attract an audience to the program. This has not been the case here.

2. **ID.; ID.; ID.; ID.; PETITIONER'S UTTERANCE MERELY BORDERS ON THE INDECENT.—** Actually, the Court concedes that petitioner Soriano's short outburst was not in the category of the obscene. It was just "indecent." But were his words and their meaning utterly indecent? In a scale of 10, did he use the grossest language? He did not. [S]oriano actually exercised some restraints in the sense that he did not use the vernacular word for the female sexual organ when referring to it, which word even the published opinions of the Court avoided despite its adult readers. He referred to it as "*yung ibaba*" or down below. And, instead of using the patently offensive vernacular equivalent of the word "fuck" that describes the sexual act in which the prostitute engages herself, he instead used the word "*gumagana lang doon yung ibaba*" or what functions is only down below. At most, his utterance merely bordered on the indecent. xxx.

3. **ID.; ID.; ID.; ID.; FEDERAL COMMUNICATIONS COMMISSION'S CASE (438 U.S. 726) INCOMPARABLE TO CASE AT BAR; PETITIONER'S INDECENT WORDS WERE SLIGHT AND SPOKEN AS A MERE FIGURE OF SPEECH.—** The Court claims that, since *Ang Dating Daan* carried a general patronage rating, Soriano's speech no doubt caused harm to the children who watched the show. This statement is much too sweeping. The Court relies on the United States case of *Federal Communications Commission (FCC) v. Pacifica Foundation,* a 1978 landmark case. xxx The U.S. Supreme Court held that the [challenged monologue] is not protected speech and that the FCC could regulate its airing on radio. The U.S. Supreme Court was of course correct. Here, however, there is no question that Soriano attacked Michael, using figure of speech, at past 10:00 in the evening, not at 2:00 in the afternoon.

The average Filipino child would have been long in bed by the time *Ang Dating Daan* appeared on the television screen. What is more, Bible teaching and interpretation is not the stuff of kids. It is not likely that they would give up programs of interest to them just to listen to Soriano drawing a distinction between "faith" and "work or action." The Court has stretched the "child" angle beyond realistic proportions. The MTRCB Probably gave the program a general patronage rating simply because *Ang Dating Daan* had never before been involved in any questionable broadcast in the previous 27 years that it had been on the air. The monologue in the FCC case that was broadcast at 2 in the afternoon was pure indecent and gross language, uttered for its own sake with no social value at all. It cannot compare to Soriano's speech where the indecent words were slight and spoken as mere figure of speech to defend himself from what he perceived as malicious criticism.

4. ID.; ID.; ID.; ID.; BALANCING OF INTEREST TEST, EXPLAINED; THREE MONTHS SUSPENSION OF THE SUBJECT TELEVISION BIBLE TEACHING PROGRAM IS A DIRECT, UNCONDITIONAL, AND TOTAL ABRIDGMENT OF THE FREEDOM OF SPEECH.— The Court applied the balancing of interest test in justifying the imposition of the penalty of suspension against *Ang Dating Daan*. Under this test, when particular conduct is regulated in the interest of public order and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of the two conflicting interests demands the greater protection under the particular circumstances presented. An example of this is where an ordinance prohibits the making of loud noises from 9:00 p.m. to 6:00 a.m. Can this ordinance be applied to prevent vehicles circling the neighborhood at such hours of night, playing campaign jingles on their loudspeakers to win votes for candidates in the election? Here, there is a tension between the rights of candidates to address their constituents and the interest of the people in healthy undisturbed sleep. The Court would probably uphold the ordinance since public interest demands a quiet night's rest for all and since the restraint on the freedom of speech is indirect, conditional, and partial. The candidate is free to make his broadcast during daytime when people are normally awake and can appreciate what he is saying. But here, the abridgment of speech—three

months total suspension of the *Ang Dating Daan* television bible teaching program—cannot be regarded as indirect, conditional, or partial. It is a direct, unconditional, and total abridgment of the freedom of speech, to which a religious organization is entitled, for a whole quarter of a year.

5. **ID.; ID.; ID.; ID.; THREE-MONTH SUSPENSION PENALTY IMPOSED ON THE SUBJECT TELEVISION PROGRAM, UNWARRANTED; APPROPRIATE PENALTY.—** In the American case of *FCC*, a parent complained. He was riding with his son in the car at 2:00 in the afternoon and they heard the grossly indecent monologue on radio. Here, no parent has in fact come forward with a complaint that his child had heard petitioner Soriano's speech and was harmed by it. The Court cannot pretend that this is a case of angry or agitated parents against *Ang Dating Daan*. The complaint here came from Iglesia ni Cristo preachers and members who deeply loathed Soriano and his church. The Court's decision will not be a victory for the children but for the Iglesia ni Cristo, finally enabling it to silence an abhorred competing religious belief and its practices. What is more, since this case is about protecting children, the more appropriate penalty, if Soriano's speech during the program mentioned was indecent and had offended them, is to raise his program's restriction classification. The MTRCB classify programs to protect vulnerable audiences. It can change the present G or General Patronage classification of *Ang Dating Daan* to PG or "with Parental Guidance only" for three months. This can come with a warning that should the program commit the same violation, the MTRCB can make the new classification permanent or, if the violation is recurring, cancel its program's permit.

APPEARANCES OF COUNSEL

De Vera Law Office and *Tudio Roque Follante Forteza and Associates* for petitioner.

The Solicitor General for public respondents.

Lazaro Tuazon Santos & Associates Law Offices for private respondents.

RESOLUTION

VELASCO, JR., *J.*:

Before us is this motion of petitioner Eliseo F. Soriano for reconsideration of the Decision of the Court dated April 29, 2009, modifying that of the Movie and Television Review and Classification Board (MTRCB) by imposing the penalty of three-month suspension on the television show *Ang Dating Daan,* instead of on petitioner Soriano, as host of that program.

Petitioner seeks reconsideration on the following grounds or issues: (1) the suspension thus meted out to the program constitutes prior restraint; (2) the Court erred in ruling that his utterances[1] did not constitute exercise of religion; (3) the Court erred in finding the language used as offensive and obscene; (4) the Court should have applied its policy of non-interference in cases of conflict between religious groups; and (5) the Court erred in penalizing the television program for the acts of petitioner.

The motion has no merit.

Petitioner's threshold posture that the suspension thus imposed constitutes prior restraint and an abridgement of his exercise of religion and freedom of expression is a mere rehash of the position he articulated in the underlying petitions for *certiorari* and expounded in his memorandum.[2] So are the supportive arguments and some of the citations of decisional law, Philippine and American, holding it together. They have been considered, sufficiently discussed in some detail, and found to be without merit in our Decision. It would, thus, make little sense to embark on another lengthy discussion of the same issues and arguments.

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[1] *Lehitimong anak ng demonyo; sinungaling;*

Gago ka talaga Michael, masahol ka pa sa putang babae o di ba. Yung putang babae ang gumagana lang doon yung ibaba, [dito] kay Michael ang gumagana ang itaas, o di ba! O, masahol pa sa putang babae yan. Sabi ng lola ko masahol pa sa putang babae yan. Sobra ang kasinungalingan ng mga demonyong ito. x x x

[2] *Rollo* (G.R. No. 165636), pp. 807-913.

Suffice it to reiterate that the sanction imposed on the TV program in question does not, under the factual milieu of the case, constitute prior restraint, but partakes of the nature of subsequent punishment for past violation committed by petitioner in the course of the broadcast of the program on August 10, 2004. To be sure, petitioner has not contested the fact of his having made statements on the air that were contextually violative of the program's "G" rating. To merit a "G" rating, the program must be "suitable for all ages," which, in turn, means that the "material for television [does not], in the judgment of the [MTRCB], x x x contain anything unsuitable for children and minors, and may be viewed without adult guidance or supervision."[3] As previously discussed by the Court, the vulgar language petitioner used on prime-time television can in no way be characterized as suitable for all ages, and is wholly inappropriate for children.

Petitioner next harps on the primacy of his freedoms, referring particularly to the exercise of his religious beliefs and profession, as presiding minister of his flock, over the right and duty of the state as *parens patriae*. Petitioner's position may be accorded some cogency, but for the fact that it fails to consider that the medium he used to make his statements was a television broadcast, which is accessible to children of virtually all ages. As already laid down in the Decision subject of this recourse, the interest of the government in protecting children who may be subjected to petitioner's invectives must take precedence over his desire to air publicly his dirty laundry. The public soapbox that is television must be guarded by the state, which purpose the MTRCB serves, and has served, in suspending *Ang Dating Daan* for petitioner's statements. As emphasized in *Gonzalez v. Kalaw Katigbak*,[4] the freedom of broadcast media is, in terms of degree of protection it deserves, lesser in scope, especially as regards television, which reaches every home where there is a set, and where children will likely be among the avid viewers

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[3] Section 2 (a), Chapter IV, Implementing Rules and Regulations Pursuant to Section 3(a) of Presidential Decree No. 1986.

[4] G.R. No. 69500, July 22, 1985, 137 SCRA 717.

of the programs shown. The same case also laid the basis for the classification system of the MTRCB when it stated, "It cannot be denied though that the State as *parens patriae* is called upon to manifest an attitude of caring for the welfare of the young."[5]

The penalty of suspension imposed on petitioner has driven him to liken the Court to "a blind man who was asked to describe an elephant, and by his description he stubbornly believed that an elephant is just the same as a Meralco post after touching one if its legs."[6] Petitioner makes this comparison with the view that the factual backdrop against which his statements were made was purportedly not considered by the Court. As he presently argues:

> The Honorable Court should have rendered its decision in light of the surrounding circumstances why and what prompted herein petitioner to utter those words. Clearly, he was provoked because of the malicious and blatant splicing by the INC ministers of his recorded voice. Verily, Petitioner submits that the choice of words he used has been harsh but strongly maintains that the same was consistent with his constitutional right of freedom of speech and religion.

Contrary to petitioner's impression, the Court has, in fact, considered the factual antecedents of and his motive in making his utterances, and has found those circumstances wanting as defense for violating the program's "G" rating. Consider the following excerpts from the Court's Decision:

> There is nothing in petitioner's statements subject of the complaints expressing any particular religious belief, nothing furthering his avowed evangelical mission. The fact that he came out with his statements in a televised bible exposition program does not automatically accord them the character of a religious discourse. Plain and simple insults directed at another person cannot be elevated to the status of religious speech. Even petitioner's attempts to place his words in context show that he was moved by anger and the need to seek retribution, not

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[5] *Id*. at 729.

[6] *Rollo* (G.R. No. 164785), p. 822.

by any religious conviction. His claim, assuming its veracity, that some INC ministers distorted his statements respecting amounts *Ang Dating Daan* owed to a TV station does not convert the foul language used in retaliation as religious speech. We cannot accept that petitioner made his statements in defense of his reputation and religion, as they constitute no intelligible defense or refutation of the alleged lies being spread by a rival religious group. They simply illustrate that petitioner had descended to the level of name-calling and foul-language discourse. Petitioner could have chosen to contradict and disprove his detractors, but opted for the low road.

And just to set things straight, the penalty imposed is on the program, not on petitioner.

Petitioner would next have the Court adopt a hands-off approach to the conflict between him and the *Iglesia Ni Cristo*. In support of his urging, he cites *Iglesia ni Cristo v. Court of Appeals*.[7]

Petitioner's invocation of *Iglesia ni Cristo* to support his hands-off thesis is erroneous. Obviously, he fails to appreciate what the Court stated in that particular case when it rejected the argument that a religious program is beyond MTRCB's review and regulatory authority. We reproduce what the Court pertinently wrote in *Iglesia ni Cristo*:

> We thus reject petitioner's postulate that its religious program is *per se* beyond review by the respondent [MTRCB]. Its public broadcast on TV of its religious program brings it out of the bosom of internal belief. Television is a medium that reaches even the eyes and ears of children. The Court iterates the rule that **the exercise of religious freedom can be regulated by the State** when it will bring about the clear and present danger of some substantive evil which the State is duty bound to prevent, *i.e.* serious detriment to the more overriding interest of public health, public morals, or public welfare. A *laissez faire* policy on the exercise of religion can be seductive to the liberal mind but history counsels the Court against its blind adoption as religion is and continues to be a volatile area of concern in our country today. Across the sea and in our shore, the bloodiest and bitterest wars fought by men were caused by irreconcilable

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[7] G.R. No. 119673, July 26, 1996, 259 SCRA 529.

religious differences. Our country is still not safe from the recurrence of this stultifying strife considering our warring religious beliefs and the fanaticism with which some of us cling and claw to these beliefs. x x x ***For when religion divides and its exercise destroys, the State should not stand still***.[8] (Emphasis added.)

Lastly, petitioner claims that there was violation of due process of law, alleging that the registered producer of the program is not a party to the proceedings. Hence, the program cannot, so petitioner asserts, be penalized.

We will let the records speak for themselves to refute that argument.

As per petitioner's admission in his petition for *certiorari* filed with the Court, he is "the Executive Producer of *Ang Dating Daan*, a televised bible exposition program produced by the Philippine-based religious organization, Church of God International."[9] It is unclear, then, which producer the movant is referring to in claiming that there was no representation before the MTRCB. He was and is the representative of *Ang Dating Daan*, and the claim that there was no due process of law is simply bereft of merit.

Even as the foregoing disquisitions would suffice to write finis to the instant motion, certain relevant issues have been raised by some members of the Court that ought to be addressed if only to put things in their proper perspective. We refer to the matter of obscenity.

As stressed at every possible turn in the challenged Court's Decision, the defining standards to be employed in judging the harmful effects of the statements petitioner used would be those for the average child, not those for the average adult. We note that the ratings and regulation of television broadcasts take into account the protection of the child, and it is from the child's narrow viewpoint that the utterances must be considered, if

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[8] *Id.* at 544-545.
[9] *Rollo* (G.R. No. 165636), p. 15.

not measured. The ratings "G," "PG" (parental guidance), "PG-13," and "R" (restricted or for adults only) suggest as much. The concern was then, as now, that the program petitioner hosted and produced would reach an unintended audience, the average child, and so it is how this audience would view his words that matters. The average child would not be concerned with colorful speech, but, instead, focus on the literal, everyday meaning of words used. It was this literal approach that rendered petitioner's utterances obscene.

The Court has taken stock of *Action for Children's Television v. FCC*,[10] but finds this U.S. case not to be of governing application to this jurisdiction under the present state of things. The so-called "safe harbor" of 10:00 p.m. to 6:00 a.m., adverted to in *Action for Children's Television* as the time wherein broadcast of indecent material may be permitted, is believed inapplicable here. As it were, there is no legislative enactment or executive issuance setting a similar period in the Philippines wherein indecent material may be broadcast. Rather than fix a period for allowing indecent programming, what is used in this jurisdiction is the system of classification of television programs, which the petitioner violated. His program was rated "G," purported to be suitable for all ages. We cannot lose sight of the violation of his program's classification that carried with it the producer's implied assurance that the program did not contain anything unsuitable for children and minors. The hour at which it was broadcasted was of little moment in light of the guarantee that the program was safe for children's viewing.

The suspension of the program has not been arrived at lightly. Taking into account all the factors involved and the arguments pressed on the Court, the suspension of the program is a sufficiently limited disciplinary action, both to address the violation and to serve as an object lesson for the future. The likelihood is great that any disciplinary action imposed on petitioner would be met with an equally energetic defense as has been put up here. The simple but stubborn fact is that there has been a violation of government regulations that have been put in place with a laudable purpose,

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[10] 58 F.3d 654 (1995).

and this violation must accordingly be dealt with. We are not unmindful of the concerns on the restriction of freedoms that may occur in imposing sanctions upon erring individuals and institutions, but it cannot be over-emphasized that the freedoms encased in the Bill of Rights are far from absolute. Each has its own limits, responsibilities, and obligations. Everyone is expected to bear the burden implicit in the exercise of these freedoms. So it must be here.

WHEREFORE, petitioner's motion for reconsideration is hereby *DENIED*.

No further pleadings shall be entertained in this case. Let entry of judgment be made in due course.

SO ORDERED.

Corona, Nachura, Leonardo-de Castro, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Puno, C.J., reiterates his dissent in the original decision.

Carpio and *Abad, JJ.,* see dissenting opinions.

Carpio Morales, J., maintains her concurrence with the dissent to the original opinion hence, she votes to grant the present motion.

Brion, J., concurs in accordance with the original separate opinion of *J.* Renato Corona.

DISSENTING OPINION

CARPIO, *J.*:

Liberty is a right that inheres in every one of us as a member of the human family. When a person is deprived of his right, all of us are diminished and debased for liberty is total and indivisible.[1]

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[1] *Ordonez v. Director of Prisons,* G.R. No. 115576, 4 August 1994, 235 SCRA 152.

Among the cherished liberties in a democracy such as ours is freedom of expression. A democracy needs a healthy public sphere where the people can exchange ideas, acquire knowledge and information, confront public issues, or discuss matters of public interest, without fear of reprisals.[2] Free speech must be protected so that the people can engage in the discussion and deliberation necessary for the successful operation of democratic institutions.[3] Thus, no less than our Constitution mandates full protection to freedom of speech, of expression, and of the press.[4] All of the protections expressed in the Bill of Rights are important, but the courts have accorded to free speech the status of a preferred freedom. This qualitative significance of freedom of expression arises from the fact that it is the indispensable condition of nearly every other freedom.[5]

The freedom of expression clause is precisely a guarantee against both prior restraint and subsequent punishment. It protects from any undue interference by the government the people's right to freely speak their minds. The guarantee rests on the principle that freedom of expression is essential to a functioning democracy and suppression of expression leads to authoritarianism.

Prior restraint has been defined as official governmental restrictions on any form of expression in advance of actual dissemination. But the mere prohibition of government interference *before* words are spoken is not an adequate protection of the freedom of expression if the government could arbitrarily punish *after* the words have been spoken. The threat of subsequent punishment itself would operate as a very effective prior restraint.[6]

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[2] SIMONE CHAMBERS, *DELIBERATION, DEMOCRACY, AND THE MEDIA*, ROWMAN & LITTLEFIELD PUBLISHERS, INC., 2000, *P. XI.*

[3] *Id.* at 3.

[4] Constitution, Article III, Section 4.

[5] *Blo Umpar Adiong v. Commission on Elections*, G.R. No. 103956, 31 March 1992, 207 SCRA 712.

[6] JOAQUIN BERNAS, S.J. *CONSTITUTIONAL RIGHTS AND SOCIAL DEMANDS, NOTES AND CASES PART II*, 2004. pp. 284-285.

Any form of prior restraint bears a presumption against its constitutional validity. The burden is on the censor to justify any imposition of prior restraint, not on the censored to put up a defense against it. In the case of print media, it has been held that just because press freedom may sometimes be abused does not mean that the press does not deserve immunity from prior restraint. The settled rule is that any such abuse may be remedied by subsequent punishment.[7]

This Court, in *Eastern Broadcasting Corporation v. Dans, Jr.*,[8] laid down the following guideline:

> All forms of media, whether print or broadcast, are entitled to the broad protection of the freedom of speech and expression clause. The test for limitations on freedom of expression continues to be the **clear and present danger rule** – that words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the lawmaker has a right to prevent.

Chief Justice Fernando expounded on the meaning of the "clear and present danger" test in *Gonzalez v. Chairman Katigbak*,[9] to wit:

> The test, to repeat, to determine whether freedom of expression may be limited is the clear and present danger of an evil of a substantive character that the State has a right to prevent. Such danger must not only be clear but must also be present. There should be no doubt that what is feared may be traced to the expression complained of. The causal connection must be evident. Also, there must be reasonable apprehension about its imminence. The time element cannot be ignored. Nor does it suffice if such danger be only probable. There is the requirement of its being well-nigh inevitable.

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[7] *Social Weather Stations, Inc. v. Commission on Elections*, 409 Phil. 571 (2001); *Iglesia ni Cristo v. Court of Appeals*, G.R. No. 119673, 26 July 1996, 259 SCRA 529 citing *Near v. Minnesota*, 283 U.S. 697 (1931).

[8] 222 Phil. 151.

[9] 222 Phil. 225.

Where the medium of a television broadcast is concerned, as in the case at hand, well-entrenched is the rule that censorship is allowable only under the clearest proof of a clear and present danger of a substantive evil to public safety, public morals, public health, or any other legitimate public interest.[10]

One of the established exceptions in freedom of expression is speech characterized as obscene. I will briefly discuss obscenity as the majority opinion characterized the subject speech in this case as obscene, thereby taking the speech out of the scope of constitutional protection.

The leading test for determining what material could be considered obscene was the famous *Regina v. Hicklin*[11] case wherein Lord Cockburn enunciated thus:

> I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.

Judge Learned Hand, in *United States v. Kennerly*,[12] opposed the strictness of the *Hicklin* test even as he was obliged to follow the rule. He wrote:

> I hope it is not improper for me to say that the rule as laid down, however consonant it may be with mid-Victorian morals, does not seem to me to answer to the understanding and morality of the present time.

Roth v. United States[13] laid down the more reasonable and thus, more acceptable test for obscenity: "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." Such material is defined as that which has "a tendency to excite lustful thoughts," and "prurient interest" as "a shameful or morbid interest in nudity, sex, or excretion."

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[10] *Id.*

[11] L.R. 3 Q.B. 360, 371 (1868).

[12] 209 F. 119, 120 (S.D.N.Y. 1913).

[13] 354 U.S. 476 (1957).

Miller v. California[14] merely expanded the *Roth* test to include two additional criteria: "the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and the work, taken as whole, lacks serious literary, artistic, political, or scientific value." The basic test, as applied in our jurisprudence,[15] extracts the essence of both *Roth* and *Miller* – that is, **whether the material appeals to prurient interest**.

The present controversy emanated from the alleged splicing of a video recording wherein petitioner was supposedly made to appear as if he was asking for contributions to raise 37 trillion pesos instead of the allegedly true amount of 3.6 million pesos. The video was played by ministers of Iglesia ni Cristo in their television program "Ang Tamang Daan."

In response, petitioner Eliseo Soriano, as host of the television program "Ang Dating Daan," made the following utterances:[16]

Bro. Josel Mallari:

Ulit-ulit na iyang talagang kawalanghiyaan na iyan, naku. E, markado nang masyado at saka branded na itong nga ito anong klase po sila. Wala kayong babalikan diyan Kapatid na Manny. Iyang klase ng mga ministro na iyan, pasamain lamang si Kapatid na Eli e pati mga ninakaw na tape, pati mga audio na pinag-edit-edit, lalagyan ng caption para makita nila, maipakita nilang malinaw 'yung panloloko nila. Kasi Sis. Luz, puwede mo nang hindi lagyan ng caption e, patunugin mo na lang na ganun ang sinasabi. Pero talagang para mai-emphasize nila 'yung kanilang kawalanghiyaan, lalagyan pa nila ng caption na hindi naman talagang sinabi ni Bro. Eli kundi pinagdugtong lang 'yung audio.

Bro. Eli Soriano:

At saka ang malisyoso. Kitang-kita malisyoso e. Paninirang-puri e. Alam mo kung bakit? Mahilig daw ako talagang manghingi

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[14] 413 U.S. 15 (1973).

[15] *Gonzales v. Chairman Katigbak*, *supra* note 9.

[16] *Rollo*, G.R. No. 164785, pp. 148-153.

para sa aking pangangailangan. Pangangailangan ko ba 'yung pambayad sa UNTV e ang mga kontrata diyan ay hindi naman ako kapatid na Josel.

Bro. Josel Mallari:

Ay, opo.

Bro. Eli Soriano:

Hindi ko kontrata iyang babayaran na iyan. I am not even a signatory to that contract. Pagkatapos para pagbintangan mo ako na humingi ako para sa pangangailangan ko, ***gago ka talaga Michael. Masahol ka pa sa putang babae. O, di ba? Yung putang babae ang gumagana lang doon yung ibaba, kay Michael ang gumagana ang itaas, o di ba! O, masahol pa sa putang babae yan. Sabi ng lola ko masahol pa sa putang babae yan. Sobra ang kasinungalingan ng mga demonyong ito****. Sige, sumagot kayo. At habang ginaganyan ninyo ako, ang mga miyembro ninyo unti-unting maliliwanagan. Makikita n'yo rin, magreresulta ng maganda iyan.*

Bro. Manny Catangay Jusay:

Bro. Eli, ay iyan nga po ang sinasabi ko e, habang gumagawa sila ng ganyan, gaya nung sinabi nung Kapatid natin kagabi dahil napanood 'yung kasinungalingan ni Pol Guevarra, ay, lumuluha 'yung Kapatid, inaanyayahan 'yung mag-anak niya. Magsialis na kayo diyan. Lipat na kayo rito. Kasi kung nag-iisip lang ang isang Iglesia ni Cristo matapos ninyong mapanood itong episode na ito, iiwanan ninyo e, kung mahal ninyo ang kaluluwa ninyo. Hindi kayo paaakay sa ganyan, nagpafabricate ng mga kasinungalingan. Sabi ko nga lahat ng paraan ng pakikipagbaka nagawa na nila e, isa na lang ang hindi 'yung pakikipagdebate at patunayan na sila ang totoo. Iyon na lang ang hindi nila nagagawa. Pero demanda, paninirang-puri – nagtataka nga ako e, tayo, kaunting kibot, nakademanda sila e. 'yung ginagawa nila, ewan ko, idinedemanda n'yo ba Bro. Eli?

The majority opinion ruled that the highlighted portion of the aforequoted speech was obscene and was, therefore, not entitled to constitutional protection.

Well-settled is the rule that speech, to be considered obscene, must appeal to prurient interest as defined in *Roth* and firmly

adopted in our jurisdiction.[17] The subject speech cannot, by any stretch of the imagination, be said to appeal to any prurient interest. The highlighted portion of the verbal exchange between the two feuding religious groups is utterly bereft of any tendency to excite lustful thoughts as to be deemed obscene. The majority's finding of obscenity is clearly untenable.

In contrast, a radio broadcast of a monologue replete with indecent words such as shit, piss, fuck, cunt, cocksucker, motherfucker, and tits, has been held protected speech depending on the context relating to the time of broadcast.[18] However, in this case before us, the words "*putang babae*" (female prostitute), and the descriptive action phrases "*ang gumagana lang doon yung ibaba*" and "*kay Michael ang gumagana ang itaas*" were enough to constitute outright obscenity for the majority. The majority opinion simply forced these words and phrases into a strained standard formula for censorship. But such overbroad standard must be struck down for it indiscriminately infringes upon free speech.

The subject speech in this case may, at most, be considered indecent speech.

Indecent speech conveyed through the medium of broadcast is a case of first impression in our jurisdiction. However, this issue has been settled in American case law, which has persuasive influence in our jurisprudence. There, the rule is that indecent speech is protected depending on the context in which it is spoken. The concept of what is "indecent" is intimately connected with the exposure of children to language that describes, in terms patently offensive, as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, at times of the day when there is a reasonable risk that children may be in the audience.[19]

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[17] *Gonzales v. Chairman Katigba*k, *supra* note 9; *Pita v. Court of Appeals,* G.R. No. 80806, 5 October 1989, 178 SCRA 362; *Fernando v. Court of Appeals*, G.R. No. 159751, 6 December 2006, 510 SCRA 351.

[18] *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978).

[19] *Id*.

FCC v. Pacifica Foundation[20] is the landmark U.S. case on the regulation of indecent speech in broadcast. The case involved a radio broadcast of "Filthy Words," a 12-minute monologue by American stand-up comedian and social critic, George Carlin. Appended to the decision is the following verbatim transcript prepared by the Federal Communications Commission:

The original seven words were, shit, piss, fuck, cunt, cocksucker, motherfucker, and tits. Those are the ones that will curve your spine, grow hair on your hands and maybe, even bring us, God help us, peace without honor and a bourbon. And now the first thing that we noticed was that word fuck was really repeated in there because the word motherfucker is a compound word and it's another form of the word fuck. You want to be a purist, it can't be on the list of basic words. Also, cocksucker is a compound word and neither half of that is really dirty. The word-the half sucker that's merely suggestive and the word cock is a half-way dirty word, 50% dirty-dirty half the time, depending on what you mean by it. Uh, remember when you first heard it, like in 6th grade, you used to giggle. And the cock crowed three times, the cock-three times. It's in the Bible, cock in the Bible. And the first time you heard about a cock-fight, remember- What? Huh? It ain't that, are you stupid? It's chickens, you know, Then you have the four letter words from the old Angle-Saxon fame. Uh, shit and fuck. The word shit, uh, is an interesting kind of word in that the middle class has never really accepted it and approved it. They use it like, crazy but it's not really okay. It's still a rude, dirty, old kind of gushy word. They don't like that, but they say it, like, they say it like, a lady now in a middle-class home, you'll hear most of the time she says it as an expletive, you know, it's out of her mouth before she knows. She says, Oh shit oh shit, oh shit. If she drops something, Oh, the shit hurt the broccoli. Shit. Thank you.

Shit! I won the Grammy, man, for the comedy album. Isn't that groovy? That's true. Thank you. Thank you man. Yeah. Thank you man. Thank you. Thank you very much, man. Thank, no, for that and for the Grammy, man, [']cause that's based on people liking it man, that's okay man. Let's let that go, man. I got my Grammy. I can let my hair hang down now, shit. Ha! So! Now the word shit is okay for the man. At work you can say it like crazy. Mostly figuratively, Get that shit out of here, will ya? I don't want to see that shit anymore.

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[20] *Id.*

I can't *cut* that shit, buddy. I've had that shit up to here. I think you're full of shit myself. He don't know shit from Shinola. you know that? Always wondered how the Shinola people felt about that Hi, I'm the new man from Shinola, Hi, how are ya? Nice to see ya. How are ya? Boy, I don't know whether to shit or wind my watch. Guess, I'll shit on my watch. Oh, *the* shit is going to hit *de* fan. Built like a brick shit-house. Up, he's up shit's creek. He's had it. He hit me, I'm sorry. Hot shit, holy shit, tough shit, eat shit. shit-eating grin. Uh, whoever thought of that was ill. He had a shit-eating grin! He had a what? Shit on a stick. Shit in a handbag. I always like that. He ain't worth shit in a handbag. Shitty. He acted real shitty. You know what I mean? I got the money back, but a real shitty attitude. Heh, he had a shit-fit. Wow! Shit-fit. Whew! Glad I wasn't there. All the animals-Bull shit, horse shit, cow shit, rat shit, bat shit. First time I heard bat shit, I really came apart. A guy in Oklahoma, Boggs, said it, man. Aw! Bat shit. Vera reminded me of that last night. Snake shit, slicker than owl shit. Get your shit together. Shit or get off the pot. I got a shit-load full of them. I got a shit-pot full, all right. Shit-head, shit-heel, shit in your heart, shit for brains, shit-face. I always try to think how that could have originated; the first guy that said that. Somebody got drunk and fell in some shit, you know. Hey, I'm shit-face. Shit-face, *today*. Anyway, enough of that shit. The big one, the word fuck that's the one that hangs them up the most. [']Cause in a lot of cases that's the very act that hangs them up the most. So, it's natural that the word would, uh, have the same effect. It's a great word, fuck, nice word, easy word, cute word, kind of. Easy word to say. One syllable, short u. Fuck. You know, it's easy. Starts with a nice soft sound fuh ends with a *kuh.* Right? A little something for everyone. Fuck Good word. Kind of a proud word, too. Who are you? I am *FUCK, FUCK OF THE MOUNTAIN.* Tune in again next week to FUCK OF THE MOUNTAIN. It's an interesting word too, [']cause it's got a double kind of a life-personality-dual, you know, whatever the right phrase is. It leads a double life, the word fuck. First of all, it means, sometimes, most of the time, fuck. What does it mean? It means to make love. Right? We're going to make love, yeh, we're going to fuck, yeh, we're going to fuck, yeh, we're going to make love. we're really going to fuck, yeh, we're going to make love. Right? And it also means the beginning of life, it's the act that begins life, so there's the word hanging around with words like love, and life, and yet on the other hand, it's also a word that we really use to hurt each other with, man. It's a heavy one that you have toward the end of the argument. Right? You finally

can't make out. Oh, fuck you man. I said, fuck you. Stupid fuck. Fuck you and everybody that looks like you man. It would be nice to change the movies that we already have and substitute the word fuck for the word kill, wherever we could, and some of those movie cliches would change a little bit. Madfuckers still on the loose. Stop me before I fuck again. Fuck the ump, fuck the ump, fuck the ump, fuck the ump, fuck the ump. Easy on the clutch Bill, you'll fuck that engine again. The other shit one was, I don't give a shit. Like it's worth something, you know? I don't give a shit. Hey, well, I don't take no shit, you know what I mean? You know why I don't take no shit? [']Cause I don't give a shit. If I give a shit, I would have to pack shit. But I don't pack no shit cause I don't give a shit. You wouldn't shit me, would you? That's a joke when you're a kid with a worm looking out the bird's ass. You wouldn't shit me, would you? It's an eight-year-old joke but a good one. The additions to the list. I found three more words that had to be put on the list of words you could never say on television, and they were fart, turd and twat, those three. Fart, we talked about, it's harmless. It's like tits, it's a cutie word, no problem. Turd, you can't say but who wants to, you know? The subject never comes up on the panel so I'm not worried about that one. Now the word twat is an interesting word. Twat! Yeh, right in the twat. Twat is an interesting word because it's the only one I know of, the only slang word applying to the, a part of the sexual anatomy that doesn't have another meaning to it. Like, ah, snatch, box and pussy all have other meanings, man. Even in a Walt Disney movie, you can say, We're going to snatch that pussy and put him in a box and bring him on the airplane. Everybody loves it. The twat stands alone, man, as it should. And two-way words. Ah, ass is okay providing you're riding into town on a religious feast day. You can't say, up your *ass.* You can say, stuff it!

Worthy of note, in *Pacifica*, the FCC did not resort to any subsequent punishment, much less any prior restraint.[21] The station was not suspended for the broadcast of the monologue, which the U.S. Supreme Court merely considered indecent speech based on the context in which it was delivered. According to the U.S. Supreme Court, the monologue would have been protected were it delivered in another context. The monologue

[21] On 21 February 1975, the Federal Communications Commission issued a declaratory order granting the complaint and holding that Pacifica "could

was broadcast at 2:00 p.m., when children were presumptively in the audience.

A later case, *Action for Children's Television v. FCC,*[22] establishes the safe harbor period to be from 10:00 in the evening to 6:00 in the morning, when the number of children in the audience is at a minimum. In effect, between the hours of 10:00 p.m. and 6:00 a.m., the broadcasting of material considered indecent is permitted. Between the hours of 6:00 a.m. and 10:00 p.m., the broadcast of any indecent material may be sanctioned.

In this case, the subject speech by petitioner was broadcast starting 10:00 p.m. onwards, clearly within the safe harbor period as established in *Action for Children's Television*. Correctly applying *Pacifica*'s context-based ruling, petitioner's speech, if indeed indecent, enjoys constitutional protection and may not be sanctioned. The rule on this matter, as laid down by *Pacifica* in relation to *Action for Children's Television*, is crystal-clear. But should the majority still have any doubt in their minds, such doubt should be resolved in favor of free speech and against any interference by government. The suspension of "Ang Dating Daan" by the MTRCB was a content-based, not a content-neutral regulation. Thus, the suspension should have been subjected to strict scrutiny following the rule in *Chavez v. Gonzales*.[23] The test should be strict because the regulation went into the very heart of the rationale for the right to free speech – that speech may not be prohibited just because government officials disapprove of the speaker's views.[24]

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have been the subject of administrative sanctions." The Commission did not impose formal sanctions, but it did state that the order would be "associated with the station's license file, and in the event that subsequent complaints are received, the Commission will then decide whether it should utilize any of the available sanctions it has been granted by Congress."

[22] 58 F.3d 654 (1995).

[23] G.R. No. 168338, 15 February 2008, 545 SCRA 441.

[24] See the dissenting opinion of Chief Justice Reynato Puno in this case. *Soriano v. Laguardia*, G.R. No. 164785, 29 April 2009.

Further, the majority opinion held that even if petitioner's utterances were not obscene but merely indecent speech, they would still be outside of the constitutional protection because they were conveyed through a medium easily accessible to children. The majority misapplied the doctrine of *FCC v. Pacifica,* the leading jurisprudence on this matter. *Pacifica* did not hold that indecent speech, when conveyed through a medium easily accessible to children, would automatically be outside the constitutional protection. On the contrary, the U.S. Supreme Court emphasized the narrowness of its ruling in *Pacifica*. The guideline that *Pacifica* laid down is that the broadcast of a monologue containing **indecent speech could be considered protected or unprotected depending on** the context, that is, **the time of the day or the night when the indecent utterances were delivered**.

The majority's ruling in this case sets a dangerous precedent. This decision makes it possible for any television or radio program, on the slightest suspicion of being a danger to national security or on other pretexts, to likewise face suspension. The exacting "clear and present danger" test is dispensed with to give way to the "balancing of interests" test in favor of the government's exercise of its regulatory power. Granting without conceding that "balancing of interests" is the appropriate test in setting a limitation to free speech, suspension of a television program is a measure way too harsh that it would be inappropriate as the most reasonable means for averting a perceived harm to society. The restriction on freedom need not be greater than is necessary to further the governmental interest.[25]

The "balancing of interests" test requires that a determination must first be made whether the necessary safeguarding of the public interest involved may be achieved by some other measure less restrictive of the protected freedom.[26] The majority

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[25] *Social Weather Stations, Inc. v. Commission on Elections, supra* note 7.

[26] Thomas Emerson, *Towards a General Theory of the First Amendment*, 72 Yale Law Journal 877 (1963).

immediately resorted to outright suspension without first exploring other measures less restrictive of freedom of speech. It cites *MTRCB v. ABS-CBN Broadcasting Corporation*[27] in justifying the government's exercise of regulatory power. But the *ABS-CBN* case involved a mere fine as punishment, not a prior restraint in the form of suspension as in this case. In the cited case, one of the episodes of "The Inside Story," a television program of ABS-CBN, was aired without prior review and approval by the MTRCB. For this omission, the MTRCB subsequently fined ABS-CBN in the amount of ₱20,000. However, even as the television station was fined, the program continued to be aired and was never suspended.

Indeed, prior restraint by suspension is an extreme measure that may only be imposed after satisfying the "clear and present danger" test, which requires the perceived danger to be both grave and imminent. Prior restraint is simply uncalled for in this case where what is involved is not even obscene speech, but mere indecent speech. Note too, that the subject utterances in this case were broadcast starting 10:00 p.m. onwards, well within the safe harbor period for permissible television broadcast of speech which may be characterized as indecent.

Suspension of the program stops not only petitioner, but also the other leaders of his congregation from exercising their constitutional right to free speech through their medium of choice, which is television. The majority opinion attempts to assuage petitioner's misery by saying that petitioner can still exercise his right to speak his mind using other venues. But this proposition assumes that petitioner has access to other venues where he may continue his interrupted exercise of free speech using his chosen mode, television broadcast.

While we may not agree with petitioner's choice of language in expressing his disgust in this word war between two feuding religious groups, let us not forget that freedom of speech includes the expression of thoughts that we do not approve of, not just

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[27] 489 Phil. 544 (2005).

thoughts that are agreeable.[28] To paraphrase Voltaire: We may disapprove of what petitioner has said, but we must defend to the death his right to say it.

The three-month suspension cannot be passed off merely as a preventive suspension that does not partake of a penalty. The actual and real effect of the three-month suspension is a prior restraint on expression in violation of a fundamental constitutional right. Even Congress cannot validly pass a law imposing a three-month preventive suspension on freedom of expression for offensive or vulgar language uttered in the past. Congress may punish such offensive or vulgar language after their utterance, with damages, fine, or imprisonment; but Congress has no power to suspend or suppress the people's right to speak freely because of such utterances. In short, Congress may pass a law punishing defamation or tortious speech but the punishment cannot be the suspension or suppression of the constitutional right to freedom of expression. **Otherwise, such law would be abridging the freedom of speech, of expression, or of the press**. If Congress cannot pass such a law, neither can respondent MTRCB promulgate a rule or a decision suspending for three months petitioner's constitutional right to freedom of speech. And of course, neither can this Court give its stamp of imprimatur to such an unconstitutional MTRCB rule or decision.

I end this dissenting opinion with a reminder from Justice Oliver Wendell Holmes – that the market place of ideas is still the best alternative to censorship.[29] The market place of ideas makes freedom of speech robust and allows people to be more tolerant of opposing views. It has been said that freedom of speech is not only to freely express oneself within the context of the law but also to hear what others say, that all may be enlightened, regardless of how obnoxious or erroneous the opposing views may be.[30]

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[28] *Gonzales v. Commission on Elections*, G.R. No. L-27833, 137 Phil. 471 (1969).

[29] Dissenting Opinion of Justice Holmes in *Abrams v. United States*, 250 U.S. 616, 40 S. Ct. 17, 63 L. Ed. 1173 (1919).

[30] RUBEN AGPALO, *PHILIPPINE CONSTITUTIONAL LAW,* 2006, p. 330.

Accordingly, I vote to **GRANT** the motion for reconsideration.

DISSENTING OPINION

ABAD, *J.*:

I am submitting this dissent to the ably written *ponencia* of Justice Presbiterio J. Velasco, Jr. that seeks to deny the petitioner's motion for reconsideration of the Court's decision in the case.

Brief Antecedent

Petitioner Eliseo F. Soriano, a television evangelist, hosted the *Ang Dating Daan*, a popular television ministry aired nationwide everyday from 10:00 p.m. to midnight over public television. The program carried a "general patronage" rating from the Movie and Television Review and Classification Board (MTRCB).

The *Ang Dating Daan's* rivalry with another religious television program, the Iglesia ni Cristo's *Ang Tamang Daan*, is well known. The hosts of the two shows have regularly engaged in verbal sparring on air, hurling accusations and counter-accusations with respect to their opposing religious beliefs and practices.

It appears that in his program *Ang Tamang Daan,* Michael M. Sandoval (Michael) of the Iglesia ni Cristo attacked petitioner Soriano of the *Ang Dating Daan* for alleged inconsistencies in his Bible teachings. Michael compared spliced recordings of Soriano's statements, matched with subtitles of his utterances, to demonstrate those inconsistencies. On August 10, 2004, in an apparent reaction to what he perceived as a malicious attack against him by the rival television program, Soriano accused Michael of prostituting himself with his fabricated presentations. Thus:

"….gago ka talaga Michael. Masahol ka pa sa putang babae. O di ba? Yung putang babae ang gumagana lang doon yung ibaba, kay Michael ang gumagana ang itaas, o di ba! O, masahol pa sa putang babae yan. Sabi ng lola ko masahol pa sa putang babae yan. Sobra ang kasinungalingan ng demonyong ito…"

Michael and seven other ministers of the Iglesia ni Cristo lodged a complaint against petitioner Soriano before the MTRCB. Acting swiftly, the latter preventively suspended the airing of Soriano's Ang Dating Daan television program for 20 days, pursuant to its powers under Section 3(d) of Presidential Decree 1986[1] and its related rules.

Petitioner Soriano challenged the validity of that preventive suspension before this Court in G.R. 164785. Meanwhile, after hearing the main case or on September 27, 2004, the MTRCB found Soriano guilty as charged and imposed on him a penalty of three months suspension from appearing on the *Ang Dating Daan* program. Soriano thus filed a second petition in G.R. 165636 to question that decision. The Court consolidated the two cases.

On April 29, 2009 the Court rendered a decision, upholding MTRCB's power to impose preventive suspension and affirming its decision against petitioner Soriano with the modification of applying the three-month suspension to the program *And Dating Daan,* rather than to Soriano.

Issue Presented

This dissenting opinion presents a narrow issue: whether or not the Court is justified in imposing the penalty of three-month suspension on the television program *Ang Dating Daan* on the ground of host petitioner Soriano's remarks about Iglesia ni Cristo's Michael prostituting himself when he attacked Soriano in the Iglesia's own television program.

The Dissent

The *Ang Dating Daan* is a nationwide television ministry of a church organization officially known as "*Members of the Church of God International*" headed by petitioner Soriano. It is a vast religious movement not so far from those of Mike Velarde's *El Shadai*, Eddie Villanueva's *Jesus is Lord*, and Apollo Quiboloy's *The Kingdom of Jesus Christ*. These movements have generated

[1] Creating the Movie and Television Review and Classification Board.

such tremendous following that they have been able to sustain daily television and radio programs that reach out to their members and followers all over the country. Some of their programs are broadcast abroad. *Ang Dating Daan* is aired in the United States and Canada.

The Catholic Church is of course the largest religious organization in the Philippines. If its members get their spiritual nourishments from attending masses or novenas in their local churches, those of petitioner Soriano's church tune in every night to listen to his televised Bible teachings and how these teachings apply to their lives. They hardly have places of worship like the Catholic Church or the mainstream protestant movements.

Thus, suspending the *Ang Dating Daan* television program is the equivalent of closing down their churches to its followers. Their inability to tune in on their Bible teaching program in the evening is for them like going to church on Sunday morning, only to find its doors and windows heavily barred. Inside, the halls are empty.

Do they deserve this? No.

1. A tiny moment of lost temper.

Petitioner Soriano's Bible ministry has been on television continuously for 27 years since 1983 with no prior record of use of foul language. For a 15-second outburst of its head at his bitterest critics, it seems not fair for the Court to close down this Bible ministry to its large followers altogether for a full quarter of a year. It is like cutting the leg to cure a smelly foot.

2. Not obscene.

Primarily, it is obscenity on television that the constitutional guarantee of freedom of speech does not protect. As the Court's decision points out, the test of obscenity is whether the average person, applying contemporary standards, would find the speech, taken as a whole, appeals to the prurient interest. A thing is

prurient when it arouses lascivious thoughts or desires[2] or tends to arouse sexual desire.[3]

A quarter-of-a-year suspension would probably be justified when a general patronage program intentionally sneaks in snippets of lewd, prurient materials to attract an audience to the program. This has not been the case here.

3. Merely borders on indecent.

Actually, the Court concedes that petitioner Soriano's short outburst was not in the category of the obscene. It was just "indecent." But were his words and their meaning utterly indecent? In a scale of 10, did he use the grossest language? He did not.

First, Soriano actually exercised some restraints in the sense that he did not use the vernacular word for the female sexual organ when referring to it, which word even the published opinions of the Court avoided despite its adult readers. He referred to it as "*yung ibaba*" or down below. And, instead of using the patently offensive vernacular equivalent of the word "fuck" that describes the sexual act in which the prostitute engages herself, he instead used the word "*gumagana lang doon yung ibaba*" or what functions is only down below. At most, his utterance merely bordered on the indecent.

Second, the word "*puta*" or "prostitute" describes a bad trade but it is not a bad word. The world needs a word to describe it. "Evil" is bad but the word "evil" is not; the use of the words "*puta*" or "evil" helps people understand the values that compete in this world. A policy that places these ordinary descriptive words beyond the hearing of children is unrealistic and is based on groundless fear. Surely no member of the Court will recall that when yet a child his or her hearing the word "*puta*" for the first time left him or her wounded for life.

Third, Soriano did not tell his viewers that being a prostitute was good. He did not praise prostitutes as to make them attractive

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[2] *Webster's Third New International Dictionary*, p. 1829.

[3] *Id*. at 1274.

models to his listeners. Indeed, he condemned Michael for acting like a prostitute in attacking him on the air. The trouble is that the Court, like the MTRCB read his few lines in isolation. Actually, from the larger picture, Soriano appears to have been provoked by Michael's resort to splicing his speeches and making it appear that he had taught inconsistent and false doctrines to his listeners. If Michael's sin were true, Soriano was simply defending himself with justified anger.

And fourth, the Court appears to have given a literal meaning to what Soriano said.

"Gago ka talaga x x x, masahol ka pa sa putang babae x x x. Yung putang babae ang gumagana lang doon yung ibaba, [dito] kay Michael ang gumagana ang itaas, o di ba!"

This was a figure of speech. Michael was a man, so he could not literally be a female prostitute. Its real meaning is that Michael was acting like a prostitute in mouthing the ideas of anyone who cared to pay him for such service. It had no indecent meaning. The Bible itself uses the word "prostitute" as a figure of speech. "By their deeds they **prostituted** themselves," said Psalm 106:39 of the Israelites who continued to worship idols after God had taken them out of Egyptian slavery.[4] Soriano's real message is that Michael prostituted himself by his calumny against him.

If at all, petitioner Soriano's breach of the rule of decency is slight, one on a scale of 10. Still, the Court would deprive the *Ang Dating Daan* followers of their nightly bible teachings for a quarter of a year because their head teacher had used figures of speech to make his message vivid.

4. The average child as listener

The Court claims that, since *Ang Dating Daan* carried a general patronage rating, Soriano's speech no doubt caused harm to the

[4] New International Version (North American Edition); see other biblical passages that use "prostitute" as a figure of speech: Judges 2:17; 8:27; 8:33; 1Chronicles 5:25; and Leviticus 20:5.

children who watched the show. This statement is much too sweeping.

The Court relies on the United States case of *Federal Communications Commission (FCC) v. Pacifica Foundation*,[5] a 1978 landmark case. Here are snatches of the challenged monologue that was aired on radio:

> **The original seven words were, shit, piss, fuck, cunt, cocksucker, motherfucker, and tits. Those are the ones that will curve your spine, grow hair on your hands and maybe, even bring us, God help us, peace without honor and bourbon…Also cocksucker is a compound word and neither half of that is really dirty…And the cock crowed three times, the cock—three times. It's in the Bible, cock in the Bible…Hot shit, holy shit, tough shit, eat shit, shit-eating grin…It's a great word, fuck, nice word, easy word, cute word, kind of. Easy word to say. One syllable, short u. Fuck…A little something for everyone. Fuck. Good word. x x x**

Imagine how the above would sound if translated into any of the Filipino vernaculars. The U.S. Supreme Court held that the above is not protected speech and that the FCC could regulate its airing on radio. The U.S. Supreme Court was of course correct.

Here, however, there is no question that Soriano attacked Michael, using figure of speech, at past 10:00 in the evening, not at 2:00 in the afternoon. The average Filipino child would have been long in bed by the time *Ang Dating Daan* appeared on the television screen. What is more, Bible teaching and interpretation is not the stuff of kids. It is not likely that they would give up programs of interest to them just to listen to Soriano drawing a distinction between "faith" and "work or action." The Court has stretched the "child" angle beyond realistic proportions. The MTRCB probably gave the program a general patronage rating simply because *Ang Dating Daan* had never before been involved in any questionable broadcast in the previous 27 years that it had been on the air.

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[5] 438 U.S. 726.

The monologue in the FCC case that was broadcast at 2 in the afternoon was pure indecent and gross language, uttered for its own sake with no social value at all. It cannot compare to Soriano's speech where the indecent words were slight and spoken as mere figure of speech to defend himself from what he perceived as malicious criticism.

5. Disproportionate penalty

The Court applied the balancing of interest test in justifying the imposition of the penalty of suspension against *Ang Dating Daan*. Under this test, when particular conduct is regulated in the interest of public order and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of the two conflicting interests demands the greater protection under the particular circumstances presented.

An example of this is where an ordinance prohibits the making of loud noises from 9:00 p.m. to 6:00 a.m. Can this ordinance be applied to prevent vehicles circling the neighborhood at such hours of night, playing campaign jingles on their loudspeakers to win votes for candidates in the election? Here, there is a tension between the rights of candidates to address their constituents and the interest of the people in healthy undisturbed sleep. The Court would probably uphold the ordinance since public interest demands a quiet night's rest for all and since the restraint on the freedom of speech is indirect, conditional, and partial. The candidate is free to make his broadcast during daytime when people are normally awake and can appreciate what he is saying.

But here, the abridgment of speech—three months total suspension of the *Ang Dating Daan* television bible teaching program—cannot be regarded as indirect, conditional, or partial. It is a direct, unconditional, and total abridgment of the freedom of speech, to which a religious organization is entitled, for a whole quarter of a year.

In the American case of *FCC*, a parent complained. He was riding with his son in the car at 2:00 in the afternoon and they heard the grossly indecent monologue on radio. Here, no parent has in fact come forward with a complaint that his child had heard petitioner Soriano's speech and was harmed by it. The Court cannot pretend that this is a case of angry or agitated parents against *Ang Dating Daan*. The complaint here came from Iglesia ni Cristo preachers and members who deeply loathed Soriano and his church. The Court's decision will not be a victory for the children but for the Iglesia ni Cristo, finally enabling it to silence an abhorred competing religious belief and its practices.

What is more, since this case is about protecting children, the more appropriate penalty, if Soriano's speech during the program mentioned was indecent and had offended them, is to raise his program's restriction classification. The MTRCB classify programs to protect vulnerable audiences. It can change the present G or General Patronage classification of *Ang Dating Daan* to PG or "with Parental Guidance only" for three months. This can come with a warning that should the program commit the same violation, the MTRCB can make the new classification permanent or, if the violation is recurring, cancel its program's permit.

This has precedent. In *Gonzales v. Katigbak*,[6] the Court did not ban the motion picture just because there were suggestive scenes in it that were not fit for children. It simply classified the picture as for adults only. By doing this, the Court would not be cutting the leg to cure a smelly foot.

I vote to partially grant the motion for reconsideration by modifying the three-month suspension penalty imposed on the program *Ang Dating Daan*. In its place, I vote to raise the program's restriction classification from G or General Patronage to PG or with Parental Guidance for three months with warning that should petitioner Soriano commit the same violation, the classification of his program will be permanently changed or, if the violation is persistent, the program will be altogether cancelled.

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[6] 22 Phil. 225 (1985).

SECOND DIVISION

[G.R. No. 167750. March 15, 2010]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **REYNALD R. SUAREZ,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; THE SUPREME COURT IS NOT A TRIER OF FACTS; EXCEPTION; PRESENT IN CASE AT BAR.—** As a rule, this Court is not a trier of facts. However, there are well- recognized exceptions to this rule, one of which is when certain relevant facts were overlooked by the lower court, which facts, if properly appreciated, would justify a different conclusion from the one reached in the assailed decision. Reviewing the records, we find that the lower courts misappreciated the evidence in this case.

2. **COMMERCIAL LAW; BANKS AND BANKING; NEGLIGENCE, DEFINED; DISHONOR OF THE CHECKS BY THE PETITIONER BANK FOR LACK OF AVAILABLE FUNDS, JUSTIFIED.—** Negligence is defined as "the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and reasonable man could not do." The question concerning BPI's negligence, however, depends on whether BPI indeed confirmed the same-day crediting of the RCBC check's face value to Suarez's BPI account. xxx While BPI had the discretion to undertake the same-day crediting of the RCBC check, and disregard the banking industry's 3-day check clearing policy, Suarez failed to convincingly show his entitlement to such privilege. As BPI pointed out, Suarez had no credit or bill purchase line with BPI which would qualify him to the exceptions to the 3-day check clearing policy. Considering that there was no binding representation on BPI's part as regards the same-day crediting of the RCBC check, no negligence can be ascribed to BPI's dishonor of the checks precisely because BPI was justified in dishonoring the checks for lack of available funds in Suarez's account.

3. ID.; ID.; PETITIONER BANK IS NOT ESTOPPED FROM DISHONORING THE CHECKS FOR INADEQUACY OF AVAILABLE FUNDS IN THE RESPONDENT'S ACCOUNT.— Based on the records, there is no sufficient evidence to show that BPI conclusively confirmed the same-day crediting of the RCBC check which Suarez's client deposited late on 16 June 1997. Suarez's secretary, Garaygay, testified that she was able to talk to a BPI male employee about the same-day crediting of the RCBC check. However, Garaygay failed to (1) identify and name the alleged BPI employee, and (2) establish that this particular male employee was authorized by BPI either to disclose any information regarding a depositor's bank account to a person other than the depositor over the telephone, or to assure Garaygay that Suarez could issue checks totaling the face value of the RCBC check. Moreover, a same-day clearing of a ₱19,129,100 check requires approval of designated bank official or officials, and not any bank official can grant such approval. Clearly, Suarez failed to prove that BPI confirmed the same-day crediting of the RCBC check, or that BPI assured Suarez that he had sufficient available funds in his account. Accordingly, BPI was not estopped from dishonoring the checks for inadequacy of available funds in Suarez's account since the RCBC check remained uncleared at that time.

4. ID.; ID.; DRAWN AGAINST INSUFFICIENT FUNDS (DAIF) DISTINGUISHED FROM DRAWN AGAINST UNCOLLECTED DEPOSIT (DAUD).— However, BPI mistakenly marked the dishonored checks with "drawn against insufficient funds (DAIF)," instead of "drawn against uncollected deposit (DAUD)." DAUD means that the account has, on its face, sufficient funds but not yet available to the drawer because the deposit, usually a check, had not yet been cleared. DAIF, on the other hand, is a condition in which a depositor's balance is inadequate for the bank to pay a check. In other words, in the case of DAUD, the depositor has, on its face, sufficient funds in his account, although it is not available yet at the time the check was drawn, whereas in DAIF, the depositor lacks sufficient funds in his account to pay the check. Moreover, DAUD does not expose the drawer to possible prosecution for *estafa* and violation of BP 22, while DAIF subjects the depositor to liability for such offenses. It is clear therefore that, contrary to BPI's contention, DAIF differs from DAUD.

5. **CIVIL LAW; DAMAGES; MORAL DAMAGES; CONDITIONS FOR THE AWARD THEREOF.—** The following are the conditions for the award of moral damages: (1) there is an injury — whether physical, mental or psychological — clearly sustained by the claimant; (2) the culpable act or omission is factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code.

6. **ID.; ID.; ID.; PLAINTIFF CANNOT RECOVER COMPENSATORY DAMAGES WHERE HIS OWN NEGLIGENCE WAS THE PROXIMATE CAUSE OF HIS INJURY; PROXIMATE CAUSE, DEFINED.—** In the present case, Suarez failed to establish that his claimed injury was proximately caused by the erroneous marking of DAIF on the checks. Proximate cause has been defined as "any cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the result complained of and without which would not have occurred." There is nothing in Suarez's testimony which convincingly shows that the erroneous marking of DAIF on the checks proximately caused his alleged psychological or social injuries. Suarez merely testified that he suffered humiliation and that the prospective consolidation of the titles to the Tagaytay properties did not materialize due to the dishonor of his checks, not due to the erroneous marking of DAIF on his checks. Hence, Suarez had only himself to blame for his hurt feelings and the unsuccessful transaction with his client as these were directly caused by the justified dishonor of the checks. In short, Suarez cannot recover compensatory damages for his own negligence.

7. **ID.; ID.; ACTUAL DAMAGES; AWARD THEREOF, UNWARRANTED.—** On the award of actual damages, we find the same without any basis. Considering that BPI legally dishonored the checks for being drawn against uncollected deposit, BPI was justified in debiting the penalty charges against Suarez's account, pursuant to the Rules of the Philippine Clearing House Corporation xxx.

8. **COMMERCIAL LAW; BANKS AND BANKING; REQUIRED DILIGENCE; PAYMENT OF NOMINAL DAMAGES WARRANTED WHERE THE BANK FAILED TO EXERCISE THE REQUIRED DILIGENCE.—** While the erroneous marking of DAIF,

which BPI belatedly rectified, was not the proximate cause of Suarez's claimed injury, the Court reminds BPI that its business is affected with public interest. It must at all times maintain a high level of meticulousness and should guard against injury attributable to negligence or bad faith on its part. Suarez had a right to expect such high level of care and diligence from BPI. Since BPI failed to exercise such diligence, Suarez is entitled to nominal damages to vindicate Suarez's right to such high degree of care and diligence. Thus, we award Suarez ₱75,000.00 nominal damages.

APPEARANCES OF COUNSEL

Benedicto Verzosa Gealogo & Burkley for petitioner.
Suarez & Narvasa Law Firm for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the Decision dated 30 November 2004[2] and Resolution dated 11 April 2005 of the Court of Appeals in CA-G.R. CV No. 76988, affirming the trial court's decision of 18 October 2002 and denying reconsideration.

The Facts

Respondent Reynald R. Suarez (Suarez) is a lawyer who used to maintain both savings and current accounts with petitioner Bank of the Philippine Islands' (BPI) Ermita Branch from 1988 to 1997.

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

[2] *Rollo*, pp. 28-40. Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Bienvenido L. Reyes and Rosalinda Asuncion-Vicente concurring.

Sometime in 1997, Suarez had a client who planned to purchase several parcels of land in Tagaytay City, but preferred not to deal directly with the land owners. In accordance with his client's instruction, Suarez transacted with the owners of the Tagaytay properties, making it appear that he was the buyer of the lots. As regards the payment of the purchase money, Suarez and his client made an arrangement such that Suarez's client would deposit the money in Suarez's BPI account and then, Suarez would issue checks to the sellers. Hence, on 16 June 1997, Suarez's client deposited a Rizal Commercial Banking Corporation (RCBC) check with a face value of ₱19,129,100, representing the total consideration of the sales, in BPI Pasong Tamo Branch to be credited to Suarez's current account in BPI Ermita Branch.

Aware of the banking system's 3-day check clearing policy,[3] Suarez instructed his secretary, Petronila Garaygay (Garaygay), to confirm from BPI whether the face value of the RCBC check was already credited to his account that same day of 16 June 1997. According to Garaygay, BPI allegedly confirmed the same-day crediting of the RCBC check. Relying on this confirmation, Suarez issued on the same day five checks of different amounts totaling ₱19,129,100 for the purchase of the Tagaytay properties.[4]

The next day, Suarez left for the United States (U.S.) for a vacation. While Suarez was in the U.S., Garaygay informed him that the five checks he issued were all dishonored by BPI due to insufficiency of funds and that his current account had been debited a total of ₱57,200 as penalty for the dishonor. Suarez's secretary further told him that the checks were dishonored despite an assurance from RCBC, the drawee bank for the sum of ₱19,129,100, that this amount had already been debited from the account of the drawer on 16 June 1997 and the RCBC check was fully funded.

On 19 June 1997, the payees of the five BPI checks that Suarez issued on 16 June 1997 presented the checks again.

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[3] TSN, 28 April 1999, pp. 4-5.

[4] Exhibits "A" to "E", records, pp. 144-149.

Since the RCBC check (which Suarez's client issued) had already been cleared by that time, rendering Suarez's available funds sufficient, the checks were honored by BPI.

Subsequently, Suarez sent a letter to BPI demanding an apology and the reversal of the charges debited from his account. Suarez received a call from Fe Gregorius, then manager of the BPI Ermita Branch, who requested a meeting with him to explain BPI's side. However, the meeting did not transpire.

Suarez sent another letter to BPI addressed to its president, Xavier Loinaz. Consequently, BPI representatives asked another meeting with Suarez. During the meeting, the BPI officers handed Suarez a letter, the relevant text of which reads:

> Dear Atty. Suarez:
>
> Your letter to our President, Xavier P. Loinaz dated 02 July 1997 was referred to us for investigation and reply.
>
> Our investigation discloses that when the checks you issued against your account were received for clearing, the checks you deposited were not yet cleared. Hence, the dishonor of the your checks.
>
> We do not see much in your allegation that you have suffered damages just because the reason for the return was "DAIF" and not "DAUD." In both instances, there is a dishonor nonetheless.[5]

Upon Suarez's request, BPI delivered to him the five checks which he issued on 16 June 1997. Suarez claimed that the checks were tampered with, specifically the reason for the dishonor, prompting him to send another letter informing BPI of its act of falsification by making it appear that it marked the checks with "drawn against uncollected deposit (DAUD) and not "drawn against insufficient fund" (DAIF). In reply, BPI offered to reverse the penalty charges which were debited from his account, but denied Suarez's claim for damages. Suarez rejected BPI's offer.

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[5] Records, p. 132.

Claiming that BPI mishandled his account through negligence, Suarez filed with the Regional Trial Court a complaint for damages, docketed as Civil Case No. 98-574.

The Regional Trial Court, Makati City, Branch 136 rendered judgment in favor of Suarez, thus:

WHEREFORE, judgment is hereby rendered ordering defendant bank to pay the following amounts:

1. The amount of ₱57,200.00, with interest from date of first demand until full payment as actual damages;
2. The sum of ₱3,000,000.00 by way of moral damages;
3. The amount of ₱1,000,000.00 as and for exemplary damages;
4. The sum of ₱1.00 as attorney's fees, and
5. The costs of litigation.

SO ORDERED.[6]

BPI appealed to the Court of Appeals, which affirmed the trial court's decision. The dispositive portion of the 30 November 2004 Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the instant appeal is DISMISSED. The decision dated 18 October 2002 of the Regional Trial Court, Branch 136, of Makati is AFFIRMED *in toto.*

SO ORDERED.[7]

The Court of Appeals denied BPI's motion for reconsideration in its 11 April 2005 Resolution.

Hence, this petition.

The Court of Appeals' Ruling

In affirming the trial court's decision, the Court of Appeals ruled as follows:

Contrary to its contention, plaintiff-appellee's evidence convincingly established the latter's entitlement to damages, which was the direct

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[6] *Rollo*, p. 69. Penned by Judge Rebecca R. Mariano.

[7] *Id.* at 39.

result of defendant-appellant's negligence in handling his account. It was duly proven that after his client deposited a check in the amount of ₱19,129,100.00 on 16 June 1997, it was confirmed through plaintiff-appellee's secretary by an employee of defendant-appellant bank that the aforesaid amount was, on the same day, already credited to his account. It was on the basis of this confirmation which made plaintiff-appellee issue five (5) checks in the amount of ₱19,129,100.00 to different payees. And despite RCBC's assurance that the aforementioned amount had already been debited from the account of the drawer bank, defendant-appellant bank still dishonored the five (5) checks for DAIF as reason when the various payees presented them for payment on 17 June 1997.

It was also proven that defendant-appellant bank through its employee inadvertently marked the dorsal sides of the checks as DAIF instead of DAUD. A closer look at the checks would indicate that intercalations were made marking the acronym DAIF thereon to appear as DAUD. Although the intercalation was obvious in the ₱12 million check, still the fact that there was intercalation made in the said check cannot be denied. It bears to stress that there lies a big difference between a check dishonored for reasons of DAUD and a check dishonored for DAIF. A check dishonored for reasons of DAIF would unduly expose herein plaintiff-appellee to criminal prosecution for violation of B.P. 22 while a check dishonored for reasons of DAUD would not. Thus, it was erroneous on the part of defendant-appellant bank to surmise that plaintiff-appellee would not suffer damages anyway for the dishonored checks for reasons of DAUD or DAIF because there was dishonor nonetheless.

While plaintiff-appellee had been spared from any criminal prosecution, his reputation, however, was sullied on account of the dishonored checks by reason of DAIF. His transaction with the would be sellers of the property in Tagaytay was aborted because the latter doubted his capacity to fulfill his obligation as buyer of their [properties.] As the agent of the true buyers, he had a lot of explaining to do with his client. In short, he suffered humiliation.

Defendant-appellant bank also contends that plaintiff-appellee is liable to pay the charges mandated by the Philippine Clearing House Rules and Regulations (PCHRR).

If truly these charges were mandated by the PCHRR, defendant-appellant bank should not have attempted to renege on its act of

debiting the charges to plaintiff-appellee's account. In its letter dated 28 July 1997 addressed to plaintiff-appellee, the former has offered to reverse these charges in order to mitigate the effects of the returned checks on the latter. This, to the mind of the court, is tantamount to an admission on their (defendant-appellant bank's employees) part that they have committed a blunder in handling plaintiff-appellee's account. Perforce, defendant-appellant bank should return the amount of the service charges debited to plaintiff-appellee. It is basic in the law governing human relations that "no one shall be unjustly enriched at the expense of others."[8]

The Issues

In its Memorandum, BPI raised the following issues:

A. WHETHER [BPI] WAS NEGLIGENT IN HANDLING THE ACCOUNT OF [SUAREZ];

B. WHETHER [SUAREZ] IS LIABLE TO PAY THE SERVICE CHARGES IMPOSED BY THE PHILIPPINE CLEARING HOUSE CORPORATION; and

C. WHETHER [BPI] IS LIABLE TO PAY [SUAREZ] MORAL AND EXEMPLARY DAMAGES, ATTORNEY'S FEES AND COSTS OF LITIGATION.[9]

The Court's Ruling

The petition is partly meritorious.

As a rule, this Court is not a trier of facts. However, there are well- recognized exceptions to this rule, one of which is when certain relevant facts were overlooked by the lower court, which facts, if properly appreciated, would justify a different conclusion from the one reached in the assailed decision.[10] Reviewing the records, we find that the lower courts misappreciated the evidence in this case.

Suarez insists that BPI was negligent in handling his account when BPI dishonored the checks he issued to various payees

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

[9] *Id*. at 182-183.

[10] *Baricuatro, Jr. v. Court of Appeals*, 382 Phil. 15, 24-25 (2000).

on 16 June 1997, despite the RCBC check deposit made to his account on the same day to cover the total amount of the BPI checks.

Negligence is defined as "the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and reasonable man could not do."[11] The question concerning BPI's negligence, however, depends on whether BPI indeed confirmed the same-day crediting of the RCBC check's face value to Suarez's BPI account.

In essence, Suarez impresses upon this Court that BPI is estopped[12] from dishonoring his checks since BPI confirmed the same-day crediting of the RCBC check deposit and assured the adequacy of funds in his account. Suarez points out that he relied on this confirmation for the issuance of his checks to the owners of the Tagaytay properties. In other words, Suarez claims that BPI made a representation that he had sufficient available funds to cover the total value of his checks.

Suarez is mistaken.

Based on the records, there is no sufficient evidence to show that BPI conclusively confirmed the same-day crediting of the RCBC check which Suarez's client deposited late on 16 June 1997.[13] Suarez's secretary, Garaygay, testified that she was able to talk to a BPI male employee about the same-day crediting of the RCBC check.[14] However, Garaygay failed to (1) identify and name the alleged BPI employee, and (2) establish that this

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[11] *Bulilan v. Commission on Audit*, 360 Phil. 626, 634 citing *McKee v. Intermediate Appellate Court*, G.R. Nos. 68102 and 68103, 16 July 1992, 211 SCRA 517.

[12] Article 1431 of the Civil Code provides: "Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."

[13] TSN, 10 April 2000, p. 17.

[14] TSN, 6 March 2000, p. 7.

particular male employee was authorized by BPI either to disclose any information regarding a depositor's bank account to a person other than the depositor over the telephone, or to assure Garaygay that Suarez could issue checks totaling the face value of the RCBC check. Moreover, a same-day clearing of a ₱19,129,100 check requires approval of designated bank official or officials, and not any bank official can grant such approval. Clearly, Suarez failed to prove that BPI confirmed the same-day crediting of the RCBC check, or that BPI assured Suarez that he had sufficient available funds in his account. Accordingly, BPI was not estopped from dishonoring the checks for inadequacy of available funds in Suarez's account since the RCBC check remained uncleared at that time.

While BPI had the discretion to undertake the same-day crediting of the RCBC check,[15] and disregard the banking industry's 3-day check clearing policy, Suarez failed to convincingly show his entitlement to such privilege. As BPI pointed out, Suarez had no credit or bill purchase line with BPI which would qualify him to the exceptions to the 3-day check clearing policy.[16]

Considering that there was no binding representation on BPI's part as regards the same-day crediting of the RCBC check, no negligence can be ascribed to BPI's dishonor of the checks precisely because BPI was justified in dishonoring the checks for lack of available funds in Suarez's account.[17]

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[15] See *Security Bank and Trust Company v. Rizal Commercial Banking Corporation*, G.R. No. 170984, 30 January 2009, 577 SCRA 407, 415, where the Court stated that the Central Bank, in a Memorandum dated 9 July 1980, gave banks the discretion to "allow immediate drawings on uncollected deposits of manager's checks, among others. Consequently, RCBC, in allowing the immediate withdrawal against the subject manager's check, only exercised a prerogative expressly granted to it by the Monetary Board."

[16] TSN, 13 August 2001, p. 39.

[17] See *Moran v. Court of Appeals*, G.R. No. 105836, 7 March 1994, 230 SCRA 799, 805-806.

However, BPI mistakenly marked the dishonored checks with "drawn against insufficient funds (DAIF), " instead of "drawn against uncollected deposit (DAUD)." DAUD means that the account has, on its face, sufficient funds but not yet available to the drawer because the deposit, usually a check, had not yet been cleared.[18] DAIF, on the other hand, is a condition in which a depositor's balance is inadequate for the bank to pay a check.[19] In other words, in the case of DAUD, the depositor has, on its face, sufficient funds in his account, although it is not available yet at the time the check was drawn, whereas in DAIF, the depositor lacks sufficient funds in his account to pay the check. Moreover, DAUD does not expose the drawer to possible prosecution for *estafa* and violation of BP 22, while DAIF subjects the depositor to liability for such offenses.[20] It is clear therefore that, contrary to BPI's contention, DAIF differs from DAUD. Now, does the erroneous marking of DAIF, instead of DAUD, give rise to BPI's liability for damages?

The following are the conditions for the award of moral damages: (1) there is an injury— whether physical, mental or psychological—clearly sustained by the claimant; (2) the culpable act or omission is factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219[21]

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[18] See *Salazar v. People*, 458 Phil. 504, 511 (2003).

[19] http://www.metrobank.com.ph/glossary.asp

[20] *Dy v. People*, G.R. No. 158312, 14 November 2008, 571 SCRA 59, 74-75, 78-79.

[21] Art. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

(3) Seduction, abduction, rape, or other lascivious acts;

(4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

of the Civil Code.[22]

In the present case, Suarez failed to establish that his claimed injury was proximately caused by the erroneous marking of DAIF on the checks. Proximate cause has been defined as "any cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the result complained of and without which would not have occurred."[23] There is nothing in Suarez's testimony which convincingly shows that the erroneous marking of DAIF on the checks proximately caused his alleged psychological or social injuries. Suarez merely testified that he suffered humiliation and that the prospective consolidation of the titles to the Tagaytay properties did not materialize due to the dishonor of his checks,[24] not due to the erroneous marking of DAIF on his checks. Hence, Suarez had only himself to blame for his hurt feelings and the unsuccessful transaction with his client as these were directly caused by the justified dishonor of the checks. In short, Suarez cannot recover compensatory damages for his own negligence.[25]

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(7) Libel, slander or any other form of defamation;

(8) Malicious prosecution;

(9) Acts mentioned in Article 309;

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[22] *Solidbank Corporation v. Sps. Arrieta*, 492 Phil. 95, 102 (2005); *Citytrust Banking Corporation v. Villanueva*, 413 Phil. 776, 787-788 (2001).

[23] *Solidbank Corporation v. Sps. Arrieta*, *supra* at 103.

[24] TSN, 14 April 1999, pp. 9-10.

[25] Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

While the erroneous marking of DAIF, which BPI belatedly rectified, was not the proximate cause of Suarez's claimed injury, the Court reminds BPI that its business is affected with public interest. It must at all times maintain a high level of meticulousness and should guard against injury attributable to negligence or bad faith on its part.[26] Suarez had a right to expect such high level of care and diligence from BPI. Since BPI failed to exercise such diligence, Suarez is entitled to nominal damages[27] to vindicate Suarez's right to such high degree of care and diligence. Thus, we award Suarez ₱75,000.00 nominal damages.

On the award of actual damages, we find the same without any basis. Considering that BPI legally dishonored the checks for being drawn against uncollected deposit, BPI was justified in debiting the penalty charges against Suarez's account, pursuant to the Rules of the Philippine Clearing House Corporation,[28] to wit:

Sec. 27. PENALTY CHARGES ON RETURNED ITEMS

27.1 A service charge of ₱600.00 for each check shall be levied against the DRAWER of any check or checks returned for any reason, except for the following:

a) Account Closed
b) No Account

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[26] *Solidbank Corporation v. Sps. Arrieta*, *supra* at 105. See also *Philippine Banking Corporation v. Court of Appeals,* G.R. No. 127469, 15 January 2004, 419 SCRA 487, 505-506; *United Coconut Planters Bank v. Ramos*, G.R. No. 147800, 11 November 2003, 415 SCRA 596, 609; *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 112392, 29 February 2000, 326 SCRA 641, 657; *Simex International (Manila), Inc. v. Court of Appeals*, G.R. No. 88013, 19 March 1990, 183 SCRA 360, 367.

[27] Article 2221 of the Civil Code provides:

Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

[28] Which is known as the exclusive cheque clearing service provider for the country (http://pchc.com.ph/profile.jsp)

c) Under Garnishment
d) Spurious Check
e) Documentary Stamps Missing (for foreign checks/drafts only)
f) Post-Dated/Stale-Dated
g) Validity Restricted
h) Miscleared Items
I) Deceased Depositor
j) Violation of Clearing Rules and/or Procedures
k) Lost by Presenting Bank while in transit to clearing

as well as other exceptions which may be defined/circulated by PCHC from time to time.[29]

In view of the foregoing, the Court deems it unnecessary to resolve the other issues raised in this case.

WHEREFORE, the Court *GRANTS* the petition in part. The Court *SETS ASIDE* the 30 November 2004 Decision and 11 April 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 76988, and deletes the award of all damages and fees. The Court awards to respondent Reynald R. Suarez nominal damages in the sum of ₱75,000.00.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

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[29] Exhibit "15", records, p. 202.

SECOND DIVISION

[G.R. No. 168266. March 15, 2010]

CARGILL, INC., *petitioner, vs.* **INTRA STRATA ASSURANCE CORPORATION,** *respondent.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION LAW; FOREIGN CORPORATION; A FOREIGN CORPORATION "DOING BUSINESS" IN THE PHILIPPINES WITHOUT PROPER LICENSE CANNOT MAINTAIN ANY ACTION BEFORE THE PHILIPPINE COURTS.—** Under Article 123 of the Corporation Code, a foreign corporation must first obtain a license and a certificate from the appropriate government agency before it can transact business in the Philippines. Where a foreign corporation does business in the Philippines without the proper license, it cannot maintain any action or proceeding before Philippine courts as provided under Section 133 of the Corporation Code xxx.

2. **ID.; ID.; ID.; ID.; PHRASE "DOING BUSINESS," EXPLAINED.—** The Corporation Code provides no definition for the phrase "doing business." Nevertheless, Section 1 of Republic Act No. 5455 (RA 5455), provides that: x x x the phrase "doing business" shall include soliciting orders, purchases, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines; **and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization.** This is also the exact definition provided under Article 44 of the Omnibus Investments Code of 1987. Republic Act No. 7042 (RA 7042), otherwise known

as the Foreign Investments Act of 1991, which repealed Articles 44-56 of Book II of the Omnibus Investments Code of 1987, enumerated not only the acts or activities which constitute "doing business" but also those activities which are not deemed "doing business." Section 3(d) of RA 7042 states: [T]he phrase "doing business" shall include "soliciting orders, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: *Provided, however,* That the phrase 'doing business' shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account.

3. **ID.; ID.; ID.; ID.; TO CONSTITUTE "DOING BUSINESS" IN THE PHILIPPINES, IT MUST BE PROVED THAT THE BUSINESS ACTIVITIES OF THE CORPORATION ARE NOT JUST CASUAL OR OCCASIONAL, BUT SO SYSTEMATIC AND REGULAR AS TO MANIFEST CONTINUITY AND PERMANENCE OF ACTIVITY.—** Since respondent is relying on Section 133 of the Corporation Code to bar petitioner from maintaining an action in Philippine courts, respondent bears the burden of proving that petitioner's business activities in the Philippines were not just casual or occasional, but so systematic and regular as to manifest continuity and permanence of activity to constitute doing business in the Philippines. In this case, we find that respondent failed to prove that petitioner's activities in the Philippines constitute doing business as would prevent it from bringing an action.

4. ID.; ID.; ID.; ID.; TO CONSTITUTE "DOING BUSINESS" THE SERIES OF TRANSACTIONS ENTERED INTO BY THE PARTIES SIGNIFY AN INTENT TO ESTABLISH A CONTINUOUS BUSINESS IN THE PHILIPPINES.— The determination of whether a foreign corporation is doing business in the Philippines must be based on the facts of each case. In the case of *Antam Consolidated, Inc. v. CA*, in which a foreign corporation filed an action for collection of sum of money against petitioners therein for damages and loss sustained for the latter's failure to deliver coconut crude oil, the Court emphasized the importance of the element of continuity of commercial activities to constitute doing business in the Philippines. The Court held: x x x The three seemingly different transactions were entered into by the parties only in an effort to fulfill the basic agreement and in no way indicate an intent on the part of the respondent to engage in a continuity of transactions with petitioners which will categorize it as a foreign corporation doing business in the Philippines. Similarly, in this case, petitioner and NMC amended their contract three times to give a chance to NMC to deliver to petitioner the molasses, considering that NMC already received the minimum price of the contract. There is no showing that the transactions between petitioner and NMC signify the intent of petitioner to establish a continuous business or extend its operations in the Philippines.

5. ID.; ID.; ID.; ID.; IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT 7041; ACTS THAT DO NOT CONSTITUTE "DOING BUSINESS," ENUMERATED; TO CONSTITUTE "DOING BUSINESS," THE ACTIVITY UNDERTAKEN SHOULD BRING DIRECT PROFITS TO THE FOREIGN CORPORATION.— The Implementing Rules and Regulations of RA 7042 provide under Section 1(f), Rule I, that "doing business" does not include the following acts: 1. Mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; 2. Having a nominee director or officer to represent its interests in such corporation; 3. Appointing a representative or distributor domiciled in the Philippines which transacts business in the representative's or distributor's own name and account; 4. The publication of a general advertisement through any print or broadcast media; 5. Maintaining a stock of goods in the Philippines solely for

the purpose of having the same processed by another entity in the Philippines; 6. Consignment by a foreign entity of equipment with a local company to be used in the processing of products for export; 7. Collecting information in the Philippines; and 8. Performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis, such as installing in the Philippines machinery it has manufactured or exported to the Philippines, servicing the same, training domestic workers to operate it, and similar incidental services. Most of these activities do not bring any direct receipts or profits to the foreign corporation, consistent with the ruling of this Court in *National Sugar Trading Corp. v. CA* that activities within Philippine jurisdiction that do not create earnings or profits to the foreign corporation do not constitute doing business in the Philippines. xxx In this case, the contract between petitioner and NMC involved the purchase of molasses by petitioner from NMC. It was NMC, the domestic corporation, which derived income from the transaction and not petitioner. To constitute "doing business," the activity undertaken in the Philippines should involve profit-making. Besides, under Section 3(d) of RA 7042, "soliciting purchases" has been deleted from the enumeration of acts or activities which constitute "doing business."

6. ID.; ID.; ID.; ID.; A FOREIGN COMPANY THAT MERELY IMPORTS MOLASSES FROM A PHILIPPINE EXPORTER, WITHOUT OPENING AN OFFICE OR APPOINTING AN AGENT IN THE PHILIPPINES IS NOT DOING BUSINESS IN THE PHILIPPINES.— Other factors which support the finding that petitioner is not doing business in the Philippines are: (1) petitioner does not have an office in the Philippines; (2) petitioner imports products from the Philippines through its non-exclusive local broker, whose authority to act on behalf of petitioner is limited to soliciting purchases of products from suppliers engaged in the sugar trade in the Philippines; and (3) the local broker is an independent contractor and not an agent of petitioner. As explained by the Court in *B. Van Zuiden Bros., Ltd. v. GTVL Marketing Industries, Inc.*: x x x **To be doing or "transacting business in the Philippines" for purposes of Section 133 of the Corporation Code, the foreign corporation must *actually transact business in the Philippines*, that is, perform specific business transactions within the Philippine**

territory on a continuing basis in its own name and for its own account. Actual transaction of business within the Philippine territory is an essential requisite for the Philippines to acquire jurisdiction over a foreign corporation and thus require the foreign corporation to secure a Philippine business license. If a foreign corporation does not transact such kind of business in the Philippines, even if it exports its products to the Philippines, the Philippines has no jurisdiction to require such foreign corporation to secure a Philippine business license. In the present case, petitioner is a foreign company merely importing molasses from a Philipine exporter. A foreign company that merely imports goods from a Philippine exporter, without opening an office or appointing an agent in the Philippines, is not doing business in the Philippines.

7. **REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE APPELLATE COURT MAY BE REVIEWED BY THE SUPREME COURT WHERE THE SAME ARE IN CONFLICT WITH THE FINDINGS OF THE TRIAL COURT.—** The Supreme Court may review the findings of fact of the Court of Appeals which are in conflict with the findings of the trial court. We find that the Court of Appeals' finding that petitioner was doing business is not supported by evidence. Furthermore, a review of the records shows that the trial court was correct in holding that the advance payment of $500,000 was released to NMC in accordance with the conditions provided under the "red clause" Letter of Credit from which said amount was drawn. The Head of the International Operations Department of the Bank of Philippine Islands testified that the bank would not have paid the beneficiary if the required documents were not complete. It is a requisite in a documentary credit transaction that the documents should conform to the terms and conditions of the letter of credit; otherwise, the bank will not pay. The Head of the International Operations Department of the Bank of Philippine Islands also testified that they received reimbursement from the issuing bank for the $500,000 withdrawn by NMC. Thus, respondent had no legitimate reason to refuse payment under the performance and surety bonds when NMC failed to perform its part under its contract with petitioner.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioner.

Jose J. Ferrer, Jr. for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 26 May 2005 Decision[2] of the Court of Appeals in CA-G.R. CV No. 48447.

The Facts

Petitioner Cargill, Inc. (petitioner) is a corporation organized and existing under the laws of the State of Delaware, United States of America. Petitioner and Northern Mindanao Corporation (NMC) executed a contract dated 16 August 1989 whereby NMC agreed to sell to petitioner 20,000 to 24,000 metric tons of molasses, to be delivered from 1 January to 30 June 1990 at the price of $44 per metric ton. The contract provides that petitioner would open a Letter of Credit with the Bank of Philippine Islands. Under the "red clause" of the Letter of Credit, NMC was permitted to draw up to $500,000 representing the minimum price of the contract upon presentation of some documents.

The contract was amended three times: first, on 11 January 1990, increasing the purchase price of the molasses to $47.50 per metric ton;[3] second, on 18 June 1990, reducing the quantity of the molasses to 10,500 metric tons and increasing the price

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

[2] Penned by Associate Justice Roberto A. Barrios with Associate Justices Amelita G. Tolentino and Vicente S. E. Veloso, concurring.

[3] Records, p. 393.

to $55 per metric ton;[4] and third, on 22 August 1990, providing for the shipment of 5,250 metric tons of molasses on the last half of December 1990 through the first half of January 1991, and the balance of 5,250 metric tons on the last half of January 1991 through the first half of February 1991.[5] The third amendment also required NMC to put up a performance bond equivalent to $451,500, which represents the value of 10,500 metric tons of molasses computed at $43 per metric ton. The performance bond was intended to guarantee NMC's performance to deliver the molasses during the prescribed shipment periods according to the terms of the amended contract.

In compliance with the terms of the third amendment of the contract, respondent Intra Strata Assurance Corporation (respondent) issued on 10 October 1990 a performance bond[6] in the sum of ₱11,287,500 to guarantee NMC's delivery of the 10,500 tons of molasses, and a surety bond[7] in the sum of ₱9,978,125 to guarantee the repayment of downpayment as provided in the contract.

NMC was only able to deliver 219.551 metric tons of molasses out of the agreed 10,500 metric tons. Thus, petitioner sent demand letters to respondent claiming payment under the performance and surety bonds. When respondent refused to pay, petitioner filed on 12 April 1991 a complaint[8] for sum of money against NMC and respondent.

Petitioner, NMC, and respondent entered into a compromise agreement,[9] which the trial court approved in its Decision[10] dated 13 December 1991. The compromise agreement provides that

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[4] *Id.* at 394-395.\

[5] *Id.* at 396-397.

[6] *Id.* at 398.

[7] *Id.* at 399.

[8] *Id.* at 1-8.

[9] *Id.* at 251-254.

[10] *Id.* at 258-261.

NMC would pay petitioner ₱3,000,000 upon signing of the compromise agreement and would deliver to petitioner 6,991 metric tons of molasses from 16-31 December 1991. However, NMC still failed to comply with its obligation under the compromise agreement. Hence, trial proceeded against respondent.

On 23 November 1994, the trial court rendered a decision, the dispositive portion of which reads:

> WHEREFORE, judgment is rendered in favor of plaintiff [Cargill, Inc.], ordering defendant INTRA STRATA ASSURANCE CORPORATION to solidarily pay plaintiff the total amount of SIXTEEN MILLION NINE HUNDRED NINETY-THREE THOUSAND AND TWO HUNDRED PESOS (₱16,993,200.00), Philippine Currency, with interest at the legal rate from October 10, 1990 until fully paid, plus attorney's fees in the sum of TWO HUNDRED THOUSAND PESOS (₱200,000.00), Philippine Currency and the costs of the suit.
>
> The Counterclaim of Intra Strata Assurance Corporation is hereby dismissed for lack of merit.
>
> SO ORDERED.[11]

On appeal, the Court of Appeals reversed the trial court's decision and dismissed the complaint. Hence, this petition.

<u>The Court of Appeals' Ruling</u>

The Court of Appeals held that petitioner does not have the capacity to file this suit since it is a foreign corporation doing business in the Philippines without the requisite license. The Court of Appeals held that petitioner's purchases of molasses were in pursuance of its basic business and not just mere isolated and incidental transactions.

<u>The Issues</u>

Petitioner raises the following issues:

1. Whether petitioner is doing or transacting business in the Philippines in contemplation of the law and established jurisprudence;

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[11] CA *rollo*, pp. 89-90.

2. Whether respondent is estopped from invoking the defense that petitioner has no legal capacity to sue in the Philippines;
3. Whether petitioner is seeking a review of the findings of fact of the Court of Appeals; and
4. Whether the advance payment of $500,000 was released to NMC without the submission of the supporting documents required in the contract and the "red clause" Letter of Credit from which said amount was drawn.[12]

The Ruling of the Court

We find the petition meritorious.

Doing Business in the Philippines and Capacity to Sue

The principal issue in this case is whether petitioner, an unlicensed foreign corporation, has legal capacity to sue before Philippine courts. Under Article 123[13] of the Corporation Code, a foreign corporation must first obtain a license and a certificate from the appropriate government agency before it can transact business in the Philippines. Where a foreign corporation does business in the Philippines without the proper license, it cannot maintain any action or proceeding before Philippine courts as provided under Section 133 of the Corporation Code:

> Sec. 133. *Doing business without a license*. – No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded

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[12] *Rollo*, pp. 154-155.

[13] Section 123 of the Corporation Code reads:

> SEC. 123. *Definition and rights of foreign corporations*. – For the purpose of this Code, a foreign corporation is one formed, organized or existing under any laws other than those of the Philippines and whose laws allow Filipino citizens and corporations to do business in its own country or state. **It shall have the right to transact business in the Philippines after it shall have obtained a license to transact business in this country in accordance with this Code and a certificate of authority from the appropriate government agency**. (Emphasis supplied)

against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

Thus, the threshold question in this case is whether petitioner was doing business in the Philippines. The Corporation Code provides no definition for the phrase "doing business." Nevertheless, Section 1 of Republic Act No. 5455 (RA 5455),[14] provides that:

x x x the phrase "doing business" shall include soliciting orders, purchases, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines; **and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization.** (Emphasis supplied)

This is also the exact definition provided under Article 44 of the Omnibus Investments Code of 1987.

Republic Act No. 7042 (RA 7042), otherwise known as the Foreign Investments Act of 1991, which repealed Articles 44-56 of Book II of the Omnibus Investments Code of 1987, enumerated not only the acts or activities which constitute "doing business" but also those activities which are not deemed "doing business." Section 3(d) of RA 7042 states:

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[14] Entitled "AN ACT TO REQUIRE THAT THE MAKING OF INVESTMENTS AND THE DOING OF BUSINESS WITHIN THE PHILIPPINES BY FOREIGNERS OR BUSINESS ORGANIZATIONS OWNED IN WHOLE OR IN PART BY FOREIGNERS SHOULD CONTRIBUTE TO THE SOUND AND BALANCED DEVELOPMENT OF THE NATIONAL ECONOMY ON A SELF SUSTAINING BASIS, AND FOR OTHER PURPOSES." RA 5455 was approved on 30 September 1968.

[T]he phrase "doing business" shall include "soliciting orders, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: *Provided, however,* That the phrase 'doing business' shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account.

Since respondent is relying on Section 133 of the Corporation Code to bar petitioner from maintaining an action in Philippine courts, respondent bears the burden of proving that petitioner's business activities in the Philippines were not just casual or occasional, but so systematic and regular as to manifest continuity and permanence of activity to constitute doing business in the Philippines. In this case, we find that respondent failed to prove that petitioner's activities in the Philippines constitute doing business as would prevent it from bringing an action.

The determination of whether a foreign corporation is doing business in the Philippines must be based on the facts of each case.[15] In the case of *Antam Consolidated, Inc. v. CA*,[16] in which a foreign corporation filed an action for collection of sum of money against petitioners therein for damages and

[15] *Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation*, G.R. No. 152228, 23 September 2005, 470 SCRA 650; *MR Holdings, Ltd. v. Sheriff Bajar*, 430 Phil. 443 (2002); *Top-Weld Manufacturing, Inc. v. ECED, S.A., IRTI, S.A., Eutectic Corp.*, 222 Phil. 424 (1985).

[16] 227 Phil. 267 (1986).

loss sustained for the latter's failure to deliver coconut crude oil, the Court emphasized the importance of the element of continuity of commercial activities to constitute doing business in the Philippines. The Court held:

> In the case at bar, the transactions entered into by the respondent with the petitioners are not a series of commercial dealings which signify an intent on the part of the respondent to do business in the Philippines but constitute an isolated one which does not fall under the category of "doing business." The records show that the only reason why the respondent entered into the second and third transactions with the petitioners was because it wanted to recover the loss it sustained from the failure of the petitioners to deliver the crude coconut oil under the first transaction and in order to give the latter a chance to make good on their obligation. x x x
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> x x x The three seemingly different transactions were entered into by the parties only in an effort to fulfill the basic agreement and in no way indicate an intent on the part of the respondent to engage in a continuity of transactions with petitioners which will categorize it as a foreign corporation doing business in the Philippines.[17]

Similarly, in this case, petitioner and NMC amended their contract three times to give a chance to NMC to deliver to petitioner the molasses, considering that NMC already received the minimum price of the contract. There is no showing that the transactions between petitioner and NMC signify the intent of petitioner to establish a continuous business or extend its operations in the Philippines.

The Implementing Rules and Regulations of RA 7042 provide under Section 1(f), Rule I, that "doing business" does not include the following acts:

> 1. Mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor;
>
> 2. Having a nominee director or officer to represent its interests in such corporation;

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[17] *Id.* at 274-275.

3. Appointing a representative or distributor domiciled in the Philippines which transacts business in the representative's or distributor's own name and account;

4. The publication of a general advertisement through any print or broadcast media;

5. Maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines;

6. Consignment by a foreign entity of equipment with a local company to be used in the processing of products for export;

7. Collecting information in the Philippines; and

8. Performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis, such as installing in the Philippines machinery it has manufactured or exported to the Philippines, servicing the same, training domestic workers to operate it, and similar incidental services.

Most of these activities do not bring any direct receipts or profits to the foreign corporation, consistent with the ruling of this Court in *National Sugar Trading Corp. v. CA*[18] that activities within Philippine jurisdiction that do not create earnings or profits to the foreign corporation do not constitute doing business in the Philippines.[19] In that case, the Court held that it would be inequitable for the National Sugar Trading Corporation, a state-owned corporation, to evade payment of a legitimate indebtedness owing to the foreign corporation on the plea that the latter should have obtained a license first before perfecting a contract with the Philippine government. The Court emphasized that the foreign corporation did not sell sugar and derive income from the Philippines, but merely purchased sugar from the Philippine government and allegedly paid for it in full.

In this case, the contract between petitioner and NMC involved the purchase of molasses by petitioner from NMC. It was NMC,

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[18] 316 Phil. 562 (1995).

[19] C. Villanueva, *PHILIPPINE CORPORATE LAW* 801-802 (2001).

the domestic corporation, which derived income from the transaction and not petitioner. To constitute "doing business," the activity undertaken in the Philippines should involve profit-making.[20] Besides, under Section 3(d) of RA 7042, "soliciting purchases" has been deleted from the enumeration of acts or activities which constitute "doing business."

Other factors which support the finding that petitioner is not doing business in the Philippines are: (1) petitioner does not have an office in the Philippines; (2) petitioner imports products from the Philippines through its non-exclusive local broker, whose authority to act on behalf of petitioner is limited to soliciting purchases of products from suppliers engaged in the sugar trade in the Philippines; and (3) the local broker is an independent contractor and not an agent of petitioner.[21]

As explained by the Court in *B. Van Zuiden Bros., Ltd. v. GTVL Marketing Industries, Inc.*:[22]

An exporter in one country may export its products to many foreign importing countries without performing in the importing countries specific commercial acts that would constitute doing business in the importing countries. The mere act of exporting from one's own country, without doing any specific commercial act within the territory of the importing country, cannot be deemed as doing business in the importing country. The importing country does not require jurisdiction over the foreign exporter who has not yet performed any specific commercial act within the territory of the importing country. Without jurisdiction over the foreign exporter, the importing country cannot compel the foreign exporter to secure a license to do business in the importing country.

Otherwise, Philippine exporters, by the mere act alone of exporting their products, could be considered by the importing countries to be doing business in those countries. This will require Philippine exporters

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[20] *Agilent Technologies Singapore (PTE) Ltd. v. Integrated Silicon Technology Phil. Corp.*, 471 Phil. 582 (2004).

[21] See Exh. "T" (contract between petitioner and its broker, Agrotex Commodities, Inc.), records, pp. 553-557.

[22] G.R. No. 147905, 28 May 2007, 523 SCRA 233.

to secure a business license in every foreign country where they usually export their products, even if they do not perform any specific commercial act within the territory of such importing countries. Such a legal concept will have deleterious effect not only on Philippine exports, but also on global trade.

To be doing or "transacting business in the Philippines" for purposes of Section 133 of the Corporation Code, the foreign corporation must ***actually transact business in the Philippines*****, that is, perform specific business transactions within the Philippine territory on a continuing basis in its own name and for its own account. Actual transaction of business within the Philippine territory is an essential requisite for the Philippines to acquire jurisdiction over a foreign corporation and thus require the foreign corporation to secure a Philippine business license.** If a foreign corporation does not transact such kind of business in the Philippines, even if it exports its products to the Philippines, the Philippines has no jurisdiction to require such foreign corporation to secure a Philippine business license.[23] (Emphasis supplied)

In the present case, petitioner is a foreign company merely importing molasses from a Philippine exporter. A foreign company that merely imports goods from a Philippine exporter, without opening an office or appointing an agent in the Philippines, is not doing business in the Philippines.

Review of Findings of Fact

The Supreme Court may review the findings of fact of the Court of Appeals which are in conflict with the findings of the trial court.[24] We find that the Court of Appeals' finding that petitioner was doing business is not supported by evidence.

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[23] *Id.* at 242-243.

[24] *AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, 23 June 2009, 590 SCRA 633; *Producers Bank of the Philippines v. Excelsa Industries, Inc.*, G.R. No. 152071, 8 May 2009, 587 SCRA 370; *Cavile v. Litania-Hong*, G.R. No. 179540, 13 March 2009, 581 SCRA 408; *Microsoft Corp. v. Maxicorp, Inc.*, 481 Phil. 550 (2004).

Furthermore, a review of the records shows that the trial court was correct in holding that the advance payment of $500,000 was released to NMC in accordance with the conditions provided under the "red clause" Letter of Credit from which said amount was drawn. The Head of the International Operations Department of the Bank of Philippine Islands testified that the bank would not have paid the beneficiary if the required documents were not complete. It is a requisite in a documentary credit transaction that the documents should conform to the terms and conditions of the letter of credit; otherwise, the bank will not pay. The Head of the International Operations Department of the Bank of Philippine Islands also testified that they received reimbursement from the issuing bank for the $500,000 withdrawn by NMC.[25] Thus, respondent had no legitimate reason to refuse payment under the performance and surety bonds when NMC failed to perform its part under its contract with petitioner.

WHEREFORE , we *GRANT* the petition. We *REVERSE* the Decision dated 26 May 2005 of the Court of Appeals in CA-G.R. CV No. 48447. We *REINSTATE* the Decision dated 23 November 1994 of the trial court.

SO ORDERED.

Brion, Abad, Villarama, Jr.,[*] and *Perez, JJ.,* concur.

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[25] TSN, 14 June 1993, pp. 19-25. The Head of the International Operations Department of the Bank of Philippine Islands further testified that most of the documents supporting the negotiations in 1989 could no longer be found in their files since they only keep current records and at the time she testified, the records before 1991 were already destroyed.

[*] Designated additional member per Raffle dated 8 March 2010.

THIRD DIVISION

[G.R. No. 169493. March 15, 2010]

STA. CLARA SHIPPING CORPORATION, *petitioner, vs.* **EUGENIA T. SAN PABLO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW; SUPERVENING EVENTS RENDERED THE PETITION BEFORE THE COURT OF APPEALS PURELY HYPOTHETICAL.—** The January 26, 2004 MARINA decision and the old CPC were the subject matter of the petition of San Pablo before the CA. The reversal of the decision and the revocation of the CPC were the reliefs sought in that petition. However, the passage of RA 9295 and the filing by Sta. Clara of an application for a new CPC under the new law supervened and rendered the January 26, 2004 MARINA decision and old CPC of no consequence. There was no more justiciable controversy for the CA to decide, no remedy to grant or deny. The petition before the CA had become purely hypothetical, there being nothing left to act upon.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCY; PRIMARY JURISDICTION OVER MATTERS RELATING TO THE ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE LODGED WITH THE MARITIME INDUSTRY AUTHORITY (MARINA), NOT THE COURT OF APPEALS.—** Although Sta. Clara filed with the CA a motion for reconsideration of its May 31, 2005 decision without disclosing the foregoing developments, by the time the CA resolved the motion for reconsideration, it was already aware of the changes in the situation of the parties: specifically, that Sta. Clara had filed a new application under RA 9295 and that the LMRO had issued Sta. Clara a new CPC. More significantly, the new CPC issued to Sta. Clara was now subject to the rules implementing RA 9295. Under Rule XV, Sec. 1 thereof, a peculiar process of administrative remedy provides that the MARINA Administrator, and not the CA, is vested with primary jurisdiction over matters relating to the issuance of a CPC.

3. **ID.; ID.; ID.; DOCTRINE OF PRIMARY ADMINISTRATIVE JURISDICTION; THE APPELLATE COURT SHOULD GIVE DEFERENCE TO THE EXERCISE BY THE MARINA OF ITS SOUND ADMINISTRATIVE DISCRETION IN APPLYING ITS SPECIAL KNOWLEDGE, EXPERIENCE AND EXPERTISE ON TECHNICAL AND INTRICATE FACTUAL MATTERS BEFORE IT.—** Under the altered state of facts, the CA should have refrained from resolving the pending motions before it and should have declared the case mooted by supervening events. Besides, questions on the validity of the new CPC are cognizable by the MARINA Administrator and, consonant with the doctrine of primary administrative jurisdiction, the CA should have referred San Pablo to MARINA for the resolution of her challenge to the validity of the new CPC of Sta. Clara. The CA ought to have given due deference to the exercise by MARINA of its sound administrative discretion in applying its special knowledge, experience and expertise to determine the technical and intricate factual matters relating to the new CPC of Sta. Clara.

4. **REMEDIAL LAW; COURTS; JUDICIAL CONTROVERSY; COURT MUST REFRAIN FROM EXPRESSING AN OPINION ON ISSUES WHERE THE DETERMINATION THEREOF WOULD BE OF NO PRACTICAL USE OR VALUE.—** The Court finds no need to resolve the other issues raised by San Pablo for they deal with the merits of the very controversy which supervening events have rendered merely theoretical. The Court must refrain from even expressing an opinion on the remaining issues as the determination thereof would be of no practical use or value, there being no more justiciable controversy to speak of.

APPEARANCES OF COUNSEL

Florido & Largo Law Office for petitioner.
Rogelio E. Subong for respondent.

D E C I S I O N

CORONA, *J.*:

Sta. Clara Shipping Corporation (Sta. Clara) assails the May 31, 2005 decision[1] and July 27, 2005 resolutions[2] of the Court of Appeals (CA) which annulled its certificate of convenience (CPC) to operate MV King Frederick.

The facts are undisputed.

Sta. Clara filed an application, docketed as Case No. 2001-033, with Maritime Industry Authority (MARINA) for a CPC to operate MV King Frederick along the route Matnog, Sorsogon–Allen, Northern Samar and vice versa.[3] The application was opposed by the pioneering operators Bicolandia Lines, Inc. and Eugenia T. San Pablo/E Tabinas Enterprises (San Pablo) on the ground that, with five vessels[4] already plying the route, the entry of a sixth vessel would cause grievous problems in berthing space and time schedule.[5]

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[1] Penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Edgardo F. Sundiam and Rosalinda Asuncion-Vicente; *rollo*, p. 94. The decision annulled the January 26, 2004 decision of the Maritime Industry Authority in Case No. 2001-033 and cancelled the old CPC of MV King Frederick.

[2] *Id.*, pp. 130 and 157. The first July 27, 2005 resolution denied the motion for reconsideration of Sta. Clara. The second July 27, 2005 resolution annulled the June 6, 2005 decision of the Legaspi Maritime Regional Office in Case No. LMRO-05-056 and cancelled the new CPC of MV King Frederick.

[3] Originally docketed as Case No. 20-072 (*rollo*, p. 33), the application was amended and docketed as Case No. 2001-033 (*rollo*, p. 54).

[4] Namely, MV Northern Samar, MV Princess Bicolandia and MV Princess of Mayon (all owned by Bicolandia, *et al.*) and MV Maharlika I and MV Maharlika II owned by St. Bernard Service Corp.

[5] Motion to Dismiss, *rollo*, p. 35.

MARINA granted the application of Sta. Clara in a decision dated January 26, 2004, the dispositive portion of which read:

WHEREFORE, for all foregoing considerations and finding that the Applicant is a domestic corporation, legally and financially capable to operate and maintain the existing service; that the approval of the instant application will promote public interest and convenience in a proper and suitable manner, this Authority hereby grants Applicant, Sta. Clara Shipping Corporation, a Certificate of Public Convenience (CPC) to operate the ship, MV KING FREDERICK, in the route: Matnog, Sorsogon – Allen, Northern Samar and vice-versa, for the carriage of passengers and cargoes, for a period of FIVE (5) YEARS from date hereof, subject to the following conditions:

1. That the terms and conditions set forth in the attached Certificate of Public Convenience and its Rider thereto shall remain in full force and effect;

2. That the Applicant shall submit the ship's renewed Certificate of Inspection (CI), Coastwise License (CWL), Radio/Ship Station License, Class Certificate and Safety Management Certificate prior to every expiration thereof, and the ship's Passenger Insurance Coverage fifteen (15) days prior to every expiration thereof, otherwise, this Certificate of Public Convenience (CPC) shall be deemed suspended until compliance/submission thereof;

3. That the Applicant shall at all times carry on board its ship a copy of the latest authority to operate (CPC/PA/SP), the PMMRR 1997, relevant MARINA/PCG/PPA Circulars/ Issuances, the SOLAS 74 as amended, Collision Regulations 1972, STCW Convention 1978/95, among other IMO Conventions;

4. That the Applicant shall comply with the provisions of MARINA Memorandum Circular No. 154 dated 23 February 2000 on "Reiteration of Safety-Related Policies/Guidelines/ Rules and Regulations For Guidance and Strict Compliance"; and

5. That any violation of the terms and conditions of this Certificate of Public Convenience shall result to the suspension/cancellation and/or revocation thereof.

(Approved during the 99th Quasi-Judicial Board Meeting held on 22 December 2003.)

SO ORDERED.[6]

Accordingly, a CPC[7] was issued to Sta. Clara to operate MV King Frederick for a period of five (5) years beginning January 26, 2004.

Counsel for San Pablo received copy of the decision on February 26, 2004.[8] Her authorized representative received another copy on February 27, 2004.[9] However, it was only on May 14, 2004 that San Pablo filed with MARINA a motion for reconsideration.[10] Consequently, MARINA denied the motion for reconsideration for having been filed out of time, citing Rule 17 of Memorandum Circular No. 74-A which provides that a decision becomes final unless a motion for reconsideration or appeal is filed within 15 days from receipt thereof.[11]

San Pablo filed a petition for review with the CA.[12]

The CA granted the petition in a decision dated May 31, 2005, the dispositive portion of which read:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition at bench must be, as it is hereby GRANTED. The decision of the MARINA in Maritime Industry Case No. 2001-033 dated January 26, 2004 and its Resolution dated September 16, 2004 denying petitioner's Motion for Reconsideration are hereby VACATED and SET ASIDE. Without costs in this instance.

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[6] *Rollo,* pp. 74-75.

[7] *Id.*, p. 77.

[8] *Id.*, p. 75.

[9] *Id*.

[10] *Rollo*, p. 79.

[11] *Id.*, p. 85.

[12] CA *rollo*, p. 2.

SO ORDERED.[13]

Meanwhile, two events transpired which altered the state of facts in this case.

First, Republic Act (RA) 9295[14] and its implementing rules and regulations[15] were issued requiring existing operators to apply for CPCs under the new law.[16] Thus, on May 4, 2005, Sta. Clara filed with the Legaspi Maritime Regional Office (LMRO) an application, docketed as Case No. LMRO 05-056, for a new CPC to operate MV King Frederick and two other vessels in several routes including Matnog, Sorsogon–Allen, Northern Samar and vice versa.[17]

Second, on June 6, 2005, LMRO granted the application of Sta. Clara for a new CPC:

WHEREFORE, upon the foregoing holdings, and finding that applicant corporation is legally and financially capable to operate and maintain the proposed service; that the approval of the instant application will promote public interest and convenience in proper and suitable manner, this Authority hereby grants applicant corporation STA. CLARA SHIPPING CORPORATION a CERTIFICATE OF PUBLIC CONVENIENCE (CPC) to operate the vessels MV KING FREDERICK, MV NELVIN JULES and MV HANSEL JOBETT for conveyance of passengers and cargoes in the applied route valid for a period of FIFTEEN (15) YEARS from date hereof, subject to the terms and conditions set forth in the attached Certificate of Public Convenience.

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[13] *Supra* at 1, p. 114.

[14] RA 9295, also known as the Domestic Shipping Development Act of 2004, approved May 3, 2004.

[15] Dated November 30, 2004.

[16] Rule XVII, Sec. 1 provides: "Within six (6) months upon the effectivity of the IRR, existing liner and tramp operators shall be required to file appropriate application for issuance of CPC under the Act and this IRR."

[17] As cited in the Decision dated June 6, 2005 of the LMRO, *rollo*, p. 300.

This decision takes effect immediately and shall become final, unless an appeal or a timely motion for reconsideration has been filed within fifteen (15) days from receipt hereof.

SO ORDERED.[18]

Yet, on June 24, 2005, Sta. Clara filed a motion for reconsideration[19] of the CA decision without disclosing that it had obtained a new CPC for MV King Frederick. It was San Pablo who reported this development to the CA when she filed a motion to hold Sta. Clara in contempt of court and to cancel its new CPC.[20]

On July 27, 2005, the CA issued two resolutions, one denying Sta. Clara's motion for reconsideration,[21] and another granting the motion of San Pablo to cancel the new CPC issued to Sta. Clara by the LMRO:

WHEREFORE, public respondent Marina's Decision dated June 6, 2005, in so far as it grants private respondent Sta. Clara Shipping Corporation a Certificate of Public Convenience (CPC) to operate the vessel KING FREDERICK is hereby RESCINDED, NULLIFIED and SET ASIDE. The public respondent Legaspi Maritime Regional Office (LMRO), through its Regional Director, Mr. Lucita T. Madarang, is thus ordered to explain why she should not be cited for contempt for rendering the assailed decision in LMRO 05-056.

SO ORDERED.[22]

Hence, Santa Clara took the present recourse on the following grounds:

I. The honorable Court of Appeals gravely and seriously erred in failing to consider and take judicial notice of the passage of RA 9295 in the resolution of the petition filed before it.

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[18] *Id.*

[19] *Rollo*, p. 117.

[20] *Id.*, pp. 140-141.

[21] *Supra* at 2.

[22] *Rollo*, p. 154.

II. The honorable Court of Appeals gravely and seriously erred in reversing the decision of the honorable MARINA [despite] the fact that it has become final and executory.

III. The honorable Court of Appeals gravely and seriously erred in reversing the decision of the honorable MARINA despite the fact that the decision is in perfect accord with law and jurisprudence.

IV. The honorable Court of Appeals gravely and seriously erred in nullifying the CPC issued to petitioner pursuant to RA 9295.[23]

The petition has merit outside of its arguments.

The Court notes that Sta. Clara repeatedly argued in its pleadings that the January 26, 2004 MARINA decision was superseded by the June 6, 2005 LMRO decision, and that the old CPC of MV King Frederick was replaced by a new CPC issued in accordance with RA 9295 and its implementing rules.[24] San Pablo herself agreed that the January 26, 2004 MARINA decision was deemed abandoned when Sta. Clara applied for and obtained a new CPC.[25]

There is no dispute then that the January 26, 2004 MARINA decision and the old CPC are now defunct.

The January 26, 2004 MARINA decision and the old CPC were the subject matter of the petition of San Pablo before the CA. The reversal of the decision and the revocation of the CPC were the reliefs sought in that petition. However, the passage of RA 9295 and the filing by Sta. Clara of an application for a new CPC under the new law supervened and rendered the January 26, 2004 MARINA decision and old CPC of no consequence. There was no more justiciable controversy for the CA to decide, no remedy to grant or deny. The petition

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

[24] Petition, *rollo*, pp. 25-26; Reply, *rollo*, pp. 328-329; Memorandum, *rollo*, pp. 360-361.

[25] Memorandum, *rollo*, p. 456.

before the CA had become purely hypothetical, there being nothing left to act upon.[26]

Although Sta. Clara filed with the CA a motion for reconsideration of its May 31, 2005 decision without disclosing the foregoing developments, by the time the CA resolved the motion for reconsideration, it was already aware of the changes in the situation of the parties: specifically, that Sta. Clara had filed a new application under RA 9295 and that the LMRO had issued Sta. Clara a new CPC.[27] More significantly, the new CPC issued to Sta. Clara was now subject to the rules implementing RA 9295. Under Rule XV, Sec. 1 thereof, a peculiar process of administrative remedy provides that the MARINA Administrator, and not the CA, is vested with primary jurisdiction over matters relating to the issuance of a CPC.[28]

Under the altered state of facts, the CA should have refrained from resolving the pending motions before it and should have declared the case mooted by supervening events.[29] Besides, questions on the validity of the new CPC are cognizable by the MARINA Administrator and, consonant with the doctrine of primary administrative jurisdiction, the CA should have referred San Pablo to MARINA for the resolution of her challenge to the validity of the new CPC of Sta. Clara. The CA ought to have given due deference to the exercise by MARINA of its sound administrative discretion in applying its special knowledge,

[26] *Rogelio Antalan v. Hon. Aniano Desierto,* G.R. No. 152258, 30 November 2006, 509 SCRA 176.

[28] The new CPC is fundamentally different from the old CPC in that the new expires in 15 years while the old in 5 years; and the new is issued to the operator or owner while the old was issued to the vessel. Hence, the new CPC cannot be considered the mere extension of the old CPC.

[29] *Mattel, Inc. v. Emma Francisco,* G.R. No. 166886, 30 July 2008, 560 SCRA 504. See *Felipe Magbanua, et al. v. Rizalino Uy*, G.R. No. 161003, 6 May 2005, 458 SCRA 184.

experience and expertise to determine the technical and intricate factual matters relating to the new CPC of Sta. Clara.[30]

The Court finds no need to resolve the other issues raised by San Pablo for they deal with the merits of the very controversy which supervening events have rendered merely theoretical. The Court must refrain from even expressing an opinion on the remaining issues as the determination thereof would be of no practical use or value, there being no more justiciable controversy to speak of.[31]

WHEREFORE, the decision dated May 31, 2005 and resolutions dated July 27, 2005 of the Court of Appeals are hereby *ANNULLED* and *SET ASIDE* on the ground of mootness.

No costs.

SO ORDERED.

Velasco, Jr., Nachura, Peralta, and *Mendoza, JJ.,* concur.

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[30] *Spouses Edmundo Osea and Ligaya Osea v. Antonio Ambrosio and Rodolfo Perez*, G.R. No. 162774, 7 April 2006, 486 SCRA 599.

[31] *Josue Engano v. Honorable Court of Appeals, et al.,* G.R. No. 156959, 27 June 2006, 493 SCRA 323.

SECOND DIVISION

[G.R. No. 169548. March 15, 2010]

TITAN CONSTRUCTION CORPORATION, *petitioner, vs.* **MANUEL A. DAVID, SR. and MARTHA S. DAVID,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; CONJUGAL PARTNERSHIP PROPERTY; PROPERTY PURCHASED DURING THE SPOUSES' MARRIAGE PRESUMED TO BE A PART OF THE CONJUGAL PARTNERSHIP; PRESUMPTION APPLIES EVEN WHEN THE MANNER IN WHICH THE PROPERTY WAS ACQUIRED DOES NOT APPEAR.— We are not persuaded by Titan's arguments that the property was Martha's exclusive property because Manuel failed to present before the RTC any proof of his income in 1970, hence he could not have had the financial capacity to contribute to the purchase of the property in 1970; and that Manuel admitted that it was Martha who concluded the original purchase of the property. In consonance with our ruling in *Spouses Castro v. Miat,* Manuel was not required to prove that the property was acquired with funds of the partnership. Rather, the presumption applies even when the manner in which the property was acquired does not appear. Here, we find that Titan failed to overturn the presumption that the property, purchased during the spouses' marriage, was part of the conjugal partnership.

2. ID.; ID.; ID.; ID.; ANY DISPOSITION OR ENCUMBRANCE OF CONJUGAL PROPERTY, WITHOUT THE WRITTEN CONSENT OF THE OTHER SPOUSE IS VOID.— Since the property was undoubtedly part of the conjugal partnership, the sale to Titan required the consent of both spouses. Article 165 of the Civil Code expressly provides that "the husband is the administrator of the conjugal partnership." Likewise, Article 172 of the Civil Code ordains that "(t)he wife cannot bind the conjugal partnership without the husband's consent, except in cases provided by law." Similarly, Article 124 of the Family

Code requires that any disposition or encumbrance of conjugal property must have the written consent of the other spouse, otherwise, such disposition is void. xxx.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT, PARTICULARLY AS REGARDS ITS ASSESSMENT THEREOF, ACCORDED WEIGHT.— The RTC found that the signature of Manuel appearing on the SPA was not his genuine signature. xxx Titan claims that the RTC gave undue weight to the testimony of Manuel's witness, and that expert testimony on handwriting is not conclusive. The contention lacks merit. The RTC's ruling was based not only on the testimony of Manuel's expert witness finding that there were significant differences between the standard handwriting of Manuel and the signature found on the SPA, but also on Manuel's categorical denial that he ever signed any document authorizing or ratifying the Deed of Sale to Titan. xxx [W]e reiterate the well-entrenched rule that the factual findings of trial courts, when adopted and confirmed by the CA, are binding and conclusive and will generally not be reviewed on appeal. We are mandated to accord great weight to the findings of the RTC, particularly as regards its assessment of the credibility of witnesses since it is the trial court judge who is in a position to observe and examine the witnesses first hand. Even after a careful and independent scrutiny of the records, we find no cogent reason to depart from the rulings of the courts below.

4. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY ERRORS OF LAW ARE REVIEWABLE THEREIN.— Furthermore, settled is the rule that only errors of law and not of fact are reviewable by this Court in a petition for review on *certiorari* under Rule 45 of the Rules of Court. This applies with even greater force here, since the factual findings by the CA are in full agreement with those of the trial court.

5. ID.; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; A NOTARIZED DOCUMENT ENJOYS A *PRIMA FACIE* PRESUMPTION OF AUTHENTICITY AND DUE EXECUTION; PRESUMPTION MAY BE OVERCOME BY CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY.— Titan claimed that because Manuel failed to specifically deny the genuineness and due execution of the

SPA in his Reply, he is deemed to have admitted the veracity of said document, in accordance with Rule 8, Sections 7 and 8, of the Rules of Court. xxx It is true that a notarial document is considered evidence of the facts expressed therein. A notarized document enjoys a *prima facie* presumption of authenticity and due execution and only clear and convincing evidence will overcome such legal presumption. However, such clear and convincing evidence is present here. While it is true that the SPA was notarized, it is no less true that there were defects in the notarization which mitigate against a finding that the SPA was either genuine or duly executed. Curiously, the details of Manuel's Community Tax Certificate are conspicuously absent, yet Martha's are complete. The absence of Manuel's data supports his claim that he did not execute the same and that his signature thereon is a forgery. Moreover, we have Manuel's positive testimony that he never signed the SPA, in addition to the expert testimony that the signature appearing on the SPA was not Manuel's true signature.

6. ID.; ACTIONS; RECOVERY OF MONEY; A PARTY MUST BE DULY APPRISED OF A CLAIM AGAINST HIM BEFORE JUDGMENT MAYBE RENDERED; CLAIM FOR RECOVERY OF THE AMOUNT PAID BY THE PETITIONER MUST BE INSTITUTED IN THE PROPER COURT.— While it is true that litigation is not a game of technicalities, it is equally true that elementary considerations of due process require that a party be duly apprised of a claim against him before judgment may be rendered. Thus, we cannot, in these proceedings, order the return of the amounts paid by Titan to Martha. However, Titan is not precluded by this Decision from instituting the appropriate action against Martha before the proper court.

APPEARANCES OF COUNSEL

Angelito B. Bulao for petitioner.
Del Rosario Bagamasbao & Raboca for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The review of factual matters is not the province of this Court.[1] The Supreme Court is not a trier of facts, and is not the proper forum for the ventilation and substantiation of factual issues.[2]

This Petition for Review assails the July 20, 2004 Decision[3] of the Court of Appeals (CA) in CA-G.R. CV No. 67090 which affirmed with modification the March 7, 2000 Decision[4] of the Regional Trial Court (RTC) of Quezon City, Branch 80. Also assailed is the August 31, 2005 Resolution[5] of the CA denying the motion for reconsideration.

Factual Antecedents

Manuel A. David, Sr. (Manuel) and Martha S. David (Martha) were married on March 25, 1957. In 1970, the spouses acquired a 602 square meter lot located at White Plains, Quezon City, which was registered in the name of "MARTHA S. DAVID, of legal age, Filipino, married to Manuel A. David" and covered by Transfer Certificate of Title (TCT) No. 156043 issued by the Register of Deeds of Quezon City.[6] In 1976, the spouses

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[1] *City of Naga v. Court of Appeals*, 254 Phil. 12, 18 (1989).

[2] *Soriano III v. Yuzon*, G.R. No. 79520, August 10, 1988, 164 SCRA 227, 240-241.

[3] *Rollo,* pp. 67-78; penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Mario L. Guariña III and Santiago Javier Ranada.

[4] Records, pp. 316-321; penned by Judge Agustin S. Dizon.

[5] *Rollo,* pp. 20-23; penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Mario L. Guariña III, Monina Arevalo-Zenarosa, and Estela M. Perlas-Bernabe. Associate Justice Santiago Javier Ranada wrote a Separate Opinion, *id.* at 24-28.

[6] Records, p. 7; TSN, April 3, 1997, pp. 6-7.

separated *de facto*, and no longer communicated with each other.[7]

Sometime in March 1995, Manuel discovered that Martha had previously sold the property to Titan Construction Corporation (Titan) for ₱1,500,000.00 through a Deed of Sale[8] dated April 24, 1995, and that TCT No. 156043 had been cancelled and replaced by TCT No. 130129 in the name of Titan.

Thus, on March 13, 1996, Manuel filed a Complaint[9] for Annulment of Contract and Recovenyance against Titan before the RTC of Quezon City. Manuel alleged that the sale executed by Martha in favor of Titan was without his knowledge and consent, and therefore void. He prayed that the Deed of Sale and TCT No. 130129 be invalidated, that the property be reconveyed to the spouses, and that a new title be issued in their names.

In its Answer with Counterclaim,[10] Titan claimed that it was a buyer in good faith and for value because it relied on a Special Power of Attorney (SPA) [11] dated January 4, 1995 signed by Manuel which authorized Martha to dispose of the property on behalf of the spouses. Titan thus prayed for the dismissal of the complaint.

In his unverified Reply,[12] Manuel claimed that the SPA was spurious, and that the signature purporting to be his was a forgery; hence, Martha was wholly without authority to sell the property.

Subsequently, Manuel filed a Motion for Leave to File Amended Complaint[13] which was granted by the trial court.

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[7] TSN, April 3, 1997, p. 25.

[8] Records, pp. 12-14.

[9] *Id.* at 1-5.

[10] *Id.* at 34-38.

[11] *Id.* at 39-40.

[12] *Id.* at 42-44.

[13] *Id.* at 53-55.

Thus, on October 15, 1996, Manuel filed an Amended Complaint[14] impleading Martha as a co-defendant in the proceedings. However, despite personal service of summons[15] upon Martha, she failed to file an Answer. Thus, she was declared in default.[16] Trial then ensued.

Ruling of the Regional Trial Court

On March 7, 2000, the RTC issued a Decision which (i) invalidated both the Deed of Sale and TCT No. 130129; (ii) ordered Titan to reconvey the property to Martha and Manuel; (iii) directed the Register of Deeds of Quezon City to issue a new title in the names of Manuel and Martha; and (iv) ordered Titan to pay ₱200,000.00 plus ₱1,000.00 per appearance as attorney's fees, and ₱50,000.00 as costs of suit.

The RTC found that:

1) The property was conjugal in character since it was purchased by Manuel and Martha with conjugal funds during their marriage. The fact that TCT No. 156043 was registered in the name of "MARTHA S. DAVID x x x married to Manuel A. David" did not negate the property's conjugal nature.

2) The SPA professing to authorize Martha to sell the property on behalf of the spouses was spurious, and did not bear Manuel's genuine signature. This was the subject of expert testimony, which Titan failed to rebut. In addition, despite the fact that the SPA was notarized, the genuineness and due execution of the SPA was placed in doubt since it did not contain Manuel's residence certificate, and was not presented for registration with

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[14] *Id.* at 56-60.

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

[16] *Id.* at 84.

the Quezon City Register of Deeds, in violation of Section 64 of Presidential Decree No. 1529.[17]

3) The circumstances surrounding the transaction with Martha should have put Titan on notice of the SPA's dubious veracity. The RTC noted that aside from Martha's failure to register the SPA with the Register of Deeds, it was doubtful that an SPA would have even been necessary, since the SPA itself indicated that Martha and Manuel lived on the same street in Navotas.

The dispositive portion of the trial court's Decision reads:

Wherefore, judgment is hereby rendered:

1.) Declaring the Deed of Sale dated April 24, 1995 as void *ab initio* and without force and effect.

2.) Declaring null and void TCT No. 130129 issued by the Register of Deeds of Quezon City in the name of defendant Titan Construction Corporation.

3.) Ordering defendant Titan Construction Corporation to reconvey the subject property to plaintiff and his spouse.

4.) Ordering the Register of Deeds of Quezon City to make and issue a new title in the name of plaintiff Manuel David and his Spouse, Martha David.

5.) Ordering defendant to pay ₱200,000.00 plus ₱1,000.00 per appearance as attorney's fees and ₱50,000.00 as costs of suit.

SO ORDERED.[18]

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[17] Amending and Codifying The Laws Relative To Registration Of Property And For Other Purposes (1978). Section 64 provides:

Section 64. *Power of attorney.* Any person may, by power of attorney, convey or otherwise deal with registered land and the same shall be registered with the Register of Deeds of the province or city where the land lies. Any instrument revoking such power of attorney shall be registered in like manner.

[18] Records, p. 321.

Ruling of the Court of Appeals

In its Decision dated July 20, 2004, the CA affirmed the Decision of the trial court but deleted the award of attorney's fees and the amount of ₱50,000.00 as costs.

The dispositive portion of the Decision reads:

> WHEREFORE, with the MODIFICATION by deleting the award of attorney's fees in favor of plaintiff-appellee Manuel A. David, Sr. and the amount of ₱50,000.00 as costs, the Decision appealed from is AFFIRMED in all other respects, with costs against defendant-appellant Titan Construction Corporation.[19]

Titan moved for reconsideration but the motion was denied on August 31, 2005.

Hence, this petition.

Issues

Titan raises the following assignment of errors:

A. THE COURT OF APPEALS PATENTLY ERRED IN DECLARING THE SUBJECT DEED OF SALE NULL AND VOID AND FAILED TO APPLY TO THIS CASE THE PERTINENT LAW AND JURISPRUDENCE ON THE TORRENS SYSTEM OF LAND REGISTRATION.

B. THE COURT OF APPEALS PATENTLY ERRED IN RULING THAT TITAN WAS NOT A BUYER IN GOOD FAITH CONTRARY TO THE STANDARDS APPLIED BY THIS HONORABLE COURT IN CASES INVOLVING SIMILAR FACTS.

C. THE COURT OF APPEALS PATENTLY ERRED BY DISCARDING THE NATURE OF A NOTARIZED SPECIAL POWER OF ATTORNEY CONTRARY TO JURISPRUDENCE AND BY GIVING UNDUE WEIGHT TO THE ALLEGED EXPERT TESTIMONY *VIS-À-VIS* THE CONTESTED SIGNATURES AS THEY APPEAR TO THE NAKED EYE CONTRARY TO JURISPRUDENCE.

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[19] *Rollo,* p. 78.

D. THE COURT OF APPEALS PATENTLY ERRED BY FAILING TO DETECT BADGES OF CONNIVANCE BETWEEN RESPONDENTS.

E. THE COURT OF APPEALS PATENTLY ERRED BY NOT RULING THAT ASSUMING THE SPA WAS NULL AND VOID, THE SAME IS IMMATERIAL SINCE THE RESPONDENTS SHOULD BE CONSIDERED ESTOPPED FROM DENYING THAT THE SUBJECT PROPERTY WAS SOLELY THAT OF RESPONDENT MARTHA S. DAVID.

F. THE COURT OF APPEALS PATENTLY ERRED BY NOT RULING THAT ASSUMING THE SALE WAS VOID, ON GROUNDS OF EQUITY MARTHA S. DAVID SHOULD REIMBURSE PETITIONER OF HIS PAYMENT WITH LEGAL INTEREST.[20]

Petitioner's Arguments

Titan is claiming that it was a buyer in good faith and for value, that the property was Martha's paraphernal property, that it properly relied on the SPA presented by Martha, and that the RTC erred in giving weight to the alleged expert testimony to the effect that Manuel's signature on the SPA was spurious. Titan also argues, ***for the first time***, that the CA should have ordered Martha to reimburse the purchase price paid by Titan.

Our Ruling

The petition is without merit.

The property is part of the spouses' conjugal partnership.

The Civil Code of the Philippines,[21] the law in force at the time of the celebration of the marriage between Martha and Manuel in 1957, provides:

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

[21] REPUBLIC ACT NO. 386, An Act to Ordain and Institute the Civil Code of the Philippines (1949).

Article 160. All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife.

Article 153 of the Civil Code also provides:

Article 153. The following are conjugal partnership property:

(1) That which is acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;

xxx xxx xxx

These provisions were carried over to the Family Code. In particular, Article 117 thereof provides:

Art. 117. The following are conjugal partnership properties:

(1) Those acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;

xxx xxx xxx

Article 116 of the Family Code is even more unequivocal in that "[a]ll property acquired during the marriage, ***whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses***, is presumed to be conjugal unless the contrary is proved."

We are not persuaded by Titan's arguments that the property was Martha's exclusive property because Manuel failed to present before the RTC any proof of his income in 1970, hence he could not have had the financial capacity to contribute to the purchase of the property in 1970; and that Manuel admitted that it was Martha who concluded the original purchase of the property. In consonance with our ruling in *Spouses Castro v. Miat,*[22] Manuel was not required to prove that the property was acquired with funds of the partnership. Rather, the presumption applies even when the manner in which the property

[22] 445 Phil. 282 (2003).

was acquired does not appear.[23] Here, we find that Titan failed to overturn the presumption that the property, purchased during the spouses' marriage, was part of the conjugal partnership.

In the absence of Manuel's consent, the Deed of Sale is void.

Since the property was undoubtedly part of the conjugal partnership, the sale to Titan required the consent of both spouses. Article 165 of the Civil Code expressly provides that "the husband is the administrator of the conjugal partnership." m Likewise, Article 172 of the Civil Code ordains that "(t)he wife cannot bind the conjugal partnership without the husband's consent, except in cases provided by law."

Similarly, Article 124 of the Family Code requires that any disposition or encumbrance of conjugal property must have the written consent of the other spouse, otherwise, such disposition is void. Thus:

> Art. 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.
>
> In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

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[23] *Id.* at 293.

The Special Power of Attorney purportedly signed by Manuel is spurious and void.

The RTC found that the signature of Manuel appearing on the SPA was not his genuine signature.

As to the issue of the validity or invalidity of the subject Special Power of Attorney x x x the Court rules that the same is invalid. As aptly demonstrated by plaintiff's evidence particularly the testimony of expert witness Atty. Desiderio Pagui, which the defense failed to rebut and impeach, the subject Special Power of Attorney does not bear the genuine signature of plaintiff Manuel David thus rendering the same as without legal effect.

Moreover, the genuineness and the due execution of the Special Power of Attorney was placed in more serious doubt as the same does not contain the Residence Certificate of the plaintiff and most importantly, was not presented for registration with the Quezon City Register of Deeds which is a clear violation of Sec. 64 of P.D. No. 1529.

As regards defendant Titan Construction Corporation's assertion that plaintiff's failure to verify his Reply (wherein the validity of the Special Power of Attorney is put into question) is an implied admission of its genuineness and due execution, [this] appears at first blush a logical conclusion. However, the Court could not yield to such an argument considering that a rigid application of the pertinent provisions of the Rules of Court will not be given premium when it would obstruct rather than serve the broader interest of justice.[24]

Titan claims that the RTC gave undue weight to the testimony of Manuel's witness, and that expert testimony on handwriting is not conclusive.

The contention lacks merit. The RTC's ruling was based not only on the testimony of Manuel's expert witness finding that there were significant differences between the standard handwriting of Manuel and the signature found on the SPA,

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[24] Records, p. 319.

but also on Manuel's categorical denial that he ever signed any document authorizing or ratifying the Deed of Sale to Titan.[25]

We also note that on October 12, 2004, Titan filed before the CA a Manifestation with Motion for Re-Examination of Another Document/ Handwriting Expert[26] alleging that there is "an extreme necessity"[27] for a conduct of another examination of the SPA by a handwriting expert "as it will materially affect and alter the final outcome"[28] of the case. Interestingly, however, Titan filed on January 6, 2005 a Manifestation/Motion to Withdraw Earlier Motion for Re-Examination of PNP Laboratory Expert[29] this time praying that its motion for re-examination be withdrawn. Titan claimed that "after a circumspect evaluation, deemed it wise not to pursue anymore said request (re-examination) as there is a great possibility that the x x x [PNP and the NBI] might come out with two conflicting opinions and conclusions x x x that might cause some confusion to the minds of the Honorable Justices in resolving the issues x x x as well as the waste of material time and resources said motion may result."[30]

In any event, we reiterate the well-entrenched rule that the factual findings of trial courts, when adopted and confirmed by the CA, are binding and conclusive and will generally not be reviewed on appeal.[31] We are mandated to accord great weight to the findings of the RTC, particularly as regards its assessment of the credibility of witnesses[32] since it is the trial court judge who is in a position to observe and examine the

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[25] TSN, April 3, 1997, pp. 12-13.

[26] CA *rollo,* pp. 151-154.

[27] *Id.* at 151.

[28] *Id*.

[29] *Id.* at 156-157.

[30] *Id.* at 156.

[31] *Abapo-Almario v. Court of Appeals*, 383 Phil. 933, 940 (2000).

[32] *Ferrer v. People*, G.R. No. 143487, February 22, 2006, 483 SCRA 31, 50.

witnesses first hand.[33] Even after a careful and independent scrutiny of the records, we find no cogent reason to depart from the rulings of the courts below.[34]

Furthermore, settled is the rule that only errors of law and not of fact are reviewable by this Court in a petition for review on *certiorari* under Rule 45 of the Rules of Court. This applies with even greater force here, since the factual findings by the CA are in full agreement with those of the trial court.[35]

Indeed, we cannot help but wonder why Martha was never subpoenaed by Titan as a witness to testify on the character of the property, or the circumstances surrounding the transaction with Titan. Petitioner's claim that she could not be found is belied by the RTC records, which show that she personally received and signed for the summons at her address in Greenhills, San Juan. Titan neither filed a cross claim nor made any adverse allegation against Martha.

On the Failure to Deny the Genuineness and Due Execution of the SPA

Titan claimed that because Manuel failed to specifically deny the genuineness and due execution of the SPA in his Reply, he is deemed to have admitted the veracity of said document, in accordance with Rule 8, Sections 7 and 8,[36] of the Rules of Court.

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[33] *People v. Umali*, G.R. No. 84450, February 4, 1991, 193 SCRA 493, 501.

[34] *People v. Garchitorena*, G.R. No. 184172, May 8, 2009

[35] *Blanco v. Quasha*, 376 Phil. 480, 491 (1999).

[36] Sec. 7. Action or defense based on document.

Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

On this point, we fully concur with the findings of the CA that:

It is true that the reply filed by Manuel alleging that the special power of attorney is a forgery was not made under oath. However, the complaint, which was verified by Manuel under oath, alleged that the sale of the subject property executed by his wife, Martha, in favor of Titan was without his knowledge, consent, and approval, express or implied; and that there is nothing on the face of the deed of sale that would show that he gave his consent thereto. In *Toribio v. Bidin*, it was held that where the verified complaint alleged that the plaintiff never sold, transferred or disposed their share in the inheritance left by their mother to others, the defendants were placed on adequate notice that they would be called upon during trial to prove the genuineness or due execution of the disputed deed of sale. While Section 8, Rule 8 is mandatory, it is a discovery procedure and must be reasonably construed to attain its purpose, and in a way as not to effect a denial of substantial justice. The interpretation should be one which assists the parties in obtaining a speedy, inexpensive, and most important, a just determination of the disputed issues.

Moreover, during the pre-trial, Titan requested for stipulation that the special power of attorney was signed by Manuel authorizing his wife to sell the subject property, but Manuel refused to admit the genuineness of said special power of attorney and stated that he is presenting an expert witness to prove that his signature in the special power of attorney is a forgery. However, Titan did not register any objection x x x. Furthermore, Titan did not object to the presentation of Atty. Desiderio Pagui, who testified as an expert witness, on his Report finding that the signature on the special power of attorney was not affixed by Manuel based on his analysis of the questioned and standard signatures of the latter, and even cross-examined said

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Sec. 8. How to contest such documents.

When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

witness. Neither did Titan object to the admission of said Report when it was offered in evidence by Manuel on the ground that he is barred from denying his signature on the special power of attorney. In fact, Titan admitted the existence of said Report and objected only to the purpose for which it was offered. In *Central Surety & Insurance Company v. C.N. Hodges*, it was held that where a party acted in complete disregard of or wholly overlooked Section 8, Rule 8 and did not object to the introduction and admission of evidence questioning the genuineness and due execution of a document, he must be deemed to have waived the benefits of said Rule. Consequently, Titan is deemed to have waived the mantle of protection given [it] by Section 8, Rule 8.[37]

It is true that a notarial document is considered evidence of the facts expressed therein.[38] A notarized document enjoys a *prima facie* presumption of authenticity and due execution[39] and only clear and convincing evidence will overcome such legal presumption.[40] However, such clear and convincing evidence is present here. While it is true that the SPA was notarized, it is no less true that there were defects in the notarization which mitigate against a finding that the SPA was either genuine or duly executed. Curiously, the details of Manuel's Community Tax Certificate are conspicuously absent, yet Martha's are complete. The absence of Manuel's data supports his claim that he did not execute the same and that his signature thereon is a forgery. Moreover, we have Manuel's positive testimony that he never signed the SPA, in addition to the expert testimony that the signature appearing on the SPA was not Manuel's true signature.

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[37] *Rollo,* pp. 13-15.

[38] *Mendiola v. Court of Appeals*, 193 Phil. 326, 335 (1981). Rule 132, Section 30 of the Rules of Court provides:

> Section 30. *Proof of notarial documents*. — Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved.

[39] *Gutierrez v. Mendoza-Plaza*, G.R. No. 185477, December 4, 2009.

[40] *Domingo v. Robles*, 493 Phil. 916, 921 (2005).

Moreover, there were circumstances which mitigate against a finding that Titan was a buyer in good faith.

First, TCT No. 156043 was registered in the name of "MARTHA S. DAVID, of legal age, Filipino, married to Manuel A. David" but the Deed of Sale failed to include Martha's civil status, and only described the vendor as "MARTHA S. DAVID, of legal age, Filipino citizen, with postal address at 247 Governor Pascual, Navotas, Rizal." And it is quite peculiar that an SPA would have even been necessary, considering that the SPA itself indicated that Martha and Manuel lived on the same street (379 and 247 Governor Pascual Street, respectively).

Second, Titan's witness Valeriano Hernandez, the real estate agent who brokered the sale between Martha and Titan, testified that Jerry Yao (Yao), Titan's Vice President for Operations (and Titan's signatory to the Deed of Sale), specifically inquired why the name of Manuel did not appear on the Deed of Sale.[41] This indicates that Titan was aware that Manuel's consent may be necessary. In addition, Titan purportedly sent their representative to the Register of Deeds of Quezon City to verify TCT No. 156043, so Titan would have been aware that the SPA was never registered before the Register of Deeds.

Third, Valeriano Hernandez also testified that during the first meeting between Martha and Yao, Martha informed Yao that the property was mortgaged to a casino for ₱500,000.00. Without even seeing the property, the original title, or the SPA, and without securing an acknowledgment receipt from Martha, Titan (through Yao) gave Martha ₱500,000.00 so she could redeem the property from the casino.[42] These are certainly not actions typical of a prudent buyer.

Titan cannot belatedly claim that the RTC should have ordered Martha to reimburse the purchase price.

[41] TSN, August 21, 1998, p. 7.

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

Titan argues that the CA erred in not ruling that, even assuming the sale was void, on grounds of equity, Martha should reimburse petitioner its payment with legal interest. We note that this equity argument was raised for the first time before the CA, which disposed of it in this manner:

> Anent defendant-appellant's claim that the court *a quo* and this Court never considered the substantial amount of money paid by it to Martha David as consideration for the sale of the subject property, suffice it to say that said matter is being raised for the first time in the instant motion for reconsideration. **If well-recognized jurisprudence precludes raising an issue only for the first time on appeal proper, with more reason should such issue be disallowed or disregarded when initially raised only in a motion for reconsideration of the decision of the appellate court**.
>
> Nonetheless, record shows that only defendant-appellant was initially sued by plaintiff-appellee in his complaint for annulment of contract and reconveyance upon the allegation that the sale executed by his wife, Martha David, of their conjugal property in favor of defendant-appellant was without his knowledge and consent and, therefore, null and void. In its answer, defendant-appellant claimed that it bought the property in good faith and for value from Martha David and prayed for the dismissal of the complaint and the payment of his counterclaim for attorney's fees, moral and exemplary damages. Subsequently, plaintiff-appellee filed a motion for leave to file amended complaint by impleading Martha David as a defendant, attaching the amended complaint thereto, copies of which were furnished defendant-appellant, through counsel. The amended complaint was admitted by the court *a quo* in an Order dated October 23, 1996. Martha David was declared in default for failure to file an answer. **The record does not show [that] a cross-claim was filed by defendant-appellant against Martha David for the return of the amount of PhP1,500,000.00 it paid to the latter as consideration for the sale of the subject property. x x x** **Thus, to hold Martha David liable to defendant-appellant for the return of the consideration for the sale of the subject property, without any claim therefore being filed against her by the latter, would violate her right to due process.** The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of his defense. It is elementary that before a person can be deprived of his property, he should be

first informed of the claim against him and the theory on which such claim is premised.[43] (Emphasis supplied)

While it is true that litigation is not a game of technicalities,[44] it is equally true that elementary considerations of due process require that a party be duly apprised of a claim against him before judgment may be rendered. Thus, we cannot, in these proceedings, order the return of the amounts paid by Titan to Martha. However, Titan is not precluded by this Decision from instituting the appropriate action against Martha before the proper court.

WHEREFORE, the petition is *DENIED*. The July 20, 2004 Decision of the Court of Appeals in CA-G.R. CV No. 67090 which affirmed with modifications the March 7, 2000 Decision of the Regional Trial Court of Quezon City, Branch 80, and its August 31, 2005 Resolution denying the motion for reconsideration, are *AFFIRMED*, without prejudice to the recovery by petitioner Titan Construction Corporation of the amounts it paid to Martha S. David in the appropriate action before the proper court.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

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[43] *Rollo,* pp. 21-22.

[44] In *Sea Power Shipping Enterprises, Inc. v. Court of Appeals,* 412 Phil. 603, 611-612 (2001), we held:

> It is true that a litigation is not a game of technicalities and that the rules of procedure should not be strictly enforced at the cost of substantial justice. However, it does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. It must be emphasized that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons.

SECOND DIVISION

[G.R. No. 171092. March 15, 2010]

EDNA DIAGO LHUILLIER, *petitioner, vs.* **BRITISH AIRWAYS,** *respondent.*

SYLLABUS

1. **COMMERCIAL LAW; CARRIAGE; INTERNATIONAL AIR TRANSPORTATION; WARSAW CONVENTION; HAS THE FORCE AND EFFECT OF LAW.—** It is settled that the Warsaw Convention has the force and effect of law in this country. In *Santos III v. Northwest Orient Airlines*, we held that: The Republic of the Philippines is a party to the Convention for the Unification of Certain Rules Relating to International Transportation by Air, otherwise known as the Warsaw Convention. It took effect on February 13, 1933. The Convention was concurred in by the Senate, through its Resolution No. 19, on May 16, 1950. The Philippine instrument of accession was signed by President Elpidio Quirino on October 13, 1950, and was deposited with the Polish government on November 9, 1950. The Convention became applicable to the Philippines on February 9, 1951. On September 23, 1955, President Ramon Magsaysay issued Proclamation No. 201, declaring our formal adherence thereto, "to the end that the same and every article and clause thereof may be observed and fulfilled in good faith by the Republic of the Philippines and the citizens thereof." The Convention is thus a treaty commitment voluntarily assumed by the Philippine government and, as such, has the force and effect of law in this country.

2. **ID.; ID.; ID.; ID.; APPLICABILITY; TERM "INTERNATIONAL CARRIAGE," EXPLAINED.—** Article 1 of the Warsaw Convention provides: 1. This Convention applies to all international carriage of persons, luggage or goods performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking. 2. For the purposes of this Convention the expression "international carriage" means any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or

a transhipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention. Thus, when the place of departure and the place of destination in a contract of carriage are situated within the territories of two High Contracting Parties, said carriage is deemed an "international carriage." The High Contracting Parties referred to herein were the signatories to the Warsaw Convention and those which subsequently adhered to it. In the case at bench, petitioner's place of departure was London, United Kingdom while her place of destination was Rome, Italy. Both the United Kingdom and Italy signed and ratified the Warsaw Convention. As such, the transport of the petitioner is deemed to be an "international carriage" within the contemplation of the Warsaw Convention.

3. **ID.; ID.; ID.; ID.; ARTICLE 28 (1) OF THE WARSAW CONVENTION; JURISDICTIONAL RULE; ACTION FOR DAMAGES, WHERE MAY BE BROUGHT BY THE PLAINTIFF.—** Under Article 28(1) of the Warsaw Convention, the plaintiff may bring the action for damages before – 1. the court where the carrier is domiciled; 2. the court where the carrier has its principal place of business; 3. the court where the carrier has an establishment by which the contract has been made; or 4. the court of the place of destination. In this case, it is not disputed that respondent is a British corporation domiciled in London, United Kingdom with London as its principal place of business. Hence, under the first and second jurisdictional rules, the petitioner may bring her case before the courts of London in the United Kingdom. In the passenger ticket and baggage check presented by both the petitioner and respondent, it appears that the ticket was issued in Rome, Italy. Consequently, under the third jurisdictional rule, the petitioner has the option to bring her case before the courts of Rome in Italy. Finally, both the petitioner and respondent aver that the place of destination is Rome, Italy, which is properly designated

given the routing presented in the said passenger ticket and baggage check. Accordingly, petitioner may bring her action before the courts of Rome, Italy. We thus find that the RTC of Makati correctly ruled that it does not have jurisdiction over the case filed by the petitioner.

4. **ID.; ID.; ID.; ID.; ID.; PRONOUNCEMENT IN *SANTOS III V. NORTHWEST ORIENT AIRLINES* (G.R. NO. 101538, JUNE 23, 1992), APPLICABLE TO CASE AT BAR.—** Contrary to the contention of petitioner, *Santos III v. Northwest Orient Airlines* is analogous to the instant case because (1) the domicile of respondent is London, United Kingdom; (2) the principal office of respondent airline is likewise in London, United Kingdom; (3) the ticket was purchased in Rome, Italy; and (4) the place of destination is Rome, Italy. In addition, petitioner based her complaint on Article 2176 of the Civil Code on *quasi-delict* and Articles 19 and 21 of the Civil Code on Human Relations. In *Santos III v. Northwest Orient Airlines*, Augusto Santos III similarly posited that Article 28 (1) of the Warsaw Convention did not apply if the action is based on tort. Hence, contrary to the contention of the petitioner, the factual setting of *Santos III v. Northwest Orient Airlines* and the instant case are parallel on the material points.

5. **ID.; ID.; ID.; ID.; A TORTIOUS CONDUCT COMMITTED AGAINST AN AIRLINE PASSENGER DURING THE COURSE OF THE INTERNATIONAL CARRIAGE IS WITHIN THE AMBIT OF THE WARSAW CONVENTION.—** Black defines *obiter dictum* as "an opinion entirely unnecessary for the decision of the case" and thus "are not binding as precedent." In *Santos III v. Northwest Orient Airlines*, Augusto Santos III categorically put in issue the applicability of Article 28(1) of the Warsaw Convention if the action is based on tort. In the said case, we held that the allegation of willful misconduct resulting in a tort is insufficient to exclude the case from the realm of the Warsaw Convention. In fact, our ruling that a cause of action based on tort did not bring the case outside the sphere of the Warsaw Convention was our *ratio decidendi* in disposing of the specific issue presented by Augusto Santos III. Clearly, the contention of the herein petitioner that the said ruling is an *obiter dictum* is without basis. Relevant to this particular issue is the case of *Carey v. United Airlines*, [where] [t]he United States Court of Appeals (9th Circuit) held

that the "passenger's action against the airline carrier arising from alleged confrontational incident between passenger and flight attendant on international flight was governed exclusively by the Warsaw Convention, even though the incident allegedly involved intentional misconduct by the flight attendant." xxx. It is thus settled that allegations of tortious conduct committed against an airline passenger during the course of the international carriage do not bring the case outside the ambit of the Warsaw Convention.

6. **ID.; CIVIL PROCEDURE; SUMMONS; VOLUNTARY APPEARANCE; THE SPECIAL APPEARANCE OF THE RESPONDENT'S COUNSEL FOR THE PURPOSE OF ASSAILING THE COURT'S JURISDICTION OVER ITS PERSON, THROUGH A MOTION TO DISMISS, NOT DEEMED VOLUNTARY SUBMISSION TO THE JURISDICTION OF THE SAID COURT.—** Petitioner argues that respondent has effectively submitted itself to the jurisdiction of the trial court when the latter stated in its Comment/Opposition to the Motion for Reconsideration that "Defendant [is at a loss] x x x how the plaintiff arrived at her erroneous impression that it is/was Euro-Philippines Airlines Services, Inc. that has been making a special appearance since x x x British Airways x x x has been clearly specifying in all the pleadings that it has filed with this Honorable Court that it is the one making a special appearance." xxx This issue has been squarely passed upon in the recent case of *Garcia v. Sandiganbayan,* where we reiterated our ruling in *La Naval Drug Corporation v. Court of Appeals* and elucidated thus: xxx. Moreover, the leading *La Naval Drug Corp. v. Court of Appeals* applies to the instant case. Said case elucidates the current view in our jurisdiction that *a special appearance before the court––challenging its jurisdiction over the person through a motion to dismiss even if the movant invokes other grounds––is not tantamount to estoppel or a waiver by the movant of his objection to jurisdiction over his person; and such is not constitutive of a voluntary submission to the jurisdiction of the court.* xxx. In this case, the special appearance of the counsel of respondent in filing the Motion to Dismiss and other pleadings before the trial court cannot be deemed to be voluntary submission to the jurisdiction of the said trial court. We hence disagree with the contention of the petitioner and rule that there was no voluntary appearance

before the trial court that could constitute estoppel or a waiver of respondent's objection to jurisdiction over its person.

APPEARANCES OF COUNSEL

PJL Legal Services Group for petitioner.
A.Q. Ancheta & Partners for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Jurisdictio est potestas de publico introducta cum necessitate juris dicendi. Jurisdiction is a power introduced for the public good, on account of the necessity of dispensing justice.[1]

Factual Antecedents

On April 28, 2005, petitioner Edna Diago Lhuillier filed a Complaint[2] for damages against respondent British Airways before the Regional Trial Court (RTC) of Makati City. She alleged that on February 28, 2005, she took respondent's flight 548 from London, United Kingdom to Rome, Italy. Once on board, she allegedly requested Julian Halliday (Halliday), one of the respondent's flight attendants, to assist her in placing her hand-carried luggage in the overhead bin. However, Halliday allegedly refused to help and assist her, and even sarcastically remarked that "If I were to help all 300 passengers in this flight, I would have a broken back!"

Petitioner further alleged that when the plane was about to land in Rome, Italy, another flight attendant, Nickolas Kerrigan (Kerrigan), singled her out from among all the passengers in the business class section to lecture on plane safety. Allegedly, Kerrigan made her appear to the other passengers to be ignorant,

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[1] 50 C.J.S. 1089.

[2] Records, pp. 1-5.

uneducated, stupid, and in need of lecturing on the safety rules and regulations of the plane. Affronted, petitioner assured Kerrigan that she knew the plane's safety regulations being a frequent traveler. Thereupon, Kerrigan allegedly thrust his face a mere few centimeters away from that of the petitioner and menacingly told her that "We don't like your attitude."

Upon arrival in Rome, petitioner complained to respondent's ground manager and demanded an apology. However, the latter declared that the flight stewards were "only doing their job."

Thus, petitioner filed the complaint for damages, praying that respondent be ordered to pay ₱5 million as moral damages, ₱2 million as nominal damages, ₱1 million as exemplary damages, ₱300,000.00 as attorney's fees, ₱200,000.00 as litigation expenses, and cost of the suit.

On May 16, 2005, summons, together with a copy of the complaint, was served on the respondent through Violeta Echevarria, General Manager of Euro-Philippine Airline Services, Inc.[3]

On May 30, 2005, respondent, by way of special appearance through counsel, filed a Motion to Dismiss[4] on grounds of lack of jurisdiction over the case and over the person of the respondent. Respondent alleged that only the courts of London, United Kingdom or Rome, Italy, have jurisdiction over the complaint for damages pursuant to the Warsaw Convention,[5] Article 28(1) of which provides:

> An action for damages must be brought at the option of the plaintiff, either before the court of domicile of the carrier or his principal place of business, or where he has a place of business through which the contract has been made, or before the court of the place of destination.

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[3] *Id.* at 11.

[4] *Id.* at 12-16.

[5] Convention for the Unification of Certain Rules Relating To International Transportation by Air, signed at Warsaw on October 12, 1929.

Thus, since a) respondent is domiciled in London; b) respondent's principal place of business is in London; c) petitioner bought her ticket in Italy (through Jeepney Travel S.A.S, in Rome);[6] and d) Rome, Italy is petitioner's place of destination, then it follows that the complaint should only be filed in the proper courts of London, United Kingdom or Rome, Italy.

Likewise, it was alleged that the case must be dismissed for lack of jurisdiction over the person of the respondent because the summons was erroneously served on Euro-Philippine Airline Services, Inc. which is not its resident agent in the Philippines.

On June 3, 2005, the trial court issued an Order requiring herein petitioner to file her Comment/Opposition on the Motion to Dismiss within 10 days from notice thereof, and for respondent to file a Reply thereon.[7] Instead of filing a Comment/Opposition, petitioner filed on June 27, 2005, an Urgent *Ex-Parte* Motion to Admit Formal Amendment to the Complaint and Issuance of *Alias* Summons.[8] Petitioner alleged that upon verification with the Securities and Exchange Commission, she found out that the resident agent of respondent in the Philippines is Alonzo Q. Ancheta. Subsequently, on September 9, 2005, petitioner filed a Motion to Resolve Pending Incident and Opposition to Motion to Dismiss.[9]

Ruling of the Regional Trial Court

On October 14, 2005, the RTC of Makati City, Branch 132, issued an Order[10] granting respondent's Motion to Dismiss. It ruled that:

> The Court sympathizes with the alleged ill-treatment suffered by the plaintiff. However, our Courts have to apply the principles of

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[6] Records, p. 8.

[7] *Id.* at 21

[8] *Id.* at 25-27.

[9] *Id.* at 37-41.

[10] *Id.* at 56-57; penned by Judge Rommel O. Baybay. Emphasis in the original text.

international law, and are bound by treaty stipulations entered into by the Philippines which form part of the law of the land. One of this is the Warsaw Convention. Being a signatory thereto, the Philippines adheres to its stipulations and is bound by its provisions including the place where actions involving damages to plaintiff is to be instituted, as provided for under Article 28(1) thereof. The Court finds no justifiable reason to deviate from the indicated limitations as it will only run counter to the provisions of the Warsaw Convention. Said adherence is in consonance with the comity of nations and deviation from it can only be effected through proper denunciation as enunciated in the Santos case (*ibid*). Since the Philippines is not the place of domicile of the defendant nor is it the principal place of business, our courts are thus divested of jurisdiction over cases for damages. Neither was plaintiff's ticket issued in this country nor was her destination Manila but Rome in Italy. It bears stressing however, that referral to the court of proper jurisdiction does not constitute constructive denial of plaintiff's right to have access to our courts since the Warsaw Convention itself provided for jurisdiction over cases arising from international transportation. Said treaty stipulations must be complied with in good faith following the time honored principle of *pacta sunt servanda*.

The resolution of the propriety of service of summons is rendered moot by the Court's want of jurisdiction over the instant case.

WHEREFORE, premises considered, the present Motion to Dismiss is hereby GRANTED and this case is hereby ordered DISMISSED.

Petitioner filed a Motion for Reconsideration but the motion was denied in an Order[11] dated January 4, 2006.

Petitioner now comes directly before us on a Petition for Review on *Certiorari* on pure questions of law, raising the following issues:

Issues

I. WHETHER X X X PHILIPPINE COURTS HAVE JURISDICTION OVER A TORTIOUS CONDUCT COMMITTED AGAINST A FILIPINO CITIZEN AND

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[11] *Id.* at 75.

RESIDENT BY AIRLINE PERSONNEL OF A FOREIGN CARRIER TRAVELLING BEYOND THE TERRITORIAL LIMIT OF ANY FOREIGN COUNTRY; AND THUS IS OUTSIDE THE AMBIT OF THE WARSAW CONVENTION.

II. WHETHER X X X RESPONDENT AIR CARRIER OF PASSENGERS, IN FILING ITS MOTION TO DISMISS BASED ON LACK OF JURISDICTION OVER THE SUBJECT MATTER OF THE CASE AND OVER ITS PERSON MAY BE DEEMED AS HAVING IN FACT AND IN LAW SUBMITTED ITSELF TO THE JURISDICTION OF THE LOWER COURT, ESPECIALLY SO, WHEN THE VERY LAWYER ARGUING FOR IT IS HIMSELF THE RESIDENT AGENT OF THE CARRIER.

Petitioner's Arguments

Petitioner argues that her cause of action arose not from the contract of carriage, but from the tortious conduct committed by airline personnel of respondent in violation of the provisions of the Civil Code on Human Relations. Since her cause of action was not predicated on the contract of carriage, petitioner asserts that she has the option to pursue this case in this jurisdiction pursuant to Philippine laws.

Respondent's Arguments

In contrast, respondent maintains that petitioner's claim for damages fell within the ambit of Article 28(1) of the Warsaw Convention. As such, the same can only be filed before the courts of London, United Kingdom or Rome, Italy.

Our Ruling

The petition is without merit.

The Warsaw Convention has the force and effect of law in this country.

It is settled that the Warsaw Convention has the force and effect of law in this country. In *Santos III v. Northwest Orient Airlines*,[12] we held that:

[12] G.R. No. 101538, June 23, 1992, 210 SCRA 256.

The Republic of the Philippines is a party to the Convention for the Unification of Certain Rules Relating to International Transportation by Air, otherwise known as the Warsaw Convention. It took effect on February 13, 1933. The Convention was concurred in by the Senate, through its Resolution No. 19, on May 16, 1950. The Philippine instrument of accession was signed by President Elpidio Quirino on October 13, 1950, and was deposited with the Polish government on November 9, 1950. The Convention became applicable to the Philippines on February 9, 1951. On September 23, 1955, President Ramon Magsaysay issued Proclamation No. 201, declaring our formal adherence thereto, "to the end that the same and every article and clause thereof may be observed and fulfilled in good faith by the Republic of the Philippines and the citizens thereof."

The Convention is thus a treaty commitment voluntarily assumed by the Philippine government and, as such, has the force and effect of law in this country.[13]

The Warsaw Convention applies because the air travel, where the alleged tortious conduct occurred, was between the United Kingdom and Italy, which are both signatories to the Warsaw Convention.

Article 1 of the Warsaw Convention provides:

1. This Convention applies to all international carriage of persons, luggage or goods performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention the expression "international carriage" means any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject

[13] *Id.* at 260-261.

> to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention. (Emphasis supplied)

Thus, when the place of departure and the place of destination in a contract of carriage are situated within the territories of two High Contracting Parties, said carriage is deemed an "international carriage." The High Contracting Parties referred to herein were the signatories to the Warsaw Convention and those which subsequently adhered to it.[14]

In the case at bench, petitioner's place of departure was London, United Kingdom while her place of destination was Rome, Italy.[15] Both the United Kingdom[16] and Italy[17] signed and ratified the Warsaw Convention. As such, the transport of the petitioner is deemed to be an "international carriage" within the contemplation of the Warsaw Convention.

Since the Warsaw Convention applies in the instant case, then the jurisdiction over the subject matter of the action is governed by the provisions of the Warsaw Convention.

Under Article 28(1) of the Warsaw Convention, the plaintiff may bring the action for damages before –

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[14] *Mapa v. Court of Appeals,* 341 Phil. 281, 295 (1997).

[15] *Rollo*, pp. 155-157.

[16] The United Kingdom signed the Warsaw Convention on October 12, 1929 and ratified the same on February 14, 1933. The Convention became effective in the United Kingdom on March 15, 1933.

[17] Italy signed the Warsaw Convention on October 12, 1929 and ratified the same on February 14, 1933. The Convention became effective in Italy on May 15, 1933.

1. the court where the carrier is domiciled;
2. the court where the carrier has its principal place of business;
3. the court where the carrier has an establishment by which the contract has been made; or
4. the court of the place of destination.

In this case, it is not disputed that respondent is a British corporation domiciled in London, United Kingdom with London as its principal place of business. Hence, under the first and second jurisdictional rules, the petitioner may bring her case before the courts of London in the United Kingdom. In the passenger ticket and baggage check presented by both the petitioner and respondent, it appears that the ticket was issued in Rome, Italy. Consequently, under the third jurisdictional rule, the petitioner has the option to bring her case before the courts of Rome in Italy. Finally, both the petitioner and respondent aver that the place of destination is Rome, Italy, which is properly designated given the routing presented in the said passenger ticket and baggage check. Accordingly, petitioner may bring her action before the courts of Rome, Italy. We thus find that the RTC of Makati correctly ruled that it does not have jurisdiction over the case filed by the petitioner.

Santos III v. Northwest Orient Airlines*[18] *applies in this case.

Petitioner contends that *Santos III v. Northwest Orient Airlines*[19] cited by the trial court is inapplicable to the present controversy since the facts thereof are not similar with the instant case.

We are not persuaded.

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[18] *Supra* note 12.

[19] *Id*.

In *Santos III v. Northwest Orient Airlines*,[20] Augusto Santos III, a resident of the Philippines, purchased a ticket from Northwest Orient Airlines in San Francisco, for transport between San Francisco and Manila via Tokyo and back to San Francisco. He was wait-listed in the Tokyo to Manila segment of his ticket, despite his prior reservation. Contending that Northwest Orient Airlines acted in bad faith and discriminated against him when it canceled his confirmed reservation and gave his seat to someone who had no better right to it, Augusto Santos III sued the carrier for damages before the RTC. Northwest Orient Airlines moved to dismiss the complaint on ground of lack of jurisdiction citing Article 28(1) of the Warsaw Convention. The trial court granted the motion which ruling was affirmed by the Court of Appeals. When the case was brought before us, we denied the petition holding that under Article 28(1) of the Warsaw Convention, Augusto Santos III must prosecute his claim in the United States, that place being the (1) domicile of the Northwest Orient Airlines; (2) principal office of the carrier; (3) place where contract had been made (San Francisco); and (4) place of destination (San Francisco).[21]

We further held that Article 28(1) of the Warsaw Convention is jurisdictional in character. Thus:

A number of reasons tends to support the characterization of Article 28(1) as a jurisdiction and not a venue provision. First, the

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[20] *Id*.

[21] In said case, we distinguished between a "destination" and an "agreed stopping place." We held that:

Article 1(2) also draws a distinction between a "destination" and an "agreed stopping place." It is the "destination" and not an "agreed stopping place" that controls for purposes of ascertaining jurisdiction under the Convention.

The contract is a single undivided operation, beginning with the place of departure and ending with the ultimate destination. The use of the singular in the expression indicates the understanding of the parties to the Convention that every contract of carriage has one place of departure and one place of destination. An intermediate place where the carriage may be broken is not regarded as a "place of destination." *Id.* at 270-271.

wording of Article 32, which indicates the places where the action for damages "must" be brought, underscores the mandatory nature of Article 28(1). Second, this characterization is consistent with one of the objectives of the Convention, which is to "regulate in a uniform manner the conditions of international transportation by air." Third, the Convention does not contain any provision prescribing rules of jurisdiction other than Article 28(1), which means that the phrase "rules as to jurisdiction" used in Article 32 must refer only to Article 28(1). In fact, the last sentence of Article 32 specifically deals with the exclusive enumeration in Article 28(1) as "jurisdictions," which, as such, cannot be left to the will of the parties regardless of the time when the damage occurred.

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In other words, where the matter is governed by the Warsaw Convention, jurisdiction takes on a dual concept. Jurisdiction in the international sense must be established in accordance with Article 28(1) of the Warsaw Convention, following which the jurisdiction of a particular court must be established pursuant to the applicable domestic law. Only after the question of which court has jurisdiction is determined will the issue of venue be taken up. This second question shall be governed by the law of the court to which the case is submitted.[22]

Contrary to the contention of petitioner, *Santos III v. Northwest Orient Airlines*[23] is analogous to the instant case because (1) the domicile of respondent is London, United Kingdom;[24] (2) the principal office of respondent airline is likewise in London, United Kingdom;[25] (3) the ticket was purchased in Rome, Italy;[26] and (4) the place of destination is Rome, Italy.[27]

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[22] *Id.* at 266-267.

[23] *Id.*

[24] *Rollo,* p. 139.

[25] *Id*.

[26] *Id.* at 174.

[27] *Id.* at 155-157.

In addition, petitioner based her complaint on Article 2176[28] of the Civil Code on *quasi-delict* and Articles 19[29] and 21[30] of the Civil Code on Human Relations. In *Santos III v. Northwest Orient Airlines*,[31] Augusto Santos III similarly posited that Article 28 (1) of the Warsaw Convention did not apply if the action is based on tort. Hence, contrary to the contention of the petitioner, the factual setting of *Santos III v. Northwest Orient Airlines*[32] and the instant case are parallel on the material points.

Tortious conduct as ground for the petitioner's complaint is within the purview of the Warsaw Convention.

Petitioner contends that in *Santos III v. Northwest Orient Airlines*,[33] the cause of action was based on a breach of contract while her cause of action arose from the tortious conduct of the airline personnel and violation of the Civil Code provisions on Human Relations.[34] In addition, she claims that our pronouncement in *Santos III v. Northwest Orient Airlines*[35] that "the allegation of willful misconduct resulting in a tort is insufficient to exclude the case from the comprehension of the

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[28] Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by provisions of this Chapter.

[29] Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith.

[30] Article 21. Any person, who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

[31] *Supra* note 12.

[32] *Id*.

[33] *Id*.

[34] *Rollo*, pp. 159 and 162.

[35] *Supra* note 12.

Warsaw Convention," is more of an *obiter dictum* rather than the *ratio decidendi.*[36] She maintains that the fact that said acts occurred aboard a plane is merely incidental, if not irrelevant.[37]

We disagree with the position taken by the petitioner. Black defines *obiter dictum* as "an opinion entirely unnecessary for the decision of the case" and thus "are not binding as precedent."[38] In *Santos III v. Northwest Orient Airlines*,[39] Augusto Santos III categorically put in issue the applicability of Article 28(1) of the Warsaw Convention if the action is based on tort.

In the said case, we held that the allegation of willful misconduct resulting in a tort is insufficient to exclude the case from the realm of the Warsaw Convention. In fact, our ruling that a cause of action based on tort did not bring the case outside the sphere of the Warsaw Convention was our *ratio decidendi* in disposing of the specific issue presented by Augusto Santos III. Clearly, the contention of the herein petitioner that the said ruling is an *obiter dictum* is without basis.

Relevant to this particular issue is the case of *Carey v. United Airlines*,[40] where the passenger filed an action against the airline arising from an incident involving the former and the airline's flight attendant during an international flight resulting to a heated exchange which included insults and profanity. The United States Court of Appeals (9th Circuit) held that the "passenger's action against the airline carrier arising from alleged confrontational incident between passenger and flight attendant on international flight was governed exclusively by the Warsaw Convention,

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[36] *Rollo*, p. 159.

[37] *Id.* at 162.

[38] BLACK'S *Law Dictionary,* 6th ed., 1990.

[39] *Supra* note 12.

[40] 255 F.3d 1044.

even though the incident allegedly involved intentional misconduct by the flight attendant."[41]

In *Bloom v. Alaska Airlines*,[42] the passenger brought nine causes of action against the airline in the state court, arising from a confrontation with the flight attendant during an international flight to Mexico. The United States Court of Appeals (9th Circuit) held that the "Warsaw Convention governs actions arising from international air travel and provides the exclusive remedy for conduct which falls within its provisions." It further held that the said Convention "created no exception for an injury suffered as a result of intentional conduct"[43] which in that case involved a claim for intentional infliction of emotional distress.

It is thus settled that allegations of tortious conduct committed against an airline passenger during the course of the international carriage do not bring the case outside the ambit of the Warsaw Convention.

Respondent, in seeking remedies from the trial court through special appearance of counsel, is not deemed to have voluntarily submitted itself to the jurisdiction of the trial court.

Petitioner argues that respondent has effectively submitted itself to the jurisdiction of the trial court when the latter stated in its Comment/Opposition to the Motion for Reconsideration that "Defendant [is at a loss] x x x how the plaintiff arrived at her erroneous impression that it is/was Euro-Philippines Airlines Services, Inc. that has been making a special appearance since x x x British Airways x x x has been clearly specifying in all

[41] *Id*.

[42] 36 Fed. Appx. 278, 2002 WL 1136727 (C.A. 9).

[43] *Id*.

the pleadings that it has filed with this Honorable Court that it is the one making a special appearance."[44]

In refuting the contention of petitioner, respondent cited *La Naval Drug Corporation v. Court of Appeals*[45] where we held that even if a party "challenges the jurisdiction of the court over his person, as by reason of absence or defective service of summons, and he also invokes other grounds for the dismissal of the action under Rule 16, *he is not deemed to be in estoppel or to have waived his objection to the jurisdiction over his person."*[46]

This issue has been squarely passed upon in the recent case of *Garcia v. Sandiganbayan,*[47] where we reiterated our ruling in *La Naval Drug Corporation v. Court of Appeals*[48] and elucidated thus:

> Special Appearance to Question a Court's Jurisdiction Is Not Voluntary Appearance
>
> The second sentence of Sec. 20, Rule 14 of the Revised Rules of Civil Procedure clearly provides:
>
> > Sec. 20. Voluntary appearance. – The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.
>
> Thus, a defendant who files a motion to dismiss, assailing the jurisdiction of the court over his person, together with other grounds raised therein, is not deemed to have appeared voluntarily before the court. What the rule on voluntary appearance – the first sentence of the above-quoted rule – means is that the voluntary appearance

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[44] *Rollo*, p. 169.

[45] G.R. No. 103200, August 31, 1994, 236 SCRA 78.

[46] *Id.* at 89.

[47] G.R. No. 170122, October 12, 2009.

[48] *Supra*.

of the defendant in court is without qualification, in which case he is deemed to have waived his defense of lack of jurisdiction over his person due to improper service of summons.

The pleadings filed by petitioner in the subject forfeiture cases, however, do not show that she voluntarily appeared without qualification. Petitioner filed the following pleadings in Forfeiture I: (a) motion to dismiss; (b) motion for reconsideration and/or to admit answer; (c) second motion for reconsideration; (d) motion to consolidate forfeiture case with plunder case; and (e) motion to dismiss and/or to quash Forfeiture I. And in Forfeiture II: (a) motion to dismiss and/or to quash Forfeiture II; and (b) motion for partial reconsideration.

The foregoing pleadings, particularly the motions to dismiss, were filed by petitioner solely for special appearance with the purpose of challenging the jurisdiction of the SB over her person and that of her three children. Petitioner asserts therein that SB did not acquire jurisdiction over her person and of her three children for lack of valid service of summons through improvident substituted service of summons in both Forfeiture I and Forfeiture II. This stance the petitioner never abandoned when she filed her motions for reconsideration, even with a prayer to admit their attached Answer *Ex Abundante Ad Cautelam* dated January 22, 2005 setting forth affirmative defenses with a claim for damages. And the other subsequent pleadings, likewise, did not abandon her stance and defense of lack of jurisdiction due to improper substituted services of summons in the forfeiture cases. Evidently, from the foregoing Sec. 20, Rule 14 of the 1997 Revised Rules on Civil Procedure, petitioner and her sons did not voluntarily appear before the SB constitutive of or equivalent to service of summons.

Moreover, the leading *La Naval Drug Corp. v. Court of Appeals* applies to the instant case. Said case elucidates the current view in our jurisdiction that *a special appearance before the court—challenging its jurisdiction over the person through a motion to dismiss even if the movant invokes other grounds—is not tantamount to estoppel or a waiver by the movant of his objection to jurisdiction over his person; and such is not constitutive of a voluntary submission to the jurisdiction of the court.*

Thus, it cannot be said that petitioner and her three children voluntarily appeared before the SB to cure the defective substituted

services of summons. They are, therefore, not estopped from questioning the jurisdiction of the SB over their persons nor are they deemed to have waived such defense of lack of jurisdiction. Consequently, there being no valid substituted services of summons made, the SB did not acquire jurisdiction over the persons of petitioner and her children. And perforce, the proceedings in the subject forfeiture cases, insofar as petitioner and her three children are concerned, are null and void for lack of jurisdiction. (Emphasis supplied)

In this case, the special appearance of the counsel of respondent in filing the Motion to Dismiss and other pleadings before the trial court cannot be deemed to be voluntary submission to the jurisdiction of the said trial court. We hence disagree with the contention of the petitioner and rule that there was no voluntary appearance before the trial court that could constitute estoppel or a waiver of respondent's objection to jurisdiction over its person.

WHEREFORE, the petition is *DENIED*. The October 14, 2005 Order of the Regional Trial Court of Makati City, Branch 132, dismissing the complaint for lack of jurisdiction, is *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

EN BANC

[G.R. No. 173510. March 15, 2010]

ERPASCUAL DIEGA *y* PAJARES, *petitioner, vs.* **COURT OF APPEALS,** *respondent.*

[G.R. No. 174099. March 15, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ERPASCUAL DIEGA *y* PAJARES,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE WITH HOMICIDE; ELEMENTS.— In a special complex crime of rape with homicide, the following elements must concur: (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman. Both rape and homicide must be established beyond reasonable doubt.

2. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; EVEN ABSENT EYEWITNESS, AN ACCUSED CAN BE CONVICTED OF THE CRIME CHARGED WHERE SUFFICIENT CIRCUMSTANTIAL EVIDENCE ARE PRESENTED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.— Considering that there were no witnesses to the commission of the crime charged herein, the weight of the prosecution's evidence must then be appreciated in light of the well-settled rule that an accused can be convicted even in the absence of an eyewitness, as long as sufficient circumstantial evidence are presented by the prosecution to prove beyond reasonable doubt that the accused committed the crime.

3. ID.; ID.; ID.; ID.; WHEN SUFFICIENT FOR CONVICTION.— Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. It is sufficient to sustain conviction if: (a) there is more than one

circumstance; (b) the facts from which the inferences were derived have been established; and (c) the combination of all circumstances is such as to warrant a finding of guilt beyond reasonable doubt.

4. ID.; ID.; ID.; ID.; A JUDGMENT BASED THEREON CAN BE SUSTAINED WHEN THE CIRCUMSTANCES, CONSIDERED TOGETHER, POINT TO THE ACCUSED AS THE CULPRIT TO THE EXCLUSION OF ALL OTHERS.— For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with each other, consistent with the hypothesis that accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. In other words, a judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator. Here, the circumstantial evidence presented by the prosecution leads to the inescapable conclusion that the appellant committed the complex crime of rape with homicide. When considered together, the circumstances point to the appellant as the culprit to the exclusion of all others.

5. ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY INITIAL SILENCE OF THE WITNESS ESPECIALLY WHEN THERE IS A THREAT AGAINST HIM AND HIS FAMILY.— The credibility of Juanito is not adversely affected by his initial silence since he was under constant threat by the appellant. After learning of the fate suffered by "AAA" at the hands of the appellant, it was only natural for Juanito to take the threat against him and his family seriously. The threat was real and present even after Juanito left. In fact, appellant told Martin and Arnel that he would kill Juanito.

6. ID.; ID.; ID.; NOT DIMINISHED BY BELATED DISCLOSURE OF THE INCIDENT; PEOPLE REACT DIFFERENTLY TO WHAT THEY OBSERVED DEPENDING ON THEIR SITUATION AND STATE OF MIND.— [T]he belated disclosure of Martin and Arnel that they saw Juanito run from the banana grove at the time "AAA" was raped and slain does not diminish their credibility. People react differently to what they observed depending on their situation and state of mind. Martin and

Arnel did not bother to report to the police investigators that they saw Juanito running from the plantation because, at that time, they did not know that it was somehow related to the fateful incident. They also knew that Juanito was a good-natured boy incapable of committing misdemeanors. It was, therefore, difficult for them to link him to the rape and murder of "AAA."

7. ID.; ID.; ID.; WITNESSES WILL NOT FABRICATE AND CONCOCT A TALE AGAINST A MAN WITH WHOM THEY HAD NO PREVIOUS QUARREL.— [T]hese prosecution witnesses would not fabricate and concoct such a tale against a man with whom they had no previous misunderstanding or quarrel, and are in fact telling the truth, motivated by a sincere desire to obtain justice for the criminal acts committed by the appellant on the young and defenseless "AAA."

8. ID.; ID.; ID.; ABSENT EVIDENCE THAT THE WITNESSES WERE ACTUATED BY IMPROPER MOTIVE, THE PRESUMPTION IS THAT THEY WERE NOT AND THEIR TESTIMONIES ARE ENTITLED TO CREDENCE.— Motive has also been proven by the prosecution. "AAA's" aunt testified that prior to the commission of the crime, the appellant maliciously stared and uttered remarks with sexual overtones to "AAA" on several occasions. Her failure to relay these incidents to "AAA's" parents does not render her testimony unworthy of credence. While it may have been best for the aunt to report the malicious acts of the appellant to the parents of "AAA," there was no legal imperative to do so. Conversely, the evil motive imputed to the aunt of "AAA" due to a land dispute between the appellant's employer and the parents of "AAA" deserves scant consideration. The charge of revenge and resentment is nothing more but unmitigated speculation as not a shred of evidence was offered in support thereof. While there was evidence of an existing land dispute between the family of the victim and the employer of the appellant, there was no proof to substantiate the allegation that the said hostility motivated the aunt of "AAA" to testify falsely against him. Besides, the land dispute was between the plantation owner and the family of "AAA" and not between the latter and the appellant. In the absence of evidence that the prosecution witnesses were actuated by improper motive, the presumption is that they were not so actuated and that their testimonies are entitled to credence.

9. ID.; ID.; DEFENSE OF ALIBI; TO PREVAIL, THE ACCUSED MUST PROVE PHYSICAL IMPOSSIBILITY TO BE AT THE CRIME SCENE AT THE TIME OF ITS COMMISSION.— Against the prosecution's evidence, the appellant presents the defense of denial and alibi. Denial is intrinsically a weak defense and must be supported by strong evidence of non-culpability in order to be credible. Courts likewise view the defense of alibi with suspicion and caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily. For alibi to prevail, it must also be established by positive, clear and satisfactory proof that it was physically impossible for the appellant to have been at the scene of the crime at the time of its commission, and not merely that the appellant was somewhere else. Here, the appellant stated that he was about 400 meters away from the crime scene at the approximate time "AAA" was raped and murdered. An hour later, the appellant was with a certain Capt. Antonio Dionisio at a place that was two kilometers away from the crime scene. Thus, it was not at all physically impossible for the appellant to be at the place of the incident at the time it occurred. The fact that Capt. Antonio Dionisio did not corroborate the appellant's alibi puts more doubt in the latter's defense.

10. ID.; ID.; ID.; POSITIVE ASSERTIONS OF THE WITNESSES DESERVE MORE CREDENCE AND EVIDENTIARY WEIGHT THAN THE NEGATIVE AVERMENTS OF THE APPELLANT.— [T]he appellant's twin defenses of denial and alibi pale in the light of the array of circumstantial evidence presented by the prosecution. The positive assertions of the prosecution witnesses deserve more credence and evidentiary weight than the negative averments of the appellant.

11. ID.; CRIMINAL PROCEDURE; ARREST; RIGHT TO ASSAIL THE LEGALITY OF THE ARREST DEEMED WAIVED WHERE THE ACCUSED VOLUNTARILY SUBMITS HIMSELF TO THE COURT BY ENTERING A PLEA.— [W]e agree with the CA that, even if his arrest was unlawful because of the absence of a valid warrant of arrest, he was deemed to have waived his right to assail the same as he never bothered to question the legality thereof and, in fact, even voluntarily entered his plea. The appellant is deemed to have waived his right to assail the legality of his arrest when he voluntarily submitted himself to

the court by entering a plea instead of filing a motion to quash the information for lack of jurisdiction over his person.

12. **CRIMINAL LAW; RAPE WITH HOMICIDE; PROPER PENALTY.—** Rape with Homicide under Article 335 of the Revised Penal Code in relation to RA 7659, provides that when by reason or on the occasion of rape, homicide is committed, the penalty shall be death. However, in view of the subsequent passage of RA 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines," we are mandated to impose on the appellant the penalty of *reclusion perpetua* without eligibility for parole.

13. **ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELLANT.—** As to damages, civil indemnity *ex delicto* in the amount of ₱100,000.00 was correctly awarded by the CA. However, the award of actual damages amounting to ₱42,000.00 is not proper since it was not sufficiently proven. It is settled that actual damages must be substantiated by documentary evidence, such as receipts to prove the expenses incurred as a result of the death of the victim. Here, the amount is not supported by any document on record. In lieu of actual damages, we award temperate damages in the amount of ₱25,000.00. Moral damages in the amount of ₱100,000.00 awarded by the trial court and affirmed by the CA must be reduced to ₱75,000.00 in line with current jurisprudence. An award of exemplary damages in the amount of ₱50,000.00 is, however, justified. Article 2229 of the Civil Code grants an award of exemplary damages in order to deter the commission of similar acts and to allow the courts to forestall behavior that can have grave and deleterious consequences on society.

APPEARANCES OF COUNSEL

Albert Fanoga for Erpascual Diega.

D E C I S I O N

DEL CASTILLO, *J.*:

The accused may be convicted on the basis of circumstantial evidence, provided the proven circumstances constitute an

unbroken chain leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.[1]

The instant appeal assails the Decision[2] of the Court of Appeals (CA) dated February 9, 2006 in CA-G.R. CR-H.C. No. 01384 which affirmed with modification the Decision[3] of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 21 dated March 3, 1991 in Criminal Case No. 949-M-95, finding appellant guilty beyond reasonable doubt of the complex crime of rape with homicide.

Factual Antecedents

The Amended Information[4] against the appellant contains the following accusatory allegations:

That on or about the 17th day of March, 1995, in the Municipality of San Jose del Monte, Province of Bulacan, Philippines and within the jurisdiction of this Honorable Court the above-named accused, with lewd design, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of "AAA"[5] against the latter's will and without her consent, and by reason or on occasion of the said rape, said accused did then and there, willfully, unlawfully and feloniously, with intent to kill the said "AAA," attack, strangulate and assault her with wood vine and blunt instrument, thereby inflicting upon her mortal injuries/wounds which directly caused her death.

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[1] *People v. Asis*, 439 Phil. 707, 717–718 (2002).

[2] CA *rollo,* pp. 203-236; penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Arturo D. Brion (now a Member of this Court) and Mariflor Punzalan Castillo.

[3] Records, pp. 204-211; penned by Judge Cesar M. Solis.

[4] *Id.* at 53. Emphasis in the original text.

[5] Pursuant to Section 44 of Republic Act (RA) No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and Section 63, Rule XI of the Rules and Regulations Implementing R.A. No. 9262, the real name of the child-victim is withheld to protect his/her privacy. Fictitious initials are used instead to represent him/her. Likewise, the personal circumstances or any other information tending to establish or compromise his/her identity, as well as those of his/her immediate family or household members shall not be disclosed.

Contrary to law.

Upon arraignment, the appellant entered a plea of not guilty. Thereafter, trial ensued.

The Version of the Prosecution

The Brief for the Appellee[6] contains a summary of the following evidence for the prosecution:

The victim, "AAA," was a 13-year old girl residing with her family in Rodriguez, Rizal. She was a 1st year high school student and would usually leave her home at 4:00 o'clock in the morning and walk for about a kilometer to a terminal where she could take a ride to school. The path towards the terminal passes a farm within a 50-hectare plantation located at Upper Ciudad Real, Araneta, San Jose Del Monte, Bulacan, where the appellant was employed as a stay-in security guard. "AAA" uses the same route on her way home.

On March 17, 1995, "AAA" failed to return home at the usual time. Her parents frantically searched for her, but it was only on the next day, March 18, 1995, between 9:00 and 10:00 o'clock in the morning, when the dead body of "AAA" was discovered inside the plantation.

"AAA's" corpse was covered with leaves. A wood vine was tied around her neck and her head bore several wounds. Her school uniform was crumpled and her panty was missing. The medico-legal examination conducted around 24 hours from "AAA's" death indicated that she died of "asphyxia by strangulation, hemorrhages as a result of traumatic injuries, head and body." There were deep, fresh lacerations at 3:00 and 9:00 o'clock positions and a shallow fresh laceration at 7:00 o'clock position in her hymen which "are compatible with recent loss of virginity." Moreover, the doctor who conducted the examination on the cadaver of "AAA" saw several injuries in the middle left forearm, suggesting that "AAA" used her hands to protect herself.

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[6] CA *rollo*, pp. 138-172.

The police investigation revealed that on March 17, 1995, between 1:00 and 2:00 o'clock in the afternoon, Juanito Manalo III (Juanito) was tending to the grazing carabaos inside the plantation when he saw the appellant stooping down. The appellant stood up clad only in his shorts and waved his pistol to call Juanito. As Juanito approached, he saw that the appellant had a menacing look and noticed "AAA" lying unconscious on the ground. The appellant then pointed his pistol to Juanito and ordered him to touch the body of "AAA" and to tie a vine around her neck. Out of fear, Juanito obeyed and discovered that "AAA" no longer had undergarments. He was permitted to leave, but only after the appellant threatened to kill him and his family if he would reveal to anyone what he witnessed. As Juanito fled from the scene, he was seen by Martin Gailan (Martin) and Arnel Alminana (Arnel).

Martin and Arnel were also privy to the death threats made by the appellant against Juanito on several occasions causing Juanito to leave his abode temporarily. They also claimed that although the appellant reported for work on March 17, 1995, he was not in his post and could not be located. At the time the appellant was questioned by the police, it was observed that he had fresh scratches on his arms, neck, and back.

The police investigation also revealed that prior to the commission of the crime, "AAA" and her aunt used to pass by the plantation and every time the appellant would see them, especially when he was drunk, he would whistle at "AAA" and even touch her upper arm. At one time, the appellant uttered to "AAA's" aunt, "*Misis, ingatan mo ang iyong pamangkin*." According to the aunt, the appellant always looked lecherously at "AAA."

Initially the appellant voluntarily submitted himself to detention. However, he was released to the custody of his former counsel after his waiver was withdrawn. Pending trial, he absconded and remained at-large until his arrest in his hometown in Baybay Gamay in Northern Samar.

The Version of the Defense

The appellant denied any wrongdoing. According to him, he did not know "AAA." He claimed he was at Balete, in the center of the farm from midnight to 10:00 o'clock in the morning of March 17, 1995. Thereafter, until 3:00 o'clock in the afternoon, he was in Makabod, Montalban, Rizal, which was on the other side of the river where the crime was committed.

The appellant alleged that he was being falsely accused of the rape-slay because he informed the farm manager that "AAA's" family was squatting within the farm and that he prevented their carabaos from grazing inside the compound. He belied the claim of Juanito but admitted not knowing of any motive why Juanito would falsely testify against him.

On March 19, 1995, the police invited him and other employees of the farm for questioning. After all of them were questioned, he was the only one who was not allowed to leave. On March 22, 1995, the police prepared his statement despite the fact that he was not assisted by counsel. Thereafter, the statement was subscribed before one of the officers.

The appellant claimed that he was released after five days of incarceration without a case having been filed against him. However, on March 26, 1995, or two days after being released, he was again brought to the police station for questioning. During his imprisonment, the parents of "AAA" allegedly admitted in a confrontation held in the presence of the jail warden and the investigating police officer that they filed the complaint due to the land dispute with the owners of the farm and not because of the death of their daughter, "AAA."

On April 4, 1995, the appellant further claimed that he was released from detention, again without any complaint being filed against him. However, on April 10, 1995 a warrant of arrest was issued against him based on the sworn statement of Juanito. The police attempted to serve the warrant at his workplace but failed since he was no longer an employee of the farm. It was only on October 30, 1997 that he was arrested in his home province of Northern Samar.

Ruling of the Regional Trial Court

On March 3, 1999, the RTC rendered judgment convicting the appellant of rape with homicide. The dispositive portion of the Decision reads:

WHEREFORE, all premises considered, this Court resolves that the prosecution has successfully undertaken its burden to prove the guilt of the accused beyond reasonable doubt. Accordingly, accused Erpascual Diega *y* Pajares is hereby found GUILTY of the crime of Rape with Homicide as charged. In view thereof and pursuant to Article 335 of the Revised Penal Code as amended, considering that by reason or on occasion of the Rape, Homicide [was] committed, the accused is sentenced to suffer the penalty of DEATH by lethal injection.

He is further directed to indemnify [the] heirs of "AAA" the sum of ₱50,000.00 for the latter's death, the amount of ₱42,000.00 for actual damages and the additional sum of ₱100,000.00 for moral damages.

With costs against the accused.[7]

The case was forwarded to this Court for automatic review and docketed as G.R. No. 138232. However, in consonance with our ruling in *People v. Mateo*,[8] the case was transferred to the CA for proper disposition.

Ruling of the Court of Appeals

The CA affirmed with modification the trial court's Decision and disposed as follows:

WHEREFORE, in view of the foregoing, the Decision dated March 13, 1999 of the Regional Trial Court of Malolos, Bulacan, Branch 21 is ***AFFIRMED with MODIFICATION*** that the civil indemnity ***ex delicto*** be increased from ₱50,000.00 to ₱100,000.00 conformably with the ruling in ***People vs. Paraiso, 349 SCRA 335***.

SO ORDERED.[9]

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[7] Records, p. 211.

[8] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[9] CA *rollo*, p. 236.

The case once again reached this Court and was docketed as G.R. No. 174099. Meanwhile, the appellant's counsel filed a motion for extension to file petition for review on *certiorari* which was docketed as G.R. No. 173510. The motion was granted[10] and a petition for review was filed.[11] G.R. Nos. 174099 and 173510 were subsequently consolidated since both cases involve the same parties and issues and assail the same Decision of the CA.[12]

The Issue

Appellant attributes the following error to the appellate court:

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDINGS OF THE REGIONAL TRIAL COURT THAT CIRCUMSTANTIAL EVIDENCE ARE STRONG ENOUGH TO CONVICT THE ACCUSED AND SENTENCED HIM TO DEATH.[13]

Our Ruling

The appeal lacks merit.

In a special complex crime of rape with homicide, the following elements must concur: (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman.[14] Both rape and homicide must be established beyond reasonable doubt.[15]

Considering that there were no witnesses to the commission of the crime charged herein, the weight of the prosecution's

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[10] *Rollo* (G.R. No. 173510), p. 7

[11] *Id.* at 9-23.

[12] Per Resolution dated October 16, 2006.

[13] *Rollo* (G.R. No. 173510), p. 15.

[14] *People v. Yatar*, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 521.

[15] *People v. Nanas*, 415 Phil. 683, 696 (2001).

evidence must then be appreciated in light of the well-settled rule that an accused can be convicted even in the absence of an eyewitness, as long as sufficient circumstantial evidence is presented by the prosecution to prove beyond reasonable doubt that the accused committed the crime.[16]

Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience.[17] It is sufficient to sustain conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences were derived have been established; and (c) the combination of all circumstances is such as to warrant a finding of guilt beyond reasonable doubt.[18]

For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with each other, consistent with the hypothesis that accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.[19] In other words, a judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator.[20]

Here, the circumstantial evidence presented by the prosecution leads to the inescapable conclusion that the appellant committed the complex crime of rape with homicide. When considered together, the circumstances point to the appellant as the culprit to the exclusion of all others.

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[16] *People v. Yatar*, *supra* note 14 at 513.

[17] *People v. Darilay*, 465 Phil. 747, 767 (2004).

[18] RULES OF COURT, Rule 133, Section 4.

[19] *People v. Darilay*, *supra*.

[20] *People v. Pascual*, G.R. No. 172326, January 19, 2009, 576 SCRA 242 252.

First. The appellant lived and worked as a security guard in the farm where "AAA" was raped and killed. Due to the nature of his job, he had all the opportunity to observe the people who travel to and from the farm.

Second. "AAA" routinely passed by the farm in going to school. She used the same path on her way home.

Third. The appellant displayed lewd interest whenever he saw "AAA" by touching her arms and making lewd comments.

Fourth. Although the appellant reported for duty on the day the crime was committed, he was not on his post and could not be located.

Fifth. On March 17, 1995, at around 1:00 to 2:00 o'clock in the afternoon, Juanito identified the appellant, clad only in short pants, as the only person beside the unconscious "AAA," whose blouse was unbuttoned and crumpled, and whose skirt was raised above her knees, near the banana grove inside the farm.

Sixth. The appellant threatened to kill Juanito, and with the use of a pistol, ordered him to touch the body of "AAA" and to tie a vine around her neck.

Seventh. When Juanito obeyed, he noticed that "AAA" no longer had undergarments.

Eighth. The threat on the life of Juanito by the appellant was persistent. Prosecution witnesses Martin and Arnel testified that the appellant continued to threaten Juanito on several occasions.

Ninth. During the police investigation, the appellant had several scratches on his arms, neck, and body, which the investigators determined to have been caused by fingernails.

Tenth. The autopsy revealed that "AAA" was raped, beaten and strangled to death on or about the time and date Juanito saw the appellant beside the unconscious body of "AAA."

Eleventh. The appellant was observed to be restless after the crime.

Twelfth. As soon as the waiver was withdrawn by the former counsel of the appellant, he abandoned his job and never returned.

Thirteenth. The appellant also fled his residence before the warrant of arrest could be served by the police. The case was even delayed for two years until his capture in a remote *barangay* in Northern Samar.

The appellant however assails the sufficiency of the circumstantial evidence and alleges that Juanito was the perpetrator of the crime. According to appellant, on the day the crime was committed, Juanito left the office at 1:00 o'clock in the afternoon, which is the time "AAA" usually passes through the farm every school day. At 1:30 o'clock in the afternoon, he was seen by his co-workers scampering towards the forest. Thereafter, the police invited him for questioning and thus had the opportunity to tell the police what he witnessed. However, he remained silent. Juanito even went into hiding momentarily after the discovery of the crime.

The appellant also claims that he could not have threatened Juanito since he was already detained pending police investigation of the incident. The threat against Juanito was merely imagined. Further, the appellant argues that the testimonies of Martin and Arnel that they saw Juanito run from the scene of the crime are unworthy of credence because they did not inform the police of this incident at the very instance they were invited for questioning.

The appellant likewise posits that the police imputed the rape and murder of "AAA" to him since there was no other lead in solving the case. There were also no pieces of physical evidence recovered from the crime scene. The police instead relied on the alleged scratches found on his back and arms to link him to the crime. However, the appellant argues that this is unbelievable since he was not subjected to a medical examination to determine whether the alleged scratches were indeed inflicted by fingernails. At the very least, the police should have taken pictures of said scratches, but they did not do so.

The appellant assails the trial court's finding that he had a motive for committing the crime in view of the testimony of

"AAA's" aunt that he touched "AAA" maliciously and uttered lewd remarks. He claims that if the testimony of "AAA's" aunt were true, then a complaint should have been filed against him or, at least, the aunt should have told the parents of "AAA" of this incident. However, she did not do so. Appellant likewise alleges that the family of the victim had ill motives in filing the case against him because they had a previous land dispute.

The appellant further insists that his voluntary submission to a polygraph examination despite the absence of a lawyer is indicative of his innocence. Moreover, he claims to have been in the office at around 10:00 o'clock in the morning on the day the crime was committed. He was also seen on the same day by the prosecution witness on board a truck at around 3:00 o'clock in the afternoon and again sometime around 5 o'clock in the afternoon.

Lastly, the appellant contends that he was denied due process since it was only the sworn statements of the prosecution witnesses that the police investigators prepared that served as basis for the issuance of a warrant for his arrest. The appellant claims that Juanito and the other witnesses should have been presented to the Municipal Trial Court judge, who, in turn, should have examined them personally by way of probing questions. He further avers that the illegality of his arrest is also apparent from his detention for five days without being charged with any offense.

The appellant's arguments fail to impress.

Juanito's presence at the crime scene at the time "AAA" was raped and killed does not necessarily mean that he was the author of the crime. Juanito has sufficiently explained in a clear and categorical manner his presence thereat. He testified on how he unexpectedly found the appellant clad only in his shorts stooping down on the grassy portion of the banana grove inside the farm. He recounted how the appellant told him to approach the unconscious body of "AAA" and forced him under threat of death, to tie her with a wood vine. He also narrated his flight after the appellant decided to let him go. Juanito's

testimony deserves credence since it was unshaken by cross-examination and unflawed by contradictions.

The credibility of Juanito is not adversely affected by his initial silence since he was under constant threat by the appellant. After learning of the fate suffered by "AAA" at the hands of the appellant, it is only natural for Juanito to take the threat against him and his family seriously. The threat was real and present even after Juanito left. In fact, appellant told Martin and Arnel that he would kill Juanito.

Moreover, it is not true that Juanito kept the matter to himself. He told his mother of the crime he witnessed and even wrote a letter to her before leaving for the province to avoid the appellant.[21]

Similarly, the belated disclosure of Martin and Arnel that they saw Juanito run from the banana grove at the time "AAA" was raped and slain does not diminish their credibility. People react differently to what they observed depending on their situation and state of mind. Martin and Arnel did not bother to report to the police investigators that they saw Juanito running from the plantation because, at that time, they did not know that it was somehow related to the fateful incident. They also knew that Juanito was a good-natured boy incapable of committing misdemeanors. It was, therefore, difficult for them to link him to the rape and murder of "AAA."

Further, these prosecution witnesses would not fabricate and concoct such a tale against a man with whom they had no previous misunderstanding or quarrel, and are in fact telling the truth, motivated by a sincere desire to obtain justice for the criminal acts committed by the appellant on the young and defenseless "AAA."

We find absurd the contention of the appellant that he was implicated by the police since the latter had no other leads in their investigation. Among the 12 employees of the farm who were questioned by the police investigators, the appellant became

[21] TSN, April 29, 1998, p. 7.

the prime suspect due to his inability to explain the fingernail scratches discovered on different parts of his body. Although he vehemently denied having scratches, the prosecution sufficiently established the contrary. At the police station, he explained that the scratches on his arm were caused by a barbwire while the scratches in other parts of his body were caused by mosquito bites. However, the ocular inspection conducted by the police investigators revealed that the barbwire was only knee-high and could not have caused the scratches on appellant's arms. Moreover, it was clear from the appearance of the fresh scratches on the appellant's body that the same were not caused by mosquito bites. They were more compatible with fingernail marks. The lack of a medical examination does not diminish their evidentiary weight. After all, it was the appellant's counsel who refused to have him examined.[22]

Motive has also been proven by the prosecution. "AAA's" aunt testified that prior to the commission of the crime, the appellant maliciously stared at and uttered remarks with sexual overtones to "AAA" on several occasions. Her failure to relay these incidents to "AAA's" parents did not render her testimony unworthy of credence. While it may have been best for the aunt to report the malicious acts of the appellant to the parents of "AAA," there was no legal imperative to do so.

Conversely, the evil motive imputed to the aunt of "AAA" due to a land dispute between the appellant's employer and the parents of "AAA" deserves scant consideration. The charge of revenge and resentment is nothing more but unmitigated speculation as not a shred of evidence was offered in support thereof. While there was evidence of an existing land dispute between the family of the victim and the employer of the appellant, there was no proof to substantiate the allegation that the said hostility motivated the aunt of "AAA" to testify falsely against him. Besides, the land dispute was between the plantation owner and the family of "AAA" and not between the latter and the appellant. In the absence of evidence that the prosecution

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[22] TSN, March 6, 1998, p. 7.

witnesses were actuated by improper motive, the presumption is that they were not so actuated and that their testimonies are entitled to credence.[23]

Appellant's voluntary submission to a polygraph test even without the assistance of counsel also deserves scant consideration. When he was taken to the polygraph section of the police department, appellant was declared unfit for a polygraph test. Thus, he was told to return on another day, but did not comply. Consequently, no polygraph examination was ever conducted on the appellant.

Against the prosecution's evidence, the appellant presents the defense of denial and alibi. Denial is intrinsically a weak defense and must be supported by strong evidence of non-culpability in order to be credible. Courts likewise view the defense of alibi with suspicion and caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily.[24] For alibi to prevail, it must also be established by positive, clear and satisfactory proof that it was physically impossible for the appellant to have been at the scene of the crime at the time of its commission, and not merely that the appellant was somewhere else.[25]

Here, the appellant stated that he was about 400 meters away from the crime scene at the approximate time "AAA" was raped and murdered. An hour later, the appellant was with a certain Capt. Antonio Dionisio at a place that was two kilometers away from the crime scene. Thus, it was not at all physically impossible for the appellant to be at the place of the incident at the time it occurred. The fact that Capt. Antonio Dionisio did not corroborate the appellant's alibi puts more doubt in the latter's defense.

Thus, the appellant's twin defenses of denial and alibi pale in the light of the array of circumstantial evidence presented by the prosecution.[26] The positive assertions of the prosecution witnesses

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[23] *People v. Diaz,* 443 Phil. 67, 86 (2003).

[24] *People v. Pascual*, *supra* note 20 at 259.

[25] *People v. De la Cruz*, G.R. No. 173308, June 25, 2008, 555 SCRA 329, 340.

[26] *People v. Pascual*, *supra* note 20 at 259.

deserve more credence and evidentiary weight than the negative averments of the appellant.

Lastly, the appellant's contention that his arrest was attended with irregularity is unworthy of credence. Records show that the "prepared statements" were given by the witnesses after they answered the questions of the police authorities.[27] His arrest, therefore, was not based merely on statements prepared by the police authorities for the prosecution witnesses.

Further, we agree with the CA that, even if his arrest was unlawful because of the absence of a valid warrant of arrest, he was deemed to have waived his right to assail the same as he never bothered to question the legality thereof and, in fact, even voluntarily entered his plea.[28] The appellant is deemed to have waived his right to assail the legality of his arrest when he voluntarily submits himself to the court by entering a plea instead of filing a motion to quash the information for lack of jurisdiction over his person.[29]

The Proper Imposable Penalty

Rape with Homicide under Article 335 of the Revised Penal Code in relation to RA 7659, provides that when by reason or on the occasion of rape, homicide is committed, the penalty shall be death. However, in view of the subsequent passage of RA 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines," we are mandated to impose on the appellant the penalty of *reclusion perpetua* without eligibility for parole.[30]

The Damages

As to damages, civil indemnity *ex delicto* in the amount of ₱100,000.00 was correctly awarded by the CA. However, the award of actual damages amounting to ₱42,000.00 is not proper since it was not sufficiently proven. It is settled that actual damages

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[27] TSN, February 25, 1998, p. 8.

[28] *People v. De la Cruz*, *supra* at 338.

[29] *Id*.

[30] *People v. Pascual*, *supra* note 20 at 260.

must be substantiated by documentary evidence, such as receipts to prove the expenses incurred as a result of the death of the victim.[31] Here, the amount is not supported by any document on record. In lieu of actual damages, we award temperate damages in the amount of ₱25,000.00.[32] Moral damages in the amount of ₱100,000.00 awarded by the trial court and affirmed by the CA must be reduced to ₱75,000.00 in line with current jurisprudence.[33] An award of exemplary damages in the amount of ₱50,000.00 is, however, justified.[34] Article 2229 of the Civil Code grants an award of exemplary damages in order to deter the commission of similar acts and to allow the courts to forestall behavior that can have grave and deleterious consequences on society.[35]

WHEREFORE, the Decision of the Court of Appeals dated February 9, 2006 in CA-G.R. CR-H.C. No. 01384 is *AFFIRMED with MODIFICATIONS*. Appellant Erpascual Diega *y* Pajares is found *GUILTY* beyond reasonable doubt of the complex crime of rape with homicide and sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. Appellant is ordered to pay the heirs of "AAA" the amounts of ₱100,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱50,000.00 as exemplary damages, and ₱25,000.00 as temperate damages.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Peralta, Bersamin, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Brion, J., no part.

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[31] *People v. Sison*, G.R. No. 172752, June 28, 2008, 555 SCRA 156, 173.

[32] *People v. Bascugin*, G.R. No. 184704, June 30, 2009.

[33] *Id*.

[34] *Id*.

[35] *Id*.

SECOND DIVISION

[G.R. No. 173854. March 15, 2010]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **FAR EAST BANK & TRUST COMPANY (NOW BANK OF THE PHILIPPINE ISLANDS),** *respondent.*

SYLLABUS

1. TAXATION; TAX REFUND; REQUISITES.— A taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites: 1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax; 2) It must be shown on the return that the income received was declared as part of the gross income; and 3) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.

2. ID.; ID.; ID.; TAXPAYER FAILED TO PROVE THAT THE INCOME RECEIVED WAS INCLUDED IN THE GROSS INCOME AS REFLECTED IN THE RETURN.— To establish the fact of withholding, respondent submitted Certificates of Creditable Tax Withheld at Source and Monthly Remittance Returns of Income Taxes Withheld, which pertain to **rentals and sales of real property**, respectively. However, a perusal of respondent's 1994 Annual Income Tax Return shows that the gross income was derived **solely from sales of services.** In fact, the phrase "NOT APPLICABLE" was printed on the schedules pertaining to rent, sale of real property, and trust income. Thus, based on the entries in the return, the income derived from **rentals and sales of real property** upon which the creditable taxes were withheld **were not included in respondent's gross income as reflected in its return**. Since no income was reported, it follows that no tax was withheld. To reiterate, it is incumbent upon the taxpayer to reflect in his return the income upon which any creditable tax is required to be withheld at the source.

3. ID.; ID.; ID.; TAXPAYER IS REQUIRED TO PRESENT ALL THE CERTIFICATES OF TAX WITHHELD AT SOURCE.— The CA likewise failed to consider in its Decision the absence of several

Certificates of Creditable Tax Withheld at Source. It immediately granted the refund without first verifying whether the fact of withholding was established by the Certificates of Creditable Tax Withheld at Source as required under Section 10 of Revenue Regulation No. 6-85. As correctly pointed out by the CTA, the certifications *(Exhibit UU)* issued by respondent cannot be considered in the absence of the required Certificates of Creditable Tax Withheld at Source.

4. ID.; ID.; ENTITLEMENT TO A TAX REFUND IS FOR THE TAXPAYER TO PROVE AND NOT FOR THE GOVERNMENT TO DISPROVE; APPLICATION.— [T]he fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer. And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Benedicto Verzosa Felipe & Burkley Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.

This Petition for Review on *Certiorari* assails the January 31, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP

[1] *Rollo*, pp. 127-139; penned by Associate Justice Edgardo F. Sundiam and concurred in by Associate Justices Martin S. Villarama, Jr. (now a Member of this Court) and Japar B. Dimaampao.

No. 56773 which reversed and set aside the October 4, 1999 Decision[2] of the Court of Tax Appeals (CTA) in CTA Case No. 5487. Also assailed is the July 19, 2006 Resolution[3] of the CA denying the motion for reconsideration.

The CTA found that respondent Far East Bank & Trust Company failed to prove that the income derived from rentals and sale of real property from which the taxes were withheld were reflected in its 1994 Annual Income Tax Return. The CA found otherwise.

Factual Antecedents

On April 10, 1995, respondent filed with the Bureau of Internal Revenue (BIR) two Corporate Annual Income Tax Returns, one for its Corporate Banking Unit (CBU)[4] and another for its Foreign Currency Deposit Unit (FCDU),[5] for the taxable year ending December 31, 1994. The return for the CBU consolidated the respondent's overall income tax liability for 1994, which reflected a refundable income tax of ₱12,682,864.00, computed as follows:

	FCDU	CBU
Gross Income	₱13,319,068	5,348,080,630
Less: Deductions	1,397,157	5,432,828,719
Net Income	11,921,911	[84,748,089]
Tax Rate	35%	35%
Income Tax Due Thereon	4,172,669	NIL
Consolidated Tax Due for Both CBU and FCDU Operations	₱ 4,172,669	

[2] *Id.* at 142-151; penned by Associate Justice Amancio Q. Saga and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Ramon O. De Veyra.

[3] *Id.* at 140-141.

[4] *Id.* at 154-155.

[5] *Id.* at 178.

Less:

Quarterly Income Tax Payments	
CBU - 1st Quarter	633,085
- 2nd Quarter	11,844,333
FCDU - 1st Quarter	955,280
- 2nd Quarter	1,104,942

Less:

Creditable Taxes Withheld at Source	2,317,893
Refundable Income Tax	[₱12,682,864][6]

Pursuant to Section 69[7] of the old National Internal Revenue Code (NIRC), the amount of ₱12,682,864.00 was carried over and applied against respondent's income tax liability for the taxable year ending December 31, 1995. On April 15, 1996, respondent filed its 1995 Annual Income Tax Return, which showed a total overpaid income tax in the amount of ₱17,443,133.00, detailed as follows:

	FCDU	CBU
Gross Income	₱16,531,038	7,076,497,628
Less: Deductions	1,327,549	7,086,821,354
Net Income	15,203,539	[10,423,728]
Tax Rate	35%	35%
Income Tax Due Thereon	5,321,239	NIL
Consolidated Tax Due for Both CBU and FCDU Operations	₱ 5,321,239	

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[6] *Id.* at 143.

[7] Section 69. Final Adjustment Return. — Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:

(a) Pay the excess still due; or

(b) Be refunded the excess amount paid, as the case may be.

Less:	
Prior year's (1994) excess income tax credit	12,682,864
Additional prior year's excess income tax cred	6,283,484
Creditable Taxes Withheld at Source	3,798,024
Refundable Income Tax	[₱17,443,133][8]

Out of the ₱17,433,133.00 refundable income tax, only ₱13,645,109.00 was sought to be refunded by respondent. As to the remaining ₱3,798,024.00, respondent opted to carry it over to the next taxable year.

On May 17, 1996, respondent filed a claim for refund of the amount of ₱13,645,109.00 with the BIR. Due to the failure of petitioner Commissioner of Internal Revenue (CIR) to act on the claim for refund, respondent was compelled to bring the matter to the CTA on April 8, 1997 *via* a Petition for Review docketed as CTA Case No. 5487.

After the filing of petitioner's Answer, trial ensued.

To prove its entitlement to a refund, respondent presented the following documents:

Exhibits	Nature and Description
A	Corporate Annual Income Tax Return covering income of respondent's CBU for the year ended December 31, 1994 together with attachments
B	Corporate Annual Income Tax Return covering income of respondent's FCDU for the year ended December 31, 1994 together with attachments

In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. *(Now Section 76 of the NIRC of 1997).*

[8] *Rollo,* p. 143.

C	Corporate Annual Income Tax Return covering income of respondent's CBU for the year ended December 31, 1995 together with attachments
D	Corporate Annual Income Tax Return covering income of respondent's FCDU for the year ended December 31, 1995 together with attachments
N to Z; AA to UU	Certificates of Creditable Withholding Tax and Monthly Remittance Returns of Income Taxes Withheld issued by various withholding agents for the year ended December 31, 1994
VV	Letter claim for refund dated May 8, 1996 filed with the Revenue District Office No. 33 on May 17, 1996[9]

Petitioner, on the other hand, did not present any evidence.

Ruling of the Court of Tax Appeals

On October 4, 1999, the CTA rendered a Decision denying respondent's claim for refund on the ground that respondent failed to show that the income derived from rentals and sale of real property from which the taxes were withheld were reflected in its 1994 Annual Income Tax Return.

On October 20, 1999, respondent filed a Motion for New Trial based on excusable negligence. It prayed that it be allowed to present additional evidence to support its claim for refund.

However, the motion was denied on December 16, 1999 by the CTA. It reasoned, thus:

[Respondent] is reminded that this case was originally submitted for decision as early as September 22, 1998 (p. 497, CTA Records). In view, however, of the Urgent Motion to Admit Memorandum filed on April 27, 1999 by Atty. Louella Martinez, who entered her

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[9] *Id.* at 147-148.

appearance as collaborating counsel of Atty. Manuel Salvador allegedly due to the latter counsel's absences, this Court set aside its resolution of September 22, 1998 and considered this case submitted for decision as of May 7, 1999. Nonetheless, it took [respondent] another five months after it was represented by a new counsel and after a decision unfavorable to it was rendered before [respondent] realized that an additional material documentary evidence has to be presented by way of a new trial, this time initiated by a third counsel coming from the same law firm. x x x

Furthermore, in ascertaining whether or not the income upon which the taxes were withheld were included in the returns of the [respondent], this Court based its findings on the income tax returns and their supporting schedules prepared and reviewed by the [respondent] itself and which, to Us, are enough to support the conclusion reached.

WHEREFORE, in view of the foregoing, [respondent's] Motion for New Trial is hereby **DENIED** for lack of merit.

SO ORDERED.[10]

Ruling of the Court of Appeals

On appeal, the CA reversed the Decision of the CTA. The CA found that respondent has duly proven that the income derived from rentals and sale of real property upon which the taxes were withheld were included in the return as part of the gross income.

Hence, this present recourse.

Issue

The lone issue presented in this petition is whether respondent has proven its entitlement to the refund.[11]

Our Ruling

We find that the respondent miserably failed to prove its entitlement to the refund. Therefore, we grant the petition filed by the petitioner CIR for being meritorious.

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

[11] *Id.* at 111.

A taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites:

1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;

2) It must be shown on the return that the income received was declared as part of the gross income; and

3) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.[12]

The two-year period requirement is based on Section 229 of the NIRC of 1997 which provides that:

SECTION 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. *(Formerly Section 230 of the old NIRC)*

While the second and third requirements are found under Section 10 of Revenue Regulation No. 6-85, as amended, which reads:

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[12] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals,* G.R. No. 155682, March 27, 2007, 519 SCRA 93, 96.

Section 10. *Claims for tax credit or refund.* — Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement duly issued by the payer to the payee (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom.

Respondent timely filed its claim for refund.

There is no dispute that respondent complied with the first requirement. The filing of respondent's administrative claim for refund on May 17, 1996 and judicial claim for refund on April 8, 1997 were well within the two-year period from the date of the filing of the return on April 10, 1995.[13]

Respondent failed to prove that the income derived from rentals and sale of real property were included in the gross income as reflected in its return.

However, as to the second and third requirements, the tax court and the appellate court arrived at different factual findings.

The CTA ruled that the income derived from rentals and sales of real property were not included in respondent's gross income. It noted that in respondent's 1994 Annual Income Tax Return, the phrase "NOT APPLICABLE" was printed on the space provided for rent, sale of real property and trust income. The CTA also declared that the certifications issued by respondent cannot be considered in the absence of the Certificates of Creditable Tax Withheld at Source. The CTA ruled that:

x x x the Certificates of Creditable Tax Withheld at Source submitted by [respondent] pertain to rentals of real property while the Monthly Remittance Returns of Income Taxes Withheld refer to sales of real

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[13] *Rollo*, p. 149.

property. But, if we are to look at Schedules 3, 4, and 5 of the Annual Income Tax Return of [respondent] for 1994 (Exhibit "A"), **there was no showing that the Rental Income and Income from Sale of Real Property were included as part of the gross income appearing in Section A of the said return.** In fact, under the said schedules, the phrase "NOT APPLICABLE" was printed by [respondent]. Verily, the **income of [respondent] coming from rent and sale of real property upon which the creditable taxes withheld were based were not duly reflected.** As to the certifications issued by the [respondent] (Exh. UU), **the same cannot be considered in the absence of the requisite Certificates of Creditable Tax Withheld at Source.**

Based on the foregoing, **[respondent] has failed to comply with two essential requirements for a valid claim for refund.** Consequently, the same cannot be given due course.[14] (Emphasis supplied)

On the other hand, the CA found thus:

We disagree with x x x CTA's findings. In the case of *Citibank, N.A. vs. Court of Appeals (280 SCRA 459)*, the Supreme Court held that:

> "**a refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding.** However, a detailed proof of the truthfulness of each and every item in the income tax return is not required. x x x
>
> x x x The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct. x x x"

In the case at bench, the BIR examined [respondent] Bank's Corporate Annual Income Tax Returns for the years 1994 and 1995 when they were filed on April 10, 1995 and April 15, 1996, respectively. Presumably, the BIR found no false declaration in them because it did not allege any false declaration thereof in its Answer (to the petition for review) filed before x x x CTA. Nowhere in the Answer, did the BIR dispute the amount of tax refund being claimed by [respondent] Bank as inaccurate or erroneous. In fact, the reason given by the BIR (in its Answer to the petition for review) why the

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[14] *Id.* at 150.

claimed tax refund should be denied was that "x x x the amount of ₱13,645,109.00 was not illegally or erroneously collected, hence, the petition for review has no basis" [see Record, p. 32]. The amount of ₱17,433,133.00 reflected as refundable income tax in [respondent] Bank's Corporate Annual Income Tax Return for the year 1995 was not disputed by the BIR to be inaccurate because there were certain income not included in the return of the [respondent]. Verily, this leads Us to a conclusion that [respondent] Bank's Corporate Annual Income Tax Returns submitted were accepted as regular and even accurate by the BIR.

Incidentally, under Sec. 16 of the NIRC, the Commissioner of the **BIR is tasked to make an examination of returns and assess the correct amount of tax,** to wit:

> "Sec. 16. Power of the Commissioner to make assessment and prescribe additional requirements for tax administration and enforcement.
>
> (a) After a return is filed as required under the provision of this Code, the Commissioner shall examine it and assess the correct amount of tax. x x x"

which the [petitioner] Commissioner undeniably failed to do. Moreover, noteworthy is the fact that during the hearing of the petition for review before the CTA, [petitioner] Commissioner of the BIR submitted the case for decision "in view of the fact that he has no evidence to present nor records to submit relative to the case"x x x

x x x x x x x x x

Thus, although it is a fact that [respondent] failed to indicate said income payments under the appropriate Schedules 3, 4, and 5 of Section C of its 1994 Annual Income Tax Return (Exhibit "A"), however, **We give credence to [respondent] Bank's assertion that it reported the said income payments as part of its gross income when it included the same as part of the "Other Income," "Trust Income," and "Interest Income"** stated in the Schedule of Income (referred to as an attachment in Section C of Exhibit "A", x x x and in the 1994 audited Financial Statements (FS) supporting [respondent's] 1994 Annual Corporate Income Tax Return. The reason why the phrase "NOT APPLICABLE" was indicated in schedules 3, 4, and 5 of Section C of [respondent's] 1994 Annual Income Tax Return is due to the fact that [respondent] Bank already reported the subject rental income and income from sale of real property in the Schedule of Income under

the headings "Other Income/Earnings," "Trust Income" and "Interest Income." Therefore, [respondent] Bank still complied with the second requirement that the income upon which the taxes were withheld are included in the return as part of the gross income.

x x x x x x x x x

[Respondent] Bank's various documentary evidence showing that it had satisfied all requirements under the Tax Code *vis-à-vis* **the Bureau of Internal Revenue's failure to adduce any evidence in support of their denial of the claim**, [respondent] Bank should, therefore, be granted the present claim for refund.[15] (Emphasis supplied)

Between the decision of the CTA and the CA, it is the former's that is based on the evidence and in accordance with the applicable law and jurisprudence.

To establish the fact of withholding, respondent submitted Certificates of Creditable Tax Withheld at Source and Monthly Remittance Returns of Income Taxes Withheld, which pertain to **rentals and sales of real property**, respectively. However, a perusal of respondent's 1994 Annual Income Tax Return shows that the gross income was derived **solely from sales of services.** In fact, the phrase "NOT APPLICABLE" was printed on the schedules pertaining to rent, sale of real property, and trust income.[16] Thus, based on the entries in the return, the income derived from **rentals and sales of real property** upon which the creditable taxes were withheld **were not included in respondent's gross income as reflected in its return**. Since no income was reported, it follows that no tax was withheld. To reiterate, it is incumbent upon the taxpayer to reflect in his return the income upon which any creditable tax is required to be withheld at the source.[17]

Respondent's explanation that its income derived from rentals and sales of real properties were included in the gross income

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[15] *Id.* at 136 to 138.

[16] *Id.* at 155.

[17] *Far East Bank and Trust Company v. Court of Appeals,* G.R. No. 129130, December 9, 2005, 477 SCRA 49, 54.

but were classified as "Other Earnings" in its Schedule of Income[18] attached to the return is not supported by the evidence. There is nothing in the Schedule of Income to show that the income under the heading "Other Earnings" includes income from rentals and sales of real property. No documentary or testimonial evidence was presented by respondent to prove this. In fact, respondent, upon realizing its omission, filed a motion for new trial on the ground of excusable negligence with the CTA. Respondent knew that it had to present additional evidence showing the breakdown of the "Other Earnings" reported in its Schedule of Income attached to the return to prove that the income from rentals and sales of real property were actually included under the heading "Other Earnings."[19] Unfortunately, the CTA was not convinced that there was excusable negligence to justify the granting of a new trial.

Accordingly, the CA erred in ruling that respondent complied with the second requirement.

Respondent failed to present all the Certificates of Creditable Tax Withheld at Source.

The CA likewise failed to consider in its Decision the absence of several Certificates of Creditable Tax Withheld at Source. It immediately granted the refund without first verifying whether the fact of withholding was established by the Certificates of Creditable Tax Withheld at Source as required under Section 10 of Revenue Regulation No. 6-85. As correctly pointed out by the CTA, the certifications *(Exhibit UU)* issued by respondent cannot be considered in the absence of the required Certificates of Creditable Tax Withheld at Source.

The burden is on the taxpayer to prove its entitlement to the refund.

Moreover, the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent

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[18] *Rollo*, p. 173.

[19] CA *rollo*, pp. 17-18.

does not *ipso facto* entitle the respondent to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.[20]

And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund.[21]

Hence, for failing to prove its entitlement to a tax refund, respondent's claim must be denied. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.[22]

WHEREFORE, the petition is *GRANTED*. The assailed January 31, 2006 Decision of the Court of Appeals in CA-G.R. SP No. 56773 and its July 19, 2006 Resolution are *REVERSED* and *SET ASIDE.* The October 4, 1999 Decision of the Court of Tax Appeals denying respondent's claim for tax refund for failure to prove that the income derived from rentals and sale of real property from which the taxes were withheld were reflected in its 1994 Annual Income Tax Return, is *REINSTATED* and *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

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[20] *Philippine Long Distance Telephone Company v. Commissioner of Internal Revenue*, G.R. No. 157264, January 31, 2008, 543 SCRA 329, 335.

[21] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue,* G.R. Nos. 156637 and 162004, December 14, 2005, 477 SCRA 761, 775.

[22] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008, 546 SCRA 150, 163.

FIRST DIVISION

[G.R. No. 181040. March 15, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RAYMOND FABIAN *y* NICOLAS and ALLAN MACALONG *y* BUCCAT,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE CONCLUSIVE AND BINDING ON THIS COURT.—** It is a settled 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. Moreover, the factual findings of the trial court, when affirmed by the Court of Appeals, are conclusive and binding on this Court. In the present case, appellants gravely failed to show that the trial court overlooked or misapprehended any fact or circumstance of weight and substance to warrant a deviation from this rule.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES ON MINOR DETAILS DO NOT IMPAIR THE INTEGRITY OF THE PROSECUTION WITNESSES.—** The alleged inconsistencies in the testimonies of the prosecution witnesses refer to trivial or minor matters, which do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witnesses' honesty. The alleged inconsistencies on minor details pertain to peripheral matters and do not refer to the actual operation itself, that crucial moment when Fabian was caught delivering *shabu* to Macalong, who knowingly possessed it. Thus, the Court sustains the trial court in giving credence to the testimonies of the prosecution's witnesses especially since the trial court was in a better position to evaluate the witnesses' deportment during the trial.

3. **ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY COUPLED WITH THE TRIAL COURT'S FINDING OF THE CREDIBILITY OF THE PROSECUTION WITNESSES PREVAIL OVER SELF-**

SERVING DENIAL.— It must be emphasized that their testimonies in open court are considered in line with the presumption that law enforcement officers have performed their duties in a regular manner, absent evidence to the contrary. In the absence of proof of motive to impute falsely a crime as serious as violation of the Comprehensive Dangerous Drugs Act, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of the prosecution witnesses, shall prevail over appellants' self-serving and uncorroborated denial. This presumption holds true for the police officers in the present case, as Fabian and Macalong could not provide a credible account on why they were allegedly being falsely accused.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

VILLARAMA, JR., *J.*:

Assailed before the Court is the July 20, 2007 Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 02310. The Court of Appeals affirmed the May 29, 2006 Decision[2] of the Regional Trial Court (RTC) of Marikina City, Branch 192 finding appellant Raymond Fabian *y* Nicolas *alias* Jaja guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165,[3] and finding appellant Allan Macalong *y* Buccat

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[1] *Rollo*, pp. 2-19. Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison concurring.

[2] CA *rollo*, pp. 19-28. Penned by Judge Geraldine C. Fiel-Macaraig.

[3] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Also known as the "Comprehensive Dangerous Drugs Act of 2002." Approved on June 7, 2002.

guilty beyond reasonable doubt of violation of Section 11, paragraph 2(3), Article II of Rep. Act No. 9165.

The prosecution charged appellants with violation of Sections 5 and 11 of Rep. Act No. 9165 in two (2) Informations which read:

Criminal Case No. 2004-2961-D-MK

That on or about the 16th day of August 2004, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, feloniously and knowingly deliver and give away to ALLAN MACALONG *y* BUCCAT 0.06 gram of white crystalline substance, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[4]

Criminal Case No. 2004-2962-D-MK

That on or about the 16th day of August 2004, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control of 0.06 gram of white crystalline substance, which is a dangerous [drug], in violation of the above-cited law.

CONTRARY TO LAW.[5]

Upon arraignment on November 17, 2004, both appellants, assisted by a counsel *de oficio*, pleaded "Not Guilty."[6] Thereafter, trial on the merits ensued.

The prosecution presented the following version:

On August 16, 2004, PO1 Roberto Muega, a member of the Marikina City Police Station's Anti-Illegal Drugs Special

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[4] Records, p. 2.

[5] *Id.* at 6.

[6] *Id.* at 32.

Operations Task Force (SAIDSOTF), received a call from a concerned citizen regarding the rampant sale of illegal drugs in Camia Street, Doña Petra, Concepcion Uno, Marikina City. Acting on the report of the concerned citizen, a team composed of P/ Supt. Romeo Abaring, PO1 Muega, PO2 Edwin Dano, PO2 Ferdinand Brubio and PO2 Christopher Anos was created to conduct surveillance in the area and possible buy-bust operation. PO2 Christopher Anos was the designated poseur-buyer. The team coordinated with the Philippine Drug Enforcement Agency (PDEA). After receiving PDEA Reference Number 1608-04-05 by fax machine, they proceeded to the target area.

At around 7:40 in the evening, the officers arrived at Camia Street and began observing the activities of the people in the area. PO1 Muega positioned himself near the driver's door of an FX taxi parked along Camia Street. A few moments later, he noticed Macalong enter a small alley. After several minutes, Macalong came out of the alley, this time accompanied by Fabian. Macalong and Fabian stood near the FX taxi and started whispering to each other. PO1 Muega then saw Fabian hand over to Macalong a small plastic sachet containing white crystalline substance, which he suspected to be *shabu*. Immediately, PO1 Muega introduced himself as a police officer and arrested Fabian and Macalong. He signalled to the other police officers, who came to his aid in apprehending the two suspects.

The officers recovered a plastic sachet containing white crystalline substance from Macalong's hand. They informed Fabian and Macalong of the cause of their arrest as well as their constitutional rights. PO1 Muega marked the confiscated plastic sachet with "ABM-RM POSS 8/16/04." He also had control and custody of the plastic sachet from the time of the arrest until they reached the SAIDSOTF office. PO1 Muega prepared the request for laboratory examination and together with the plastic sachet, brought it to the Philippine National Police (PNP) Crime Laboratory, National Headquarters, in Camp Crame, Quezon City.[7] PO1 Jennifer G.

[7] TSN, April 19, 2005, pp. 3-9; TSN, July 19, 2005, pp. 3-9.

Tantoy, forensic chemical officer of the PNP Crime Laboratory, examined the marked specimen, which tested positive for methamphetamine hydrochloride or *shabu*.[8]

On the other hand, appellants denied the charges against them. Raymond Fabian testified that on August 16, 2004, at around 4:00 in the afternoon, he was cleaning their FX Taxi, which was parked along Camia Street, when an owner-type jeep and a red car stopped near him. Two (2) men in civilian clothes disembarked from their vehicle and approached him. Four (4) other persons were left inside the vehicles. PO2 Ferdinand Brubio asked him if he knew a certain "Bobong." He told them that he did not know the person. He was frisked and forced to board the FX taxi that he was cleaning. The officers took the key of the FX taxi from him. At the precinct, PO2 Brubio informed him that he was arrested for illegal possession of *shabu*. It was only there where he met his co-accused Macalong. He denied that it was PO1 Muega who frisked him because the latter was left inside the vehicle. He further denied that PO1 Muega saw him handing over a plastic sachet to Macalong.[9]

For his part, Macalong testified that on August 16, 2004 at around 6:00 in the evening, he was riding a tricycle along Dama de Noche Street, Twinville Subdivision in Marikina City, on his way home to San Mateo, Rizal. Suddenly, an owner-type jeep slowed down beside them forcing the tricycle to stop. PO2 Brubio, who was wearing short pants and shirt, alighted from the jeep and approached him. He was ordered to get out of the tricycle and raise his hands. When PO2 Brubio searched his front and back pockets, PO2 Brubio recovered a pack of cigarettes and his wallet. PO2 Brubio asked the tricycle driver and the other passengers to leave the area. Macalong was unable to leave because his driver's license was inside his wallet. He asked why PO2 Brubio took his wallet, but the latter simply said that they were just going to look inside. At the precinct, a small plastic containing white crystalline substance was shown

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[8] Chemistry Report No. D-367-04, folder of exhibits, p. 2.

[9] TSN, November 8, 2005, pp. 4-9.

to him. According to Macalong, it was the first time he came to know that he was being charged with violation of the Comprehensive Dangerous Drugs Act. He further denied that he knew Raymond Fabian, whom he just met at the police station at around 7:00 in the evening of the same date.[10]

After trial on the merits, the RTC of Marikina City, Branch 192 found appellants guilty beyond reasonable doubt of the offenses charged. The dispositive portion of the Decision dated May 29, 2006 reads:

> WHEREFORE, in Criminal Case No. 2004-2961-D-MK, the Court finds the accused, Raymond Fabian *y* Nicolas @ Jaja, GUILTY BEYOND REASONABLE DOUBT of Violation of Section 5, Article II of Republic Act 9165. Applying Article 63 of the Revised Penal Code, and there being no mitigating or aggravating circumstance attending the commission of the crime, the accused is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and TO PAY A FINE OF FIVE HUNDRED THOUSAND (₱500,000.00) PESOS.
>
> In Criminal Case No. 2004-2962-D-MK, the Court finds the accused, Allan Macalong *y* Buccat, GUILTY BEYOND REASONABLE DOUBT of violation of Section 11, paragraph 2(3), Article II of Republic Act 9165. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to THIRTEEN (13) YEARS, as maximum, and to PAY A FINE of THREE HUNDRED THOUSAND (₱300,000.00) PESOS.
>
> The *shabu* subject matter of this case is hereby confiscated in favor of the Government and to be turned over to the Dangerous Drugs Board for proper disposal, without delay.
>
> SO ORDERED.[11]

On appeal, appellants assailed the credibility of the police officers and insisted that they were framed-up. They denied having committed the illegal acts attributed to them; thus, there were no legal bases for their arrest. According to them, the trial court's assessment of the evidence was unduly selective

[10] TSN, February 20, 2006, pp. 4-12.

[11] CA *rollo*, pp. 27-28.

and the evidence was not scrutinized in its totality, with the trial court disregarding important facts which would warrant the acquittal of the appellants based on reasonable doubt. They stressed that factual findings of the trial court may be reversed if, by the evidence on record or lack of it, it appears that the trial court overlooked, misunderstood or misapplied certain facts or circumstance of weight or substance which, if considered, would affect the result of the case.[12]

In a Decision dated July 20, 2007, the Court of Appeals affirmed the judgment of conviction. The appellate court found that the inconsistencies appellants pointed out were plainly minor and refer only to collateral matters, which do not touch on the commission of the crime itself or detract from the positive identification of appellants as the culprits in the violation of the Comprehensive Dangerous Drugs Act. At any rate, the appellate court ruled that the elements of the violation of Rep. Act No. 9165 were clearly established by the prosecution.[13]

The Court of Appeals also rejected appellants' claim that all the members of the arresting team should have been presented before the court to testify on appellants' guilt. It held that the proposed testimony of the other members of the team is not essential for appellants' conviction as long as the principal witnesses for the State have already adequately testified on the material and essential matters of the charged delivery and possession of the prohibited drug.[14]

Hence, this appeal.

The sole issue in this case is whether appellants are guilty beyond reasonable doubt of violation of (1) Section 5, Article II of Rep. Act No. 9165 for the delivery of 0.06 gram of *shabu*; and (2) Section 11, Article II of Rep. Act No. 9165 for the possession of 0.06 gram of *shabu*, respectively.

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[12] *Id.* at 52-53.

[13] *Rollo*, p. 13.

[14] *Id.* at 14-15.

The appeal lacks merit.

Sections 5 and 11, Article II of Rep. Act No. 9165 read:

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.

SEC. 11. *Possession of Dangerous Drugs.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

(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 opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, **methamphetamine hydrochloride or "*shabu,*"** or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana. (Emphasis supplied.)

The Court sustains the finding of the lower courts that the prosecution sufficiently established appellants' guilt beyond reasonable doubt for violations of Sections 5 and 11 of Article II of Rep. Act No. 9165. The prosecution proved that appellant Fabian illegally delivered a plastic sachet containing *shabu* to

appellant Macalong, who knowingly possessed the same. Moreover, the subject drugs were also proven to be positive for methamphetamine hydrochloride, as evidenced by "Chemistry Report No. D-367-04" conducted by Forensic Chemical Officer and PO1 Jennifer G. Tantoy of the PNP Crime Laboratory.

PO1 Muega narrated the events that took place the night appellants were apprehended. He testified in a direct and unequivocal manner on all the factual elements of the crime, to wit:

PROS. AMOS:	And when these two came out of the alley, what happened next?
WITNESS:	They went in front of me near the FX and I heard them whispering something and then I saw Raymond Fabian handed over a small transparent plastic to the other person.
PROS. AMOS:	Did you hear what they were whispering about?
WITNESS:	No, Sir.
PROS. AMOS:	You said you saw Raymond Fabian handed a plastic sachet. What was unusual with this transparent sachet?
WITNESS:	It contains white substance, Ma'am.
PROS. AMOS:	After you saw him gave that transparent plastic sachet to Allan Macalong, what happened next?
WITNESS:	I slowly approached them.
PROS. AMOS:	And then what happened next?
WITNESS:	I introduced myself as a police officer and immediately I grabbed their hands.
PROS. AMOS:	And then when you grabbed their hands, what happened next?
WITNESS:	My companions arrived, Ma'am.

PROS. AMOS: After your companions arrived, what happened next?

WITNESS: I ordered Allan Macalong to open his right hand.

PROS. AMOS: And then what happened when he opened his right hand?

WITNESS: I saw the one (1) piece transparent plastic sachet containing *shabu* which my companion also saw.

PROS. AMOS: And this was the same plastic sachet that you saw Raymond Fabian gave to Allan Macalong?

WITNESS: Yes, Ma'am.[15]

We likewise note that the foregoing testimony was corroborated on material points by PO2 Anos, one (1) of the back-up operatives in the operation that night. PO2 Anos testified as follows:

PROS. AMOS: And once you separated yourself into these strategic places, what happened next?

WITNESS: When I was in my position, about more or less 25 meters from PO1 Muega, I saw PO1 Muega swaying his hands and calling our attention, Ma'am.

PROS. AMOS: When you saw this PO1 Muega signaling to you, what happened next?

WITNESS: I looked at him and when I saw that he was grabbing the two male persons near him, I immediately run and assisted him.

PROS. AMOS: And when you were able to [reach] him, what did you witness?

WITNESS: I saw the two male persons handed by PO1 Muega and when PO1 Muega asked the

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[15] TSN, April 19, 2005, pp. 6-7.

	male persons to open their hands and to have the thing in their hands, we saw a plastic sachet on their hands.
PROS. AMOS:	Who was this person whom PO1 Muega ordered to open his hand? Is he in this courtroom right now, mister witness?
WITNESS:	Yes, Ma'am.
PROS. AMOS:	Could you point to him, mister witness?
WITNESS:	Yes, Ma'am.
C. INTERPRETER:	Witness at this juncture pointed to a person seated at the back wearing a light yellow Polo shirt who when asked, identified himself as Allan Macalong.
PROS. AMOS:	How about the other one that PO1 Muega apprehended? What about the other person? Is he in this room also?
WITNESS:	Yes, Ma'am.
PROS. AMOS:	Could you point to him?
C. INTERPRETER:	Witness pointing to a person wearing dark yellow shirt who when asked, identified himself as Raymond Fabian.[16]

It is a settled 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.[17] Moreover, the factual findings of the trial court, when affirmed by the Court of Appeals, are conclusive and binding on this Court.[18] In the present case, appellants gravely

[16] TSN, July 19, 2005, pp. 6-7.

[17] *People v. Navarro,* G.R. No. 173790, October 11, 2007, 535 SCRA 644, 649, citing *People v. Saludes*, G.R. No. 144157, June 10, 2003, 403 SCRA 590, 595-596.

[18] *People v. Mateo*, G.R. No. 179478, July 28, 2008, 560 SCRA 397, 413; See *Teodosio v. Court of Appeals*, G.R. No. 124346, June 8, 2004,

failed to show that the trial court overlooked or misapprehended any fact or circumstance of weight and substance to warrant a deviation from this rule.

The alleged inconsistencies in the testimonies of the prosecution witnesses refer to trivial or minor matters, which do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witnesses' honesty.[19] The alleged inconsistencies on minor details pertain to peripheral matters and do not refer to the actual operation itself, that crucial moment when Fabian was caught delivering *shabu* to Macalong, who knowingly possessed it. Thus, the Court sustains the trial court in giving credence to the testimonies of the prosecution's witnesses especially since the trial court was in a better position to evaluate the witnesses' deportment during the trial.[20]

Furthermore, appellants did not substantiate their defense of denial and frame-up. They did not present evidence that the prosecution witnesses had motive to charge them falsely. Neither did appellants prove that the police officers did not perform their duties regularly.[21] As the Court of Appeals held, the defense of denial and frame-up, like alibi, can easily be concocted and is a common and standard ploy in most prosecutions for violations of Rep. Act No. 9165. According to Fabian, he was arrested because he denied knowing a certain "Bobong." On the other hand, Macalong claimed he did not know why the police officers would fabricate a case against him.

It must be emphasized that their testimonies in open court are considered in line with the presumption that law enforcement

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431 SCRA 194, 203 and *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 546-547.

[19] *People v. Fernando*, G.R. No. 170836, April 4, 2007, 520 SCRA 675, 683, citing *People v. Madriaga*, G.R. No. 82293, July 23, 1992, 211 SCRA 698, 712.

[20] *People v. Dilao*, G.R. No. 170359, July 27, 2007, 528 SCRA 427, 439; *People v. Cabugatan*, *supra* at 547; *People v. Villanueva*, G.R. No. 172116, October 30, 2006, 506 SCRA 280, 286.

[21] See *People v. Cabugatan*, *supra* at 551.

officers have performed their duties in a regular manner, absent evidence to the contrary. In the absence of proof of motive to impute falsely a crime as serious as violation of the Comprehensive Dangerous Drugs Act, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of the prosecution witnesses, shall prevail over appellants' self-serving and uncorroborated denial. This presumption holds true for the police officers in the present case, as Fabian and Macalong could not provide a credible account on why they were allegedly being falsely accused.

Considering that appellant Fabian is guilty beyond reasonable doubt of violation of Section 5, Article II of Rep. Act No. 9165, the Court of Appeals correctly affirmed the trial court's imposition of life imprisonment and a fine of ₱500,000.00 for delivering and giving away to Macalong 0.06 gram of *shabu*. With regard to appellant Macalong, who was found guilty beyond reasonable doubt of violation of Section 11, paragraph 2(3), Article II of Rep. Act No. 9165, we find the penalty of twelve (12) years and one (1) day to thirteen (13) years and a fine of ₱300,000.00 imposed by the trial court and affirmed by the Court of Appeals to be in accordance with law and jurisprudence.

WHEREFORE, the appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02310 is hereby *AFFIRMED*.

With costs against the accused-appellants.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 181071. March 15, 2010]

LADISLAO ESPINOSA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; DOCTRINE OF RATIONAL EQUIVALENCE, NOT APPLICABLE.—** The very application of the doctrine of rational equivalence, invoked by the petitioner, militates against his claim. The doctrine of rational equivalence presupposes the consideration not only of the nature and quality of the weapons used by the defender and the assailant—but of the totality of circumstances surrounding the defense *vis-à-vis,* the unlawful aggression. Significantly, a perusal of the facts shows that after petitioner was successful in taking down private complainant Merto—the former *continued to hack* the latter, who was, by then, already neutralized by the blow. This fact was clearly established by the testimony of Rodolfo Muya, who recounted having seen the petitioner continuously hacking the private complainant with the *bolo* scabbard, even as the latter lay almost motionless upon the muddy ground. Clearly, this "continuous hacking" by the petitioner constitutes force beyond what is reasonably required to repel the private complainant's attack—and is therefore unjustified.
2. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURTS, WHEN AFFIRMED BY THE APPELLATE COURT, ARE CONCLUSIVE UPON THE SUPREME COURT.—** As to whether the fractures suffered by the private complainant resulted from a single blow or a product of multiple hackings is a question of fact best left to the judgment of the trial court. It is a well-settled principle that factual findings of the trial court—especially if already affirmed by an appellate court—are binding and conclusive upon this Court, save only for certain compelling reasons which are absent in this case. Hence, the Court refuses to disturb the facts, and defers to the determination of the Regional Trial Court and of the Court of Appeals.

APPEARANCES OF COUNSEL

Bernaldo Mirador & Directo Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

The Case

This case comes before this Court as an appeal, by way of a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, from the Decision[1] of the Court of Appeals affirming the conviction of herein petitioner, Ladislao Espinosa, for the crime of Serious Physical Injuries under the third paragraph of Article 263 of the Revised Penal Code.[2] The dispositive portion of the assailed decision reads:

WHEREFORE, the Decision of the Regional Trial Court of Iba, Zambales, Branch 71 dated 30 March 2005, finding appellant Ladislao Espinosa **GUILTY** beyond reasonable doubt of the crime of **SERIOUS PHYSICAL INJURIES** is **AFFIRMED** with the **MODIFICATION** that he will suffer the straight penalty of six (6) months of *Arresto Mayor* and pay the amount of ₱54,925.50 as actual damages.

With costs against accused-appellant.

The Facts

The undisputed facts of the case, as found by the Regional Trial Court, and as confirmed by the Court of Appeals on appeal, may be so summarized:

On 6 August 2000, at about 10 o'clock in the evening, private complainant Andy Merto, bearing a grudge against the petitioner,

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[1] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso concurring. *Rollo,* pp. 28-48.

[2] Act No. 3185, as amended.

went to the house of the latter in the Municipality of Sta. Cruz, Zambales. While standing outside the house, private complainant Merto shouted violent threats, challenging the petitioner to face him outside.

Sensing the private complainant's agitated state and fearing for the safety of his family, petitioner went out of his house to reason with and pacify Merto. However, as soon as he drew near the private complainant, the latter hurled a stone at the petitioner. The petitioner was able to duck just in time to avoid getting hit and instinctively retaliated by hitting the left leg of the private complainant with a *bolo* scabbard. The private complainant fell to the ground. Petitioner then continuously mauled the private complainant with a *bolo* scabbard, until the latter's cousin, Rodolfo Muya, restrained him.[3]

As a consequence of the incident, private complainant Merto sustained two (2) bone fractures, one in his left leg and another in his left wrist. It took about six (6) months for these injuries to completely heal.[4]

On 22 September 2000, petitioner was originally charged with Frustrated Homicide, under an Information[5] which reads as follows:

> That on or about the 6th day of August 2006 at about 10 o'clock in the evening, at Brgy. Pagatpat, in the Municipality of Sta. Cruz, Province of Zambales, Philippines and within the jurisdiction of this Honorable Court, the said accused, with treachery, evide[nt] premeditation and intent to kill, did then and there willfully, unlawfully and feloniously, assault, attack and hack several times one Andy Merto, thereby inflicting upon the latter the following physical injuries, to wit:
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> 1. Fracture open III A P/3 Tibia left secondary to Hacking Wound;

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[3] *Rollo,* pp. 32-33.

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

[5] *Id.* at 52-53.

2. Incised wound, wrist joint with Incised Extensor Pollicis Brevis Tendon, Left S/P F Debridement Right Wrist S/P Long Circular Cast, Left

thus performing all the acts of execution which would produce the crime of murder as a consequence, but nevertheless, did not produce it by reason of causes independent of his will, that is by the timely and able medical assistance rendered to said Andy Merto which prevented his death.

CONTRARY TO LAW.

Petitioner pleaded not guilty, and trial thereafter ensued.

On 14 December 2004, the Regional Trial Court of Iba, Zambales, Branch 71, convicted petitioner only of Serious Physical Injuries under the third paragraph of Article 263 of the Revised Penal Code, noting that the prosecution had failed to prove the element of "intent to kill," which is necessary to a conviction for Frustrated Homicide. The dispositive[6] portion of the ruling reads:

WHEREFORE premises considered, judgment is rendered finding accused Ladislao Espinosa GUILTY beyond reasonable doubt of the crime of Serious Physical Injuries defined and penalized under Art. 263, paragraph 3 of the Revised Penal Code and is hereby sentenced [to] suffer the penalty of six (6) months of *Arresto Mayor* as minimum to two (2) years, eleven (11) months and ten (10) days of *prision correccional* as maximum. Accused is ordered to pay private complainant Andy Merto the amount of ₱54,925.50 as and by way of actual damages.

Undeterred, petitioner filed a Motion for Reconsideration dated 7 February 2005, before the trial court, invoking for the first time complete self-defense, under the first paragraph of Article 11 of the Revised Penal Code. In a Resolution[7] dated 30 March 2005, the trial court denied petitioner's motion for reconsideration holding that self-defense cannot be appreciated to justify the act of petitioner. The trial court cites the means

[6] *Id.* at 76.

[7] *Id.* at 77-81.

adopted by the petitioner in repelling the attack as not reasonably necessary in view of the surrounding circumstances and the severity of the victim's injuries.

On appeal, the Court of Appeals affirmed the judgment of conviction with the modification that the penalty imposed by the trial court should be lowered by one degree in accordance with the privileged mitigating circumstance of incomplete self-defense under Article 69[8] of the Revised Penal Code. Consequently, the Motion for Reconsideration[9] filed by the petitioner was also denied by the Court of Appeals *via* a Resolution[10] dated 4 January 2008.

Hence, this appeal.

The Issue

The sole issue raised in this appeal is whether under the set of facts given in this case, complete self-defense may be appreciated in favor of the petitioner.

The Ruling of the Court

The Court rules in the negative.

The requirements of self-defense as a justifying circumstance are found in the first paragraph of Article 11 of the Revised Penal Code, to wit:

> **Article 11**. *Justifying circumstances*. – The following do not incur any criminal liability:

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[8] Article 69 of the Revised Penal Code provides:

> **Article 69**. *Penalty to be imposed when the crime committed is not wholly excusable*. – A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in Articles 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number of the nature of the conditions of exemption present or lacking.

[9] Filed on 15 October 2007. *Rollo*, pp. 110-118.

[10] *Id.* at 50-51.

1. Anyone who acts in defense of his person or rights, provided that the following requisites concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

In their decisions, both the trial court and the Court of Appeals found that the first and third elements of self-defense are present in the case at bar. This finding was never questioned by either of the parties and, as such, may be taken as established for purposes of this appeal. Nonetheless, to dispel any doubts, the Court hereby affirms the existence of the first and third elements of self-defense, based on the following reasons:

First, unlawful aggression on the part of private complainant Merto was manifested by his attack upon the person of the petitioner in throwing a stone at the latter. This sudden and unexpected assault posed actual danger on the life or limb of the petitioner, prompting the latter to take steps in his defense. To the mind of the Court, this is an offensive positively strong enough to be the basis for a defensive action.

Second, there is lack of sufficient, if not total absence of, provocation on the part of the petitioner. The facts are clear that it is private complainant Merto who invited the confrontation with petitioner—by shouting violent threats at the latter.

The argumentation is on the existence of the second element, *i.e.,* reasonable necessity of the means employed to prevent or repel the unlawful aggression. The trial court and the Court of Appeals were in agreement that the means employed by the petitioner in conducting his defense is disproportionate to what was necessary to prevent or deter the attack of private complainant Merto.

In arguing that the means employed was reasonable to repel the unlawful aggression, the petitioner invokes the application

of the "*doctrine of rational equivalence*," delineated in *People v. Gutual,*[11] to wit:

> x x x It is settled that reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. ***What the law requires is rational equivalence, in the consideration of which will enter the principal factors the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury***. (Emphasis supplied)

Tersely put, petitioner contends that the trial court and the Court of Appeals erred in citing the severity of the injuries sustained by private complainant Merto, as an indicator that belies the reasonableness of the means adopted by the former to repel the attack of the latter. Instead, petitioner wants to place emphasis on the fact that he merely acted out of instinct and that he used a *bolo* scabbard—as opposed to using the *bolo* itself—in incapacitating the private complainant.

The Court is not impressed.

The very application of the doctrine of rational equivalence, invoked by the petitioner, militates against his claim. The doctrine of rational equivalence presupposes the consideration not only of the nature and quality of the weapons used by the defender and the assailant—but of the totality of circumstances surrounding the defense *vis-à-vis,* the unlawful aggression.

Significantly, a perusal of the facts shows that after petitioner was successful in taking down private complainant Merto—the former *continued to hack* the latter, who was, by then, already neutralized by the blow. This fact was clearly established by the testimony of Rodolfo Muya, who recounted having seen the petitioner continuously hacking the private complainant with the *bolo* scabbard, even as the latter lay almost motionless upon the muddy ground.[12]

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[11] 324 Phil. 244, 259-260 (1996).

[12] *Rollo,* pp. 32-33.

Clearly, this "continuous hacking" by the petitioner constitutes force beyond what is reasonably required to repel the private complainant's attack—and is therefore unjustified.

People v. Beltran, Jr.,[13] which also involves repetitious hacking by the accused even after the aggressor had been neutralized, is especially instructive:

> **The act of appellant in repeatedly hacking Norman on his head and neck was not a reasonable and necessary means of repelling the aggression allegedly initiated by the latter**. As stated earlier, no convincing evidence was presented to show that Norman was armed with an ice-pick at the time of the incident. In fact, no ice-pick was found in the crime scene or in the body of the victim. There was also no proof showing that Norman attempted to stab appellant or tried to barge into the latter's house. Granting *arguendo* that Norman was armed with an ice-pick, the repeated hackings were not necessary since he can overpower or disable Norman by a single blow on non-vital portion/s of his body.
>
> Again, as correctly observed by the OSG, had the appellant merely wanted to protect himself from what he perceived as an unlawful aggression of Norman, he could have just disabled Norman. **When Norman fell on the ground, appellant should have ceased hacking the former since the alleged aggression or danger no longer exists. By appellant's own testimony, however, he hacked Norman with his bolo even when the latter was already lying on the ground. It appears, therefore, that the means used by appellant, which were simultaneous and repeated hackings, were adopted by him not only to repel the aggression of Norman but to ensure the latter's death. In sum, such act failed to pass the test of reasonableness of the means employed in preventing or repelling an unlawful aggression**. (Emphasis supplied)

Notwithstanding the fact that the petitioner merely used a scabbard in fending off the unlawful aggression—the totality of the circumstances shows that after the aggressor was taken down to the ground, the petitioner ceased to be motivated with the lawful desire of defending himself. He was, by then, acting with intent to harm the private complainant whose aggression had already ceased.

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[13] G.R. No. 168051, 27 September 2006, 503 SCRA 715, 734.

Finally, in trying to disprove the testimony of Rodolfo Muya that there was "continuous hacking," the petitioner also posits that the injuries sustained by the private complainant could not have been serious enough to be the product of repeated hacks, and claims that the same are merely a product of a single blow. This contention has had ample study and consideration in the trial court and in the Court of Appeals. It deserves no further ado.

As to whether the fractures suffered by the private complainant resulted from a single blow or a product of multiple hackings is a question of fact best left to the judgment of the trial court. It is a well-settled principle that factual findings of the trial court—especially if already affirmed by an appellate court—are binding and conclusive upon this Court, save only for certain compelling reasons which are absent in this case.[14] Hence, the Court refuses to disturb the facts, and defers to the determination of the Regional Trial Court and of the Court of Appeals.

WHEREFORE, the instant appeal is *DENIED* for lack of merit. Accordingly, the appealed Decision of the Court of Appeals, dated 25 September 2007, in CA-G.R. CR No. 29633 is hereby *AFFIRMED IN TOTO*. No pronouncement as to costs.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

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[14] *Republic v. Casimiro*, G.R. No. 166139, 20 June 2006, 491 SCRA 499, 523.

FIRST DIVISION

[G.R. No. 182061. March 15, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FERDINAND T. BALUNTONG,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; ARSON; IN THE ABSENCE OF PROOF TO SHOW THAT THE MAIN MOTIVE WAS TO KILL THE OCCUPANTS OF THE HOUSE, THE ACCUSED CAN BE HELD LIABLE ONLY FOR ARSON.—** Absent any concrete basis then to hold that the house was set on fire to kill the occupants, appellant cannot be held liable for double murder with frustrated murder. This is especially true with respect to the death of Celerina, for even assuming *arguendo* that appellant wanted to kill her to get even with her in light of her alleged desire to drive him out of the neighboring house, Celerina was outside the house at the time it was set on fire. She merely entered the burning house to save her grandsons. While the above-quoted Information charged appellant with "Double Murder with Frustrated Murder," appellant may be convicted of Arson. For the only difference between a charge for Murder under Article 248 (3) of the Revised Penal Code and one for Arson under the Revised Penal Code, as amended by Section 3 (2) of P.D. No. 1613, lies in the intent in pursuing the act. As reflected above, as it was not shown that the main motive was to kill the occupants of the house, the crime would only be arson, the homicide being a mere consequence thereof, hence, absorbed by arson.

2. **ID.; ID.; CIVIL LIABILITIES.—** The appellate court likewise affirmed the award of compensatory damages, actual damages, and moral damages to the heirs of Alvin. Compensatory damages and actual damages are the same, however. Since the trial court awarded the duly proven actual damages of ₱16,500.00 representing burial expenses, the award of compensatory damages of ₱50,000.00 does not lie. x x x The appellate court awarded exemplary damages "to the heirs of the victims," clearly referring to the deceased Celerina and Alvin. Absent proof of the presence

of any aggravating circumstances, however, the award does not lie. x x x When death occurs due to a crime, the grant of civil indemnity requires no proof other than the death of the victim. The heirs of Celerina are thus entitled to an award of ₱50,000.00 as civil indemnity *ex delicto*. And so are Alvin's. The appellate court's award of temperate damages of ₱25,000.00 to Joshua is in order.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

Ferdinand T. Baluntong (appellant) appeals from the August 13, 2007 Decision[1] of the Court of Appeals to which the Court had earlier referred the present case for intermediate review following *People v. Mateo*.[2]

In its challenged Decision, the appellate court affirmed appellant's conviction by the Regional Trial Court of Roxas, Oriental Mindoro, Branch 43, of Double Murder with Frustrated Murder, following his indictment for such offense in an Information reading:

That on or about the 31st day of July 1998, at about 10:30 in the evening at Barangay Danggay, Municipality of Roxas, Province of

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[1] Penned by Court of Appeals Justice Mariflor Punzalan-Castillo with the concurrence of Justices Marina L. Buzon and Rosmari D. Carandang.

[2] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. The case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment and allowed intermediate review by the Court of Appeals before such cases are elevated to the Supreme Court.

Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, with malice aforethought and with deliberate intent to kill, set on fire, the house of Celerina Solangon, causing the complete destruction of the said house and the death of Celerina Solangon and Alvin Savarez, and inflicting serious physical injuries on Josua (sic) Savarez, thereby performing all the acts of execution which would produce the crime of murder as a consequance (sic) but which, nevertheless do not produce it by reason of causes independent of the will of the perpetrator.[3] x x x (underscoring supplied)

Gathered from the records of the case is the following version of the prosecution:

At around 10:30 p.m. of July 31, 1998, while then 12-year old Jovelyn Santos (Jovelyn) was sleeping in the house of her grandmother Celerina Solangon (Celerina) at Barangay Dangay, Roxas, Oriental Mindoro, she was awakened by heat emanating from the walls of the house. She thus roused her cousin Dorecyll and together they went out of the house.

Jovelyn saw appellant putting dry hay (*dayami*) around the house near the terrace where the fire started, but appellant ran away when he saw her and Dorecyll.

Appellant's neighbor, Felicitas Sarzona (Felicitas), also saw appellant near Celerina's house after it caught fire, following which, appellant fled on seeing Jovelyn and Dorecyll stepping out of the house, as other neighbors repaired to the scene to help contain the flames. Felicitas also saw Celerina, who was at a neighbor's house before the fire started, enter the burning house and resurface with her grandsons Alvin and Joshua.

Celerina and Alvin sustained third degree burns which led to their death. Joshua sustained second degree burns.

Upon the other hand, appellant, denying the charge, invoked alibi, claiming that he, on his mother Rosalinda's request, went to Caloocan City on July 15, 1998 (16 days before the incident)

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[3] Records, p.1.

and stayed there until February 1999. Rosalinda corroborated appellant's alibi.

By Decision of February 28, 2003, the trial court found appellant guilty as charged, disposing as follows:

WHEREFORE, judgment is hereby rendered as follows:

(a) The court finds accused Ferdinand Baluntong **GUILTY** beyond reasonable doubt of the complex crime of Double Murder with Frustrated Murder punishable under Article 248 of the Revised Penal Code as amended by Republic Act 7659 in relation to Article 48 of the Revised Penal Code and is hereby sentenced to suffer the supreme penalty of **DEATH** to be executed in accordance with the existing law;

x x x x x x x x x

c) Accused Ferdinand Baluntong is also ordered to pay the *heirs of Celerina* Suba Solangon the sum of ₱50,000.00 as compensatory damages and the heirs of *Elvin* [*sic*] Savariz the following: (I) the sum of ₱50,000.00 as compensatory damages (II) the sum of ₱16,500.00 as actual damages; and (III) the sum of ₱50,000.00 as moral damages.

SO ORDERED.[4] (emphasis in the original; italics and underscoring supplied)

In affirming the trial court's conviction of appellant, the appellate court brushed aside appellant's claim that the prosecution failed to prove his guilt beyond reasonable doubt. The appellate court, however, *modified* the trial court's decision by **reducing** the penalty to *reclusion perpetua* in light of the passage of Republic Act No. 9346,[5] and by **additionally awarding** exemplary damages to the heirs of the victims (Celerina and Alvin), and temperate damages to Joshua representing his "hospitalization and recuperation." Thus the appellate court disposed:

WHEREFORE, premises considered, the February 28, 2003 Decision of the Regional Trial Court of Roxas, Oriental Mindoro, Branch 43, is ***MODIFIED*** as follows:

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[4] *Id.* at 134.

[5] Otherwise known as *"An Act Which Prohibits the Imposition of Death Penalty in the Philippines,"* June 24, 2006.

1. Accused-appellant FERDINAND BALUNTONG *y* TALAGA is found **GUILTY** beyond reasonable doubt of the complex crime of Double Murder with Frustrated Murder and is hereby sentenced to suffer the penalty of *reclusion perpetua*.
2. Accused-appellant is further required to pay the heirs of the victims the amount of ₱25,000.00 as **exemplary damages** and the amount of ₱25,000.00 as **temperate damages for the hospitalization and recuperation of Joshua Savariz.**
3. In all other respects, the February 28, 2003 Decision of the regional trial court is hereby ***AFFIRMED***.[6] (italics and emphasis in the original; underscoring supplied)

In his Brief, appellant raises doubt on prosecution witness Felicitas' claim that she saw appellant fleeing away from the burning house, it being then 10:30 p.m. and, therefore, dark. He raises doubt too on Jovelyn's claim that she saw appellant, given her failure to ask him to stop putting dried hay around the house if indeed her claim were true.

After combing through the records of the case, the Court finds that the trial court, as well as the appellate court, did not err in finding that appellant was the malefactor.

There should be no doubt on prosecution witnesses Felicitas' and Jovelyn's positive identification of their neighbor-herein appellant as the person they saw during the burning of the house, given, among other things, the illumination generated by the fire. Consider the following testimonies of Felicitas and Jovelyn:

FELICITAS:

Q: Which portion of the house was on fire when you saw Balentong (sic) for the first time?

A: The fire was at the rear portion going up, sir.

Q: How far was Balentong (sic) from that burning portion of the house?

A: He was just infront (sic) of the house, sir.

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[6] *Rollo*, pp. 28-29.

Q: How far from the burning portion of the house?

A: About two (2) meters away, sir.

Q: The two (2) meters from the front portion or two (2) meters from the burning portion?

A: About two (2) meters, sir.

Q: From the burning portion?

A: Yes, sir.[7] (underscoring supplied)

JOVELYN:

Q: How big was the fire when according to you, you saw the back of this Ferdinand Balontong (sic)?

A: It is already considerable size, Your Honor.

Q: What effect has this fire in the illumination in that vicinity, regarding visibility of that vicinity?

A: The surrounding was illuminated by that fire, Your Honor.[8] (underscoring supplied)

Appellant's alibi must thus fail.

In determining the offense committed by appellant, *People v. Malngan*[9] teaches:

[I]n cases where both burning and death occur, in order to determine what crime/crimes was/were perpetrated – whether arson, murder or arson and homicide/murder, it is *de rigueur* to ascertain the main objective of the malefactor: (a) if the **main objective is the burning** of the building or edifice, but death results by reason or on the occasion of arson, the crime is simply **arson**, and the resulting homicide is absorbed; (b) if, on the other hand, the **main objective is to kill** a particular person who may be in a building or edifice, when fire is resorted to as the means to accomplish such goal the crime committed is **murder** only; lastly, (c) if the **objective is, likewise, to kill** a particular person, and in fact the offender has already done

[7] TSN, June 9, 1999, pp. 23-24

[8] TSN, September 1, 1999, p. 21.

[9] G.R. No. 170470, September 26, 2006, 503 SCRA 294, 317.

so, but fire is resorted to as a means to cover up the killing, then there are two separate and distinct crimes committed – **homicide/ murder and arson**. (emphasis and underscoring partly in the original; emphasis partly supplied)

Presidential Decree (P.D.) No. 1613, "*Amending the Law on* Arson," reads:

Section 3. Other Cases of Arson. — The penalty of *Reclusion Temporal to Reclusion Perpetua* shall be imposed if the property burned is any of the following:

xxx xxx xxx

2. Any inhabited house or dwelling;

The Court finds that there is no showing that appellant's main objective was to kill Celerina and her housemates and that the fire was resorted to as the means to accomplish the goal.

In her Affidavit executed on August 11, 1998,[10] Felicitas stated that what she knew is that Celerina wanted appellant, who was renting a house near Celerina's, to move out.

How Felicitas acquired such "knowledge" was not probed into, however, despite the fact that she was cross-examined thereon.[11]

Absent any concrete basis then to hold that the house was set on fire to kill the occupants, appellant cannot be held liable for double murder with frustrated murder. This is especially true with respect to the death of Celerina, for even assuming *arguendo* that appellant wanted to kill her to get even with her in light of her alleged desire to drive him out of the neighboring house, Celerina was outside the house at the time it was set on fire. She merely entered the burning house to save her grandsons.

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[10] Records, p.6

[11] *Vide* TSN, June 9, 1997, pp. 16-18.

While the above-quoted Information charged appellant with "Double Murder with Frustrated Murder," appellant may be convicted of Arson. For the only difference between a charge for Murder under Article 248 (3) of the Revised Penal Code and one for Arson under the Revised Penal Code, as amended by Section 3 (2) of P.D. No. 1613, lies in the intent in pursuing the act.

As reflected above, as it was not shown that the main motive was to kill the occupants of the house, the crime would only be arson, the homicide being a mere consequence thereof, hence, absorbed by arson.[12]

When there is variance between the offense charged in the complaint or information and that proved, and the offense charged is included or necessarily includes the offense proved, conviction shall be for the offense proved which is included in the offense charged, or the offense charged which is included in the offense proved.[13]

Under Section 5 of P.D. 1613, the penalty of *reclusion perpetua* to death is imposed when death results. In the light of the passage of Republic Act No. 9346,[14] the penalty should be *reclusion perpetua.*

A word on the damages awarded.

The appellate court affirmed the award of compensatory damages to the heirs of Celerina. But entitlement thereto was not proven.

The appellate court likewise affirmed the award of compensatory damages, actual damages, and moral damages to the heirs of Alvin. Compensatory damages and actual damages are the same, however.[15] Since the trial court awarded the duly proven actual damages of ₱16,500.00 representing burial

[12] *People v. Cedenio*, G.R. No. 93485, June 27, 1994, 233 SCRA 456.

[13] RULES OF CRIMINAL PROCEDURE, Rule 120, Section 4.

[14] *Supra* note 5.

[15] *Vide* Article 2199, CIVIL CODE.

expenses, the award of compensatory damages of ₱50,000.00 does not lie. It is gathered from the evidence, however, that Alvin was hospitalized for five days,[16] hence, an award of ₱8,500.00 as temperate damages for the purpose would be reasonable.

As for the award to Alvin of moral damages, the records do not yield any basis therefor.

More. The appellate court awarded exemplary damages "to the heirs of the victims," clearly referring to the deceased Celerina and Alvin. Absent proof of the presence of any aggravating circumstances, however, the award does not lie.[17]

When death occurs due to a crime, the grant of civil indemnity requires no proof other than the death of the victim. The heirs of Celerina are thus entitled to an award of ₱50,000.00 as civil indemnity *ex delicto*.[18] And so are Alvin's.

The appellate court's award of temperate damages of ₱25,000.00 to Joshua is in order.

WHEREFORE, the assailed Court of Appeals Decision of August 13, 2007 is *REVERSED* and *SET ASIDE*, and a *NEW* one is rendered as follows:

> Appellant, Ferdinand T. Baluntong, is found *GUILTY* beyond reasonable doubt of Simple Arson under Sec. 3(2) of P.D. No. 1613 and is sentenced to suffer the penalty of *reclusion perpetua* with no eligibility for parole.
>
> Appellant is *ORDERED* to pay the amount of ₱50,000.00 to the heirs of Celerina Solangon, and the same amount to the heirs of Alvin Savariz, representing civil indemnity.

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[16] *Vide* TSN, Oct. 20, 1999, pp. 5-6.

[17] Art. 2230 of the New Civil Code provides that 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.

[18] *People v. Mokammad*, *et al*. G.R. No. 180594, August 19, 2009.

Appellant is likewise *ORDERED* to pay the amount of ₱16,500.00 to the heirs of Alvin as actual damages for burial expenses, and ₱8,500.00 as temperate damages for hospitalization expenses.

Appellant is further *ORDERED* to pay ₱25,000.00 as temperate damages to the heirs of Celerina.

Finally, appellant is *ORDERED* to pay ₱25,000.00 as temperate damages to Joshua Savariz.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183357. March 15, 2010]

HONORIO BERNARDO, *petitioner, vs.* **HEIRS OF EUSEBIO VILLEGAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; GENERAL RULE TO QUESTION COURT'S JURISDICTION, EXPLAINED.— The general rule is that the jurisdiction of a court may be questioned at any stage of the proceedings. Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.

2. **ID.; ID.; ID.; WHEN ESTOPPEL TO QUESTION COURT'S JURISDICTION SETS IN.—** [E]stoppel sets in when a party participates in all stages of a case before challenging the jurisdiction of the lower court. One cannot belatedly reject or repudiate its decision after voluntarily submitting to its jurisdiction, just to secure affirmative relief against one's opponent or after failing to obtain such relief. The Court has, time and again, frowned upon the undesirable practice of a party submitting a case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction when adverse.

3. **ID.; ID.; ID.; PRINCIPLE OF ESTOPPEL FROM QUESTIONING COURT'S JURISDICTION BASED ON JUSTICE AND EQUITY, APPLIED.—** The principle of justice and equity as espoused in *Tijam* should be applied in this case. The MTC dismissed the ejectment case upon its ruling that the case is for *accion publiciana.* It did not assert jurisdiction over the case even if it could have done so based on the assessed value of the property subject of the *accion publiciana*. And there was no showing, indeed, not even an allegation, that the MTC was not aware of its jurisdictional authority over an *accion publiciana* involving property in the amount stated in the law. Moreover, petitioner did not bring up the issue of jurisdictional amount that would have led the MTC to proceed with the trial of the case. Petitioner obviously considered the dismissal to be in his favor. When, as a result of such dismissal, respondents brought the case as *accion publiciana* before the RTC, petitioner never brought up the issue of jurisdictional amount. What petitioner mentioned in his Answer before the RTC was the generally phrased allegation that "the Honorable Court has no jurisdiction over the subject matter and the nature of the action in the above-entitled case." This general assertion, which lacks any basis, is not sufficient. Clearly, petitioner failed to point out the omission of the assessed value in the complaint. Petitioner actively participated during the trial by adducing evidence and filing numerous pleadings, none of which mentioned any defect in the jurisdiction of the RTC. It was only on appeal before the Court of Appeals, after he obtained an adverse judgment in the trial court, that petitioner, for the first time, came up with the argument that the decision is void because there was no allegation in the complaint about the

value of the property. Clearly, petitioner is estopped from questioning the jurisdiction of the RTC.

4. ID.; ID.; ID.; TAX DECLARATION INDICATING THE ASSESSED VALUE OF THE PROPERTY CONSIDERED IN DETERMINING COURT'S JURISDICTION.— [T]he Technical Report on Verification Survey by Engineer Robert C. Pangyarihan, which was attached to and formed part of the records, contained a tax declaration indicating that the subject property has an assessed value of ₱110,220.00. It is basic that the tax declaration indicating the assessed value of the property enjoys the presumption of regularity as it has been issued by the proper government agency. Under Republic Act No. 7691, the RTC in fact has jurisdiction over the subject matter of the action.

APPEARANCES OF COUNSEL

Amor Mia J. Francisco-Naval and *Pablo B. Francisco* for petitioner.

Edmundo Dantes M. Samson for respondent.

D E C I S I O N

PEREZ, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to assail the validity of the Decision[1] dated 21 April 2008 of the Court of Appeals, which affirmed the judgment of the Regional Trial Court (RTC) of Binangonan, Rizal in Civil Case No. R-00-035.

This controversy stemmed from a Complaint dated 14 November 2000 for *accion publiciana* filed by respondent Heirs of Eusebio Villegas against petitioner Honorio Bernardo, Romeo Gaza (Gaza) and Monina Francisco (Francisco). Respondents had earlier filed an ejectment case against the trio, docketed as Civil Case No. 99-065 with the Municipal

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[1] Penned by Former Associate Justice Martin S. Villarama, Jr. (now a member of this Court) with Associate Justices Noel G. Tijam and Myrna Dimaranan Vidal concurring. *Rollo,* pp. 21-46.

Trial Court (MTC) of Binangonan, Rizal, which case was dismissed on the ground of lack of jurisdiction for having been filed beyond the one-year prescriptive period for filing a forcible entry case.[2]

Respondents alleged in the Complaint that their father, Eusebio Villegas, is the registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. 46891 with an area of 18,369 square meters and situated in *Barangay* Pag-asa, Binangonan, Rizal; that petitioner, by stealth and in the guise of merely grazing his cattle, surreptitiously entered into possession of a portion of respondents' land; that petitioner conspired and confederated with Gaza and Francisco by illegally constructing their own houses on the subject land; that the issue of possession was brought to the *barangay* for conciliation but no settlement was reached by the parties; and that petitioner, Gaza and Francisco had forcibly, unlawfully and unjustly possessed and continue to possess the subject property and had refused to vacate the same.

In his Answer, petitioner denied taking possession of any portion of the property of respondents. He argued that the cause of action is barred by the judgment in the ejectment case. He claimed that he had been in possession of his land since the early 1950s.[3] As he did before the MTC, petitioner also alleged lack of jurisdiction on the part of the RTC.

Gaza alleged that he has been occupying an abandoned river bed adjacent to the property allegedly owned by respondents.[4] Gaza averred that he entered into a written agreement with petitioner, who claimed to own the land and allowed him to build a *nipa* hut thereon.[5]

An ocular inspection was conducted by the trial court judge. On 5 March 2007, the trial court rendered judgment in favor

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[2] Records, p. 276.

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

[4] *Id.* at 66.

[5] TSN, 28 July 2006, p. 327.

of respondents and ordered petitioner, Gaza and Francisco to vacate the subject land covered by TCT No. 46891 and to pay jointly and severally respondents the amount of ₱30,000.00 as attorney's fees and the cost of suit.[6]

The trial court held that the suit, being an *accion publiciana*, falls within its jurisdiction. It found that the houses of petitioner and Gaza were inside the titled property of respondents. Its findings were based on the testimony of one of the respondents, Estelito Villegas; the relocation plan prepared by Engineer Rico J. Rasay; and the Technical Report on Verification Survey submitted by Engineer Robert C. Pangyarihan, petitioner's own witness.[7] The trial court noted that petitioner failed to present any title or tax declaration to prove ownership or possessory right.[8]

On appeal, the Court of Appeals affirmed the ruling of the trial court.

In his appeal, petitioner questioned the jurisdiction of the trial court over the subject matter and argued that in their complaint, the respondents failed to state the assessed value of the property in dispute. The appellate court ruled that petitioner is estopped from raising the issue of jurisdiction because he failed to file a motion to dismiss on such ground and, instead, actively participated in the proceedings before the trial court.

With respect to the argument that being indispensable parties, all of the heirs of Eusebio Villegas should have been impleaded as parties, the appellate court disagreed and invoked Article 487 of the Civil Code, which provides that any one of the co-owners may bring an action for ejectment. The appellate court construed said provision to cover all kinds of actions for recovery of possession.[9]

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[6] *Rollo*, p. 107.

[7] *Id.* at 106.

[8] *Id.* at 107.

[9] *Id.* at 42.

The appellate court sustained the trial court's finding that the portions of the land occupied by petitioner and Gaza are owned by respondents. The appellate court likewise ruled that respondents could not be guilty of laches considering that Estelito Villegas, upon seeing for the first time in 1996 that petitioner was already building his house on the premises, verbally asked him to discontinue the construction.[10]

His motion for reconsideration having been denied, petitioner filed the instant petition.

Petitioner insists that the trial court had no jurisdiction over the subject matter of the action for failure of respondents to allege the assessed value of the property involved in their complaint. Petitioner belies the ruling of the appellate court that he failed to raise objections before the trial court. Petitioner reiterates that he raised the defense of lack of jurisdiction as early as in his Answer filed before the trial court. Moreover, he argues that even if he did not raise the defense of lack of jurisdiction, the trial court should have dismissed the complaint *motu proprio.* Petitioner disputes the application to him of the doctrine of estoppel by laches in *Tijam v. Sibonghanoy.*[11] Petitioner avers that unlike in *Tijam*, he raised the issue of jurisdiction, not only in his answer, but also in his appeal.[12]

Respondents defend the ruling of the Court of Appeals and maintain that petitioner is estopped from challenging the jurisdiction of the trial court.[13]

The issue presented before this Court is simple: Whether or not estoppel bars petitioner from raising the issue of lack of jurisdiction.

Under *Batas Pambansa Bilang* 129, the plenary action of *accion publiciana* must be brought before the regional trial

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[10] *Id.* at 43.

[11] 131 Phil. 556 (1968).

[12] *Rollo*, pp. 14-18.

[13] *Id.* at 138-139.

courts. With the modifications introduced by Republic Act No. 7691[14] in 1994, the jurisdiction of the regional trial courts was limited to real actions where the assessed value exceeds ₱20,000.00, and ₱50,000.00 where the action is filed in Metro Manila, thus:

SEC. 19. *Jurisdiction in civil cases.* — Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x x x x x x

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) or, for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts.

Under the law as modified, jurisdiction is determined by the assessed value of the property.

A reading of the complaint shows that respondents failed to state the assessed value of the disputed land. The averments read:

x x x x x x x x x

3. EUSEBIO VILLEGAS, deceased father of the plaintiffs, is the registered owner of a parcel of land situated in Barangay Pag-asa (formerly Barangay Tayuman), Binangonan, Rizal with a land area of 18,369 square meters. The same is covered by and embraced in Transfer Certificate of Title No. 46891 of the Registry of Deeds for the Province of Rizal. x x x.

4. Plaintiffs are the legal heirs of EUSEBIO VILLEGAS and succeeded to the subject parcel of land by virtue of their inheritance

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[14] Entitled, *AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129, OTHERWISE KNOWN AS THE "JUDICIARY REORGANIZATION ACT OF 1980."*

rights as compulsory heirs of said deceased Eusebio Villegas and upon his death, immediately took over and were enjoying the peaceful possession of the said parcel of land and exercising said rights of possession and ownership thereof;

5. That sometime in 1996, defendant Honorio Bernardo, by stealth and in guise of merely grazing his cattle, without the consent of the plaintiffs, surreptitiously entered into the possession of a portion of the subject parcel of land. Employing threats and intimidations, he claimed later that the area he illegally occupied is purportedly not part and parcel of the land owned by the plaintiff's predecessor, Eusebio Villegas, and forcibly fenced and built his house on the portion of land he illegally occupied;

6. Not being content with his own forcible and unlawful invasion, usurpation and incursion into the plaintiffs' parcel of land, and in furtherance of his desire to forcibly exclude the plaintiffs of their lawful and for possession of the subject portion of plaintiffs' parcel of land, defendant Bernardo, conspired and confederated with defendants Romeo Gaza and Monina Francisco by surreptitiously and illegally constructing their own houses on the subject parcel of land through stealth and intimidation;

7. That the issue of the possession of the subject parcel of land was brought under the Barangay Justice System in 1996 for conciliation but, no settlement was reached by the parties. Copies of the Certifications issued by the Barangay for that matter is hereto attached and marked as Annex "B";

8. That the defendants have forcibly, unlawfully, and unjustly dispossessed and still continues to forcibly, unlawfully, and unjustly dispossesses the plaintiffs of their lawful rights of possession and ownership on a portion of the subject property since 1966 up to the present;

9. Because of the unjust refusal of the defendants to vacate the premises, plaintiffs were constrained to engage the services of counsel to protect their interest on the property for an agreed attorney's fee of ₱50,000.00, and have incurred litigation expenses[;]

10. By reason of the unlawful and forcible invasion by the defendants of the property of the plaintiffs which was accompanied by threats and intimidation, the plaintiffs have suffered and continue to suffer anxiety and sleepless nights for which the defendants should

be made to indemnify by way of moral damages in the amount of at least ₱100,000.00;

11. To serve as an example to others who might be minded to commit similar wanton and unlawful acts, defendants should be held answerable for exemplary damages of not less than ₱50,000.00.[15]

This fact was noted by the Court of Appeals in its Decision but it proceeded to rule in this wise:

Records show that at the time plaintiffs-appellees filed their complaint below, R.A. No. 7691 which amended Batas Pambansa Blg. 129 was already in effect. However, the complaint failed to allege the assessed value of the real property involved. Although appellant indeed raised the issue of jurisdiction in his answer, he had not filed a motion to dismiss on this ground nor reiterated the matter thereafter but actively participated in the proceedings after the denial of his demurrer to evidence anchored on the failure of the plaintiffs to identify in their complaint all the heirs of the registered owner and supposed lack of technical description of the property in the certificate of title. Indeed, appellant is now estopped to question the trial court's jurisdiction over the subject matter and nature of the case having actively pursued throughout the trial, by filing various pleadings and presenting all relevant documentary and testimonial evidence, his theory that the portion occupied by him is not covered by the torrens title of Eusebio Villegas.[16]

We agree.

As already shown, nowhere in the complaint was the assessed value of the subject property ever mentioned. There is no showing on the face of the complaint that the RTC has jurisdiction exclusive of the MTC. Indeed, absent any allegation in the complaint of the assessed value of the property, it cannot readily be determined which of the two trial courts had original and exclusive jurisdiction over the case.[17]

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[15] *Rollo,* pp. 57-59.

[16] *Id.* at 41.

[17] *Quinagoran v. Court of Appeals*, G.R. No. 155179, 24 August 2007, 531 SCRA 104, 114-115.

The general rule is that the jurisdiction of a court may be questioned at any stage of the proceedings.[18] Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss.[19] The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.[20]

However, estoppel sets in when a party participates in all stages of a case before challenging the jurisdiction of the lower court. One cannot belatedly reject or repudiate its decision after voluntarily submitting to its jurisdiction, just to secure affirmative relief against one's opponent or after failing to obtain such relief. The Court has, time and again, frowned upon the undesirable practice of a party submitting a case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction when adverse.[21]

In *Tijam*, the Court held that it is iniquitous and unfair to void the trial court's decision for lack of jurisdiction considering that it was raised only after fifteen (15) years of tedious litigation, thus:

The facts of this case show that from the time the Surety became a quasi-party on July 31, 1948, it could have raised the question of the lack of jurisdiction of the Court of First Instance of Cebu to take

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[18] *Vargas v. Caminas*, G.R. No. 137869 and G.R. No. 137940, 12 June 2008, 554 SCRA 305, 316.

[19] *Geonzon Vda. de Barrera v. Heirs of Vicente Legaspi*, G.R. No. 174346, 12 September 2008, 565 SCRA 192, 198, citing *Francel Realty Corporation v. Sycip*, G.R. No. 154684, 8 September 2005, 469 SCRA 424, 432.

[20] *Sales v. Barro*, G.R. No. 171678, 10 December 2008, 573 SCRA 456, 464, citing *Venancio Figueroa y Cervantes v. People*, G.R. No. 147406, 14 July 2008, 558 SCRA 63, 69, and *Atwel v. Concepcion Progressive Association, Inc.*, G.R. No. 169370, 14 April 2008, 551 SCRA 272, 283.

[21] *Cua v. Vargas*, G.R. No. 156536, 31 October 2006, 506 SCRA 374, 388.

cognizance of the present action by reason of the sum of money involved which, according to the law then in force, was within the original exclusive jurisdiction of inferior courts. It failed to do so. Instead, at several stages of the proceedings in the court *a quo* as well as in the Court of Appeals, it invoked the jurisdiction of said courts to obtain affirmative relief and submitted its case for a final adjudication on the merits. It was only after an adverse decision was rendered by the Court of Appeals that it finally woke up to raise the question of jurisdiction. Were we to sanction such conduct on its part, We would in effect be declaring as useless all the proceedings had in the present case since it was commenced on July 19, 1948 and compel the judgment creditors to go up their Calvary once more. The inequity and unfairness of this is not only patent but revolting.[22]

The principle of justice and equity as espoused in *Tijam* should be applied in this case. The MTC dismissed the ejectment case upon its ruling that the case is for *accion publiciana.* It did not assert jurisdiction over the case even if it could have done so based on the assessed value of the property subject of the *accion publiciana*. And there was no showing, indeed, not even an allegation, that the MTC was not aware of its jurisdictional authority over an *accion publiciana* involving property in the amount stated in the law. Moreover, petitioner did not bring up the issue of jurisdictional amount that would have led the MTC to proceed with the trial of the case. Petitioner obviously considered the dismissal to be in his favor. When, as a result of such dismissal, respondents brought the case as *accion publiciana* before the RTC, petitioner never brought up the issue of jurisdictional amount. What petitioner mentioned in his Answer before the RTC was the generally phrased allegation that "the Honorable Court has no jurisdiction over the subject matter and the nature of the action in the above-entitled case."[23]

This general assertion, which lacks any basis, is not sufficient. Clearly, petitioner failed to point out the omission of the assessed value in the complaint. Petitioner actively participated during

[22] *Tijam v. Sibonghanoy, supra* note 11 at 565.

[23] Records, p. 14.

the trial by adducing evidence and filing numerous pleadings, none of which mentioned any defect in the jurisdiction of the RTC. It was only on appeal before the Court of Appeals, after he obtained an adverse judgment in the trial court, that petitioner, for the first time, came up with the argument that the decision is void because there was no allegation in the complaint about the value of the property.

Clearly, petitioner is estopped from questioning the jurisdiction of the RTC.

We note that the decisions of the RTC and of the Court of Appeals discussed extensively the merits of the case, which has been pending for nearly ten (10) years. It was handled by two (2) judges and its records had to be reconstituted after the fire that gutted the courthouse.[24] If we were to accede to petitioner's prayer, all the effort, time and expenses of parties who participated in the litigation would be wasted. Quite obviously, petitioner wants a repetition of the process hoping for the possibility of a reversal of the decision. The Court will not countenance such practice.

Significantly, the Technical Report on Verification Survey[25] by Engineer Robert C. Pangyarihan, which was attached to and formed part of the records, contained a tax declaration[26] indicating that the subject property has an assessed value of ₱110,220.00. It is basic that the tax declaration indicating the assessed value of the property enjoys the presumption of regularity as it has been issued by the proper government agency.[27] Under Republic Act No. 7691, the RTC in fact has jurisdiction over the subject matter of the action.

Taking into consideration the decision of the MTC proclaiming that the case is one for *accion publiciana* and the assessed

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[24] *Id.* at 44.

[25] *Id.* at 138-150.

[26] *Id.* at 158.

[27] *Ouano v. PGTT International Investment Corporation*, 434 Phil. 28, 36 (2002).

value of the property as evidenced by the case records, jurisdiction pertains, rightfully so, with the RTC. Perforce, the petition should be denied.

WHEREFORE, the decision of the Court of Appeals dated 21 April 2008, affirming the judgment of the Regional Trial Court of Binangonan, Rizal dated 5 March 2007, is *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

FIRST DIVISION

[G.R. No. 183612. March 15, 2010]

POLYTECHNIC UNIVERSITY OF THE PHILIPPINES, *petitioner, vs.* **GOLDEN HORIZON REALTY CORPORATION,** *respondent.*

[G.R. No. 184260. March 15, 2010.]

NATIONAL DEVELOPMENT COMPANY, *petitioner, vs.* **GOLDEN HORIZON REALTY CORPORATION,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; AN OPTION CONTRACT AND A RIGHT OF FIRST REFUSAL, DISTINGUISHED.—** An option is a contract by which the owner of the property agrees with another person that the latter shall have the right to buy the former's property at a fixed price within a certain time. It is a condition offered or contract by which the owner stipulates with another that the latter shall have the right to buy the property at a fixed price within a certain time, or under, or in

compliance with certain terms and conditions; or which gives to the owner of the property the right to sell or demand a sale. It binds the party, who has given the option, not to enter into the principal contract with any other person during the period designated, and, within that period, to enter into such contract with the one to whom the option was granted, if the latter should decide to use the option. Upon the other hand, a right of first refusal is a contractual grant, not of the sale of a property, but of the first priority to buy the property in the event the owner sells the same. As distinguished from an option contract, in a right of first refusal, while the object might be made determinate, the exercise of the right of first refusal would be dependent not only on the owner's eventual intention to enter into a binding juridical relation with another but also on terms, including the price, that are yet to be firmed up.

2. ID.; ID.; RIGHT OF FIRST REFUSAL; WHEN THE OPTION TO PURCHASE CLAUSE WAS CONSTRUED AS A MERE RIGHT OF FIRST REFUSAL.— As the option to purchase clause in the second lease contract has no definite period within which the leased premises will be offered for sale to respondent lessee and the price is made subject to negotiation and determined only at the time the option to buy is exercised, it is obviously a mere right of refusal, usually inserted in lease contracts to give the lessee the first crack to buy the property in case the lessor decides to sell the same. That respondent was granted a right of first refusal under the second lease contract appears not to have been disputed by petitioners.

3. ID.; ID.; ID.; LEGAL DUTY OF THE LESSOR UNDER A LEASE CONTRACT CONTAINING A RIGHT OF FIRST REFUSAL CLAUSE.— When a lease contract contains a right of first refusal, the lessor has the legal duty to the lessee not to sell the leased property to anyone at any price until after the lessor has made an offer to sell the property to the lessee and the lessee has failed to accept it. Only after the lessee has failed to exercise his right of first priority could the lessor sell the property to other buyers under the same terms and conditions offered to the lessee, or under terms and conditions more favorable to the lessor.

4. ID.; ID.; ID.; RULING IN *POLYTECHNIC UNIVERSITY OF THE PHILIPPINES V. COURT OF APPEALS* APPLIES IN CASE

AT BAR.— [T]he CA was correct in declaring that there exists no justifiable reason not to apply the same rationale in *Polytechnic University of the Philippines v. Court of Appeals* in the case of respondent who was similarly prejudiced by petitioner NDC's sale of the property to PUP, as to entitle the respondent to exercise its option to purchase until October 1988 inasmuch as the May 4, 1978 contract embodied the option to renew the lease for another ten (10) years upon mutual consent and giving respondent the option to purchase the leased premises for a price to be negotiated and determined at the time such option was exercised by respondent. It is to be noted that Memorandum Order No. 214 itself declared that the transfer is "subject to such liens/leases existing [on the subject property]."

5. **ID.; ID.; ID.; THE RIGHT OF FIRST REFUSAL IS ENFORCEABLE.—** [T]he contractual grant of a right of first refusal is enforceable, and following an earlier ruling in *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.,* the execution of such right consists in directing the grantor to comply with his obligation according to the terms at which he should have offered the property in favor of the grantee and at that price when the offer should have been made.

6. **ID.; ID.; ID.; THE CONSIDERATION FOR THE LEASE INCLUDES THE CONSIDERATION FOR THE RIGHT OF FIRST REFUSAL.—** [B]asic is the rule that a party to a contract cannot unilaterally withdraw a right of first refusal that stands upon valuable consideration. We have categorically ruled that it is not correct to say that there is no consideration for the grant of the right of first refusal if such grant is embodied in the same contract of lease. Since the stipulation forms part of the entire lease contract, the consideration for the lease includes the consideration for the grant of the right of first refusal. In entering into the contract, the lessee is in effect stating that it consents to lease the premises and to pay the price agreed upon provided the lessor also consents that, should it sell the leased property, then, the lessee shall be given the right to match the offered purchase price and to buy the property at that price.

7. **ID.; ID.; REASON OF PUBLIC WELFARE OR THE CONSTITUTIONAL PRIORITY ACCORDED TO EDUCATION**

CANNOT BE INVOKED TO DESTROY CONTRACTUAL OBLIGATIONS.— We have further stressed that not even the avowed public welfare or the constitutional priority accorded to education, invoked by petitioner PUP in the *Firestone* case, would serve as license for us, and any party for that matter, to destroy the sanctity of binding obligations. While education may be prioritized for legislative and budgetary purposes, it is doubtful if such importance can be used to confiscate private property such as the right of first refusal granted to a lessee of petitioner NDC. Clearly, no reversible error was committed by the CA in sustaining respondent's contractual right of first refusal and ordering the reconveyance of the leased portion of petitioner NDC's property in its favor.

APPEARANCES OF COUNSEL

Rhoel Z. Mabazza & Benjamin I.J.F. Rabuco III for National Development Company.

The Solicitor General for Polytechnic University of the Phils.

Arturo S. Santos for Golden Horizon Realty Corp.

D E C I S I O N

VILLARAMA, JR., *J.*:

The above-titled consolidated petitions filed under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seek to reverse the Decision[1] dated June 25, 2008 and Resolution dated August 22, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 84399 which affirmed the Decision[2] dated November 25, 2004 of the Regional Trial Court (RTC) of Makati City, Branch 144 in Civil Case No. 88-2238.

The undisputed facts are as follows:

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[1] *Rollo* (G.R. No. 184260), pp. 35-48. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Edgardo P. Cruz and Ricardo R. Rosario.

[2] Records, Vol. III, pp. 389-403. Penned by Judge Oscar B. Pimentel.

Petitioner National Development Company (NDC) is a government-owned and controlled corporation, created under Commonwealth Act No. 182, as amended by Com. Act No. 311 and Presidential Decree (P.D.) No. 668. Petitioner Polytechnic University of the Philippines (PUP) is a public, non-sectarian, non-profit educational institution created in 1978 by virtue of P.D. No. 1341.

In the early sixties, NDC had in its disposal a ten (10)-hectare property located along Pureza St., Sta. Mesa, Manila. The estate was popularly known as the NDC Compound and covered by Transfer Certificate of Title Nos. 92885, 110301 and 145470.

On September 7, 1977, NDC entered into a Contract of Lease (C-33-77) with Golden Horizon Realty Corporation (GHRC) over a portion of the property, with an area of 2,407 square meters for a period of ten (10) years, renewable for another ten (10) years with mutual consent of the parties.[3]

On May 4, 1978, a second Contract of Lease (C-12-78) was executed between NDC and GHRC covering 3,222.80 square meters, also renewable upon mutual consent after the expiration of the ten (10)-year lease period. In addition, GHRC as lessee was granted the "option to purchase the area leased, the price to be negotiated and determined at the time the option to purchase is exercised."[4]

Under the lease agreements, GHRC was obliged to construct at its own expense buildings of strong material at no less than the stipulated cost, and other improvements which shall automatically belong to the NDC as lessor upon the expiration of the lease period. Accordingly, GHRC introduced permanent improvements and structures as required by the terms of the contract. After the completion of the industrial complex project, for which GHRC spent ₱5 million, it was leased to various manufacturers, industrialists and other businessmen thereby generating hundreds of jobs.[5]

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[3] Records, Vol. III, pp. 83-89.

[4] *Id.*, at pp. 91-97.

[5] *Id.*, at pp. 77, 137-138.

On June 13, 1988, before the expiration of the ten (10)-year period under the second lease contract, GHRC wrote a letter to NDC indicating its exercise of the option to renew the lease for another ten (10) years. As no response was received from NDC, GHRC sent another letter on August 12, 1988, reiterating its desire to renew the contract and also requesting for priority to negotiate for its purchase should NDC opt to sell the leased premises.[6] NDC still did not reply but continued to accept rental payments from GHRC and allowed the latter to remain in possession of the property.

Sometime after September 1988, GHRC discovered that NDC had decided to secretly dispose the property to a third party. On October 21, 1988, GHRC filed in the RTC a complaint for specific performance, damages with preliminary injunction and temporary restraining order.[7]

In the meantime, then President Corazon C. Aquino issued Memorandum Order No. 214 dated January 6, 1989, ordering the transfer of the whole NDC Compound to the National Government, which in turn would convey the said property in favor of PUP at acquisition cost. The memorandum order cited the serious need of PUP, considered the "Poor Man's University," to expand its campus, which adjoins the NDC Compound, to accommodate its growing student population, and the willingness of PUP to buy and of NDC to sell its property. The order of conveyance of the 10.31-hectare property would automatically result in the cancellation of NDC's total obligation in favor of the National Government in the amount of ₱57,193,201.64.[8]

On February 20, 1989, the RTC issued a writ of preliminary injunction enjoining NDC and its attorneys, representatives, agents and any other persons assisting it from proceeding with the sale and disposition of the leased premises.[9]

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[6] Records, Vol. I, pp. 25-26.

[7] *Id.*, at pp. 1-8.

[8] Records, Vol. III, pp. 100-101.

[9] Records, Vol. I, pp. 143-144.

On February 23, 1989, PUP filed a motion to intervene as party defendant, claiming that as a purchaser *pendente lite* of a property subject of litigation it is entitled to intervene in the proceedings. The RTC granted the said motion and directed PUP to file its Answer-in-Intervention.[10]

PUP also demanded that GHRC vacate the premises, insisting that the latter's lease contract had already expired. Its demand letter unheeded by GHRC, PUP filed an ejectment case (Civil Case No. 134416) before the Metropolitan Trial Court (MeTC) of Manila on January 14, 1991.[11]

Due to this development, GHRC filed an Amended and/or Supplemental Complaint to include as additional defendants PUP, Honorable Executive Secretary Oscar Orbos and Judge Ernesto A. Reyes of the Manila MeTC, and to enjoin the afore-mentioned defendants from prosecuting Civil Case No. 134416 for ejectment. A temporary restraining order was subsequently issued by the RTC enjoining PUP from prosecuting and Judge Francisco Brillantes, Jr. from proceeding with the ejectment case.[12]

In its Second Amended and/or Supplemental Complaint, GHRC argued that Memorandum Order No. 214 is a nullity, for being violative of the writ of injunction issued by the trial court, apart from being an infringement of the Constitutional prohibition against impairment of obligation of contracts, an encroachment on legislative functions and a bill of attainder. In the alternative, should the trial court adjudge the memorandum order as valid, GHRC contended that its existing right must still be respected by allowing it to purchase the leased premises.[13]

Pre-trial was set but was suspended upon agreement of the parties to await the final resolution of a similar case involving

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[10] *Id.*, at pp. 163-170, 224, 232-246.

[11] *Id.*, at pp. 411-418.

[12] *Id.*, at pp. 290-328.

[13] *Id.*, at pp. 390-391.

NDC, PUP and another lessee of NDC, Firestone Ceramics, Inc. (Firestone), then pending before the RTC of Pasay City.[14]

On November 14, 2001, this Court rendered a decision in G.R. Nos. 143513 (*Polytechnic University of the Philippines v. Court of Appeals*) and 143590 (*National Development Corporation v. Firestone Ceramics, Inc.*),[15] which declared that the sale to PUP by NDC of the portion leased by Firestone pursuant to Memorandum Order No. 214 violated the right of first refusal granted to Firestone under its third lease contract with NDC. We thus decreed:

WHEREFORE, the petitions in G.R. No. 143513 and G.R. No. 143590 are DENIED. Inasmuch as the first contract of lease fixed the area of the leased premises at 2.90118 hectares while the second contract placed it at 2.60 hectares, let a ground survey of the leased premises be immediately conducted by a duly licensed, registered surveyor at the expense of private respondent FIRESTONE CERAMICS, INC., within two (2) months from the finality of the judgment in this case. Thereafter, private respondent FIRESTONE CERAMICS, INC., shall have six (6) months from receipt of the approved survey within which to exercise its right to purchase the leased property at ₱1,500.00 per square meter, and petitioner Polytechnic University of the Philippines is ordered to reconvey the property to FIRESTONE CERAMICS, INC., in the exercise of its right of first refusal upon payment of the purchase price thereof.

SO ORDERED.[16]

The RTC resumed the proceedings and when mediation and pre-trial failed to settle the case amicably, trial on the merits ensued.[17]

On November 25, 2004, the RTC rendered its decision upholding the right of first refusal granted to GHRC under its lease contract

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[14] Records, Vol. II, pp. 757, 770-806.

[15] 368 SCRA 691.

[16] *Id.*, at p. 799.

[17] Records, Vol. III, pp. 6-73.

with NDC and ordering PUP to reconvey the said portion of the property in favor of GHRC. The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the plaintiff to cause immediate ground survey of the premises subject of the leased contract under Lease Contract No. C-33-77 and C-12-78 measuring 2,407 and 3,222.8 square meters respectively, by a duly licensed and registered surveyor at the expense of the plaintiff within two months from receipt of this Decision and thereafter, the plaintiff shall have six (6) months from receipt of the approved survey within which to exercise its right to purchase the leased property at ₱554.74 per square meter. And finally, the defendant PUP, in whose name the property is titled, is hereby ordered to reconvey the aforesaid property to the plaintiff in the exercise of its right of its option to buy or first refusal upon payment of the purchase price thereof.

The defendant NDC is hereby further ordered to pay the plaintiff attorney's fees in the amount of ₱100,000.00.

The case against defendant Executive Secretary is dismissed and this decision shall bind defendant Metropolitan Trial Court, Branch 20 of Manila.

With costs against defendants NDC and PUP.

SO ORDERED.[18]

NDC and PUP separately appealed the decision to the CA.[19] By Decision of June 25, 2008, the CA affirmed *in toto* the decision of the RTC.[20]

Both the RTC and the CA applied this Court's ruling in *Polytechnic University of the Philippines v. Court of Appeals (supra)*, considering that GHRC is similarly situated as a lessee of NDC whose right of first refusal under the lease contract was violated by the sale of the property to PUP without NDC having first offered to sell the same to GHRC despite the latter's request

[18] *Id.*, at pp. 402-403.

[19] *Id.*, at pp. 404-415.

[20] CA *rollo,* pp. 223-236.

for the renewal of the lease and/or to purchase the leased premises prior to the expiration of the second lease contract. The CA further agreed with the RTC's finding that there was an implied renewal of the lease upon the failure of NDC to act on GHRC's repeated requests for renewal of the lease contract, both verbal and written, and continuing to accept monthly rental payments from GHRC which was allowed to continue in possession of the leased premises.

The CA also rejected the argument of NDC and PUP that even assuming that GHRC had the right of first refusal, said right pertained only to the second lease contract, C-12-78 covering 3,222.80 square meters, and not to the first lease contract, C-33-77 covering 2,407 square meters, which had already expired. It sustained the RTC's finding that the two (2) lease contracts were interrelated because each formed part of GHRC's industrial complex, such that business operations would be rendered useless and inoperative if the first contract were to be detached from the other, as similarly held in the afore-mentioned case of *Polytechnic University of the Philippines v. Court of Appeals.*

Petitioner PUP argues that respondent's right to exercise the option to purchase had expired with the termination of the original contract of lease and was not carried over to the subsequent implied new lease between respondent and petitioner NDC. As testified to by their witnesses Leticia Cabantog and Atty. Rhoel Mabazza, there was no agreement or document to the effect that respondent's request for extension or renewal of the subject contracts of lease for another ten (10) years was approved by NDC. Hence, respondent can no longer exercise the option to purchase the leased premises when the same were conveyed to PUP pursuant to Memorandum Order No. 214 dated January 6, 1989, long after the expiration of C-33-77 and C-12-78 in September 1988.[21]

Petitioner PUP further contends that while it is conceded that there was an implied new lease between respondent and petitioner NDC after the expiration of the lease contracts, the

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[21] *Rollo* (G.R. No. 183612), pp. 20-21.

same did not include the right of first refusal originally granted to respondent. The CA should have applied the ruling in *Dizon v. Magsaysay*[22] that the lessee cannot any more exercise its option to purchase after the lapse of the one (1)-year period of the lease contract. With the implicit renewal of the lease on a monthly basis, the other terms of the original contract of lease which are revived in the implied new lease under Article 1670 of the Civil Code are only those terms which are germane to the lessee's right of continued enjoyment of the property leased. The provision entitling the lessee the option to purchase the leased premises is not deemed incorporated in the impliedly renewed contract because it is alien to the possession of the lessee. Consequently, as in this case, respondent's right of option to purchase the leased premises was not violated despite the impliedly renewed contract of lease with NDC. Respondent cannot favorably invoke the decision in G.R. Nos. 143513 and 143590 (*Polytechnic University of the Philippines v. Court of Appeals)* for the simple reason, among others, that unlike in said cases, the contracts of lease of respondent with NDC were not mutually extended or renewed for another ten (10) years. Thus, when the leased premises were conveyed to PUP, respondent did not any more have any right of first refusal, which incidentally appears only in the second lease contract and not in the first lease contract.[23]

On its part, petitioner NDC assails the CA in holding that the contracts of lease were impliedly renewed for another ten (10)-year period. The provisions of C-33-77 and C-12-78 clearly state that the lessee is granted the option "to renew for another ten (10) years with the mutual consent of both parties." As regards the continued receipt of rentals by NDC and possession by the respondent of the leased premises, the impliedly renewed lease was only month-to-month and not ten (10) years since the rentals are being paid on a monthly basis, as held in *Dizon v. Magsaysay*.[24]

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[22] No. L-23399, May 31, 1974, 57 SCRA 250.

[23] *Id.*, at pp. 21-25.

[24] *Rollo* (G.R. No. 184260), pp. 22-26.

Petitioner NDC further faults the CA in sustaining the RTC's decision which erroneously granted respondent the option to purchase the leased premises at the rate of ₱554.74 per square meter, the same rate for which NDC sold the property to petitioner PUP and/or the National Government, which is the mere acquisition cost thereof. It must be noted that such consideration or rate was imposed by Memorandum Order No. 214 under the premise that it shall, in effect, be a sale and/or purchase from one (1) government agency to another. It was intended merely as a transfer of one (1) user of the National Government to another, with the beneficiary, PUP in this case, merely returning to the petitioner/transferor the cost of acquisition thereof, as appearing on its accounting books. It does not in any way reflect the true and fair market value of the property, nor was it a price a "willing seller" would demand and accept for parting with his real property. Such benefit, therefore, cannot be extended to respondent as a private entity, as the latter does not share the same pocket, so to speak, with the National Government.[25]

The issue to be resolved is whether or not our ruling in *Polytechnic University of the Philippines v. Court of Appeals* applies in this case involving another lessee of NDC who claimed that the option to purchase the portion leased to it was similarly violated by the sale of the NDC Compound in favor of PUP pursuant to Memorandum Order No. 214.

We rule in the affirmative.

The second lease contract contained the following provision:

III. It is mutually agreed by the parties that this Contract of Lease shall be in full force and effect for a period of ten (10) years counted from the effectivity of the payment of rental as provided under sub-paragraph (b) of Article I, with option to renew for another ten (10) years with the mutual consent of both parties. In no case should the rentals be increased by more than 100% of the original amount fixed.

Lessee shall also have the option to purchase the area leased, the price to be negotiated and determined at the time the option to purchase is exercised. [emphasis supplied]

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[25] *Id.*, at pp. 27-28.

An option is a contract by which the owner of the property agrees with another person that the latter shall have the right to buy the former's property at a fixed price within a certain time. It is a condition offered or contract by which the owner stipulates with another that the latter shall have the right to buy the property at a fixed price within a certain time, or under, or in compliance with certain terms and conditions; or which gives to the owner of the property the right to sell or demand a sale.[26] It binds the party, who has given the option, not to enter into the principal contract with any other person during the period designated, and, within that period, to enter into such contract with the one to whom the option was granted, if the latter should decide to use the option.[27]

Upon the other hand, a right of first refusal is a contractual grant, not of the sale of a property, but of the first priority to buy the property in the event the owner sells the same.[28] As distinguished from an option contract, in a right of first refusal, while the object might be made determinate, the exercise of the right of first refusal would be dependent not only on the owner's eventual intention to enter into a binding juridical relation with another but also on terms, including the price, that are yet to be firmed up.[29]

As the option to purchase clause in the second lease contract has no definite period within which the leased premises will be offered for sale to respondent lessee and the price is made subject to negotiation and determined only at the time the option

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[26] *Eulogio v. Apeles,* G.R. No. 167884, January 20, 2009, 576 SCRA 561, citing *Tayag v. Lacson,* G.R. No. 134971, March 25, 2004, 426 SCRA 282, 304.

[27] *Carceller v. Court of Appeals,* G.R. No. 124791, February 10, 1999, 302 SCRA 718, 724, citing Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines* (Vol. IV), 1991 ed., pp. 466-467.

[28] *Rosencor Development Corporation v. Inquing,* G.R. No. 140479, March 8, 2001, 354 SCRA 119.

[29] *Vazquez v. Ayala Corporation,* G.R. No. 149734, November 19, 2004, 443 SCRA 231, 255, citing *Ang Yu Asuncion v. Court of Appeals,* G.R. No. 109125, December 2, 1994, 238 SCRA 602.

to buy is exercised, it is obviously a mere right of refusal, usually inserted in lease contracts to give the lessee the first crack to buy the property in case the lessor decides to sell the same. That respondent was granted a right of first refusal under the second lease contract appears not to have been disputed by petitioners. What petitioners assail is the CA's erroneous conclusion that such right of refusal subsisted even after the expiration of the original lease period, when respondent was allowed to continue staying in the leased premises under an implied renewal of the lease and without the right of refusal carried over to such month-to-month lease. Petitioners thus maintain that no right of refusal was violated by the sale of the property in favor of PUP pursuant to Memorandum Order No. 214.

Petitioners' position is untenable.

When a lease contract contains a right of first refusal, the lessor has the legal duty to the lessee not to sell the leased property to anyone at any price until after the lessor has made an offer to sell the property to the lessee and the lessee has failed to accept it. Only after the lessee has failed to exercise his right of first priority could the lessor sell the property to other buyers under the same terms and conditions offered to the lessee, or under terms and conditions more favorable to the lessor.[30]

Records showed that during the hearing on the application for a writ of preliminary injunction, respondent adduced in evidence a letter of Antonio A. Henson dated *15 July 1988* addressed to Mr. Jake C. Lagonera, Director and Special Assistant to Executive Secretary Catalino Macaraeg, reviewing a proposed memorandum order submitted to President Corazon C. Aquino transferring the whole NDC Compound, including the premises leased by respondent, in favor of petitioner PUP.

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[30] *Villegas v. Court of Appeals,* G.R. Nos. 111495 and 122404, August 18, 2006, 499 SCRA 276, 288, citing *Riviera Filipina, Inc. v. Court of Appeals,* 430 Phil. 8 (2002); *Parañaque Kings Enterprises, Inc. v. Court of Appeals,* G.R. No. 111538, February 26, 1997, 268 SCRA 727; *Guzman, Bocaling & Co. v. Bonnevie,* G.R. No. 86150, March 2, 1992, 206 SCRA 668.

This letter was offered in evidence by respondent to prove the existence of documents as of that date and even prior to the expiration of the second lease contract or the lapse of the ten (10)-year period counted from the effectivity of the rental payment — that is, one hundred and fifty (150) days from the signing of the contract (May 4, 1978), as provided in Art. I, paragraph (b) of C-12-78, or on *October 1, 1988*.

Respondent thus timely exercised its option to purchase on August 12, 1988. However, considering that NDC had been negotiating through the National Government for the sale of the property in favor of PUP as early as July 15, 1988 without first offering to sell it to respondent and even when respondent communicated its desire to exercise the option to purchase granted to it under the lease contract, it is clear that NDC violated respondent's right of first refusal. Under the premises, the matter of the right of refusal not having been carried over to the impliedly renewed month-to-month lease after the expiration of the second lease contract on October 21, 1988 becomes irrelevant since at the time of the negotiations of the sale to a third party, petitioner PUP, respondent's right of first refusal was still subsisting.

Petitioner NDC in its memorandum contended that the CA erred in applying the ruling in *Polytechnic University of the Philippines v. Court of Appeals* pointing out that the case of lessee Firestone Ceramics, Inc. is different because the lease contract therein had not yet expired while in this case respondent's lease contracts have already expired and never renewed. The date of the expiration of the lease contract in said case is December 31, 1989 which is prior to the issuance of Memorandum Order No. 214 on January 6, 1989. In contrast, respondent's lease contracts had already expired (September 1988) at the time said memorandum order was issued.[31]

Such contention does not hold water. As already mentioned, the reckoning point of the offer of sale to a third party was not the issuance of Memorandum Order No. 214 on January 6,

[31] *Rollo* (G.R. No. 184260), pp. 282-283.

1989 but the commencement of such negotiations as early as July 1988 when respondent's right of first refusal was still subsisting and the lease contracts still in force. Petitioner NDC did not bother to respond to respondent's letter of June 13, 1988 informing it of respondent's exercise of the option to renew and requesting to discuss further the matter with NDC, nor to the subsequent letter of August 12, 1988 reiterating the request for renewing the lease for another ten (10) years and also the exercise of the option to purchase under the lease contract. Petitioner NDC had dismissed these letters as "mere informative in nature, and a request at its best."[32]

Perusal of the letter dated August 12, 1988, however, belies such claim of petitioner NDC that it was merely informative, thus:

August 12, 1988

HON. ANTONIO HENSON
General Manager
NATIONAL DEVELOPMENT COMPANY
377 Se(n). Gil J. Puyat Avenue
Makati, Metro Manila

REF: Contract of Lease
Nos. C-33-77 & C-12-78

Dear Sir:

This is further to our earlier letter dated June 13, 1988 formally advising your goodselves of our intention to exercise our option for another ten (10) years. Should the National Development Company opt to sell the property covered by said leases, we also request for priority to negotiate for its purchase at terms and/or conditions mutually acceptable.

As a backgrounder, we wish to inform you that since the start of our lease, we have improved on the property by constructing bodega-type buildings which presently house all legitimate trading and manufacturing concerns. These business are substantial taxpayers, employ not less than 300 employees and contribute even foreign earnings.

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[32] *Id.*, at p. 278.

It is in this context that **we are requesting for the extension of the lease contract to prevent serious economic disruption and dislocation of the business concerns, as well as provide ourselves, the lessee, an opportunity to recoup our investments and obtain a fair return thereof.**

Your favorable consideration on our request will be very much appreciated.

very truly yours,

TIU HAN TENG
President[33]

As to petitioners' argument that respondent's right of first refusal can be invoked only with respect to the second lease contract which expressly provided for the option to purchase by the lessee, and not in the first lease contract which contained no such clause, we sustain the RTC and CA in finding that the second contract, covering an area of 3,222.80 square meters, is interrelated to and inseparable from the first contract over 2,407 square meters. The structures built on the leased premises, which are adjacent to each other, form part of an integrated system of a commercial complex leased out to manufacturers, fabricators and other businesses. Petitioners submitted a sketch plan and pictures taken of the driveways, in an effort to show that the leased premises can be used separately by respondent, and that the two (2) lease contracts are distinct from each other.[34] Such was a desperate attempt to downplay the commercial purpose of respondent's substantial improvements which greatly contributed to the increased value of the leased premises. To prove that petitioner NDC had considered the leased premises as a single unit, respondent submitted evidence showing that NDC issued only one (1) receipt for the rental payments for the two portions.[35] Respondent further presented the blueprint plan prepared by its witness, Engr. Alejandro E. Tinio, who

[33] Records, Vol. III, p. 99.

[34] Records, Vol. III, pp. 163 to 163-A, 330, 337-341.

[35] Exhibit "M", Records, Vol. III, pp. 173 and 185; Judicial Affidavit of Mr. Tiu Han Teng, Records, Vol. III, pp. 77 and 79.

supervised the construction of the structures on the leased premises, to show the building concept as a one-stop industrial site and integrated commercial complex.[36]

In fine, the CA was correct in declaring that there exists no justifiable reason not to apply the same rationale in *Polytechnic University of the Philippines v. Court of Appeals* in the case of respondent who was similarly prejudiced by petitioner NDC's sale of the property to PUP, as to entitle the respondent to exercise its option to purchase until October 1988 inasmuch as the May 4, 1978 contract embodied the option to renew the lease for another ten (10) years upon mutual consent and giving respondent the option to purchase the leased premises for a price to be negotiated and determined at the time such option was exercised by respondent. It is to be noted that Memorandum Order No. 214 itself declared that the transfer is "subject to such liens/leases existing [on the subject property]." Thus:

> ...we now proceed to determine whether FIRESTONE should be allowed to exercise **its right of first refusal over the property.** Such right was **expressly stated by NDC and FIRESTONE in par. XV of their third contract denominated as A-10-78 executed on 22 December 1978** which, as found by the courts *a quo*, **was interrelated to and inseparable from their first contract denominated as C-30-65 executed on 24 August 1965 and their second contract denominated as C-26-68 executed on 8 January 1969.** Thus –
>
> > Should the LESSOR desire to sell the leased premises during the term of this Agreement, or any extension thereof, the LESSOR shall first give to the LESSEE, which shall have the *right of first option to purchase* the leased premises subject to mutual agreement of both parties.
>
> In the instant case, the right of first refusal is an integral and indivisible part of the contract of lease and is inseparable from the whole contract. The consideration for the right is built into the reciprocal obligations of the parties. Thus, it is not correct for petitioners to insist that there was no consideration paid by FIRESTONE to entitle it to the exercise of the right, inasmuch as the

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[36] Records, Vol. III, pp. 159-161, 163 to 163-A (Exhibits "N" and "O").

stipulation is part and parcel of the contract of lease making the consideration for the lease the same as that for the option.

It is a settled principle in civil law that when a lease contract contains a right of first refusal, the lessor is under a legal duty to the lessee not to sell to anybody at any price until after he has made an offer to sell to the latter at a certain price and the lessee has failed to accept it. The lessee has a right that the lessor's first offer shall be in his favor.

The option in this case was incorporated in the contracts of lease by NDC for the benefit of FIRESTONE which, in view of the total amount of its investments in the property, wanted to be assured that it would be given the first opportunity to buy the property at a price for which it would be offered. Consistent with their agreement, it was then implicit for NDC to have first offered the leased premises of 2.60 hectares to FIRESTONE prior to the sale in favor of PUP. Only if FIRESTONE failed to exercise its right of first priority could NDC lawfully sell the property to petitioner PUP.[37] [emphasis supplied]

As we further ruled in the afore-cited case, the contractual grant of a right of first refusal is enforceable, and following an earlier ruling in *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.,*[38] the execution of such right consists in directing the grantor to comply with his obligation according to the terms at which he should have offered the property in favor of the grantee and at that price when the offer should have been made. We then determined the proper rate at which the leased portion should be reconveyed to respondent by PUP, to whom the lessor NDC sold it in violation of respondent lessee's right of first refusal, as follows:

It now becomes *apropos* to ask whether the courts *a quo* were correct in fixing the proper consideration of the sale at ₱1,500.00 per square meter. In contracts of sale, the basis of the right of first refusal must be the current offer of the seller to sell or the offer to purchase of the prospective buyer. Only after the lessee-grantee fails to exercise

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[37] *Polytechnic University of the Philippines v. Court of Appeals, supra*, at pp. 707-708.

[38] G.R. No. 106063, November 21, 1996, 264 SCRA 483.

its right under the same terms and within the period contemplated can the owner validly offer to sell the property to a third person, again, *under the same terms as offered to the grantee*. It appearing that the whole NDC compound was sold to PUP for ₱554.74 per square meter, it would have been more proper for the courts below to have ordered the sale of the property also at the same price. However, **since FIRESTONE never raised this as an issue, while on the other hand it admitted that the value of the property stood at ₱1,500.00 per square meter, then we see no compelling reason to modify the holdings of the courts *a quo* that the leased premises be sold at that price.**[39] [emphasis supplied]

In the light of the foregoing, we hold that respondent, which did not offer any amount to petitioner NDC, and *neither disputed the ₱1,500.00 per square meter actual value of NDC's property* at that time it was sold to PUP at ₱554.74 per square meter, as duly considered by this Court in the *Firestone* case, should be bound by such determination. Accordingly, the price at which the leased premises should be sold to respondent in the exercise of its right of first refusal under the lease contract with petitioner NDC, which was pegged by the RTC at ₱554.74 per square meter, should be adjusted to ₱1,500.00 per square meter, which more accurately reflects its true value at that time of the sale in favor of petitioner PUP.

Indeed, basic is the rule that a party to a contract cannot unilaterally withdraw a right of first refusal that stands upon valuable consideration.[40] We have categorically ruled that it is not correct to say that there is no consideration for the grant of the right of first refusal if such grant is embodied in the same contract of lease. Since the stipulation forms part of the entire lease contract, the consideration for the lease includes the consideration for the grant of the right of first refusal. In entering into the contract, the lessee is in effect stating that it consents to lease the premises and to pay the price agreed upon provided the lessor also consents that, should it sell the leased property, then,

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[39] *Polytechnic University of the Philippines v. Court of Appeals, supra*, at pp. 708-709.

[40] *Id.*, at p. 702.

the lessee shall be given the right to match the offered purchase price and to buy the property at that price.[41]

We have further stressed that not even the avowed public welfare or the constitutional priority accorded to education, invoked by petitioner PUP in the *Firestone* case, would serve as license for us, and any party for that matter, to destroy the sanctity of binding obligations. While education may be prioritized for legislative and budgetary purposes, it is doubtful if such importance can be used to confiscate private property such as the right of first refusal granted to a lessee of petitioner NDC.[42] Clearly, no reversible error was committed by the CA in sustaining respondent's contractual right of first refusal and ordering the reconveyance of the leased portion of petitioner NDC's property in its favor.

WHEREFORE, the petitions are *DENIED*. The Decision dated November 25, 2004 of the Regional Trial Court of Makati City, Branch 144 in Civil Case No. 88-2238, as affirmed by the Court of Appeals in its Decision dated June 25, 2008 in CA-G.R. CV No. 84399, is hereby *AFFIRMED* with *MODIFICATION* in that the price to be paid by respondent Golden Horizon Realty Corporation for the leased portion of the NDC Compound under Lease Contract Nos. C-33-77 and C-12-78 is hereby increased to ₱1,500.00 per square meter.

No pronouncement as to costs.

SO ORDERED.

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

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[41] *Lucrative Realty and Development Corporation v. Bernabe, Jr.,* G.R. No. 148514, November 26, 2002, 392 SCRA 679, 685, citing *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc., supra.*

[42] *Polytechnic University of the Philippines v. Court of Appeals, supra* at p. 703.

FIRST DIVISION

[G.R. No. 183678. March 15, 2010]

RENE VENTENILLA PUSE, *petitioner, vs.* **LIGAYA DELOS SANTOS-PUSE,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; THE BOARD OF PROFESSIONAL TEACHERS-PRC, THE DEPARTMENT OF EDUCATION AND THE CIVIL SERVICE COMMISSION HAVE CONCURRENT JURISDICTION OVER ADMINISTRATIVE CASES AGAINST PUBLIC SCHOOL TEACHERS.—** An administrative case against a public school teacher may be filed before the Board of Professional Teachers-PRC, the DepEd or the CSC, which have concurrent jurisdiction over administrative cases such as for immoral, unprofessional or dishonorable conduct. Concurrent jurisdiction is that which is possessed over the same parties or subject matter at the same time by two or more separate tribunals. When the law bestows upon a government body the jurisdiction to hear and decide cases involving specific matters, it is to be presumed that such jurisdiction is exclusive unless it be proved that another body is likewise vested with the same jurisdiction, in which case, both bodies have concurrent jurisdiction over the matter. The authority to hear and decide administrative cases by the Board of Professional Teachers-PRC, DepEd and the CSC comes from Rep. Act No. 7836, Rep. Act No. 4670 and Presidential Decree (P.D.) No. 807, respectively.

2. **ID.; ID.; ID.; THE BODY OR AGENCY THAT FIRST TAKES COGNIZANCE OF THE COMPLAINT SHALL EXERCISE JURISDICTION TO THE EXCLUSION OF THE OTHERS; APPLICATION.—** [W]here concurrent jurisdiction exists in several tribunals, the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others. Here, it was the Board of Professional Teachers, before which respondent filed the complaint, that acquired jurisdiction over the case and which had the authority to proceed and decide the case to the exclusion of the DepEd and the CSC.

3. ID.; ID.; RULES OF PROCEDURE AND EVIDENCE AND THE REQUIREMENT OF DUE PROCESS ARE NOT STRICTLY APPLIED IN ADMINISTRATIVE PROCEEDINGS.— Petitioner's allegation of improper venue and the fact that the complaint was not under oath are not sufficient grounds for the dismissal of the complaint. Well to remember, the case was an administrative case and as such, technical rules of procedure are liberally applied. In administrative cases, 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. The intention is to resolve disputes brought before such bodies in the most expeditious and inexpensive manner possible.

4. ID.; ID.; GOOD MORAL CHARACTER IS A CONTINUING REQUIREMENT WHICH ONE MUST POSSESS IN THE PRACTICE OF THE TEACHING PROFESSION.— In the practice of his profession, he, as a licensed professional teacher, is required to strictly adhere to, observe and practice the set of ethical and moral principles, standards and values laid down in the [Code of Ethics of Professional Teachers]. It is of no moment that he was not yet a teacher when he contracted his second marriage. His good moral character is a continuing requirement which he must possess if he wants to continue practicing his noble profession. In the instant case, he failed to abide by the tenets of morality. x x x Any deviation from the prescribed standards, principles and values renders a teacher unfit to continue practicing his profession. Thus, it is required that a teacher must at all times be moral, honorable and dignified.

5. ID.; ID.; THE TEACHER'S ACT OF ENTERING INTO A BIGAMOUS MARRIAGE CONSTITUTES GROSSLY IMMORAL CONDUCT; PROPER PENALTY IS REVOCATION OF LICENSE.— [P]etitioner's act of entering into said second marriage constitutes grossly immoral conduct. No doubt, such actuation demonstrates a lack of that degree of morality required of him as a member of the teaching profession. When he contracted his second marriage despite the subsistence of the first, he made a mockery of marriage, a sacred institution demanding respect and dignity. We now go to the penalty imposed on petitioner. The penalty imposed on petitioner was the revocation of his license which penalty was upheld by the Court of Appeals. x x x we find the penalty imposed by the Board proper.

6. ID.; ID.; THE POWER OF THE BOARD OF PROFESSIONAL TEACHERS-PRC TO SUSPEND OR REVOKE A TEACHER'S LICENSE, EXPLAINED.— It must be remembered, however, that petitioner was charged before the Board of Professional Teachers under Rep. Act No. 7836 and not under Civil Service Law, Rules and Regulations. Under Section 23 of Rep. Act No. 7836, the Board has the **power to suspend or revoke** the certificate of registration of any teacher for any causes mentioned in said section, one (1) of which is immoral, unprofessional or dishonorable conduct. The Board has the discretion, taking into account the circumstances obtaining, to impose the penalty of suspension or revocation. In the imposition of the penalty, the Board is not guided by Section 22 of Rule XIV of the Omnibus Civil Service Rules and Regulations which provides for suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense for disgraceful and immoral conduct. Petitioner, therefore, cannot insist that Section 22 be applied to him in the imposition of his penalty, because the Board's basis is Section 23 of Rep. Act No. 7836 which does not consider whether the offense was committed the first or second time.

APPEARANCES OF COUNSEL

Brandon Law Office for petitioner.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is a Petition for Review on *Certiorari* with Prayer for Injunction and Temporary Restraining Order filed by petitioner Rene V. Puse assailing the Decision[1] dated 28 March 2008 of the Court of Appeals in CA-G.R. SP No. 100421.

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[1] CA *rollo*, pp. 134-138. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Hakim S. Abdulwahid and Mariflor P. Punzalan Castillo concurring.

Petitioner is a registered Professional Teacher stationed at S. Aguirre Elementary School, East District, Jose Panganiban, Camarines Norte, while respondent is a Barangay Rural Health Midwife assigned at the Municipal Health Office of Jose Panganiban, Camarines Norte.

It appears that on 10 January 1992, petitioner married respondent Ligaya Delos Santos-Puse at the Municipal Trial Court (MTC) of Daet, Camarines Norte before the Hon. Judge Oscar T. Osorio.[2] He had two (2) children with her, and had a church wedding before respondent found out that petitioner was already married. Respondent discovered that petitioner had already gotten married to Cristina Pablo Puse at the Municipal Trial Court in Cities of Laoag City, Ilocos Norte on 27 December 1986. Respondent likewise learned that he has two (2) children with his first wife.[3]

Thus, on 2 August 2005, respondent filed a letter-complaint with the Director of the Professional Regulation Commission (PRC), National Capital Region, Manila, through the Director, PRC, Lucena City, seeking assistance regarding her husband against whom she had filed a criminal case for "Bigamy" and "Abandonment." She alleged that her husband has not been giving her and their children support.[4]

In a letter dated 16 August 2005, petitioner was directed by the PRC of Lucena City to answer the complaint for immorality and dishonorable conduct filed by respondent.[5] Per directive, petitioner submitted his Compliance[6] dated 31 August 2005 denying the charges against him. He adopted his counter-affidavit and the affidavits of his witnesses, Jocelyn Puse Decena and Dominador I. Blanco, which were submitted in Criminal Case Nos. 7228 and 7229 before the MTC of Jose Panganiban,

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[2] *Rollo*, p. 144.

[3] *Id.* at 140.

[4] *Id.* at 86.

[5] *Id.* at 85.

[6] *Id.* at 87-90.

Camarines Norte. He argued that if respondent's allegations were true, she herself would be equally guilty of immorality and dishonorable conduct, as she was fully aware that petitioner was already married when she married him. He added he has not abandoned respondent or their children and continually gives support for their children.

In her Reply to Answer/Compliance[7] dated 6 September 2005, respondent said she married petitioner in good faith, unaware that he was already married to Cristina N. Pablo. When she learned of petitioner's deception regarding his marital status, she filed a case for Bigamy before the MTC of Jose Panganiban, Camarines Norte, which found probable cause to hold petitioner for trial. She found petitioner's explanation "*Na ako ay wala ng balita o komunikasyon sa aking unang asawa at ang paniwala ko ay siya ay patay na at ang aking kasal ay nawala ng saysay*" to be lame and insufficient to justify his contracting a subsequent bigamous marriage. She claimed that petitioner should have instituted in court a summary proceeding for the declaration of presumptive death of his first wife before contracting a subsequent marriage. In the absence of such declaration, her marriage to petitioner is bigamous and void *ab initio*. She added that the affidavits of his sister and close friend should not be given weight.

In his Rejoinder[8] dated 11 October 2005, petitioner reiterated the arguments in his Answer and prayed for the dismissal of the complaint on the ground that it was not verified and for failure of the respondent to attach a valid certification against forum-shopping.

After due consideration of the complaint, affidavits, supporting documents and pleadings filed, the Board of Professional Teachers, PRC, Lucena City, found a *prima facie* case for Immorality and Dishonorable Conduct against petitioner, and directed respondent to pay docket and legal research fees.[9] The case was docketed as Adm. Case No. LCN-0016.

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[7] *Id.* at 99-100.
[8] *Id.* at 102-105.
[9] *Id.* at 106.

On 16 February 2007, the Board of Professional Teachers (Board), PRC, Manila, found petitioner administratively liable of the charges and revoked his license as a Professional Teacher. The dispositive portion of the Resolution reads:

IN VIEW OF ALL THE FOREGOING, the Board finds Rene Ventenilla Puse guilty as charged and accordingly revokes his license as a Professional Teacher. He is ordered to surrender his Certificate of Registration and his Professional Identification Card to the Professional Regulation Commission within ten (10) days from the time this decision becomes final and executory and to desist from the practice of the teaching profession under the pain of criminal prosecution.

SO ORDERED.[10]

The Board ruled that contrary to petitioner's contentions, it had jurisdiction over petitioner and could validly order the revocation of his license, as petitioner was a professional teacher. Under Section 23 of Republic Act No. 7836, otherwise known as the Philippine Teachers Professionalization Act of 1994, the Board has the power and authority to regulate the practice of teaching in the Philippines. The charge of Immorality and/ or Dishonorable Conduct is also one (1) of the grounds for the revocation or suspension of a license of a professional teacher. For entering into a second marriage without first seeking a judicial declaration of the presumptive death of his first wife and thereafter cohabiting with his second wife and having children with her, petitioner is liable for Immorality and Dishonorable Conduct. The Board added that whether respondent had knowledge of the first marriage or not is irrelevant and further found petitioner's claim that his cohabitation with respondent was under duress, force or intimidation untenable. Citing Section 3,[11] Article III and

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[10] *Id.* at 82.

[11] ARTICLE III – THE TEACHER AND THE COMMUNITY

x x x x x x x x x

Section 3. Every teacher shall merit reasonable social recognition for which purpose he shall behave with honor and dignity at all times and

Section 3,[12] Article XI of the Code of Ethics of Professional Teachers, and the Oath of Professionals,[13] the Board also explained that petitioner's official life cannot be detached from his personal life, contrary to his contention that the acts complained of were purely private. His immorality and dishonorable conduct demonstrate his unfitness to continue practicing his profession as he is no longer the embodiment of a role model for young elementary school pupils, the Board ruled.

Petitioner moved for reconsideration of the decision but his motion was denied by the Board per Resolution dated 9 July 2007.[14]

Aggrieved, petitioner filed a petition for review, docketed as CA-G.R. SP No. 100421, before the Court of Appeals assailing the Resolutions dated 16 February 2007 and 9 July 2007 of the Board.

On 28 March 2008, the Court of Appeals dismissed petitioner's appeal.[15] The appellate court held that the applicable law was Rep. Act No. 4670 or the Magna Carta for Public School Teachers because petitioner was occupying the position of Teacher I at the S. Aguirre Elementary School. Under Rep. Act No. 4670, the one (1) tasked to investigate the complaint was the Board of Professional Teachers. Thus, it was the Board of Professional Teachers that had jurisdiction over the administrative case and not the Civil Service Commission (CSC) or the Department of

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refrain from such activities as gambling, smoking, drunkenness and other excesses, much less illicit relations.

[12] ARTICLE XI – THE TEACHER AS A PERSON

x x x x x x x x x

Section 3. A teacher shall maintain at all times a dignified personality which could serve as a model worthy of emulation by learners, peers, and others.

[13] Oath of Professionals

I further solemnly swear that at all times and places I will adhere closely to the ethical standards and professional roles of teachers in the Philippines x x x.

[14] *Rollo,* pp. 83-84.

[15] CA *rollo*, pp. 134-138.

Education (DepEd) as contended by petitioner. As to the finding of immorality and/or dishonorable conduct, the Court of Appeals agreed with the Board in finding as untenable petitioner's excuse that he believed his first wife to be dead and that his first marriage was no longer subsisting. It said that petitioner should have applied for a judicial order declaring his first wife presumptively dead before marrying respondent. It further found without merit petitioner's defense that the complaint is of a private nature, explaining that his actions relate to the very nature of his career: to teach, mold and guide the youth to moral righteousness.

As to petitioner's defense of *pari delicto*, the appellate court upheld the Board's finding that respondent was in good faith when she married petitioner. The Board also afforded petitioner due process.

On 30 June 2008, the Court of Appeals denied petitioner's motion for reconsideration for lack of merit.[16] Hence, the present recourse.

Petitioner argues that:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN VALIDATING THE RESOLUTIONS OF THE BOARD FOR PROFESSIONAL TEACHERS OF PRC-MANILA DESPITE THE LACK OF SUBSTANTIAL EVIDENCE SUPPORTING THE SAME AND ITS PATENT NULLITY FOR HAVING BEEN ISSUED OUTSIDE OF ITS JURISDICTION AND IN VIOLATION OF THE RIGHT OF YOUR PETITIONER TO DUE PROCESS;

II. THE HONORABLE BOARD FOR PROFESSIONAL TEACHERS OF THE PROFESSIONAL REGULATION COMMISSION (PRC)-MANILA AND LUCENA CITY, GRAVELY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION, WHEN IT ASSUMED PRIMARY JURISDICTION OVER THE UNVERIFIED COMPLAINT OF THE RESPONDENT IN CONTRAVENTION WITH EXISTING RULES AND SETTLED JURISPRUDENCE ON THE MATTER;

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[16] *Id.* at 162.

III. THE HONORABLE BOARD FOR PROFESSIONAL TEACHERS OF THE PRC-MANILA GRAVELY ERRED IN FINDING THE PETITIONER GUILTY OF IMMORALITY AND DISHONORABLE CONDUCT AND SUBSEQUENTLY REVOKING HIS TEACHER'S LICENSE AS A PENALTY NOTWITHSTANDING THE LACK OF SUBSTANTIAL EVIDENCE SUSTAINING THE COMPLAINT, WHICH IN EFFECT VIOLATED THE RIGHT OF YOUR PETITIONER TO DUE PROCESS OF LAW.[17]

From the foregoing, the issues may be summed up as follows: (1) Did the Board of Professional Teachers have jurisdiction to hear and decide the complaint filed by respondent against petitioner? (2) Was petitioner denied administrative due process? (3) Was there substantial evidence to sustain the complaint and to hold petitioner liable?

On the first issue, petitioner argues that the proper forum to hear and decide the complaint was either the CSC pursuant to CSC Resolution No. 991936 (Uniform Rules on Administrative Cases in the Civil Service) or the DepEd pursuant to Rep. Act No. 4670 (Magna Carta for Public School Teachers). Since the charge was for violation of the Code of Conduct and Ethical Standards for Public Officials and Employees, the complaint should have been brought before the CSC.

We do not agree. An administrative case against a public school teacher may be filed before the Board of Professional Teachers-PRC, the DepEd or the CSC, which have concurrent jurisdiction over administrative cases such as for immoral, unprofessional or dishonorable conduct.

Concurrent jurisdiction is that which is possessed over the same parties or subject matter at the same time by two or more separate tribunals.[18] When the law bestows upon a government body the jurisdiction to hear and decide cases involving specific matters, it is to be presumed that such jurisdiction is exclusive unless it be proved that another body is likewise vested

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[17] *Rollo*, pp. 22-23.

[18] Bouvier's *Law Dictionary*, Vol. 1, Third Revision, p. 1761.

with the same jurisdiction, in which case, both bodies have concurrent jurisdiction over the matter.[19] The authority to hear and decide administrative cases by the Board of Professional Teachers-PRC, DepEd and the CSC comes from Rep. Act No. 7836, Rep. Act No. 4670 and Presidential Decree (P.D.) No. 807, respectively.

Under Section 23 of Rep. Act No. 7836, the Board is given the power, after due notice and hearing, to suspend or revoke the certificate of registration of a professional teacher for causes enumerated therein. Among the causes is immoral, unprofessional or dishonorable conduct. Section 23 reads:

SEC. 23. *Revocation of the Certificate of Registration, Suspension from the Practice of the Teaching Profession, and Cancellation of Temporary or Special Permit.* – The **Board** shall have the power, after due notice and hearing, to **suspend or revoke the certificate of registration of any registrant**, to reprimand or to cancel the temporary/special permit of a holder thereof who is exempt from registration, for any of the following causes:

(a) Conviction for any criminal offense by a court of competent jurisdiction;

(b) **Immoral, unprofessional or dishonorable conduct**;

(c) Declaration by a court of competent jurisdiction for being mentally unsound or insane;

(d) Malpractice, gross incompetence, gross negligence or serious ignorance of the practice of the teaching profession;

(e) The use of or perpetration of any fraud or deceit in obtaining a certificate of registration, professional license or special/temporary permit;

(f) Chronic inebriety or habitual use of drugs;

(g) Violation of any of the provisions of this Act, the rules and regulations and other policies of the Board and the Commission, and the code of ethical and professional standards for professional teachers; and

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[19] *Civil Service Commission v. Sojor*, G.R. No. 168766, May 22, 2008, 554 SCRA 160, 176.

(h) Unjustified or willful failure to attend seminars, workshops, conferences and the like or the continuing education program prescribed by the Board and the Commission. x x x[20]

Thus, if a complaint is filed under Rep. Act No. 7836, the jurisdiction to hear the same falls with the Board of Professional Teachers-PRC.

However, if the complaint against a public school teacher is filed with the DepEd, then under Section 9 of Rep. Act No. 4670 or the Magna Carta for Public School Teachers, the jurisdiction over administrative cases of public school teachers is lodged with the investigating committee created pursuant to said section, now being implemented by Section 2, Chapter VII of DECS Order No. 33, S. 1999, also known as the DECS Rules of Procedure. Section 9 of the Magna Carta provides:

SEC. 9. *Administrative Charges*. – Administrative charges against a teacher shall be heard initially by a committee composed of the corresponding School Superintendent of the Division or a duly authorized representative who should at least have the rank of a division supervisor, where the teacher belongs, as chairman, a representative of the local or, in its absence, any existing provincial or national teachers' organization and a supervisor of the Division, the last two to be designated by the Director of Public Schools. The committee shall submit its findings and recommendations to the Director of Public Schools within thirty days from the termination of the hearings: *Provided, however*, That where the school superintendent is the complainant or an interested party, all the members of the committee shall be appointed by the Secretary of Education.

A complaint filed under Rep. Act No. 4670 shall be heard by the investigating committee which is under the DepEd.

As to the CSC, under P.D. No. 807, also known as the Civil Service Decree of the Philippines, particularly Sections 9(j) and 37(a) thereof, the CSC has the power to hear and decide administrative disciplinary cases instituted directly with it or brought to it on appeal. These sections state:

[20] Sec. 23 (h) has been repealed by Sec. 20, Rep. Act No. 8981 (PRC Modernization Act of 2000).

SEC. 9. *Powers and Functions of the Commission.*–The Commission shall administer the Civil Service and shall have the following powers and functions:

x x x x x x x x x

(j) Hear and decide administrative disciplinary cases instituted directly with it in accordance with Section 37 or brought to it on appeal;

x x x x x x x x x

SEC. 37. *Disciplinary Jurisdiction.*–(a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

As the central personnel agency of the government, the CSC has jurisdiction to supervise and discipline all government employees including those employed in government-owned or controlled corporations with original charters.[21] Consequently, if civil service rules and regulations are violated, complaints for said violations may be filed with the CSC.

However, where concurrent jurisdiction exists in several tribunals, the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others.[22] Here, it was the Board of Professional Teachers, before which respondent filed the complaint, that acquired jurisdiction over

[21] *Civil Service Commission v. Alfonso*, G.R. No. 179452, June 11, 2009, pp. 7-8.

[22] *Department of Justice v. Liwag*, G.R. No. 149311, February 11, 2005, 451 SCRA 83, 98.

the case and which had the authority to proceed and decide the case to the exclusion of the DepEd and the CSC.

Petitioner's reliance on the cases of *Emin v. De Leon*[23] and *Office of the Ombudsman v. Estandarte*[24] to support his claim that it was the DepEd Investigating Committee created pursuant to Rep. Act No. 4670 which had jurisdiction to try him because he is a public school teacher, is without merit as these cases are not in point. In *Emin*, the issue was which between the DepEd Investigating Committee (under Rep. Act No. 4670) and the CSC (under P.D. No. 807) had jurisdiction to try the administrative case, while in *Estandarte*, the issue was which between the Office of the Ombudsman and the DepEd Investigating Committee had jurisdiction over the administrative case filed in said case. In contrast, the instant case involves the Board of Professional Teachers which, under Rep. Act No. 7836, had jurisdiction over administrative cases against professional teachers and has the power to suspend and revoke a licensed teacher's certificate of registration after due proceedings.

As to the issue of due process, was petitioner denied administrative due process?

Petitioner questions the authority of the Board of Professional Teachers-Lucena City to assume jurisdiction over the complaint, arguing that venue was improperly laid as he and respondent are residents of Parang, Jose Panganiban, Camarines Norte; they were married in Daet, Camarines Norte where the alleged immoral and dishonorable conduct was committed; his professional teacher's license was issued in the Central Office of the PRC in Manila and renewed in the PRC Regional Office in Legaspi City, Albay; and he is a Teacher I of S. Aguirre Elementary School, East District, Jose Panganiban, Camarines Norte.

Moreover, petitioner also faults the Board of Professional Teachers-Lucena City for acting on respondent's unverified letter in violation of CSC Resolution No. 94-0521 which provides:

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[23] G.R. No. 139794, February 27, 2002, 378 SCRA 143.

[24] G.R. No. 168670, April 13, 2007, 521 SCRA 155.

Section 4. *Complaint in Writing and Under Oath*. – No complaint against a civil servant shall be given due course, unless the same is in writing and under oath.

He also asserts that respondent purposely filed the complaint before the Board of Professional Teachers in Lucena City because the investigating officer was her colleague and belonged to the same religious denomination as her. This, according to petitioner, showed the partiality of the board. The Board of Professional Teachers also allegedly denied him due process because he was allegedly informed of the retraction of the testimony/affidavit of his witness (Dominador Blanco) only upon receipt of the Board's decision.

Petitioner's contentions are without merit.

Petitioner's allegation of improper venue and the fact that the complaint was not under oath are not sufficient grounds for the dismissal of the complaint. Well to remember, the case was an administrative case and as such, technical rules of procedure are liberally applied. In administrative cases, 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.[25] The intention is to resolve disputes brought before such bodies in the most expeditious and inexpensive manner possible.[26]

Petitioner was likewise amply afforded administrative due process the essence of which is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of.[27] The records show that petitioner filed the following: (1) Compliance-Answer to the Complaint; (2) Rejoinder; (3) Position paper; (4) Motion for Reconsideration of the Resolution of the Board of Professional Teachers finding

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[25] *Emin v. De Leon*, *supra* at 154.

[26] *De la Cruz v. Department of Education, Culture and Sports-Cordillera Administrative Region*, G.R. No. 146739, January 16, 2004, 420 SCRA 113, 124.

[27] *Alcala v. Villar*, G.R. No. 156063, November 18, 2003, 416 SCRA 147, 154.

him guilty as charged; and (5) Motion for Reconsideration of the decision of the Court of Appeals. He attended the preliminary conference and hearing where he was able to adduce his evidence. With the opportunities he had, he cannot claim he was denied due process.

As regards his claim that the Board of Professional Teachers-Lucena City was partial because the investigating officer knew respondent personally, the same was not substantiated. Even assuming *arguendo* that the investigating officer knew respondent, convincing proof was still required to establish partiality or bias. Extrinsic evidence is required to establish bias.[28] For failure of petitioner to adduce such evidence, the presumption of regularity in the performance of official duty prevails.[29]

That he was allegedly informed of Dominador Blanco's retraction upon receipt of the Board's resolution is also of no moment. Even if it were true that petitioner was only informed of the retraction when he received a copy of the Board's resolution, there was still no denial of due process because he still had the opportunity to question the same in his Motion for Reconsideration. This, he did not do.

But was there substantial evidence to show that petitioner was guilty of immoral and dishonorable conduct? On this issue, we likewise find against petitioner.

Petitioner claims good faith and maintains that he married respondent with the erroneous belief that his first wife was already deceased. He insists that such act of entering into the second marriage did not qualify as an immoral act, and asserts that he committed the act even before he became a teacher. He said that for thirteen (13) years, he was a good husband and loving father to his children with respondent. He was even an inspiration to many as he built a second home thinking that

[28] *De la Cruz v. Department of Education, Culture and Sports-Cordillera Administrative Region*, *supra* at 123.

[29] *Id.*

he had lost his first. He wanted to make things right when he learned of the whereabouts of his first family and longed to make up for his lost years with them. He maintains that he never violated the Code of Ethics of Professional Teachers but embraced it like a good citizen when he opted to stop his illicit marriage to go back to his first family. He adds that respondent knew fully well he was married and had children when they contracted marriage. Thus, she was also at fault. Lastly, he claims there was no substantial proof to show that his bigamous marriage contracted before he became a teacher has brought damage to the teaching profession.

However, the issues of whether petitioner knew his first wife to be dead and whether respondent knew that petitioner was already married have been ruled upon by both the Board of Professional Teachers and the Court of Appeals. The Board and the appellate court found untenable petitioner's belief that his first wife was already dead and that his former marriage was no longer subsisting. For failing to get a court order declaring his first wife presumptively dead, his marriage to respondent was clearly **unlawful and immoral**.

It is not the Court's function to evaluate factual questions all over again. A weighing of evidence necessarily involves the consideration of factual issues – an exercise that is not appropriate for the Rule 45 petition filed. Under the 1997 Rules of Civil Procedure, as amended, the parties may raise only questions of law in petitions filed under Rule 45, as the Supreme Court is not a trier of facts. As a rule, we are not duty-bound to again analyze and weigh the evidence introduced and considered in the tribunals below.[30] This is particularly true where the Board and the Court of Appeals agree on the facts. While there are recognized exceptions to this general rule and the Court may be prevailed upon to review the findings of fact of the Court of Appeals when the same are manifestly mistaken, or when the appealed judgment was based on a misapprehension of facts, or when the appellate court overlooked certain undisputed

[30] *Madrid v. Mapoy*, G.R. No. 150887, August 14, 2009, p. 8.

facts which, if properly considered, would justify a different conclusion,[31] no such circumstances exist in this case.

Indeed, there is no sufficient reason to overturn the findings of the Board as affirmed by the appellate court. It is clear from the evidence that petitioner's claim that he believed his first wife Cristina Puse to be already dead was belied by the latter's declaration. In the affidavit submitted before the CSC in A.C. No. CSC RO5 D-06-012 entitled *Cristina Puse v. Ligaya de los Santos,* Cristina Puse, petitioner's first wife, declared that "*Sometime in 1993, complainant decided to work in Hongkong x x x. Since then up to the present, she has regularly sent financial support to her children and husband. From time to time, complainant would visit her family in the Philippines at least once a year every year.*" From this statement, petitioner cannot claim that he had no knowledge of the whereabouts of his first wife or that she was already dead given that she regularly sent her family financial support and visited them in the Philippines at least once a year.

Petitioner's contention that there was no substantial evidence to show his guilt because respondent did not even formally offer her exhibits also does not persuade. As we have already said, technical rules of procedure and evidence are not strictly applied in administrative proceedings. The fact that respondent did not formally offer her exhibits the way she would in the courts of justice does not prevent the Board of Professional Teachers or Court of Appeals from admitting said exhibits and considering them in the resolution of the case. Under Section 5 of PRC Resolution No. 06-342 (A), Series of 2006, also known as the <u>New Rules of Procedure in Administrative Investigations in the Professional Regulation Commission and the Professional Regulatory Boards</u>, "technical errors in the admission of the evidence which do not prejudice the substantive rights of the parties shall not vitiate the proceedings." Here, we do not find any evidence that respondent's failure to formally offer her exhibits substantially prejudiced petitioner.

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[31] *Orix Metro Leasing and Finance Corporation v. M/V "Pilar-1,"* G.R. No. 157901, September 11, 2009, p. 15.

Neither is there merit to petitioner's contention that because he contracted the bigamous marriage before he even became a teacher, he is not required to observe the ethical standards set forth in the Code of Ethics of Professional Teachers.[32]

In the practice of his profession, he, as a licensed professional teacher, is required to strictly adhere to, observe and practice the set of ethical and moral principles, standards and values laid down in the aforesaid code. It is of no moment that he was not yet a teacher when he contracted his second marriage. His good moral character is a continuing requirement which he must possess if he wants to continue practicing his noble profession. In the instant case, he failed to abide by the tenets of morality. Petitioner kept his first marriage secret to his second wife. Unfortunately for him, his second wife discovered his true marital status which led to the filing of the administrative and criminal cases against him.

In *Santos, Jr. v. NLRC*, a case involving a teacher dismissed from work on account of immorality, we declared:

> On the outset, it must be stressed that to constitute immorality, the circumstances of each particular case must be holistically considered and evaluated in light of the prevailing norms of conduct and applicable laws. American jurisprudence has defined immorality as a course of conduct which offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and to elevate, x x x Thus, in petitioner's case, the gravity and seriousness of the charges against him stem from his being a married man and at the same time a teacher.
>
> x x x x x x x x x
>
> As a teacher, petitioner serves as an example to his pupils, especially during their formative years and stands in *loco parentis* to them. To stress their importance in our society, teachers are given substitute and special parental authority under our laws.
>
> Consequently, it is but stating the obvious to assert that teachers must adhere to the exacting standards of morality and decency. There

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[32] Professional Regulation Commission Resolution No. 435, Series of 1997.

is no dichotomy of morality. A teacher, both in his official and personal conduct, must display exemplary behavior. He must freely and willingly accept restrictions on his conduct that might be viewed irksome by ordinary citizens. In other words, the personal behavior of teachers, in and outside the classroom, must be beyond reproach.

Accordingly, teachers must abide by a standard of personal conduct which not only proscribes the commission of immoral acts, but also prohibits behavior creating a suspicion of immorality because of the harmful impression it might have on the students. Likewise, they must observe a high standard of integrity and honesty.

From the foregoing, it seems obvious that when a teacher engages in extra-marital relationship, especially when the parties are both married, such behaviour amounts to immorality, justifying his termination from employment.[33]

The Code of Ethics of Professional Teachers contains, among others, the following:

PREAMBLE

Teachers are duly licensed professionals who possess dignity and reputation with **high moral values** as well as technical and professional competence. In the practice of their noble profession, they **strictly adhere to, observe, and practice this set of ethical and moral principles, standards, and values.**

x x x x x x x x x

ARTICLE II
THE TEACHER AND THE STATE

Section 1. The schools are the nurseries of the citizens of the state. Each teacher is a trustee of the cultural and educational heritage of the nation and is under obligation to transmit to learners such heritage as well as to **elevate national morality**, x x x.

x x x x x x x x x

Section 3. In the interest of the State of the Filipino people as much as of his own, every teacher shall be physically, mentally and **morally fit.**

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[33] G.R. No. 115795, March 6, 1998, 287 SCRA 117, 123-125.

x x x x x x x x x

ARTICLE III
THE TEACHER AND THE COMMUNITY

x x x x x x x x x

Section 3. Every teacher shall merit reasonable social recognition for which purpose he shall **behave with honor and dignity at all times** and **refrain from** such activities as gambling, smoking, drunkenness and other excesses, much less **illicit relations**.

x x x x x x x x x

ARTICLE XI
THE TEACHER AS A PERSON

Section 1. A teacher shall **live with dignity in all places at all times**.

x x x x x x x x x

Section 3. A teacher shall **maintain at all times a dignified personality which could serve as model worthy of emulation by learners, peers, and others**. [Emphasis supplied.]

The foregoing provisions show that a teacher must conform to the standards of the Code. Any deviation from the prescribed standards, principles and values renders a teacher unfit to continue practicing his profession. Thus, it is required that a teacher must at all times be moral, honorable and dignified.

The discovery of petitioner's bigamous marriage has definitely caused damage to the teaching profession. How can he hold his head up high and expect his students, his peers and the community to look up to him as a model worthy of emulation when he failed to follow the tenets of morality?

The fact that he is now allegedly walking away from his second marriage in order to be with his first family to make up for lost time does not wipe away the immoral conduct he performed when he contracted his second marriage. If we are to condone immoral acts simply because the offender says he is turning his back on his immoral activities, such would be

a convenient excuse for moral transgressors and which would only abet the commission of similar immoral acts.

His assertion that he fulfilled his responsibilities as a father and a husband to his second family will, even if true, not cleanse his moral transgression. In a case involving a lawyer who raised this same defense, we held:

> Before we write *finis* to this case, we find it necessary to stress certain points in view of respondent's additional reason why he should be exonerated – that he loves all his children and has always provided for them. He may have indeed provided well for his children. But this accomplishment is not sufficient to show his moral fitness to continue being a member of the noble profession of law. It has always been the duties of parents – *e.g.*, to support, educate and instruct their children according to right precepts and good example; and to give them love, companionship and understanding, as well as moral and spiritual guidance. But what respondent forgot is that he has also duties to his wife. As a husband, he is obliged to live with her; observe mutual love, respect and fidelity; and render help and support. And most important of all, he is obliged to remain faithful to her until death.[34]

Petitioner's claim that he is a good provider to his second family is belied by the complaint of respondent wherein it was alleged that he failed financially to support his second family. Moreover, he is already delinquent as to his duties to his second wife. How can he live with her, observe mutual love, respect and fidelity, render help and support, and to remain faithful to her until death when he has another family to whom he is returning to?

All told, petitioner's act of entering into said second marriage constitutes grossly immoral conduct. No doubt, such actuation demonstrates a lack of that degree of morality required of him as a member of the teaching profession. When he contracted his second marriage despite the subsistence of the first, he made a mockery of marriage, a sacred institution demanding respect and dignity.

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[34] *Cojuangco, Jr. v. Palma*, A.C. No. 2474, June 30, 2005, 462 SCRA 310, 322.

We now go to the penalty imposed on petitioner. The penalty imposed on petitioner was the revocation of his license which penalty was upheld by the Court of Appeals. He claims that such penalty was harsh and inappropriate. He cites Section 22, Rule XIV of the Omnibus Civil Service Rules and Regulations which states that disgraceful and immoral conduct is a grave offense punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense and dismissal for the second offense. Considering that the charge was supposedly his first offense and taking into account his years of committed service, the commensurate penalty, according to petitioner, is only the suspension of his professional license. He refers to the case of *Vitug v. Rongcal*,[35] where this Court considered remorse and the brevity of the illicit relationship as mitigating circumstances taken in favor of the respondent lawyer.

It must be remembered, however, that petitioner was charged before the Board of Professional Teachers under Rep. Act No. 7836 and not under Civil Service Law, Rules and Regulations. Under Section 23 of Rep. Act No. 7836, the Board has the **power to suspend or revoke** the certificate of registration[36] of any teacher for any causes mentioned in said section, one (1) of which is immoral, unprofessional or dishonorable conduct. The Board has the discretion, taking into account the circumstances obtaining, to impose the penalty of suspension

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[35] A.C. No. 6313, September 7, 2006, 501 SCRA 166, 185.

[36] SEC. 17. *Issuance of Certificate of Registration and Professional License.* – The registration of a professional teacher commences from the date his name is enrolled in the roster of professional teachers.

Every registrant who has satisfactorily met all the requirements specified in this Act shall, upon payment of the registration fee, be issued a certificate of registration as a professional teacher x x x as evidence that the person named therein is entitled to practice the profession x x x. The certificate shall remain in full force and effect until withdrawn, suspended and/or revoked in accordance with law.

A professional license x x x shall likewise be issued to every registrant who has paid the annual registration fees for three (3) consecutive years. This license shall serve as evidence that the licensee can lawfully practice his profession until the expiration of its validity.

or revocation. In the imposition of the penalty, the Board is not guided by Section 22 of Rule XIV of the Omnibus Civil Service Rules and Regulations which provides for suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense for disgraceful and immoral conduct. Petitioner, therefore, cannot insist that Section 22 be applied to him in the imposition of his penalty, because the Board's basis is Section 23 of Rep. Act No. 7836 which does not consider whether the offense was committed the first or second time.

As to the supposed mitigating circumstances of remorse and brevity of the illicit relationship, these cannot be appreciated in petitioner's favor, as these circumstances are not present in the instant case. We do not find any expression of remorse in petitioner. What we note, instead, is obduracy on his part. Despite the clear evidence (first wife's statement that she regularly sends financial support to her children and husband [referring to petitioner] and that she visits them in the Philippines at least once a year) showing that petitioner knew that his first wife was still alive, he remains unyielding on his stand that he thought that his wife was already deceased. We also cannot consider the illicit and immoral relationship to be brief because it lasted for more than twelve (12) years until respondent learned about petitioner's deception.

Under the circumstances, we find the penalty imposed by the Board proper.

WHEREFORE, the petition is *DENIED*. The Decision dated 28 March 2008 of the Court of Appeals in CA-G.R. SP No. 100421 is *AFFIRMED*.

With costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 184722. March 15, 2010]

ALEX C. COOTAUCO, *petitioner, vs.* **MMS PHIL. MARITIME SERVICES, INC., MS. MARY C. MAQUILAN AND/OR MMS CO. LTD.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL INQUIRY MAY NOT BE RAISED IN A RULE 45 PETITION.—** Petitioner is fundamentally assailing the findings of both the Court of Appeals and the NLRC, that the evidence on record does not support his claim for disability benefits. This clearly involves a factual inquiry, the determination of which is not the statutory function of this Court. As a rule, only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Court. The reason being that the Court is not a trier of facts; it is not duty-bound to re-examine and calibrate the evidence on record.

2. **LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION; FINDINGS OF FACT GENERALLY CONCLUSIVE ON THE COURT; EXCEPTION THERETO, APPLIED.—** [F]indings of fact of quasi-judicial bodies like the NLRC, as affirmed by the Court of Appeals, are generally conclusive on this Court. In exceptional cases, however, we may be urged to probe and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties or, where the Labor Arbiter and the NLRC came up with conflicting positions. The case at bar constitutes one of these exceptional cases.

3. **ID.; SEAFARER; POEA-STANDARD EMPLOYMENT CONTRACT REQUIRES THE SEAFARER TO UNDERGO POST-EMPLOYMENT MEDICAL EXAMINATION.—** Applying x x x Section 20(B), paragraph (3) [POEA-SEC], petitioner is required to undergo post-employment medical examination by a company-designated physician within three working days from arrival,

except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period would suffice. In *Maunlad Transport, Inc. v. Manigo, Jr.*, this Court explicitly declared that it is **mandatory** for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits.

4. ID.; ID.; ID.; IN THE ABSENCE OF PROOF OF COMPLIANCE WITH THE MANDATORY POST-EMPLOYMENT MEDICAL EXAMINATION, CLAIM FOR DISABILITY BENEFIT WILL BE DENIED.— The NLRC and the Court of Appeals determined that petitioner did not observe the established procedure as there is no proof at all that he reported to the office of the respondents. We see no reason to depart from their findings. While petitioner remains firm that he reported to the office of the respondents for mandatory reporting, the records are bereft of any proof to fortify his claim. The *onus probandi* falls on petitioner to establish or substantiate such claim by the requisite quantum of evidence. There is absolutely no evidence on record to prove petitioner's claim that he reported to respondents' office for mandatory reportorial requirement. Petitioner therefore failed to adduce substantial evidence as basis for the grant of relief. x x x [W]e are hard pressed to grant petitioner's claim for disability benefits and other monetary awards prayed for by him. The Court is surely saddened by the plight of the petitioner, but we are constrained to deny his claim for compensation benefits absent proof of compliance with the requirements set forth in Section 20(B), paragraph (3) of the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. Awards of compensation cannot rest on speculations and presumptions as the claimant must prove a positive proposition.

APPEARANCES OF COUNSEL

Constantino L. Reyes for petitioner.
Esguerra & Blanco for respondents.

D E C I S I O N

PEREZ, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure filed by petitioner Alex C. Cootauco (petitioner) assailing the: (1) Decision of the Court of Appeals dated 17 June 2008 in CA G.R. SP No. 101324,[1] which affirmed the Resolutions dated 31 May 2007[2] and 31 August 2007,[3] issued by the National Labor Relations Commission (NLRC) in NLRC CA No. 050470–06 reversing the decision of the Labor Arbiter, granting the petitioner's claim for disability benefits. The NLRC, as a result, disallowed petitioner's claim for said benefits. Likewise assailed is the resolution of the Court of Appeals dated 25 September 2008,[4] denying petitioner's Motion for Reconsideration.

The antecedent facts are:

On 9 September 2005, petitioner filed a Complaint before the Labor Arbiter docketed as NLRC NCR OFW Case No. 2005-09-02375-00, against herein respondents MMS Phil. Maritime Services, Inc. (MMS Phils.) and by Mary C. Maquilan (respondents), for medical reimbursement, permanent disability benefits, moral damages, compensatory damages, exemplary damages and attorney's fees.[5]

In his Position Paper dated 26 January 2006 before the Labor Arbiter, petitioner alleged that on 14 March 2003, MMS Phils., for and in behalf of its principal, MMS Co. Ltd., hired him as Able Seaman for *M/V Pax Phoenix* after he passed the Pre-

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[1] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Vicente S. E. Veloso and Agustin S. Dizon concurring. *Rollo,* pp. 38-59.

[2] *Id.* at 82.

[3] *Id.* at 90.

[4] *Id.* at 61.

[5] *Id.* at 76.

Employment Medical Examination (PEME) conducted by MMS Phils.'s designated physician and after obtaining the necessary Overseas Employment Certificate from the Philippine Overseas Employment Administration (POEA). Petitioner departed from the Philippines on 4 August 2003 on board the vessel *M/V Pax Phoenix* as an Able Seaman. He had various duties and responsibilities at sea, port, anchor and drills. According to petitioner, he did not only perform work that was assigned to him, but also other strenuous job assignments and other heavy workloads that exposed him to cold, heat and other elements of nature and perils of the sea. Resultantly, one day, he was surprised to see a speck of blood in his urine. He informed his 2nd Mate about the incident and was merely told to observe and report the same if it should be repeated. He disembarked on 19 May 2004, and on the following day, he had fever and experienced irregular urination. He consulted Dr. Benjamin C. Parco (Dr. Parco) at St. Tomas Clinic in Tondo, Manila, who advised him to take a rest and prescribed him with medicines for his flu and Urinary Track Infection. The day following his consultation with Dr. Parco, on 21 May 2004,[6] he reported at respondents' office for mandatory reportorial requirement and at the same time he informed respondents' company officer about his medical condition and asked for medical assistance which went unheeded. Despite the medication prescribed by Dr. Parco, there was no improvement in his condition, thus in September 2004, he went to the Seamen's Hospital for a thorough check-up. In his laboratory findings, it was shown that there were traces of blood with presence of stones in his urine. On 24 October 2004, he could no longer urinate, thus his wife brought him again to the Seaman's Hospital. The ultrasound and x-rays results showed that he had a 12mm stone in his urinary bladder and dark portion on his ureter, which must be immediately operated on.

Petitioner further alleged that on 11 November 2004, he was admitted at the Seamen's Hospital by Dr. Pahutan,[7] his attending

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

[7] Complete name of Dr. Pahutan is not reflected in the Records. CA *rollo,* pp. 51-52.

physician. He underwent a pre-operative cardiac and pulmonary evaluation, and the final diagnosis was "Urinary Bladder Stone." On 12 November 2004, he was operated on his left ureter by means of a urethrogram. On 1 December 2004, he again underwent surgery for the exploration of his left distal ureter. On 25 January 2005, he was given a medical certificate at the Seamen's Hospital with the diagnosis impression of Periureteritis (left) Distal Ureter and tuberculosis. Petitioner consulted an independent doctor in the person of Dr. Rodrigo F. Guanlao (Dr. Guanlao), an Internist-Cardiologist of the Philippine Heart Center. Dr. Guanlao diagnosed him as afflicted with the following: Hypertension stage 2, TB of the left Uretus *(sic)*, Cystolithiasis, Carpal Tunnel Syndrome of both hands with impediment disability Grade 1, permanent unfit for sea duty.[8]

Petitioner averred that he is entitled to medical reimbursement and sickness allowance as his sickness was incurred during the validity of his contract of employment and while performing his duty as Able Seaman of the vessel *M/V Pax Phoenix*; he is entitled to permanent Disability Benefits under his existing contract because his condition could have been brought about by the poor working conditions on board the vessel, and by exposure to different chemicals and other harmful substances in the vessel. He also claims that he is entitled to receive the total amount of US $60,000.00 for permanent disability benefits.[9]

Specifically, petitioner prayed that the respondents be ordered to reimburse his medical expenses and to pay him permanent disability benefits in the amount of US $60,000.00; moral, compensatory and exemplary damages in the amount of ₱500,000.00 for each of the damages claimed, as well as attorney's fees equivalent to ten percent (10%) of the total monetary claims.[10]

Expectedly, respondents negated petitioner's claim. They point out that sometime in early 2003, petitioner applied for a

[8] *Id.* at 40.

[9] *Id*.

[10] *Id.* at 41.

position in *M/V Pax Phoenix*. On 13 March 2003, petitioner formalized his employment with respondents by accomplishing the POEA Standard Employment Contract (POEA-SEC) which was to be effective upon petitioner's passing the requisite PEME. On 4 July 2003, petitioner underwent a PEME and he was required to disclose all existing or prior medical conditions. The disclosure requirement specifically focused on 29 medical conditions including stomach pain or ulcer, other abdominal trouble and high blood pressure, among others. Petitioner confirmed that he had never been afflicted with any illness, and the standard tests conducted on him yielded no significant findings, thus he had been declared fit to work. He was assigned to serve on board the vessel *M/V Pax Phoenix* as able seaman for a period of nine (9) months. On 5 August 2003, petitioner joined the crew of *M/V Pax Phoenix* and his employment on board the vessel was without any incident. After the expiration of the term of petitioner's contract, he signed off from the vessel on 15 May 2004 and was repatriated on 19 May 2004. Upon his arrival in the Philippines, petitioner did not make any report of any ailment or injury allegedly suffered on board *M/V Pax Phoenix*. On 9 September 2005 or almost fifteen (15) months after petitioner's repatriation, he filed the Complaint before the Labor Arbiter.[11]

Respondents argued that there is no basis for petitioner's claims under the POEA-SEC, as he did not suffer any work-related illness or injury during the term of his employment. His repatriation was due to the expiration of his contract and not due to any medical reasons and, at no time did he report any illness allegedly suffered during his employment on board *M/V Pax Phoenix* and even after repatriation. Section 20(B), paragraph 3 of the 2000 Amended Standard Terms and Conditions governing the employment of Filipino Seafarers provides that the seafarer must submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return, and failure

[11] *Id*.

to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the compensation and benefits for injury or illness. Petitioner is not entitled to his claim for damages and attorney's fees for the same is without basis. Finally, respondents prayed that the Complaint be dismissed for lack of merit.[12]

The Labor Arbiter found ample justification to grant the claim for disability benefits of the petitioner and held:

> The proximity from the time complainant was repatriated on May 19, 2004 and the illness/urinary bladder stone which started its symptoms on May 20, 2004 or one day after complainant's repatriation until all his illnesses were uncovered and he was declared unfit to work definitely shows that complainant incurred his illness while on board and during the effectivity of his contract as the urinary bladder stone could not develop overnight. This is bolstered by the fact that the complainant was employed by the respondent since 1994 to 2004 or for a period of ten years.

The *fallo* of the Decision[13] dated 31 August 2006 rendered by the Labor Arbiter reads:

> WHEREFORE, Respondents MMS Phil Maritime Services, Inc. and/or Mary C. Maquilan are hereby ordered jointly and severally to pay complainant Alex C. Cootauco disability compensation benefit Grade 1 equivalent to Sixty Thousand (US$60,000) US Dollars pursuant to the POEA Standard Contract or its peso equivalent at the rate of exchange prevailing at the actual time of payment.
>
> In addition, an attorney's fees equivalent to ten (10%) of the total award is hereby granted.

Respondents filed an Appeal with the NLRC which was docketed as NLRC CA No. 050470-06. The NLRC rendered a Resolution[14] dated 31 May 2007, granting the appeal and reversing the decision of the Labor Arbiter.

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[12] *Id*.

[13] Penned by Labor Arbiter Lilia S. Savari. *Rollo,* p. 80.

[14] *Id.* at 87.

The NLRC explained:

In his case, he never consulted the company-designated physician. Granting that the respondents-appellants refused to refer him to the company-designated physician, that did not prevent him from consulting him because it was the complainant-appellee who paid for all his medical expenses. Without the certification of the company-designated physician, We cannot consider the medical certification of Dr. Guanlao as independent as alleged by the complainant-appellee. Not only was it issued fifteen (15) months after repatriation, the certification was not accurate because the complainant-appellee never consulted Dr. Guanlao before August 18, 2005 but the doctor claimed that the complainant-appellee was 'under his care, May 2004.'[15]

Ultimately, the NLRC held:

WHEREFORE, considering the foregoing, the instant appeal is hereby GRANTED. The decision appealed from is REVERSED and SET ASIDE.

Accordingly, the complaint is DISMISSED for lack of merit.[16]

Petitioner filed a motion for reconsideration with the NLRC which was denied in a resolution dated 31 August 2007.[17]

He next sought recourse *via* a petition for review on *certiorari* under Rule 65[18] with the Court of Appeals docketed as CA G.R. SP No. 101324.

In a Decision[19] dated 17 June 2008, the Court of Appeals denied the petition and affirmed the Resolutions of the NLRC dated 31 May 2007 and 31 August 2007. In arriving at such disposition, the Court of Appeals ratiocinated:

Petitioner failed to undergo the required post-employment medical examination by a company-designated physician. Again, he allegedly

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[15] *Id.*

[16] *Id.*

[17] *Id.* at 90.

[18] *Certiorari,* Prohibition and *Mandamus.*

[19] *Rollo,* pp. 38-59.

consulted his own physician Dr. Guanlao, who issued a medical certificate on 18 August 2005, or after fifteen (15) months following petitioner's repatriation to the Philippines following the expiration of his employment contract, with the diagnosis "Hypertension, stage 2, TB of left uretus, Cystolithiasis, Carpel Tunnel Syndrom, both hand" and the remark "GRADE 1 disability Permanent unfit for sea duty."

As aforesaid, it is not disputed that petitioner failed to submit himself to a post-employment examination by a company-designated physician, the adverse consequence of which is non-entitlement to the benefits. It bears stressing that it must be the company-designated physician who must declare that petitioner suffered a permanent disability, whether total or partial, due to injury or illness, during the term of the latter's employment. A resort to a "third doctor" could only be had if the physician appointed by the seafarer disagrees with the assessment of the company-designated physician, and when such third doctor has been agreed jointly between the employer and the seafarer. Therefore, it is of no moment that petitioner consulted Dr. Parco who prescribed medicines to him and thereafter he went to Dr. Pahutan of the Seamen's Hospital who issued a Medical Certification with the diagnosis impression of "Periureteritis (L) distal Ureter, 2 to tuberculosis" and relation to work "Oriented." Petitioner also sought the opinion of Dr. Guanlao, who issued a Certification on 18 August 2005, viz: "GRADE 1 disability permanent unfit for sea duty." The foregoing notwithstanding, petitioner utterly failed to undergo, within three working days from his return to the Philippines on 19 May 2004, any post-employment medical examination by a company-designated physician.

x x x x x x x x x

Furthermore, it has been held that in connection with said Section 20-B of the POEA Standard Employment Contract, the employer could be held liable to the seafarer for disability benefits, if the latter could present proof that he acquired or contracted the injury or illness, which resulted to his disability, during the term of his contract. From these recent rulings, it could be gleaned that: Section 20-B of the POEA Standard Employment Contract refers not only to the seafarer's right to claim medical treatment and sickness allowance but also to his right to claim disability benefits; and the injury or illness, which resulted to disability, was acquired during the term of the employment contract. In the instant case, it has been established by substantial evidence that petitioner was signed off from the vessel on 15 May

2004 following the expiration of his employment contract and was repatriated to the Philippines on 19 May 2004; during his employment on board *M/V Pax Phoenix*, there was no incident; and upon his arrival in the Philippines, he made no report to private respondents of any ailment or injury allegedly suffered on board said vessel.

The dispositive portion of the assailed decision[20] of the Court of Appeals reads:

WHEREFORE, premises considered, the Petition is DENIED for lack of merit. No costs.

The motion for reconsideration filed by petitioner was likewise denied by the Court of Appeals in a Resolution dated 25 September 2008.[21] Hence, this petition is based on the following grounds:

I. THE HONORABLE COURT OF APPEALS SERIOUSLY ERREED (sic) IN DISMISSING THE PETITION ON THE GROUND THAT PETITIONER DID NOT COMPLY WITH THE MANDATORY REPORTING REQUIREMENT, CONTRARY TO FACTS, EVIDENCE AND PREVAILING JURISPRUDENCE.

II. THE HONORABLE COURT OF APPEALS BLATANTLY MISAPPLIED SEC. 20 (B) OF THE POEA SEC. WHEN IT HELD THAT IT IS THE COMPANY-DESIGNATED PHYSICIAN WHO MUST PROCLAIM THAT THE SEAMAN SUFFERED FROM PERMANENT DISABILITY, CONTRARY TO PREVAILING JURISPRUDENCE.

III. THE HONORABLE COURT OF APPEALS BLATANTLY MISAAPLIED SEC. 20 (B) OF THE POEA SEC. WHEN IT DENIED THE PETITION ON THE GROUND THAT PETITIONER WAS REPATRIATED DUE TO A FINISHED CONTRACT.

IV. THE HONORABLE COURT OF APPEALS ERRED WHEN IT REQUIRED PETITIONER TO PRESENT CONCRETE PROOF THAT HE ACQUIRED OR CONTRACTED THE INJURY OR ILLNESS, CONTRARY TO PREVAILING JURISPRUDENCE.

V. PETITIONER IS ENTITLED TO PERMANENT DISABILITY BENEFITS.

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[20] *Id.* at 57.

[21] *Id.* at 61.

VI. PETITIONER IS ENTITLED TO ATTORNEY'S FEES.[22]

In sum, the issue boils down to whether petitioner failed to comply with the requirement pertaining to the rule on mandatory reporting thus rendering his illness non-compensable.

We resolve to deny the petition for lack of merit.

The present petition is premised on the argument that the Court of Appeals erred in affirming the resolution of the NLRC dated 31 May 2007, which reversed and set aside the decision of the Labor Arbiter granting disability benefits to the petitioner.

Petitioner is fundamentally assailing the findings of both the Court of Appeals and the NLRC, that the evidence on record does not support his claim for disability benefits. This clearly involves a factual inquiry, the determination of which is not the statutory function of this Court. As a rule, only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Court. The reason being that the Court is not a trier of facts; it is not duty-bound to re-examine and calibrate the evidence on record. Moreover, findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the Court of Appeals, are generally conclusive on this Court.[23]

In exceptional cases, however, we may be urged to probe and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties or, where the Labor Arbiter and the NLRC came up with conflicting positions. The case at bar constitutes one of these exceptional cases.[24]

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[22] *Id.* at 140-141.

[23] *Acevedo v. Advanstar Company, Inc.,* G.R. No. 157656, 11 November 2005, 474 SCRA 656, 664.

[24] *Nisda v. Sea Serve Maritime Agency,* G.R. No. 179177, 23 July 2009, citing *Pascua v. National Labor Relations Commission*, 351 Phil. 48, 61 (1998).

As with all other kinds of workers, the terms and conditions of a seafarer's employment are governed by the provisions of the contract he signs at the time he is hired. But unlike that of others, deemed written in the seafarer's contract is a set of standard provisions set and implemented by the POEA called the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which is considered to be the minimum requirement acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels.[25]

The issue of whether petitioner can legally demand and claim disability benefits from respondents for an illness suffered is best addressed by the provisions of his POEA-SEC which incorporated the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels.

Verily, when petitioner was hired on 14 March 2003, it was the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels that applied, and was deemed written in or appended to his POEA-SEC. This section specifically provides for the liabilities of the employer for an injury or illness suffered by a seaman during the term of his contract. Primarily, for an injury or illness to be duly compensated under the POEA-SEC, there must be a showing that such injury or illness occurred or was suffered during the effectivity of the employment contract. The same is true with respect to any disability caused by either injury or illness.[26]

Section 20(B), paragraph (3) thereof states:

x x x x x x x x x.

3. upon sign off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has

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[25] *Nisda v. Sea Serve Maritime Agency, id.*

[26] *Id.*

been assessed by the company-designated physician but in no case shall this period exceed one-hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three working days from arrival for diagnosis and treatment.[27]

Applying the above provision of Section 20(B), paragraph (3), petitioner is required to undergo post-employment medical examination by a company-designated physician within three working days from arrival, except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period would suffice.

In *Maunlad Transport, Inc. v. Manigo, Jr.*,[28] this Court explicitly declared that it is **mandatory** for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits.

The NLRC and the Court of Appeals determined that petitioner did not observe the established procedure as there is no proof at all that he reported to the office of the respondents.[29] We see no reason to depart from their findings. While petitioner

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[27] *Vergara v. Hammonia Maritime Services, Inc.*, G.R. No. 172933, 6 October 2008, 567 SCRA 610, 628.

[28] G.R. No.161416, 13 June 2008, 554 SCRA 446, 459. The Court actually applied Section 20–B of the 1996 POEA-SEC, which is reproduced in *verbatim* in 2000 POEA-SEC.

[29] *Rollo*, p. 54.

remains firm that he reported to the office of the respondents for mandatory reporting, the records are bereft of any proof to fortify his claim. The *onus probandi* falls on petitioner to establish or substantiate such claim by the requisite quantum of evidence. There is absolutely no evidence on record to prove petitioner's claim that he reported to respondents' office for mandatory reportorial requirement. Petitioner therefore failed to adduce substantial evidence as basis for the grant of relief.

The general principle is that one who makes an allegation has the burden of proving it. A party alleging a critical fact must support his allegation with substantial evidence. Any decision based on unsubstantiated allegation cannot stand as it will offend due process.[30]

In labor cases as in other administrative proceedings, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required.[31]

The oft repeated rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence.[32]

In *Wallem Maritime Services v. National Labor Relations Commission,*[33] this Court made an exception regarding the compulsory reporting requirement and emphasized that this rule is not absolute. The Court explained that the seaman therein was physically incapacitated from complying with the requirement observing that the seaman was already terminally ill and for a man in that condition and in need of urgent medical attention, one could not reasonably expect that he would immediately resort to and avail of the required medical attention assuming that he was still capable of submitting himself to such examination at that time.

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[30] *UST Faculty Union v. UST*, G.R. No. 180892, 7 April 2009.

[31] *Id*.

[32] *Signey v. Social Security System*, G.R. No. 173582, 28 January 2008, 542 SCRA 629, 639.

[33] 376 Phil. 738, 749 (1999).

Regretfully, we cannot apply *Wallem* to petitioner's case as the circumstances in that case are not the same herein. Petitioner is not similarly situated in that there is no showing that he is likewise physically incapacitated to comply with the mandatory reporting requirement as to justify exemption of the application of the rule. In this case, petitioner was incontrovertibly repatriated due to the completion of his contract and not due to any ailment. There is no showing that he contracted illness during the effectivity of his contract though he maintained that while on board the vessel he noticed a speck of blood in his urine and informed a 2nd mate about it. This remains to be a bare claim unsupported by proof. There is no evidence of any entry in the Master's report or the vessel's log of any medical complaints involving petitioner.[34] More, he could not, at the very least, point out the date of the occurrence of the incident or provide the identity of the crew member to whom he allegedly related the matter.

In *Rivera v. Wallem Maritime Services, Inc.,*[35] this Court again highlighted the importance of the requirement regarding mandatory reporting when it denied therein petitioner's claim for disability benefits for failure to undergo mandatory post-employment medical examination. This Court held:

> In this case, it is not disputed that Rodolfo failed to submit himself to the mandatory post-employment medical examination. The respondent manning agency found out about his confinement only through the petitioner, who asked for assistance in claiming her husband's retirement benefits. Indeed, while compliance with the reporting requirement under the Standard Employment Contract can be dispensed with, there must likewise be basis for the award of death compensation. Without a post-medical examination or its equivalent to show that the disease for which the seaman died was contracted during his employment or that his working conditions increased the risk of contracting the ailment, the respondents cannot be made liable for death compensation.[36]

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[34] *Rollo,* p. 55.

[35] G.R. No. 160315, 11 November 2005, 474 SCRA 714.

[36] *Id.* at 723.

For the same reason, we are hard pressed to grant petitioner's claim for disability benefits and other monetary awards prayed for by him. The Court is surely saddened by the plight of the petitioner, but we are constrained to deny his claim for compensation benefits absent proof of compliance with the requirements set forth in Section 20(B), paragraph (3) of the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. Awards of compensation cannot rest on speculations and presumptions as the claimant must prove a positive proposition.[37]

Admittedly, strict rules of evidence are not applicable in claims for compensation and disability benefits, but the Court cannot altogether disregard the mandatory provisions of the law.[38]

In light of the foregoing conclusion, there is no necessity of discussing the other presented issues.

WHEREFORE, premises considered, the instant Petition is *DENIED* for lack of merit and the decision of the Court of Appeals dated 17 June 2008 and the resolution of the same court dated 25 September 2008 in CA G.R. SP No. 101324 are *AFFIRMED*. No costs.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

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[37] *Orate v. Court of Appeals*, 447 Phil. 654, 660 (2003).

[38] *Rivera v. Wallem Maritime Services, Inc.*, *supra* note 35 at 724.

SECOND DIVISION

[G.R. No. 186228. March 15, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTONIO LAUGA *Y* PINA *ALIAS* TERIO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; EXTRAJUDICIAL CONFESSION BEFORE A "*BANTAY BAYAN*" IS INADMISSIBLE.— This Court is, therefore, convinced that *barangay*-based volunteer organizations in the nature of watch groups, as in the case of the "*bantay bayan*," are recognized by the local government unit to perform functions relating to the preservation of peace and order at the *barangay* level. Thus, without ruling on the legality of the actions taken by Moises Boy Banting, and the specific scope of duties and responsibilities delegated to a "*bantay bayan*," particularly on the authority to conduct a custodial investigation, any inquiry he makes has the color of a state-related function and objective insofar as the entitlement of a suspect to his constitutional rights provided for under Article III, Section 12 of the Constitution, otherwise known as the Miranda Rights, is concerned. We, therefore, find the extrajudicial confession of appellant, which was taken without a counsel, inadmissible in evidence.

2. ID.; ID.; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCY IN THE TESTIMONIES OF THE WITNESSES DO NOT IMPAIR THEIR CREDIBILITY.— [T]he testimony of AAA does not run contrary to that of BBB. Both testified that they sought the help of a "*bantay bayan*." Their respective testimonies differ only as to when the help was sought for, which this Court could well attribute to the nature of the testimony of BBB, a shortcut version of AAA's testimony that dispensed with a detailed account of the incident. At any rate, the Court of Appeals is correct in holding that the assailed inconsistency is too trivial to affect the veracity of the testimonies. In fact, inconsistencies which refer to minor, trivial or inconsequential circumstances even strengthen the credibility of the witnesses, as they erase doubts that such testimonies have been coached or rehearsed.

3. CRIMINAL LAW; RAPE; THE CREDIBLE TESTIMONY OF THE VICTIM AS SUPPORTED BY MEDICAL FINDINGS SUFFICES TO PROVE THE COMMISSION OF RAPE.— The consistent and forthright testimony of AAA detailing how she was raped, culminating with the penetration of appellant's penis into her vagina, suffices to prove that appellant had carnal knowledge of her. When a woman states that she has been raped, she says in effect all that is necessary to show that rape was committed. Further, when such testimony corresponds with medical findings, there is sufficient basis to conclude that the essential requisites of carnal knowledge have been established.

4. REMEDIAL LAW; EVIDENCE; ALIBI AND DENIAL, NOT ESTABLISHED.— Settled is the rule that, "alibi is an inherently weak defense that is viewed with suspicion because it is easy to fabricate." "Alibi and denial must be supported by strong corroborative evidence in order to merit credibility." Moreover, for the defense of alibi to prosper, the accused must establish two elements – (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission. Appellant failed in this wise.

5. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP, ADEQUATELY ESTABLISHED BY JUDICIAL ADMISSION.— The presence of the qualifying circumstances of minority and relationship with the offender in the instant case has likewise been adequately established. Both qualifying circumstances were specifically alleged in the Information, stipulated on and admitted during the pre-trial conference, and testified to by both parties in their respective testimonies. Also, such stipulation and admission, as correctly pointed out by the Court of Appeals, are binding upon this Court because they are judicial admissions within the contemplation of Section 4, Rule 129 of the Revised Rules of Court.

6. ID.; ID.; CIVIL LIABILITIES.— [I]n increasing the amount of civil indemnity and damages each from ₱50,000.00 to ₱75,000.00, the Court of Appeals correctly considered controlling jurisprudence to the effect that where, as here, the rape is committed with any of the qualifying/aggravating circumstances warranting the imposition of the death penalty, the victim is entitled to ₱75,000.00 as civil indemnity *ex delicto* and ₱75,000.00 as moral damages.

However, the award of exemplary damages should have been increased from ₱25,000.00 to ₱30,000.00.

7. ID.; ID.; PENALTY; ACCUSED NOT ELIGIBLE FOR PAROLE.— [T]he penalty of *reclusion perpetua in lieu* of death was correctly imposed considering that the imposition of the death penalty upon appellant would have been appropriate were it not for the enactment of Republic Act No. 9346, or *An Act Prohibiting the Imposition of Death Penalty in the Philippines*. We further affirm the ruling of the Court of Appeals on appellant's non-eligibility for parole. Sec. 3 of Republic Act No. 9346 clearly provides that "persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua* by reason of the law, shall not be eligible for parole."

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PEREZ, ***J*.:**

Before Us for final review is the trial court's conviction of the appellant for the rape of his thirteen-year old daughter.

Consistent with the ruling of this Court in *People v. Cabalquinto,*[1] the real name and the personal circumstances of the victim, and any other information tending to establish or compromise her identity, including those of her immediate family or household members, are not disclosed in this decision.

The Facts

In an Information dated 21 September 2000,[2] the appellant was accused of the crime of QUALIFIED RAPE allegedly committed as follows:

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[1] G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[2] Records, p. 27.

That on or about the 15th day of March 2000, in the evening, at Barangay xxx, municipality of xxx, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the father of AAA with lewd design, with the use of force and intimidation, did then and there, willfully, unlawfully and criminally have carnal knowledge with his own daughter AAA, a 13 year[s]old minor against her will.[3]

On 12 October 2000, appellant entered a plea of not guilty.[4] During the pre-trial conference, the prosecution and the defense stipulated and admitted: (a) the correctness of the findings indicated in the medical certificate of the physician who examined AAA; (b) that AAA was only thirteen (13) years old when the alleged offense was committed; and (c) that AAA is the daughter of the appellant.[5] On trial, three (3) witnesses testified for the prosecution, namely: victim AAA;[6] her brother BBB;[7] and one Moises Boy Banting[8] a "*bantay bayan*" in the *barangay*. Their testimonies revealed the following:

In the afternoon of 15 March 2000, AAA was left alone at home.[9] AAA's father, the appellant, was having a drinking spree at the neighbor's place.[10] Her mother decided to leave because when appellant gets drunk, he has the habit of mauling AAA's mother.[11] Her only brother BBB also went out in the company of some neighbors.[12]

At around 10:00 o'clock in the evening, appellant woke AAA up;[13] removed his pants, slid inside the blanket covering AAA

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[3] *Id*.
[4] *Id.* at 32.
[5] *Id.* at 36.
[6] TSN, 12 November 2001.
[7] TSN, 11 March 2002.
[8] TSN, 5 June 2003.
[9] TSN, 12 November 2001, p. 4.
[10] *Id.* at 5.
[11] *Id.* at 4.
[12] *Id.* at 4-5.
[13] *Id.* at 5; TSN, 11 March 2002, p. 4.

and removed her pants and underwear;[14] warned her not to shout for help while threatening her with his fist;[15] and told her that he had a knife placed above her head.[16] He proceeded to mash her breast, kiss her repeatedly, and "inserted his penis inside her vagina."[17]

Soon after, BBB arrived and found AAA crying.[18] Appellant claimed he scolded her for staying out late.[19] BBB decided to take AAA with him.[20] While on their way to their maternal grandmother's house, AAA recounted her harrowing experience with their father.[21] Upon reaching their grandmother's house, they told their grandmother and uncle of the incident,[22] after which, they sought the assistance of Moises Boy Banting.[23]

Moises Boy Banting found appellant in his house wearing only his underwear.[24] He invited appellant to the police station,[25] to which appellant obliged. At the police outpost, he admitted to him that he raped AAA because he was unable to control himself.[26]

The following day, AAA submitted herself to physical examination.[27] Dra. Josefa Arlita L. Alsula, Municipal Health

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[14] *Id.* at 6.

[15] *Id.*

[16] *Id.*

[17] *Id.* at 7.

[18] *Id.* at 8; TSN, 11 March 2002, pp. 4-5.

[19] TSN, 12 November 2001, p. 10.

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

[21] *Id.* at 9.

[22] *Id.* at 11-12.

[23] *Id.* at 12; TSN, 11 March 2002, p. 6.

[24] *Id.* at 13.

[25] *Id.* at 15.

[26] *Id.* at 13.

[27] Records, p. 5.

Officer of x x x, Bukidnon, issued the Medical Certificate, which reads:

> hyperemic vulvae with 4 o'clock & 6 o'clock freshly lacerated hymen; (+) minimal to moderate bloody discharges 2° to an alleged raping incident[28]

On the other hand, only appellant testified for the defense. He believed that the charge against him was ill-motivated because he sometimes physically abuses his wife in front of their children after engaging in a heated argument,[29] and beats the children as a disciplinary measure.[30] He went further to narrate how his day was on the date of the alleged rape.

He alleged that on 15 March 2000, there was no food prepared for him at lunchtime.[31] Shortly after, AAA arrived.[32] She answered back when confronted.[33] This infuriated him that he kicked her hard on her buttocks.[34]

Appellant went back to work and went home again around 3 o'clock in the afternoon.[35] Finding nobody at home,[36] he prepared his dinner and went to sleep.[37]

Later in the evening, he was awakened by the members of the "*Bantay Bayan*" headed by Moises Boy Banting.[38] They asked him to go with them to discuss some matters.[39] He later

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[28] *Id*.
[29] TSN, 12 November 2001, pp. 6-8.
[30] *Id.* at 10.
[31] *Id.* at 12-13.
[32] *Id.* at 13.
[33] *Id.* at 13-14.
[34] *Id.* at 15.
[35] *Id.* at 16.
[36] *Id*.
[37] *Id.* at 17.
[38] *Id.* at 18.
[39] *Id.* at 19.

learned that he was under detention because AAA charged him of rape.[40]

On 8 July 2006, the Regional Trial Court, Branch 9, Malaybalay City, Bukidnon, rendered its decision[41] in Criminal Case No. 10372-0, finding appellant guilty of rape qualified by relationship and minority, and sentenced him to suffer the penalty of *reclusion perpetua*.[42] It also ordered him to indemnify AAA ₱50,000.00 as moral damages, and ₱50,000.00 as civil indemnity with exemplary damages of ₱25,000.00.[43]

On 30 September 2008, the decision of the trial court was AFFIRMED with MODIFICATIONS[44] by the Court of Appeals in CA-G.R. CR HC No. 00456-MIN.[45] The appellate court found that appellant is not eligible for parole and it increased both the civil indemnity and moral damages from ₱50,000.00 to ₱75,000.00.[46]

On 24 November 2008, the Court of Appeals gave due course to the appellant's notice of appeal.[47] This Court required the parties to simultaneously file their respective supplemental briefs,[48] but both manifested that they will no longer file supplemental pleadings.[49]

The lone assignment of error in the appellant's brief is that, the trial court gravely erred in finding him guilty as charged despite the failure of the prosecution to establish his guilt beyond reasonable doubt,[50] because: (1) there were inconsistencies in

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[40] *Id.* at 21.

[41] Penned by Judge Pelagio B. Estopia. Records, pp. 95-104.

[42] *Id.* at 104.

[43] *Id*.

[44] *Id.* at 79.

[45] Penned by Associate Justice Elihu A. Ybañez with Associate Justices Romulo V. Borja and Mario V. Lopez concurring. CA *rollo*, pp. 56-79.

[46] *Id*.

[47] *Id.* at 92.

[48] *Rollo*, p. 31.

[49] *Id.* at 40-43 and 46-48.

[50] *Id.* at 17.

the testimonies of AAA and her brother BBB;[51] (2) his extrajudicial confession before Moises Boy Banting was without the assistance of a counsel, in violation of his constitutional right;[52] and (3) AAA's accusation was ill-motivated.[53]

Our Ruling

Appellant contests the admissibility in evidence of his alleged confession with a "*bantay bayan*" and the credibility of the witnesses for the prosecution.

Admissibility in Evidence of an Extrajudicial Confession before a "Bantay Bayan"

Appellant argues that even if he, indeed, confessed to Moises Boy Banting, a "*bantay bayan,*" the confession was inadmissible in evidence because he was not assisted by a lawyer and there was no valid waiver of such requirement.[54]

The case of *People v. Malngan*[55] is the authority on the scope of the Miranda doctrine provided for under Article III, Section 12(1)[56] and (3)[57] of the Constitution. In *Malngan,* appellant questioned the admissibility of her extrajudicial confessions given to the *barangay* chairman and a neighbor of the private complainant. This Court distinguished. Thus:

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[51] *Id.* at 18.

[52] *Id.* at 18-19.

[53] *Id.* at 19-21.

[54] *Id.* at 18-19.

[55] G.R. No. 170470, 26 September 2006, 503 SCRA 294.

[56] (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

[57] (3) Any confession or admission obtained in violation of this Section or Section 17 hereof shall be inadmissible in evidence against him.

> *Arguably,* the *barangay tanods*, including the *Barangay* Chairman, in this particular instance, *may* be deemed as law enforcement officer for purposes of applying Article III, Section 12(1) and (3), of the Constitution. When accused-appellant was brought to the *barangay* hall in the morning of 2 January 2001, she was already a suspect, actually the only one, in the fire that destroyed several houses x x x. She was, therefore, already under custodial investigation and the rights guaranteed by x x x [the] Constitution should have already been observed or applied to her. Accused-appellant's confession to *Barangay* Chairman x x x was made in response to the 'interrogation' made by the latter – admittedly conducted without first informing accused-appellant of her rights under the Constitution or done in the presence of counsel. For this reason, the confession of accused-appellant, given to *Barangay* Chairman x x x, as well as the lighter found x x x in her bag are **inadmissible in evidence** against her x x x.
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> [But such does] not automatically lead to her acquittal. x x x [T]he constitutional safeguards during custodial investigations **do not apply to those not elicited through questioning by the police <u>or their agents</u>** but given in an ordinary manner whereby the accused verbally admits x x x as x x x in the case at bar when accused-appellant admitted to Mercedita Mendoza, one of the neighbors x x x [of the private complainant].[58] *(Emphasis supplied)*

Following the rationale behind the ruling in *Malngan,* this Court needs to ascertain whether or not a "*bantay bayan*" may be deemed a law enforcement officer within the contemplation of Article III, Section 12 of the Constitution.

In *People of the Philippines v. Buendia,*[59] this Court had the occasion to mention the nature of a "*bantay bayan*," that is, "a group of male residents living in [the] area organized for the purpose of keeping peace in their community[,which is] an accredited auxiliary of the x x x PNP."[60]

Also, it may be worthy to consider that pursuant to Section 1(g) of Executive Order No. 309 issued on 11 November 1987, as amended, a Peace and Order Committee in each *barangay*

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[58] *People v. Malngan, supra* note 55 at 324-325.

[59] 432 Phil. 471 (2002).

[60] *Id.* at 476.

shall be organized "to serve as implementing arm of the City/ Municipal Peace and Order Council at the *Barangay* level."[61] The composition of the Committee includes, among others: (1) the *Punong Barangay* as Chairman; (2) the Chairman of the *Sangguniang Kabataan*; (3) a Member of the *Lupon Tagapamayapa*; (4) a *Barangay Tanod*; and (5) **at least three (3) Members of existing *Barangay*-Based Anti-Crime or neighborhood Watch Groups or a Non Government Organization Representative well-known in his community.**[62]

This Court is, therefore, convinced that *barangay*-based volunteer organizations in the nature of watch groups, as in the case of the "*bantay bayan*," are recognized by the local government unit to perform functions relating to the preservation of peace and order at the *barangay* level. Thus, without ruling on the legality of the actions taken by Moises Boy Banting, and the specific scope of duties and responsibilities delegated to a "*bantay bayan*," particularly on the authority to conduct a custodial investigation, any inquiry he makes has the color of a state-related function and objective insofar as the entitlement of a suspect to his constitutional rights provided for under Article III, Section 12 of the Constitution, otherwise known as the Miranda Rights, is concerned.

We, therefore, find the extrajudicial confession of appellant, which was taken without a counsel, inadmissible in evidence.

Be that as it may, We agree with the Court of Appeals that the conviction of the appellant was not deduced solely from the assailed extrajudicial confession but "from the confluence of evidence showing his guilt beyond reasonable doubt."[63]

Credibility of the Witnesses for the Prosecution

Appellant assails the inconsistencies in the testimonies of AAA and her brother BBB. AAA testified that BBB

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[61] Executive Order No. 309, Sec. 1(g), as amended, quoted in Memorandum Circular No. 2008-114 dated 17 July 2008 of the Department of the Interior and Local Government.

[62] *Id*.

[63] *Rollo,* p. 19.

accompanied her to the house of their grandmother. Thereafter, they, together with her relatives, proceeded to look for a "*bantay bayan*." On the other hand, BBB testified that he brought her sister to the house of their "*bantay bayan*" after he learned of the incident.

Citing *Bartocillo v. Court of Appeals,*[64] appellant argues that "where the testimonies of two key witnesses cannot stand together, the inevitable conclusion is that one or both must be telling a lie, and their story a mere concoction."[65]

The principle, however, is not applicable in the case at bar. In *Bartocillo,* the two testimonies could not simply stand together because:

> On one hand, if we are to believe Susan, Orlando could not have possibly seen the hacking incident since he had accompanied Vicente home. On the other hand, if we are to accept the testimony of Orlando, then Susan could not have possibly witnessed the hacking incident since she was with Vicente at that time.

Here, the testimony of AAA does not run contrary to that of BBB. Both testified that they sought the help of a "*bantay bayan*." Their respective testimonies differ only as to when the help was sought for, which this Court could well attribute to the nature of the testimony of BBB, a shortcut version of AAA's testimony that dispensed with a detailed account of the incident.

At any rate, the Court of Appeals is correct in holding that the assailed inconsistency is too trivial to affect the veracity of the testimonies.[66] In fact, inconsistencies which refer to minor, trivial or inconsequential circumstances even strengthen the credibility of the witnesses, as they erase doubts that such testimonies have been coached or rehearsed.[67]

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[64] 420 Phil. 50 (2001).

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

[66] *Rollo*, p. 17.

[67] *People v. Villadares,* 406 Phil. 530, 540 (2001), citing *People v. Gargar,* 360 Phil. 729, 741 (1998).

Appellant's contention that AAA charged him of rape only because she bore grudges against him is likewise unmeritorious. This Court is not dissuaded from giving full credence to the testimony of a minor complainant by motives of feuds, resentment or revenge.[68] As correctly pointed out by the Court of Appeals:

> Indeed, mere disciplinary chastisement is not strong enough to make daughters in a Filipino family invent a charge that would not only bring shame and humiliation upon them and their families but also bring their fathers into the gallows of death.[69] The Supreme Court has repeatedly held that it is unbelievable for a daughter to charge her own father with rape, exposing herself to the ordeal and embarrassment of a public trial and subjecting her private parts to examination if such heinous crime was not in fact committed.[70] No person, much less a woman, could attain such height of cruelty to one who has sired her, and from whom she owes her very existence, and for which she naturally feels loving and lasting gratefulness.[71] Even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to concoct a story which would put her own father to jail for the most of his remaining life and drag the rest of the family including herself to a lifetime of shame.[72] It is highly improbable for [AAA] against whom no proof of sexual perversity or loose morality has been shown to fake charges much more against her own father. In fact her testimony is entitled to greater weight since her accusing words were directed against a close relative.[73]

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[68] *People v. Aycardo,* G.R. No. 168299, 6 October 2008, 567 SCRA 523, 535-536.

[69] *Rollo,* p. 19, citing *People v. Mascariñas,* 432 Phil. 96, 102 (2002), further citing *People v. Tabugoca,* 349 Phil. 236, 253 (1998).

[70] *Id.*, citing *People v. Sangil, Sr.,* 342 Phil. 499, 508-509 (1997), further citing *People v. Mabunga*, G.R. No. 96441, 13 November 1992, 215 SCRA 694, 704.

[71] *Id.* at 19-20, citing *People v. Sangil, Sr., id.* at 509.

[72] *Id.* at 20, citing *People v. Melivo,* 323 Phil. 412, 428 (1996).

[73] *Id.*, citing *People v. Sangil, Sr., supra* note 70 at 509.

Elements of Rape

Having established the credibility of the witnesses for the prosecution, We now examine the applicability of the Anti-Rape Law of 1997[74] to the case at bar.

The law provides, in part, that rape is committed, among others, "[b]y a man who shall have carnal knowledge of a woman" "through force, threat or intimidation."[75] The death penalty shall be imposed if it is committed with aggravating/qualifying circumstances, which include, "[w]hen the victim is under eighteen (18) years of age and the offender is a parent."[76]

The consistent and forthright testimony of AAA detailing how she was raped, culminating with the penetration of appellant's penis into her vagina, suffices to prove that appellant had carnal knowledge of her. When a woman states that she has been raped, she says in effect all that is necessary to show that rape was committed.[77] Further, when such testimony corresponds with medical findings, there is sufficient basis to conclude that the essential requisites of carnal knowledge have been established.[78]

The Court of Appeals pointed out that the element of force or intimidation is not essential when the accused is the father of the victim, inasmuch as his superior moral ascendancy or influence substitutes for violence and intimidation.[79] At any rate, AAA was actually threatened by appellant with his fist and a knife allegedly placed above AAA's head.[80]

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[74] Republic Act No. 8353.

[75] *Id.*, Article 266-A, Paragraph 1(a).

[76] *Id.*, Article 266-B.

[77] *People v. Jacob,* G.R. No. 177151, 22 August 2008, 563 SCRA 191, 207.

[78] *People v. Tuazon,* G.R. No. 168102, 22 August 2008, 563 SCRA 124, 135.

[79] *Rollo,* pp. 20-21.

[80] TSN, 11 March 2002, p. 6.

It may be added that the self-serving defense of appellant cannot prevail over the positive and straightforward testimony of AAA. Settled is the rule that, "alibi is an inherently weak defense that is viewed with suspicion because it is easy to fabricate."[81] "Alibi and denial must be supported by strong corroborative evidence in order to merit credibility."[82] Moreover, for the defense of alibi to prosper, the accused must establish two elements – (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.[83] Appellant failed in this wise.

Aggravating/Qualifying Circumstances

The presence of the qualifying circumstances of minority and relationship with the offender in the instant case has likewise been adequately established. Both qualifying circumstances were specifically alleged in the Information, stipulated on and admitted during the pre-trial conference, and testified to by both parties in their respective testimonies. Also, such stipulation and admission, as correctly pointed out by the Court of Appeals, are binding upon this Court because they are judicial admissions within the contemplation of Section 4, Rule 129 of the Revised Rules of Court. It provides:

Sec. 4. *Judicial admissions.* — **An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof.** The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

Penalty

Finally, in increasing the amount of civil indemnity and damages each from ₱50,000.00 to ₱75,000.00, the Court of Appeals correctly considered controlling jurisprudence to the effect that where, as

[81] *People v. Jacob, supra* note 77 at 203.

[82] *Id.*

[83] *People v. Aycardo, supra* note 68 at 534.

here, the rape is committed with any of the qualifying/aggravating circumstances warranting the imposition of the death penalty, the victim is entitled to ₱75,000.00 as civil indemnity *ex delicto*[84] and ₱75,000.00 as moral damages.[85] However, the award of exemplary damages should have been increased from ₱25,000.00 to ₱30,000.00.[86] Also, the penalty of *reclusion perpetua in lieu* of death was correctly imposed considering that the imposition of the death penalty upon appellant would have been appropriate were it not for the enactment of Republic Act No. 9346, or *An Act Prohibiting the Imposition of Death Penalty in the Philippines*.[87] We further affirm the ruling of the Court of Appeals on appellant's non-eligibility for parole. Sec. 3 of Republic Act No. 9346 clearly provides that "persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua* by reason of the law, shall not be eligible for parole."

WHEREFORE, the Decision of the Court of Appeals dated 30 September 2008 in CA-G.R. CR HC No. 00456-MIN is hereby *AFFIRMED*. Appellant Antonio Lauga is *GUILTY* beyond reasonable doubt of qualified rape, and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

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[84] *People v. Sia,* G.R. No. 174059, 27 February 2009, 580 SCRA 364, 367-368.

[85] *Id.*

[86] *Id.*

[87] *Id.*

EN BANC

[G.R. No. 188078. March 15, 2010]

VICTORINO B. ALDABA, CARLO JOLETTE S. FAJARDO, JULIO G. MORADA, and MINERVA ALDABA MORADA, *petitioners, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THE COURT'S JUDICIAL REVIEW POWER OVER REPUBLIC ACT (R.A.) 9591 (OR THE LAW CREATING A LEGISLATIVE DISTRICT OF MALOLOS CITY), DISCUSSED.— If laws creating legislative districts are unquestionably within the ambit of this Court's judicial review power, then there is more reason to hold justiciable subsidiary questions impacting on their constitutionality, such as their compliance with a *specific* constitutional *limitation* under Section 5(3), Article VI of the 1987 Constitution that only cities with at least 250,000 constituents are entitled to representation in Congress. To fulfill this obligation, the Court, of necessity, must inquire into the authoritativeness and reliability of the population indicators Congress used to comply with the constitutional limitation. x x x To deny the Court the exercise of its judicial review power over RA 9591 is to contend that this Court has no power "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government," a *duty* mandated under Section 1, Article VIII of the Constitution. Indeed, if we subscribe to the COMELEC's theory, this Court would be reduced to rubberstamping laws creating legislative districts *no matter how unreliable and non-authoritative* the population indicators Congress used to justify their creation. There can be no surer way to render meaningless the limitation in Section 5(3), Article VI of the 1987 Constitution.

2. ID.; ID.; CONSTITUTIONALITY OF R.A. 9591; EXECUTIVE ORDER (EO) 135 MANDATES THAT THE POPULATION REQUIREMENT IN THE CREATION AND CONVERSION OF

LOCAL GOVERNMENT UNITS SHALL BE PROVED EXCLUSIVELY BY AN NSO CERTIFICATION.— There can be no doubt on the applicability of EO 135 to test the constitutionality of RA 9591. The COMELEC *invoked* EO 135 to convince the Court of the credibility and authoritativeness of Miranda's certificate. It is hardly alien for the Court to adopt standards contained in a parallel statute to fill gaps in the law in the absence of an express prohibition. Indeed, one is hard-pressed to find any distinction, statistically speaking, on the reliability of an NSO certification of a city's population for purposes of *creating its legislative district* and for purposes of *converting it* to a highly-urbanized or an independent component city. Congress itself confirms the wisdom and relevance of EO 135's paradigm of privileging NSO certifications by mandating that compliance with the population requirement in the creation and conversion of local government units shall be proved *exclusively* by an NSO certification. Unquestionably, representation in Congress is no less important than the creation of local government units in enhancing our democratic institutions, thus both processes should be subject to the same stringent standards.

3. ID.; ID.; ID.; R.A. 9591 CONTRAVENES THE REQUIREMENT IN SECTION 5(3), ARTICLE VI OF THE CONSTITUTION.— Aside from failing to comply with Section 5(3), Article VI of the Constitution on the population requirement, **the creation by RA 9591 of a legislative district for Malolos City, carving the city from the former First Legislative District, leaves the town of Bulacan isolated from the rest of the geographic mass of that district**. This contravenes the requirement in Section 5(3), Article VI that each legislative district shall "**comprise, as far as practicable, *contiguous, compact, and adjacent territory***." It is no argument to say, as the OSG does, that it was impracticable for Congress to create a district with contiguous, compact, and adjacent territory because Malolos city lies at the center of the First Legislative District. The geographic lay-out of the First Legislative District is not an insuperable condition making compliance with Section 5(3) impracticable. To adhere to the constitutional mandate, and thus maintain fidelity to its purpose of ensuring efficient representation, the practicable alternative for Congress was to include the municipality of Bulacan in Malolos City's legislative district. Although unorthodox, the resulting contiguous and

compact district fulfills the constitutional requirements of geographic unity *and* population floor, ensuring efficient representation of the minimum mass of constituents.

APPEARANCES OF COUNSEL

Carlo Jolette S. Fajardo for petitioners.
The Solicitor General for respondent.

R E S O L U T I O N

CARPIO, *J.*:

This resolves the motion for reconsideration of respondent Commission on Elections (COMELEC) of the Decision dated 25 January 2010.[1]

The COMELEC grounds its motion on the singular reason, already considered and rejected in the Decision, that Congress' reliance on the Certification of Alberto N. Miranda (Miranda), Region III Director, National Statistics Office (NSO), projecting Malolos City's population in 2010, is non-justiciable. The COMELEC also calls attention to the other sources of Malolos City's population indicators as of 2007 (2007 Census of Population – PMS 3 – Progress Enumeration Report[2]) and as of 2008 (Certification of the City of Malolos' Water District, dated 31 July 2008,[3] and Certification of the Liga ng Barangay, dated 22 August 2008[4]) which Congress allegedly used in enacting

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[1] Malolos City's motion for leave to intervene and file a motion for reconsideration was denied in the Resolution of 16 February 2010. The COMELEC, in its Supplemental Motion for Reconsideration, adopted as its own the arguments raised in Malolos City's rejected motion for reconsideration.

[2] Showing that as of 5 November 2007, Malolos City's population was 255,543.

[3] Stating that as of 31 July 2008, Malolos City's population was 281,413.

[4] Stating that as of 22 August 2008, Malolos City's population was 258,229.

Republic Act No. 9591 (RA 9591). The COMELEC extends its non-justiciability argument to these materials.

We find no reason to grant the motion.

First. It will not do for the COMELEC to insist that the reliability and authoritativeness of the population indicators Congress used in enacting RA 9591 are non-justiciable. If laws creating legislative districts are unquestionably within the ambit of this Court's judicial review power,[5] then there is more reason to hold justiciable subsidiary questions impacting on their constitutionality, such as their compliance with a *specific* constitutional *limitation* under Section 5(3), Article VI of the 1987 Constitution that only cities with at least 250,000 constituents are entitled to representation in Congress. To fulfill this obligation, the Court, of necessity, must inquire into the authoritativeness and reliability of the population indicators Congress used to comply with the constitutional limitation. Thus, nearly five decades ago, we already rejected claims of non-justiciability of an apportionment law alleged to violate the constitutional requirement of proportional representation:

> It is argued in the motion to reconsider, that since Republic Act 3040 improves existing conditions, this Court could perhaps, in the exercise of judicial statesmanship, consider the question involved as purely political and therefore non-justiciable. **The overwhelming weight of authority is that district apportionment laws are subject to review by the courts**[:]
>
> > The constitutionality of a legislative apportionment act is a judicial question, and not one which the court cannot consider on the ground that it is a political question.
> >
> > It is well settled that the passage of apportionment acts is not so exclusively within the political power of the legislature as to preclude a court from inquiring into their constitutionality when the question is properly brought before it.
>
> It may be added in this connection, that the mere impact of the suit upon the political situation does not render it political instead of judicial.

[5] *Macias v. COMELEC*, G.R. No. L-18684, 14 September 1961, 3 SCRA 1.

The alleged circumstance that this statute improves the present set-up constitutes no excuse for approving a transgression of constitutional limitations, because the end does not justify the means. Furthermore, there is no reason to doubt that, aware of the existing inequality of representation, and impelled by its sense of duty, Congress will opportunely approve remedial legislation in accord with the precepts of the Constitution.[6] (Emphasis supplied; internal citations omitted)

To deny the Court the exercise of its judicial review power over RA 9591 is to contend that this Court has no power "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government," a *duty* mandated under Section 1, Article VIII of the Constitution. Indeed, if we subscribe to the COMELEC's theory, this Court would be reduced to rubberstamping laws creating legislative districts *no matter how unreliable and non-authoritative* the population indicators Congress used to justify their creation. There can be no surer way to render meaningless the limitation in Section 5(3), Article VI of the 1987 Constitution.[7]

Second. Under Executive Order No. 135 (EO 135), the population indicators Congress used to measure Malolos City's compliance with the constitutional limitation are unreliable and non-authoritative. On Miranda's Certification, (that the "projected population of the [City] of Malolos will be 254,030 by the year 2010 using the population growth rate of 3.78[%] between 1995 and 2000"), this fell short of EO 135's requirements that (a) for intercensal years, the certification should be *based on a set of demographic projections and estimates* <u>*declared official*</u> *by the National Statistical and Coordination Board*

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[6] *Id.* at 7.

[7] Just recently, the Court, in the exercise of its judicial review power, struck down a law creating a province for non-compliance with population and land mass requirements under relevant legislation (*Navarro v. Ermita*, G.R. No. 180050, 10 February 2010, declaring unconstitutional Republic Act No. 9355 creating the province of Dinagat Islands for non-compliance with Republic Act No. 7610).

(NSCB); (b) certifications on intercensal population estimates *will be as of the middle of every year*; and (c) certifications based on projections or estimates must be issued by the *NSO Administrator or his designated certifying officer*. Further, using Miranda's own growth rate assumption of 3.78%, Malolos City's population as of 1 August 2010 will only be 249,333, below the constitutional threshold of 250,000 (using as base Malolos City's population as of 1 August 2007 which is 223,069). That Miranda issued his Certification "by authority of the NSO administrator" does not make the document reliable as it neither makes Miranda the NSO Administrator's *designated certifying officer* nor cures the Certification of its fatal defects for failing to use *demographic projections and estimates declared official by the NSCB* or make the projection as of the middle of 2010.

Nor are the 2007 Census of Population – PMS 3 – Progress Enumeration Report, the Certification of the City of Malolos' Water District, dated 31 July 2008 and the Certification of the Liga ng Barangay, dated 22 August 2008, reliable because none of them qualifies as authoritative population indicator under EO 135. The 2007 Census of Population – PMS 3 – Progress Enumeration Report merely contains *preliminary* data on the population census of Bulacan which were subsequently adjusted to reflect actual population as indicated in the 2007 Census results (showing Malolos City's population at 223,069). The COMELEC, through the Office of the Solicitor General (OSG), adopts Malolos City's claim that the 2007 census for Malolos City was "sloped to make it appear that come Year 2010, the population count for Malolos would still fall short of the constitutional requirement."[8] This unbecoming attack by the government's chief counsel on the integrity of the processes of the government's census authority has no place in our judicial system. The OSG ought to know that absent convincing proof of so-called data "sloping," the NSO enjoys the presumption of the regularity in the performance of its functions.

[8] Supplemental Motion for Reconsideration, p. 3.

The Certification of the City of Malolos' Water District fares no better. EO 135 excludes from its ambit certifications from a public utility gathered incidentally in the course of pursuing its business. To elevate the water district's so-called population census to the level of credibility NSO certifications enjoy is to render useless the existence of NSO. This will allow population data incidentally gathered by electric, telephone, sewage, and other utilities to enter into legislative processes even though these private entities are not in the business of generating statistical data and thus lack the scientific training, experience and competence to handle, collate and process them.

Similarly, the Certification of the Liga ng Barangay is not authoritative because much like the Malolos City Water District, the Liga ng Barangay is not authorized to conduct population census, much less during off-census years. The non-NSO entities EO 135 authorizes to conduct population census are local government *units* (that is, province, city, municipality or *barangay*) subject to the prior approval of the NSCB and under the technical supervision of the NSO from planning to data processing.[9]

By presenting these alternative population indicators with their widely divergent population figures,[10] the COMELEC unwittingly highlighted the danger of relying on non-NSO authorized certifications. EO 135's stringent standards ensuring reliability of population census cannot be diluted as these data lie at the core of crucial government decisions and, in this case, the legislative function of enforcing the constitutional mandate of creating congressional districts in cities with at least 250,000 constituents.

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[9] Section 6(e) of EO 135 provides:

(e) The smallest geographic area for which a certification on population size may be issued will be the *barangay* for census population counts, and the city or municipality for intercensal estimates. *If an LGU wants to conduct its own population census, during off-census years, approval must be sought from the NSCB and the conduct must be under the technical supervision of NSO from planning to data processing*. (Emphasis supplied)

[10] See notes 2-4.

There can be no doubt on the applicability of EO 135 to test the constitutionality of RA 9591. The COMELEC *invoked* EO 135 to convince the Court of the credibility and authoritativeness of Miranda's certificate.[11] It is hardly alien for the Court to adopt standards contained in a parallel statute to fill gaps in the law in the absence of an express prohibition.[12] Indeed, one is hard-pressed to find any distinction, statistically speaking, on the reliability of an NSO certification of a city's population for purposes of *creating its legislative district* and for purposes of *converting it* to a highly-urbanized or an independent component city.[13] Congress itself confirms the wisdom and relevance of EO 135's paradigm of privileging NSO certifications by mandating that compliance with the population requirement in the creation and conversion of local government units shall be proved *exclusively* by an NSO certification.[14] Unquestionably, representation in Congress is no less important than the creation of local government units in enhancing our democratic institutions, thus both processes should be subject to the same stringent standards.

Third. Malolos City is entitled to representation in Congress only if, before the 10 May 2010 elections, it breaches the 250,000

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[11] Malolos City invoked EO 135 for the same purpose in its Comment-in-Intervention (pp. 11-12) which the Court did not admit.

[12] Thus, in *Menzon v. Petilla*, 274 Phil. 523 (1991), we applied *by analogy* two statutory provisions to resolve the question of the validity of a succession via a Presidential appointment, to fill a *temporary* vacancy in a provincial legislative council: (1) Commonwealth Act No. 588 and the Revised Administrative Code authorizing the President to make temporary appointments in *appointive* positions; and (2) Section 49 of Republic Act No. 7160 (RA 7160) governing succession to *permanent* vacancies in the office of the vice-governor.

[13] Section 7, RA 7160.

[14] Section 7 of RA No. 7160 provides that in the creation or conversion of a local government unit, compliance with the income, **population** and land mass indicators "shall be attested to by the Department of Finance (DOF), **the National Statistics Office (NSO)**, and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR)," respectively.

population mark following the mandate in Section 3 of the Ordinance appended to the 1987 Constitution that "any city whose population may hereafter increase to more than two hundred fifty thousand shall be entitled *in the immediately following election* to at least one Member." COMELEC neither alleged nor proved that Malolos City is in compliance with Section 3 of the Ordinance.

Fourth. Aside from failing to comply with Section 5(3), Article VI of the Constitution on the population requirement, **the creation by RA 9591 of a legislative district for Malolos City, carving the city from the former First Legislative District, leaves the town of Bulacan isolated from the rest of the geographic mass of that district**.[15] This contravenes the requirement in Section 5(3), Article VI that each legislative district shall "**comprise, as far as practicable, *contiguous, compact, and adjacent territory***." It is no argument to say, as the OSG does, that it was impracticable for Congress to create a district with contiguous, compact, and adjacent territory because Malolos city lies at the center of the First Legislative District. The geographic lay-out of the First Legislative District is not an insuperable condition making compliance with Section 5(3) impracticable. To adhere to the constitutional mandate, and thus maintain fidelity to its purpose of ensuring efficient representation, the practicable alternative for Congress was to include the municipality of Bulacan in Malolos City's legislative district. Although unorthodox, the resulting contiguous and compact district fulfills the constitutional requirements of geographic unity *and* population floor, ensuring efficient representation of the minimum mass of constituents.

WHEREFORE, the Supplemental Motion for Reconsideration of respondent Commission on Elections dated 22 February 2010

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[15] The municipality of Bulacan, one of the five municipalities comprising the First Legislative District, is bounded on the northwest by Malolos City, on the northeast by the Second Legislative District, on the southeast by the fourth Legislative District, and on the northwest by the Manila Bay. (Per the administrative map of the Province of Bulacan furnished the Court by the National Mapping and Resource Information Authority).

is *DENIED WITH FINALITY*. Let no further pleadings be allowed.

SO ORDERED.

Puno, C.J., Carpio Morales, Brion, Del Castillo, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Corona, Nachura, Leonardo-de Castro, Peralta, Bersamin, join the dissent of *J.* Abad.

Abad, J., adopts his dissent in the main opinion.

Velasco, Jr., J., no part due to realationship to a party.

FIRST DIVISION

[G.R. No. 157009. March 17, 2010]

SULPICIO LINES, INC., *petitioner, vs.* **DOMINGO E. CURSO, LUCIA E. CURSO, MELECIO E. CURSO, SEGUNDO E. CURSO, VIRGILIO E. CURSO, DIOSDADA E. CURSO, and CECILIA E. CURSO,** *respondents.*

SYLLABUS

1. **CIVIL LAW; MORAL DAMAGES; PURPOSE; CONDITIONS FOR THE AWARD.—** [T]he purpose of moral damages is indemnity or reparation, that is, to enable the injured party to obtain the means, diversions, or amusements that will serve to alleviate the moral suffering he has undergone by reason of the tragic event. According to *Villanueva v. Salvador*, the conditions for awarding moral damages are: (*a*) there must be an injury, whether physical, mental, or psychological, clearly substantiated by the claimant; (*b*) there must be a culpable act or omission factually established; (*c*) the wrongful act or omission of the defendant must be the proximate cause of the injury sustained

by the claimant; and (*d*) the award of damages is predicated on any of the cases stated in Article 2219 of the *Civil Code*.

2. **ID.; ID.; BROTHERS AND SISTERS OF A DECEASED PASSENGER ARE NOT ENTITLED TO MORAL DAMAGES IN AN ACTION PREDICATED UPON A BREACH OF CONTRACT OF CARRIAGE.—** The omission from Article 2206 (3) of the brothers and sisters of the deceased passenger reveals the legislative intent to exclude them from the recovery of moral damages for mental anguish by reason of the death of the deceased. *Inclusio unius est exclusio alterius*. The solemn power and duty of the courts to interpret and apply the law do not include the power to correct the law by reading into it what is not written therein. Thus, the CA erred in awarding moral damages to the respondents. x x x To be entitled to moral damages, the respondents must have a right based upon law. It is true that under Article 1003 of the *Civil Code* they succeeded to the entire estate of the late Dr. Curso in the absence of the latter's descendants, ascendants, illegitimate children, and surviving spouse. However, they were not included among the persons entitled to recover moral damages, as enumerated in Article 2219 of the *Civil Code*. x x x Article 2219 circumscribes the instances in which moral damages may be awarded. The provision does not include succession in the collateral line as a source of the right to recover moral damages. The usage of the phrase *analogous cases* in the provision means simply that the situation must be held similar to those expressly enumerated in the law in question following the *ejusdem generis* rule. Hence, Article 1003 of the *Civil Code* is not concerned with recovery of moral damages.

3. **ID.; ID.; INSTANCES WHEN MORAL DAMAGES MAY BE RECOVERED IN AN ACTION UPON A BREACH OF CONTRACT OF CARRIAGE.—** [M]oral damages may be recovered in an action upon breach of contract of carriage only when: (*a*) where death of a passenger results, or (*b*) it is proved that the carrier was guilty of fraud and bad faith, even if death does not result. Article 2206 of the *Civil Code* entitles the descendants, ascendants, illegitimate children, and surviving spouse of the deceased passenger to demand moral damages for mental anguish by reason of the death of the deceased.

APPEARANCES OF COUNSEL

Arthur D. Lim Law Office for petitioner.
Clemencio C. Sabitsana, Jr. for respondents.

D E C I S I O N

BERSAMIN, *J.*:

Are the surviving brothers and sisters of a passenger of a vessel that sinks during a voyage entitled to recover moral damages from the vessel owner as common carrier?

This is the question presented in the appeal taken by the common carrier from the reversal by the Court of Appeals (CA) of the decision of the Regional Trial Court (RTC) dismissing the complaint for various damages filed by the surviving brothers and sisters of the late Dr. Cenon E. Curso upon a finding that *force majeure* had caused the sinking. The CA awarded moral and other damages to the surviving brothers and sisters.

Antecedents

On October 23, 1988, Dr. Curso boarded at the port of Manila the MV *Doña Marilyn*, an inter-island vessel owned and operated by petitioner Sulpicio Lines, Inc., bound for Tacloban City. Unfortunately, the MV *Doña Marilyn* sank in the afternoon of October 24, 1988 while at sea due to the inclement sea and weather conditions brought about by Typhoon *Unsang*. The body of Dr. Curso was not recovered, along with hundreds of other passengers of the ill-fated vessel. At the time of his death, Dr. Curso was 48 years old, and employed as a resident physician at the Naval District Hospital in Naval, Biliran. He had a basic monthly salary of ₱3,940.00, and would have retired from government service by December 20, 2004 at the age of 65.

On January 21, 1993, the respondents, allegedly the surviving brothers and sisters of Dr. Curso, sued the petitioner in the RTC in Naval, Biliran to claim damages based on breach of contract of carriage by sea, averring that the petitioner had acted negligently

in transporting Dr. Curso and the other passengers. They stated, among others, that their parents had predeceased Dr. Curso, who died single and without issue; and that, as such, they were Dr. Curso's surviving heirs and successors in interest entitled to recover moral and other damages.[1] They prayed for judgment, as follows: (*a*) compensatory damages of ₱1,924,809.00; (*b*) moral damages of ₱100,000.00; (*c*) exemplary or corrective damages in the amount deemed proper and just; (*d*) expenses of litigation of at least ₱50,000.00; (*e*) attorney's fees of ₱50,000.00; and (*f*) costs of suit.

The petitioner denied liability, insisting that the sinking of the vessel was due to *force majeure* (*i.e.*, Typhoon *Unsang),* which exempted a common carrier from liability. It averred that the MV *Doña Marilyn* was seaworthy in all respects, and was in fact cleared by the Philippine Coast Guard for the voyage; and that after the accident it conducted intensive search and rescue operations and extended assistance and aid to the victims and their families.

Ruling of the RTC

On July 28, 1995, the RTC dismissed the complaint upon its finding that the sinking of the vessel was due to *force majeure*. The RTC concluded that the officers of the MV *Doña Marilyn* had acted with the diligence required of a common carrier; that the sinking of the vessel and the death of its passengers, including Dr. Curso, could not have been avoided; that there was no basis to consider the MV *Doña Marilyn* not seaworthy at the time of the voyage; that the findings of the Special Board of Marine Inquiry (SBMI) constituted to investigate the disaster absolved the petitioner, its officers, and crew of any negligence and administrative liability; and that the respondents failed to prove their claim for damages.

Ruling of the CA

The respondents appealed to the CA, contending that the RTC erred: (*a*) in considering itself barred from entertaining the case by the findings of fact of the SBMI in SBMI-ADM Case No. 08-88; (*b*) in not holding that the petitioner was negligent and

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[1] *Rollo*, pp. 24-28.

did not exercise the required diligence and care in conducting Dr. Curso to his destination; (*c*) in not finding that the MV *Doña Marilyn* was unseaworthy at the time of its sinking; and (*d*) in not awarding damages to them.[2]

In its decision dated September 16, 2002,[3] the CA held and disposed:

> Based on the events described by the appellee's witness, the Court found inadequate proof to show that Sulpicio Lines, Inc., or its officers and crew, had exercised the required degree of diligence to acquit the appellee of liability.
>
> In the first place, the court finds inadequate explanation why the officers of the M.V. Doña Marilyn had not apprised themselves of the weather reports on the approach of typhoon "Unsang" which had the power of a signal No. 3 cyclone, bearing upon the general direction of the path of the M.V. Doña Marilyn. If the officers and crew of the Doña Marilyn had indeed been adequately monitoring the strength and direction of the typhoon, and had acted promptly and competently to avoid the same, then such a mishap would not have occurred.
>
> Furthermore, there was no account of the acts and decision of the crew of the ill-fated ship from 8:00 PM on October 23, 1988 when the Chief Mate left his post until 4:00 AM the next day when he resumed duty. It does not appear what occurred during that time, or what weather reports were received and acted upon by the ship captain. What happened during such time is important in determining what information about the typhoon was gathered and how the ship officers reached their decision to just change course, and not take shelter while a strong typhoon was approaching.
>
> Furthermore, the Court doubts the fitness of the ship for the voyage, since at the first sign of bad weather, the ship's hydraulic system failed and had to be repaired mid-voyage, making the vessel a virtual derelict amidst a raging storm at sea. It is part of the appellee's extraordinary diligence as a common carrier to make sure that its ships can withstand the forces that bear upon them during a voyage, whether they be the ordinary stress of the sea during a calm voyage or the rage of a

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[2] *Id.* at 52.

[3] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Josefina Guevara–Salonga and Edgardo F. Sundiam concurring, *Id.* at 49-60.

storm. The fact that the stud bolts in the ships hydraulic system gave way while the ship was at sea discredits the theory that the appellee exercised due diligence in maintaining the seaworthy condition of the M.V. Doña Marilyn. x x x.[4]

x x x x x x x x x

Aside from these, the defendant must compensate the plaintiffs for moral damages that they suffered as a result of the negligence attending the loss of the M.V. Doña Marilyn. Plaintiffs, have established that they took great pains to recover, in vain, the body of their brother, at their own cost, while suffering great grief due to the loss of a loved one. Furthermore, Plaintiffs were unable to recover the body of their brother. Moral damages worth ₱100,000.00 is proper.

WHEREFORE, premises considered, the appealed decision of the RTC of Naval, Biliran, Branch 16, rendered in Civil Case No. B-0851, is hereby SET ASIDE. In lieu thereof, judgment is hereby rendered, finding the defendant-appellee Sulpicio Lines, Inc, to have been negligent in transporting the deceased Cenon E. Curso who was on board the ill-fated M.V. Doña Marilyn, resulting in his untimely death. Defendant-appellee is hereby ordered to pay the plaintiffs heirs of Cenon E. Curso the following:

(1) Death indemnity in the amount of ₱50,000.00;

(2) Loss of Earning Capacity in the amount of ₱504,241.20;

(3) Moral Damages in the amount of ₱100,000.00.

(4) Costs of the suit.[5]

Hence, this appeal, in which the petitioner insists that the CA committed grievous errors in holding that the respondents were entitled to moral damages as the brothers and sisters of the late Dr. Curso; that the CA thereby disregarded Article 1764 and Article 2206 of the *Civil Code,* and the ruling in *Receiver for North Negros Sugar Co., Inc. v. Ybañez*,[6] whereby the Supreme Court disallowed the award of moral

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

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

[6] G.R. No. L-22183, August 30, 1968, 24 SCRA 979.

damages in favor of the brothers and sisters of a deceased passenger in an action upon breach of a contract of carriage.[7]

Issues

The petitioner raises the following issues:

ARE THE BROTHERS AND SISTERS OF A DECEASED PASSENGER IN A CASE OF BREACH OF CONTRACT OF CARRIAGE ENTITLED TO AN AWARD OF MORAL DAMAGES AGAINST THE CARRIER?

ASSUMING (THAT) THEY ARE ENTITLED TO CLAIM MORAL DAMAGES, SHOULD THE AWARD BE GRANTED OR GIVEN TO THE BROTHER OR SISTER NOTWITHSTANDING (THE) LACK OF EVIDENCE AS REGARDS HIS OR HER PERSONAL SUFFERING?

Ruling

The petition is meritorious.

As a general rule, moral damages are not recoverable in actions for damages predicated on a breach of contract, unless there is fraud or bad faith.[8] As an exception, moral damages may be awarded in case of breach of contract of carriage that results in the death of a passenger,[9] in accordance with Article 1764, in relation to Article 2206 (3), of the *Civil Code*, which provide:

Article 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.

Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the

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[7] *Rollo,* p. 11.

[8] *Japan Airlines v. Simangan*, G.R. No. 170141, April 22, 2008, 552 SCRA 341, 361.

[9] *Victory Liner, Inc. v. Gammad*, G.R. No. 159636, November 25, 2004, 444 SCRA 355, 356.

latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

The foregoing legal provisions set forth the persons entitled to moral damages. The omission from Article 2206 (3) of the brothers and sisters of the deceased passenger reveals the legislative intent to exclude them from the recovery of moral damages for mental anguish by reason of the death of the deceased. *Inclusio unius est exclusio alterius*.[10] The solemn power and duty of the courts to interpret and apply the law do not include the power to correct the law by reading into it what is not written therein.[11] Thus, the CA erred in awarding moral damages to the respondents.

The petitioner has correctly relied on the holding in *Receiver for North Negros Sugar Company, Inc. v. Ybañez,*[12] to the effect that in case of death caused by *quasi*-delict, the brother of the deceased was not entitled to the award of moral damages based on Article 2206 of the *Civil Code*.

Essentially, the purpose of moral damages is indemnity or reparation, that is, to enable the injured party to obtain the means, diversions, or amusements that will serve to alleviate the moral suffering he has undergone by reason of the tragic event. According to *Villanueva v. Salvador*,[13] the conditions for

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[10] The express inclusion of one implies the exclusion of all others.

[11] *Agote v. Lorenzo*, G.R. No. 142675, July 22, 2005, 464 SCRA 60.

[12] *Supra,* note 6.

[13] G.R. No. 139436, January 25, 2006, 480 SCRA 39.

awarding moral damages are: (*a*) there must be an injury, whether physical, mental, or psychological, clearly substantiated by the claimant; (*b*) there must be a culpable act or omission factually established; (*c*) the wrongful act or omission of the defendant must be the proximate cause of the injury sustained by the claimant; and (*d*) the award of damages is predicated on any of the cases stated in Article 2219 of the *Civil Code*.

To be entitled to moral damages, the respondents must have a right based upon law. It is true that under Article 1003[14] of the *Civil Code* they succeeded to the entire estate of the late Dr. Curso in the absence of the latter's descendants, ascendants, illegitimate children, and surviving spouse. However, they were not included among the persons entitled to recover moral damages, as enumerated in Article 2219 of the *Civil Code, viz*:

Article 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

(3) Seduction, abduction, rape or other lascivious acts;

(4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

(7) Libel, slander or any other form of defamation;

(8) Malicious prosecution;

(9) Acts mentioned in Article 309;

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34 and 35.

The parents of the female seduced, abducted, raped or abused referred to in No. 3 of this article, may also recover moral damages.

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[14] Article 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles. (946a)

The spouse, descendants, ascendants and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

Article 2219 circumscribes the instances in which moral damages may be awarded. The provision does not include succession in the collateral line as a source of the right to recover moral damages. The usage of the phrase *analogous cases* in the provision means simply that the situation must be held similar to those expressly enumerated in the law in question[15] following the *ejusdem generis* rule. Hence, Article 1003 of the *Civil Code* is not concerned with recovery of moral damages.

In fine, moral damages may be recovered in an action upon breach of contract of carriage only when: (*a*) where death of a passenger results, or (*b*) it is proved that the carrier was guilty of fraud and bad faith, even if death does not result.[16] Article 2206 of the *Civil Code* entitles the descendants, ascendants, illegitimate children, and surviving spouse of the deceased passenger to demand moral damages for mental anguish by reason of the death of the deceased.[17]

WHEREFORE, the petition for review on *certiorari* is granted, and the award made to the respondents in the decision dated September 16, 2002 of the Court of Appeals of moral damages amounting to ₱100,000.00 is deleted and set aside.

SO ORDERED.

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

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[15] *Expertravel & Tours, Inc. v. Court of Appeals,* G.R. No. 130030, June 25, 1999, 309 SCRA 141, 146.

[16] *Morris v. Court of Appeals*, G.R. No. 127957, February 21, 2001, 352 SCRA 428.

[17] *Fores v. Miranda*, 105 Phil 266 (1959).

FIRST DIVISION

[G.R. No. 176717. March 17, 2010]

EVANGELINE C. COBARRUBIAS, *petitioner, vs.* **SAINT LOUIS UNIVERSITY, INC.,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; FAILURE TO REPORT BACK FOR WORK DESPITE SEVERAL NOTICES CONSTITUTES ABANDONMENT; WHEN PENDENCY OF AN EMPLOYEE'S COMPLAINT FOR ILLEGAL DISMISSAL IS NOT A VALID EXCUSE.— Petitioner was, for five times, notified in writing by respondent to resume teaching for the *second* semester of school year 2003-2004 following the service of her suspension during the *first* semester. She was advised that a teaching load had already been prepared for her. Respondent never ever replied to those notices. x x x [P]etitioner contends that her filing of a complaint for illegal dismissal was a manifestation of her desire to return to her job and negated any intention to sever the employer-employee relationship. x x x Petitioner forgets that her complaint for "illegal dismissal" which she filed on June 5, 2003 sprang, not from her dismissal on December 6, 2003 due to abandonment but, from her suspension during the *first* semester of school year 2003-2004. While the filing of a complaint with a prayer for reinstatement negates an intention to sever the employer-employee relationship, the same contemplates an action made *subsequent* to dismissal.

APPEARANCES OF COUNSEL

Emmanuel T. Costales for petitioner.
Oracion Barlis & Associates Law Office for respondent.

DECISION

CARPIO MORALES, *J.*:

In 1982, Evangeline C. Cobarrubias (petitioner) was hired as a faculty member at St. Louis University, Inc. (respondent) in Baguio City.[1]

By letter of May 23, 2003,[2] respondent's President Rev. Fr. Paul Van Parijs informed petitioner that she had failed to meet the required minimum evaluation rating for faculty members during the 5-year period beginning school year 1998 until 2003 to thus place her on forced leave during the first semester of school year 2003-2004; and that while on forced leave, all benefits due her would be suspended following Section 7.7 of the existing Collective Bargaining Agreement (CBA) between respondent and the Union of Faculty and Employees of Saint Louis University.

In the same letter of May 23, 2003, petitioner was advised that "before the lapse of thirty (30) days prior to the end of the First Semester . . . or on or before 12 September 2003," she should "inform in writing . . . [her] readiness and availability to teach during the Second Semester . . ."

The above-cited CBA provision reads:

Section 7.7. For teaching employees in college who fail the yearly evaluation, the following provisions shall apply:

(a) Teaching employees who are *retained for three (3) cumulative years* in five (5) years, shall be on forced leave for one (1) regular semester during which period all benefits due them shall be suspended;

(b) Teaching employees who obtain evaluation ratings below 80 for three (3) cumulative years in five (5) years shall be terminated.[3] (italics and underscoring supplied)

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[1] NLRC records, p. 427. The records are paginated from 472-1.

[2] *Id.* at 52-51.

[3] *Id.* at 75.

Under the guidelines for Faculty Promotion of respondent's Handbook,[4] a faculty member is "retained in rank if he does not obtain the required rating for that particular rank." And under respondent's Evaluation Manual,[5] a faculty member is evaluated on the basis of his rank.

Petitioner had the following performance record for the 5-year period preceding the notice for her to go on forced leave:

School Year	**Over-all Rating**	**Required Minimum Evaluation**	**Remarks**	**Faculty Rank**
1998-99	85.50	86	_	Asst. Professor III+
1999-2000	85	86	<u>Retained</u>	Asst. Professor III+
2000-2001	87	86	Passed but maximum rank obtained	Asst. Professor III+
2001-2002	90.50	86	Passed but maximum rank obtained	Asst. Professor III+ and was later adjusted to Associate Professor I-1* owing to the passing of the BAR exam
2002-2003	85	87	<u>Retained</u>	Associate Professor I-2**

* Faculty rank effective 1 April 2002 until 31 May 2002

** Faculty rank for SY 2002-2003 due [for] having passed the evaluation of SY 2002-2002.[6] (underscoring supplied)

Before the *first* semester of the 2003-2004 school year began or in June 2003, petitioner attempted to report for work, but as

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

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

[6] *Id.* at 69.

she was placed on forced leave, she was not given any teaching load.[7]

Petitioner thereupon filed on June 5, 2003 a complaint for illegal dismissal with prayer for reinstatement, backwages, moral and exemplary damages, attorney's fees and payment of service incentive leave before the Regional Arbitration Branch, Cordillera Administrative Region of the National Labor Relations Commission.[8] The Executive Labor Arbiter, for lack of jurisdiction, was later to refer the case to the National Conciliation and Mediation Board by Order of January 19, 2005.

By letter of October 13, 2003,[9] respondent's Personnel Officer advised petitioner that a 24-unit load had been prepared for her for the *second* semester of the school year 2003-2004 "which starts on November 3, 2003," but that despite its letter of May 23, 2003, it had not received any communication from her. She was thus required to signify in writing her intention to resume teaching duties "on or before the end of October 2003" failing which her teaching load would be assigned to "other qualified and available faculty."[10]

As no word was received from petitioner, respondent sent her another letter of November 8, 2003[11] the pertinent portions of which read:

xxx xxx xxx

Despite all these efforts, you failed to report for work. We urge you to come. We shall give you up till Nov. 10, 2003. Otherwise we will be constrained to assign your load to other teachers.

Since your forced leave is finished, we ask you to come and continue your teaching function this Second Semester.

x x x[12] (underscoring supplied)

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[7] *Id.* at 363-362.
[8] CA *rollo*, pp. 167-171.
[9] Records, p. 27.
[10] CA *rollo,* p. 132.
[11] Records, pp. 22-21.
[12] *Id.* at 22-21.

Still later, respondent sent petitioner another letter of November 12, 2003[13] asking her to explain in writing within 48 hours why she should not be deemed to have abandoned her work, and a final letter dated November 28, 2003[14] giving her an opportunity to report for work within five days from receipt and to explain in writing within the same period why she should not be terminated due to abandonment.

Petitioner never ever responded to respondent's letters, hence, she was, by letter of December 6, 2003,[15] dismissed for abandonment.

Before the Voluntary Arbitrator designated to handle the case, the following issues were raised:

1. The legality of dismissal of complainant due to abandonment;
2. The validity of forced leave imposed upon complainant for one semester; and
3. . . . [Whether] due process [was] observed by Respondent.[16]

The Arbiter, by Decision of July 11, 2005,[17] declared the earlier-quoted Article 7, Section 7 of the CBA to be void, *viz*:

> It is elementary that a contract that contravenes a policy, which confers a juridical relation to which it refers shall be void. The CBA may not interpret or expand the provisions of the Evaluation Manual that will make it prejudicial to the interests of the persons referred to in the evaluation manual…[18] (underscoring supplied)
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> x x x x x x x x x
>
> The Evaluation Manual manifests the will of the University in its educational policy in the ranking and promoting members of its faculty.

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[13] *Id.* at 19.

[14] *Id.* at 17.

[15] *Id.* at 16-15.

[16] *Id.* at 1.

[17] *Id.* at 182-174.

[18] *Id.* at 178.

The CBA as a labor contract may not contravene the policy of the University where it does not impose a penalty other than what the University manifests in that the failure of a faculty member in his performance within a five year period of which he has failed to meet the minimum rating for three (3) cumulative years will **not be promoted but retained in rank** only. **The CBA states otherwise as it adds a penal provision** that said faculty member shall be on forced leave, for one regular semester and all his benefits suspended. Such penalty constitutes **undue and unreasonable restraint in the occupation of the faculty member and works hardship in his economic life** as he will be deprived of his only livelihood for one regular semester including any benefit owing to him during that period.[19] (emphasis and underscoring supplied)

And he noted that petitioner was not afforded due process, there being no showing that the twin requirements of notice and hearing were complied with.[20]

Respecting the issue of abandonment, the Arbiter ruled that petitioner's failure to report for work, despite repeated notices from respondent, did not constitute abandonment, citing *Samarca v. Arc-men Industries, Inc.*[21] which held that to constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship[22] which, to the Arbiter, was wanting in the case at bar. Hence, the Arbiter ordered the reinstatement of petitioner.

Thus the Arbiter disposed:

WHEREFORE, in the light of the foregoing, the clause in the CBA, Article 7, Section 7, Par. (a), imposing forced leave for one regular semester during which period all benefits due the, will be suspended is declared **void**, and Respondent is ordered to **reinstate** Complainant to her former position without loss of seniority rights and other privileges; to pay her backwages from the time it was withheld from her to the time of her actual reinstatement; to pay moral damages

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[19] *Id.* at 177.

[20] *Vide ibid.*

[21] 459 Phil. 506 (2003).

[22] Records, p. 176.

of ₱50,000.00; exemplary damages ay ₱25,000.00 and attorney's fees pf 10% of the total sum awarded to Complainant.[23] (emphasis and underscoring supplied)

On respondent's Petition for Review,[24] the Court of Appeals, by Decision of May 23, 2006,[25] *reversed* the Arbiter's decision, holding that the Arbiter breached the bounds of his authority by nullifying Sec. 7.7 of the CBA.[26] To the appellate court, the Arbiter's authority to settle labor disputes is confined only to the proper interpretation and implementation of the CBA provisions,[27] citing Art. 261 of the Labor Code which provides:

ART. 261. Jurisdiction of Voluntary Arbitrator or panel of Voluntary Arbitrators. – The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies…

The appellate court went on to hold that, assuming *arguendo* that the Arbiter has authority to nullify the provisions of the CBA, the questioned provision is not contrary to law.

Citing *Peña v. National Labor Relations Commission,*[28] the Court of Appeals upheld the prerogative of a school to maintain high standards of efficiency for its teachers, quality education being a mandate of the Constitution, and to dismiss teachers who fail to attain reasonable work goals set by it.[29]

Respecting the issue of abandonment, the appellate court found that petitioner had indeed abandoned her job, she having

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[23] *Id.* at 174.

[24] CA *rollo,* pp. 2-43.

[25] *Id.* at 265-277. Penned by Justice Bienvenido L. Reyes with the concurrence of Justices Amelita G. Tolentino and Mariflor Punzalan Castillo.

[26] *Id.* at 270.

[27] *Ibid.*

[28] 327 Phil. 673 (1996).

[29] *Id.* at 676.

failed to report back for work despite several notices for her to do so, the pendency of her complaint for illegal dismissal not being a valid excuse therefor.

Contrary to the Arbiter's finding, the Court of Appeals declared that petitioner was afforded ample opportunity to contest the ratings she had been given, citing *Peña* which held that a university's act of informing faculty members of their ratings after every evaluation period and inviting them to examine their grades and discuss them with their evaluators amounts to sufficient compliance with the due process requirement.[30]

Nonetheless, the appellate court, passing on the above-quoted provision of Section 7 of Article 7 of the CBA, held that there was doubt on its proper interpretation, particularly when the five-year period in the phrase "three (3) cumulative years in five (5) years" should be reckoned.

Resolving the doubt in petitioner's favor, the appellate court held:

> . . . We are of the impression that the matter of forced leave for teachers who failed thrice in the evaluation within a five year span should be co-terminous with, and anchored on the particular CBA from which it draws its breathing force. Emphasis should be placed on the fact that the provision for the six month forced leave is *exclusively* of contractual origin as the same is found nowhere else but in the parties' Collective Bargaining Agreement, having been introduced for the first time in the 1996-2001 CBA and reiterated in the 2001-2006 CBA. Indeed, although some provisions may have been reproduced from the old bargaining agreement, still, every bargaining agreement remains a separate pact between the employer and its employees. Hence, one should be construed independently of the other.
>
> Again, it is because there are doubts engendered by the CBA as regards the reckoning period of five years mentioned under Sec. 7.7 thereof that we are inclined to declare the **suspension** of the respondent as illegal.

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[30] CA *rollo*, p. 271.

. . . [J]udicial partiality to workers on occasions of doubt in labor agreements is not a dictate of whim, but of a need to safeguard the interest of an underprivileged sector. The legal tie that binds labor and capital are not merely contractual in character. It is because the morally disadvantaged employee very seldom has the upper hand in the bargaining table that gray areas in labor contracts are customarily interpreted to his benefit.[31] (citation omitted; italics in the original; emphasis and underscoring supplied)

On the matter of damages, the appellate court set aside the Arbiter's award to petitioner of moral damages, her dismissal by respondent on account of an "erroneous interpretation" of the CBA provision having been attended with good faith.[32] The appellate court accordingly deleted the award of exemplary damages.

Noting that that was the first offense of petitioner who had devoted 20 years of service during which she was cited for her contributions to respondent,[33] the appellate court awarded petitioner separation pay following *Philippine Long Distance Telephone Co. v. NLRC*[34] which held:

There should be no question that where it comes to such valid but not iniquitous causes as failure to comply with work standards, the grant of separation pay to the dismissed employee maybe both just and compassionate, particularly if he has worked for some time with the company.[35]

Thus the appellate court disposed:

WHEREFORE, in the light of the foregoing premises, the instant petition is GRANTED. The decision rendered by the Voluntary Arbitrator dated July 11, 205 is hereby declared ***null and void***, and a new one is entered declaring the respondent to have been ***illegally***

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[31] *Id.* at 274-275.

[32] Citing *Zamboanga City Electric Cooperative v. Buat*, G.R. No. 100514, March 29, 1995, 243 SCRA 47, 52.

[33] CA *rollo*, p. 270.

[34] G.R. No. 80609, August 23, 1988, 164 SCRA 671.

[35] *Id.* at 681.

suspended, but nonetheless validly dismissed. Accordingly, the petitioner is ordered to pay the respondent all salaries and benefits that are due her for the duration of her six month forced leave. Solely to satisfy the demands of equity, the petitioner is likewise ordered to pay the respondent an amount equivalent to one (1) month salary for every year of service as separation pay.

SO ORDERED.[36] (emphasis and italics in the original)

Her Motion for Reconsideration[37] having been denied by Resolution of January 26, 2007,[38] petitioner filed the present Petition for Review on *Certiorari*, faulting the appellate court

A. . . . IN HOLDING PETITIONER TO HAVE ABANDONED HER WORK EVEN AND DESPITE THE PENDENCY OF THE ILLEGAL DISMISSAL CASE PETITIONER FILED AGAINST THE RESPONDENT.

B. . . . [IN HOLDING] THAT [PETITIONER] IS NOT ENTITLED TO THE DAMAGES AWARDED BY THE VOLUNTARY ARBITRATOR[.][39]

The petition fails.

Petitioner was, for five times, notified in writing by respondent to resume teaching for the *second* semester of school year 2003-2004 following the service of her suspension during the *first* semester. She was advised that a teaching load had already been prepared for her. Respondent never ever replied to those notices.

Petitioner's justification for her failure to respond to the notices – that her acceptance of the offer could be constituted as a waiver of her claims – is not indeed a valid excuse.

At all events, petitioner contends that her filing of a complaint for illegal dismissal was a manifestation of her desire to return

[36] CA *rollo,* p. 276.

[37] *Id.* at 278-289.

[38] CA *rollo*, pp. 324-329.

[39] *Rollo,* pp. 17-18.

to her job and negated any intention to sever the employer-employee relationship, citing *Del Monte Philippines, Inc. v. National Labor Relations Commission*[40] which held:

> . . . Thus we cannot conceive how private respondent could abandon her job and give up the benefits she has earned from years of hard work. Finally, her filing of an illegal dismissal case contradicts petitioner's allegations that she abandoned her job.[41]

Petitioner forgets that her complaint for "illegal dismissal" which she filed on June 5, 2003 sprang, not from her dismissal on December 6, 2003 due to abandonment but, from her suspension during the *first* semester of school year 2003-2004. While the filing of a complaint with a prayer for reinstatement negates an intention to sever the employer-employee relationship,[42] the same contemplates an action made *subsequent* to dismissal.

WHEREFORE, the petition is, in light of the foregoing discussions, *DENIED*.

Costs against petitioner.

SO ORDERED.

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

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[40] G.R. No. 126688, March 5, 1998, 287 SCRA 71.

[41] *Id.* at 77-78.

[42] *Vide Pentagon Steel Corporation v. Court of Appeals, et al.,* G.R. No. 174141, June 26, 2009 citing *Big AA Manufacturer v. Antonio, et al.,* G.R. No. 160854, March 3, 2006, 484 SCRA 33.

THIRD DIVISION

[G.R. No. 185195. March 17, 2010]

VIOLETA BAHILIDAD, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; THE COURT WILL NOT HESITATE TO REVERSE FACTUAL FINDINGS OF THE TRIAL COURT IF THERE WAS MISAPPRECIATION OF FACTS.—** Well-settled is the rule that findings of fact of the trial court are given great respect. But when there is a misappreciation of facts as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings of the trial court. In such a case, the scales of justice must tilt in favor of an accused, considering that he stands to lose his liberty by virtue of his conviction. The Court must be satisfied that the factual findings and conclusions of the trial court, leading to an accused's conviction, must satisfy the standard of proof beyond reasonable doubt.

2. **CRIMINAL LAW; CONSPIRACY, EXPLAINED.—** There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts. It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting

moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.

3. **ID.; MALVERSATION OF PUBLIC FUNDS THROUGH FALSIFICATION OF PUBLIC DOCUMENTS; PARTICIPATION OF THE ACCUSED, NOT PROVEN WITH MORAL CERTAINTY.—** [T]he Sandiganbayan particularly pointed to petitioner's indispensable participation in the crime, being the payee of the check, because without her signature, the check would not have been encashed, and the funds would not have been taken from the coffers of the provincial government. Other than her being named as the payee, however, there were no overt acts attributed to her adequate to hold her equally guilty of the offense proved. There was no showing that petitioner had a hand in the preparation of the requirements submitted for the disbursement of the check. There was no evidence presented that she was instrumental to the issuance of the check in favor of WIP, nor was there any showing that she interceded for the approval of the check. Why the check was issued in her name and not in the name of WIP is beyond cavil, but this was not incumbent upon her to question. x x x There was no showing that petitioner had foreknowledge of any irregularity committed in the processing and disbursement of the check, or that the COA Rules required that the check had to be deposited in the bank first, or that an evaluation report from the provincial agriculturist had to be submitted. Evil intent must unite with the unlawful act for a crime to exist. *Actus non facit reum, nisi mens sit rea.* There can be no crime when the criminal mind is wanting. As a general rule, ignorance or mistake as to particular facts, honest and real, will exempt the doer from felonious responsibility. All told, there is reasonable doubt as to petitioner's guilt. Where there is reasonable doubt, an accused must be acquitted even though his innocence may not have been fully established. When guilt is not proven with moral certainty, exoneration must be granted as a matter of right.

APPEARANCES OF COUNSEL

Capuyan & Quimpo for petitioner.
The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J*.:

Before us is a petition for review on *certiorari* assailing the Decision[1] of the Sandiganbayan in Criminal Case No. 28326, convicting petitioner Violeta Bahilidad and co-accused Amelia Carmela C. Zoleta of the complex crime of Malversation of Public Funds through Falsification of Public Documents.

Acting on a complaint filed by a "Concerned Citizen of Sarangani Province" with the Office of the Ombudsman-Mindanao against Mary Ann Gadian, Amelia Carmela Zoleta, both assigned to the Office of the Vice-Governor, and a certain Sheryll Desiree Tangan, from the Office of the Sangguniang Panlalawigan, for their alleged participation in the scheme of giving fictitious grants and donations using funds of the provincial government, a special audit was conducted in Sarangani province. The Special Audit Team, created for the purpose, conducted its investigation from June 1 to July 31, 2003, and submitted the following findings:

1. Release of financial assistance intended to NGOs/POs and LGUs were fraudulently and illegally made thus local development projects do not exist resulting in the loss of ₱16,106,613.00 on the part of the government.

2. Financial Assistance were also granted to Cooperatives whose officials and members were mostly government personnel or relative of the officials of Sarangani Province resulting to wastage and misuse of government fund amounting to ₱2,246,481.00.[2]

Included in the list of alleged fictitious associations that benefited from the financial assistance given to certain Non-Governmental Organizations (NGOs), People's Organizations (POs), and Local Governmental Units (LGUs) was Women in

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[1] Penned by Associate Justice Jose R. Hernandez, with Associate Justices Gregory S. Ong and Roland B. Jurado, concurring; *rollo*, pp. 30-60.

[2] *Id.* at 39-40.

Progress (WIP), which received a check in the amount of ₱20,000.00, issued in the name of herein petitioner Bahilidad, as the Treasurer thereof.

Based on its findings, the Special Audit Team recommended the filing of charges of malversation through falsification of public documents against the officials involved. Thus, the following Information was filed:

That on January 24, 2002, or prior or subsequent thereto in Sarangani Province, Philippines, and within the jurisdiction of this Honorable Court, accused Felipe Katu Constantino, a high-ranking public officer, being the Vice-Governor of the Province of Sarangani, Maria D. Camanay, Provincial Accountant, Teodorico F. Diaz, Provincial Board Member, Amelia Carmela C. Zoleta, Executive Assistant III, all accountable public officials of the Provincial Government of Sarangani, by reason of the duties of their office, conspiring and confederating with Violeta Balihidad, private individual, the public officers, while committing the offense in relation to office, taking advantage of their respective positions, did then and there willfully, unlawfully and feloniously take, convert and misappropriate the amount of TWENTY THOUSAND PESOS (₱20,000.00), Philippine Currency, in public funds under their custody, and for which they are accountable, by falsifying or causing to be falsified the corresponding Disbursement Voucher No. 101-2002-01-822 and its supporting documents, making it appear that financial assistance had been sought by Women in Progress, Malungon, Sarangani, represented by its President Amelia Carmela C. Zoleta, when in truth and in fact, the accused fully knew well that no financial assistance had been requested by the said group and her association, nor did Amelia Carmela C. Zoleta and her association receive the aforementioned amount, thereby facilitating the release of the above-mentioned public funds in the amount of TWENTY THOUSAND PESOS (₱20,000.00) through encashment by the accused at the Land Bank of the Philippines (LBP) Check No. 36481 dated January 24, 2002 issued in the name of Violeta Bahilidad, which amount they subsequently misappropriated to their personal use and benefit and despite demand, the said accused failed to return the said amount to the damage and prejudice of the government and the public interest of the aforesaid sum.

Upon arraignment, accused Constantino, Zoleta and Bahilidad pled not guilty to the charges, while Camanay and Diaz did not appear and remain at large to date. Thereafter, during the pendency of the case, Constantino died. Consequently, the Sandiganbayan granted the motion to dismiss the case against him. As regards Zoleta and Bahilidad, they posted bail and the case against them proceeded to trial.

The prosecution presented in evidence the testimonies of the following persons:

1. Helen Cailing, a State Auditor IV at the Commission on Audit (COA) and leader of the Special Audit Team (SAT) of Sarangani Province. Cailing testified that the SAT, composed of herself and three (3) members, in the course of the audit, discovered that the voucher issued by the Office of the Vice-Governor to the WIP violated specific COA Guidelines 3.1, 3.2, 3.4, 3.7, 3.10 and 4.4. The guidelines required the monitoring, inspection and evaluation of the project by the provincial engineer if an infra-project and by the provincial agriculturist if it is a livelihood project. Cailing further testified that, based on their audit, WIP appeared to be headed by Zoleta, who was the daughter of Vice-Governor Constantino, and simultaneously an Executive Assistant III in the latter's office.

2. Luttian Tutoh, Region XII Director of the Cooperative Development Authority (CDA), testified on the certification[3] she issued that WIP and Women in Development (WID) were not registered cooperatives. Tutoh further testified that (1) the certification was based on the listing prepared by the Assistant Regional Director; (2) the Certification was issued upon the instruction of the CDA Chairman, who received an inquiry from the Office of the Ombudsman on whether WIP and/or WID were cooperatives registered with the CDA; and (3) she had not come across a registered cooperative named WIP.

3. Mary Ann Gadian, Bookbinder II, designated as Computer Operator III at the Office of the Sangguniang

[3] Dated May 9, 2006.

Panlalawigan of Sarangani from July 1993 to August 2002, who acted as state witness, admitted in open court that she took part in the preparation and processing of a disbursement voucher and its supporting documents involving a cash advance for WIP sometime in 2002. Gadian, likewise, testified that she saw accused Constantino, Camanay, Diaz, and Zoleta sign the documents, and she merely followed Zoleta's directive and instructions on the preparation of the disbursement voucher. Gadian further admitted antedating and changing the date of a January 24, 2002 letter-request from WIP to January 7, 2002 in order to make the letter appear authentic.

4. Sheryll Desiree Jane Tangan, Local Legislative Staff at the Office of the Vice-Governor in 2002, who also acted as state witness, admitted in open court that, upon orders of Zoleta, she helped prepare and process the request of WIP. Tangan disclosed that she was used to signing for other persons, as instructed by Zoleta, whenever their office had legal transactions; in this instance, she forged the signature of Melanie Remulta, the purported secretary of WIP. Tangan then recounted that she accompanied petitioner Bahilidad to claim and encash the check for WIP. After encashment, Bahilidad gave her a white envelope containing the ₱20,000.00 cash. She noticed Bahalidad's uneasiness. She was told by Zoleta that Bahilidad was merely a dummy for that disbursement. Tangan gave the money to Zoleta who told her that she would take care of Bahalidad.

The defense presented, as witnesses Bahilidad, Zoleta and Remulta. On the whole, the defense denied the prosecution's charge of malversation. The witnesses testified that WIP and WID were registered cooperatives. To support her contention that WIP and WID were legitimate cooperatives, Bahilidad presented a Certification from Barangay Captain Jose Mosquera containing a list of the supposed officers of these cooperatives. Bahilidad insisted that the amount of ₱20,000.00 that she received from the Office of the Vice-Governor was, in turn, properly distributed by WIP as loans to its members. Remulta corroborated Bahilidad's story on this point. As for Zoleta, she completely denied knowing Bahilidad.

After trial, the Sandiganbayan found petitioner Bahilidad and Zoleta guilty beyond reasonable doubt of Malversation of Public Funds through Falsification of Public Documents, and disposed, as follows:

ACCORDINGLY, accused Amelia C. Zoleta ("Zoleta") and Violeta Bahilidad ("Bahilidad"), are found guilty beyond reasonable doubt for Malversation of Public Funds thru Falsification of Public Documents under Article 217 of the Revised Penal Code, in relation to Article 171[,] par[.] 2[,] and Article 48 of the same Code and are sentenced to suffer in prison the penalty of 14 years[,] 8 months and 1 day to 16 years[,] 5 months and 11 days of *reclusion temporal*. They also have to suffer perpetual disqualification from holding any public office and to pay back the Province of Sarangani the amount of Php 20,000.00 plus interest on it computed from January 2002 until the full amount is paid.

No pronouncement is made for or against Constantino, said accused having died during the pendency of this case, his personal and pecuniary penalties and liabilities were totally extinguished upon his death. This Court has already ordered the dismissal of the case against him.

Since the Court did not acquire jurisdiction over the persons of the other accused, Teodorico Diaz and Maria Camanay, the case as it pertains to them is in the meantime archived. It shall be revived when the Court acquires jurisdiction over their person. Let an *alias* warrant of arrest be then issued against them.

Costs against accused Zoleta and Bahilidad.[4]

Hence, this appeal by Bahilidad, questioning her conviction by the Sandiganbayan.

We find for petitioner.

Well-settled is the rule that findings of fact of the trial court are given great respect. But when there is a misappreciation of facts as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings of the trial court. In such a case, the scales of justice must tilt in favor of an accused, considering that he stands to lose his liberty by virtue of his

[4] *Id.* at 59.

conviction. The Court must be satisfied that the factual findings and conclusions of the trial court, leading to an accused's conviction, must satisfy the standard of proof beyond reasonable doubt.

In the instant case, petitioner was found guilty of conspiring with Zoleta and other public officials in the commission of the crime of Malversation of Public Funds through Falsification of Public Documents. The trial court relied on the dictum that the act of one is the act of all. The Sandiganbayan explained petitioner's complicity in the crime, to wit:

> The facts taken together would prove the existence of conspiracry. Zoleta, as president of an inexistent association and a co-terminus employee at the office of her father, [accused Constantino,] initiated the request for obligation of allotments and certified and proved the disbursement voucher. There is no doubt that accused Constantino facilitated the illegal release of the funds by signing the questioned voucher. Without the signatures of accused Constantino, Zoleta and Bahilidad, the amount could not have been disbursed on that particular day. When the voucher with its supporting documents was presented to accused Constantino, Diaz and Camanay for approval and signature, they readily signed them without further ado, despite the lack of proper documentation and non-compliance of the rules. Zoleta had contact with the payee of the check, Bahilidad, and received the amount. Their combined acts, coupled with the falsification of the signature of Remulta, all lead to the conclusion that the accused conspired to defraud the government.
>
> Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proven by direct evidence and may be inferred from the conduct of the accused before, during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated.
>
> The circumstances that Zoleta placed her initials on the voucher knowing that there was really no WIP, that the other accused likewise signified their approval to the disbursement and allowed payment,

and that payee received and encashed the check out of the fund of the provincial government instead of depositing it, shows that there was connivance between the accused. The unavoidable conclusion is that the accused were in cahoots to defraud the provincial government and to camouflage the defraudation by using a dummy organization as a payee.[5]

There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.[6]

It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators.[7] Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.[8]

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

[6] *Magsuci v. Sandiganbayan,* G.R. No. 101545, January 3, 1995, 240 SCRA 13, 18.

[7] *Pecho v. People, et al,* G.R. No. 111399, September 27, 1996, 262 SCRA 518, 530-531.

[8] *Santos v. Sandiganbayan*, G.R. Nos. 71523-25, December 8, 2000, 347 SCRA 386, 420.

In the instant case, we find petitioner's participation in the crime not adequately proven with moral certainty. Undeniably, petitioner, as a private individual, had no hand in the preparation, processing or disbursement of the check issued in her name. A cursory look at the disbursement voucher (No. 101-2002-01-822) reveals the following signatures: signature of Board Member Teodorico Diaz certifying that the cash advance is necessary, lawful and incurred under his direct supervision; signature of Provincial Accountant Camanay certifying to the completeness and propriety of the supporting documents and to the liquidation of previous cash advances; signature of Moises Magallona, Jr. over the name of Provincial Treasurer Cesar M. Cagang certifying that cash is available; signature of Constantino, with the initials of Zoleta adjacent to his name, certifying that the disbursement is approved for payment, and with petitioner's signature as the payee.[9]

The SAT reported that the check was payable to the alleged Treasurer, Bahalidad, instead of to Women in Progress; that the check was encashed when it should have been for deposit only; and that there was also failure of the provincial agriculturist to monitor and submit an evaluation report on the project.[10] Based on this SAT report, the Sandiganbayan particularly pointed to petitioner's indispensable participation in the crime, being the payee of the check, because without her signature, the check would not have been encashed, and the funds would not have been taken from the coffers of the provincial government. Other than her being named as the payee, however, there were no overt acts attributed to her adequate to hold her equally guilty of the offense proved. There was no showing that petitioner had a hand in the preparation of the requirements submitted for the disbursement of the check. There was no evidence presented that she was instrumental to the issuance of the check in favor of WIP, nor was there any showing that she

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[9] *Magsuci v. Sandiganbayan, supra.*

[10] *Rollo*, p. 40.

interceded for the approval of the check. Why the check was issued in her name and not in the name of WIP is beyond cavil, but this was not incumbent upon her to question.

On being informed by Melanie Remulta that WIP's request for financial assistance was granted, petitioner went to the provincial capitol to claim the check, because the check was issued in her name as the Treasurer of WIP. She later encashed the check and distributed the proceeds to the different members of WIP. There were acknowledgment receipts dated February 7, 2002, signed by the different members of the cooperative, in varying amounts of ₱3,000.00, ₱2,000.00 and ₱500.00, all of which prove that the amount of ₱20,000.00 was disbursed for the benefit of the members of the cooperative.[11]

The Sandiganbayan faulted petitioner for immediately encashing the check, insisting that she should have deposited the check first. Such insistence is unacceptable. It defies logic. The check was issued in petitioner's name and, as payee, she had the authority to encash it. The Disbursement Voucher (No. 101-2002-01-822) clearly states that she is the WIP treasurer, and the purpose of the voucher is "to cash advance financial assistance from grants and donations for Winds Malugon, Sarangani as per supporting papers hereto attached." Petitioner's action cannot, in itself, be considered as specious. There was no showing that petitioner had foreknowledge of any irregularity committed in the processing and disbursement of the check,[12] or that the COA Rules required that the check had to be deposited in the bank first, or that an evaluation report from the provincial agriculturist had to be submitted. Evil intent must unite with the unlawful act for a crime to exist. *Actus non facit reum, nisi mens sit rea.* There can be no crime when the criminal mind is wanting. As a general rule, ignorance or mistake as

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[11] *Rollo*, pp. 464-474.

[12] See *Magsuci v. Sandiganbayan, id.*

to particular facts, honest and real, will exempt the doer from felonious responsibility.[13]

All told, there is reasonable doubt as to petitioner's guilt. Where there is reasonable doubt, an accused must be acquitted even though his innocence may not have been fully established. When guilt is not proven with moral certainty, exoneration must be granted as a matter of right.[14]

Finally, we reiterate what we have long enjoined:

> Time and time again, this Court has emphasized the need to stamp out graft and corruption in the government. Indeed, the tentacles of greed must be cut and the offenders punished. However, this objective can be accomplished only if the evidence presented by the prosecution passes the test of moral certainty. Where doubt lingers, as in this case, the Court is mandated to uphold the presumption of innocence guaranteed by our Constitution to the accused.[15]

WHEREFORE, the petition is *GRANTED***.** The assailed Decision is *SET ASIDE.* Petitioner is *ACQUITTED* on reasonable doubt.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Mendoza, JJ.,* concur.

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[13] *Lecaroz v. Sandiganbayan,* G.R. No. 130872, March 25, 1999, 305 SCRA 396, 408.

[14] *Monteverde v. People,* G.R. No. 139610, August 12, 2002, 387 SCRA 196, 215.

[15] *Id.* at 200.

THIRD DIVISION

[G.R. No. 188706. March 17, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **OSCAR M. DOCUMENTO,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; GUILT OF THE ACCUSED ESTABLISHED APART FROM HIS IMPROVIDENT PLEA OF GUILT.—** It is true that the appellate court noted the trial court's failure to conduct the prescribed "searching inquiry" into the matter of whether or not Documento's plea of guilt was improvidently made. Nonetheless, it still found the conviction of appellant proper. Its disquisition on Documento's plea of guilt is in point. x x x With the trial court's failure to comply with the guidelines, appellant's guilty plea is deemed improvidently made and thus rendered inefficacious. This does not mean, however, that the case should be remanded to the trial court. This course of action is appropriate only when the appellant's guilty plea was the sole basis for his conviction. As held in *People v. Mira*, – Notwithstanding the incautiousness that attended appellant's guilty plea, we are not inclined to remand the case to the trial court as suggested by appellant. Convictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment. If the trial court relied on sufficient and credible evidence in finding the accused guilty, the judgment must be sustained, because then it is predicated not merely on the guilty plea of the accused but also on evidence proving his commission of the offense charged. On the whole, we find that the appellate court committed no reversible error in affirming the trial court's ruling convicting Documento.

2. **ID.; ID.; AWARD OF EXEMPLARY DAMAGES, INCREASED.—** [O]n the matter of the appellate court's award of exemplary damages, we increase the award from ₱25,000.00 to ₱30,000.00 in line with prevailing jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

RESOLUTION

NACHURA, *J.*:

On appeal is the Court of Appeals (CA) Decision[1] dated August 13, 2008, affirming the Regional Trial Court[2] (RTC) Decision[3] dated June 9, 2003, finding appellant Oscar Documento guilty beyond reasonable doubt of two (2) counts of Rape.

Documento was charged before the RTC with two (2) counts of Rape, as defined and punished under Article 335 of the Revised Penal Code, in separate Informations, which read:

CRIMINAL CASE NO. 6899

That sometime on April 22, 1996 at Ochoa Avenue, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with the use of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his daughter AAA, a minor, 16 years of age, against her will and consent.

CONTRARY TO LAW: (Art. 335 of the Revised Penal Code in relation to R.A. 7659).

CRIMINAL CASE NO. 6900

That sometime on October 15, 1995 at Barangay Antongalon, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with the use of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his daughter AAA, a minor, 16 years of age, against her will and consent.

CONTRARY TO LAW: (Art. 335 of the Revised Penal Code in relation to R.A. 7659).[4]

Upon arraignment, Documento pled not guilty. Subsequently, however, he changed his earlier plea to one of guilt. As such, the

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[1] Penned by Associate Justice Romulo V. Borja, with Associate Justices Mario V. Lopez and Elihu A. Ybañez, concurring; *rollo*, pp. 5-26.

[2] Agusan del Norte and Butuan City, Branch 5.

[3] Penned by Judge Augustus L. Calo, CA *rollo*, pp. 21-38.

[4] *Rollo*, p. 6.

RTC ordered a re-arraignment and entered appellant's plea of guilt to the charges.

Thereafter, the prosecution presented evidence consisting of the testimonies of private complainant herself, AAA, her mother, BBB, and Dr. Johann A. Hugo. Their testimonies established the following:

1. Documento started sexually molesting his daughter, AAA, in 1989 when she was ten (10) years old. Eventually, AAA became pregnant and gave birth in 1993.

2. Documento raped AAA on a number of occasions in the houses of Barsilisa Morada, Documento's relative, and Aida Documento, both located in Butuan City. During each incident, Documento hit and hurt AAA physically. He likewise threatened to kill her if she told anyone of the rape.

3. AAA's mother, BBB, who was working in Manila from 1994 to 1996, went to Barsilisa and asked for help in locating Oscar and AAA. BBB testified that she had not seen nor heard from the two since April 7, 1994, when Documento brought their daughters AAA and CCC to Tubod, Lanao del Norte, for a vacation. Thereafter, Documento left CCC in Tubod and brought AAA with him to Santiago, Agusan del Norte.

4. When BBB found out from their relatives that AAA got pregnant and gave birth, she suspected that Documento was the culprit. Upon learning that Documento and AAA were in Butuan City, she went to the Butuan Police Station and requested assistance in securing custody of AAA. As soon as Documento was arrested, AAA informed the police that Documento raped her.

5. Dr. Hugo testified on the genital examination he conducted on AAA, and affirmed the medical certificate he issued with the following findings:

Physical exam: HEENT – with in normal limits.
C/L – with in normal limits.
CVB – with in normal limits.
ABD – Soft; NABS
GU – (-) KPS

Genitalia	-	Parrous
	-	Healed vaginal laceration
	-	Vaginal introitus; admits 2 finger[s] with ease
	-	Hymen with pemnants "caruncula multiforma"

Labs; Vaginal Smear; Negative for Spermatozoa.[5]

Documento testified as the sole witness for the defense. He asseverated that he pled guilty to the crime of Rape only because Prosecutor Hector B. Salise convinced him to do so. Documento contended that he did not rape AAA, and that, to the contrary, they had a consensual, sexual relationship. He further alleged that the incident did not happen in Butuan City, but in Clarin, Misamis Occidental. Finally, on cross-examination, Documento disowned the handwritten letters he had supposedly written to his wife and to AAA, asking for their forgiveness.

The RTC rendered judgment convicting Documento of both counts of Rape, to wit:

WHEREFORE, as a consequence of the foregoing, this Court finds accused Oscar M. Documento GUILTY beyond reasonable doubt of the two (2) counts of rape and correspondingly sentences him:

1. To suffer the penalty of DEATH in each of the two (2) rape cases filed against him – Criminal Case No. 6899 and Criminal Case No. 6900;

2. To indemnify the victim, AAA, in the amount of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages, respectively, for each count of rape in accordance with recent jurisprudence.

Let a Commitment Order be issued for the transfer of accused Oscar M. Documento from Butuan City Jail to the Bureau of Corrections, Muntinlupa, Metro Manila.

Let the records of these cases be forwarded immediately to the Supreme Court for mandatory review.

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[5] *Id.* at 8.

SO ORDERED.[6]

Consistent with our ruling in *People v. Mateo*,[7] Documento's appeal was remanded to the CA.

Ruling on the appeal, the CA affirmed the RTC's conviction, but changed the penalty imposed on Documento from death penalty to *reclusion perpetua*, and increased the award of moral damages from ₱50,000.00 to ₱75,000.00 for each count of Rape. The *fallo* of the Decision reads:

WHEREFORE, the assailed Decision finding appellant Oscar Documento guilty beyond reasonable doubt of two counts of the crime of rape and ordering him to indemnify the victim for each count of rape the amounts of ₱75,000.00 as civil indemnity and ₱25,000.00 as exemplary damages, is AFFIRMED with the MODIFICATION that the award of moral damages is increased to ₱75,000.00 for each count of rape and that in lieu of the death penalty, appellant Oscar Documento is hereby sentenced to suffer the penalty of *reclusion perpetua* for each count of rape without possibility of parole.

SO ORDERED.[8]

Hence, this appeal, assigning the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN DECIDING THE CASE WITHOUT FIRST RESOLVING ITS TERRITORIAL JURISDICTION OVER THE CRIME CHARGED AS THE PROSECUTION FAILED TO ESTABLISH THAT THE TWO (2) COUNTS OF RAPE WERE PERPETRATED IN BUTUAN CITY.

II.

THE TRIAL COURT GRAVELY ERRED IN FAILING TO CONDUCT A SEARCHING INQUIRY INTO THE VOLUNTARINESS AND FULL COMPREHENSION BY ACCUSED-APPELLANT OF THE CONSEQUENCES OF HIS PLEA.[9]

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[6] CA *rollo*, p. 38.

[7] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[8] *Rollo*, pp. 25-26.

[9] CA *rollo*, p. 50.

We find no cogent reason to disturb Documento's conviction. We affirm the CA, but with modification.

On the issue of the trial court's territorial jurisdiction over the crime, we completely agree with the appellate court's ruling thereon. Contrary to the insistence of Documento that the prosecution failed to establish that the two (2) counts of Rape were perpetrated in Butuan City, the CA pointed to specific parts of the records which show that, although AAA did not specifically mention "Butuan City" in her testimony, the incidents in the present cases transpired in Barangay Antongalon and on Ochoa Avenue, both in Butuan City.

First. AAA in her Sworn Statement dated April 24, 1996 answered the prosecutor's question in this wise:

> 15. Q : Right after you arrived [in] Butuan City, did your father molest you or rape you?
> A : Yes, sir.
>
> Q : When was that?
> A : From the month of October 15, 1995 when we stayed [in] **Barangay Antongalon, Butuan City, and the last happened in the evening of April 22, 1996 [on] Ochoa Avenue, Butuan City.**

Second. The Resolution dated May 3, 1996 of Hector B. Salise, Second Assistant City Prosecutor, states that:

> There were many places they stayed and several sexual intercourse that took place which this office has no jurisdiction to conduct preliminary investigation but only on the incidents of rape that took place [in] **Antongalon, Butuan City on October 15, 1995 and [on] Ochoa Avenue, Butuan City on April 22, 1996.**

Third. The two (2) Informations dated May 8, 1996, clearly state that the crimes charged against appellant were perpetrated in Barangay Antongalon and Ochoa Avenue, Butuan City on October 15, 1995 and April 22, 1996, respectively.

Fourth. The inclusion of the two *Barangays* in the City of Butuan is a matter of *mandatory* judicial notice by the trial court. Section 1 of Rule 129 of the Revised Rules on Evidence provides –

> SECTION 1. *Judicial notice, when mandatory*. – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.[10]

Documento avers that his conviction for Rape must be reversed because the trial court did not properly conduct a searching inquiry on the voluntariness and full comprehension of his plea of guilt.

We disagree.

It is true that the appellate court noted the trial court's failure to conduct the prescribed "searching inquiry" into the matter of whether or not Documento's plea of guilt was improvidently made. Nonetheless, it still found the conviction of appellant proper. Its disquisition on Documento's plea of guilt is in point.

> Nothing in the records of the case at bench shows that the trial court complied with the guidelines [set forth by the Supreme Court in a number of cases] after appellant's re-arraignment and guilty plea. The questions propounded to appellant during the direct and cross-examination likewise fall short of these requirements. x x x.
>
> x x x x x x x x x
>
> The questions propounded were clearly not compliant with the guidelines set forth by the High Court. The appellant was not fully apprised of the consequences of his guilty plea. In fact, as argued by appellant, "the trial court should have informed him that his plea of guilt would not affect or reduce the imposable penalty, which is death as he might have erroneously believed that under Article 63, the death penalty, being a single indivisible penalty, shall be applied by the court regardless of any mitigating circumstances that might have attended the commission of the deed." Moreover, the trial court judge failed to inform appellant of his right to adduce evidence despite the guilty plea.

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[10] *Rollo*, pp. 23-24.

With the trial court's failure to comply with the guidelines, appellant's guilty plea is deemed improvidently made and thus rendered inefficacious.

This does not mean, however, that the case should be remanded to the trial court. This course of action is appropriate only when the appellant's guilty plea was the sole basis for his conviction. As held in *People v. Mira*, —

> Notwithstanding the incautiousness that attended appellant's guilty plea, we are not inclined to remand the case to the trial court as suggested by appellant. Convictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment. If the trial court relied on sufficient and credible evidence in finding the accused guilty, the judgment must be sustained, because then it is predicated not merely on the guilty plea of the accused but also on evidence proving his commission of the offense charged.[11]

On the whole, we find that the appellate court committed no reversible error in affirming the trial court's ruling convicting Documento.

Lastly, on the matter of the appellate court's award of exemplary damages, we increase the award from ₱25,000.00 to ₱30,000.00 in line with prevailing jurisprudence.

WHEREFORE, premises considered, the Court of Appeals Decision dated August 13, 2008 in CA-G.R. CR–HC No. 00285 is *AFFIRMED* with the *MODIFICATION* that the award of exemplary damages is hereby increased from ₱25,000.00 to ₱30,000.00. The decision is affirmed in all other respects.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Peralta, and *Mendoza, JJ.,* concur.

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[11] *Id.* at 13-16.

THIRD DIVISION

[G.R. No. 189122. March 17, 2010]

JOSE ANTONIO LEVISTE, *petitioner, vs.* **THE COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION IN DENYING APPLICATION FOR BAIL, NOT A CASE OF.— It cannot be said that the Court of Appeals issued the assailed resolution without or in excess of its jurisdiction. One, pending appeal of a conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is expressly declared to be **discretionary**. Two, the discretion to allow or disallow bail pending appeal in a case such as this where the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable is exclusively lodged by the rules with the appellate court. Thus, the Court of Appeals had jurisdiction to hear and resolve petitioner's urgent application for admission to bail pending appeal. Neither can it be correctly claimed that the Court of Appeals committed grave abuse of discretion when it denied petitioner's application for bail pending appeal. **Grave abuse of discretion is not simply an error in judgment** but it is such a capricious and whimsical exercise of judgment which is tantamount to lack of jurisdiction. **Ordinary abuse of discretion is insufficient**. x x x Petitioner never alleged that, in denying his application for bail pending appeal, the Court of Appeals exercised its judgment capriciously and whimsically. No capriciousness or arbitrariness in the exercise of discretion was ever imputed to the appellate court. Nor could any such implication or imputation be inferred. As observed earlier, the Court of Appeals exercised grave caution in the exercise of its discretion. The denial of petitioner's application for bail pending appeal was not unreasonable but was the result of a thorough assessment of petitioner's claim of ill health. By making a preliminary appraisal of the merits of the case for the purpose

of granting bail, the court also determined whether the appeal was frivolous or not, or whether it raised a substantial question. The appellate court did not exercise its discretion in a careless manner but followed doctrinal rulings of this Court.

2. **ID.; CRIMINAL PROCEDURE; BAIL; APPLICATION FOR BAIL PENDING APPEAL; TWO SCENARIOS CONTEMPLATED BY THE 3RD PARAGRAPH OF SECTION 5, RULE 114, DISTINGUISHED AND DISCUSSED.—** The third paragraph of Section 5, Rule 114 applies to two scenarios where the penalty imposed on the appellant applying for bail is imprisonment exceeding six years. The first scenario deals with the circumstances enumerated in the said paragraph (namely, recidivism, quasi-recidivism, habitual delinquency or commission of the crime aggravated by the circumstance of reiteration; previous escape from legal confinement, evasion of sentence or violation of the conditions of his bail without a valid justification; commission of the offense while under probation, parole or conditional pardon; circumstances indicating the probability of flight if released on bail; undue risk of committing another crime during the pendency of the appeal; or other similar circumstances) not present. The second scenario contemplates the existence of at least one of the said circumstances. The implications of this distinction are discussed with erudition and clarity in the commentary of retired Supreme Court Justice Florenz D. Regalado. x x x In the first situation, bail is a matter of sound judicial discretion. This means that, if none of the circumstances mentioned in the third paragraph of Section 5, Rule 114 is present, the appellate court has the discretion to grant or deny bail. An application for bail pending appeal may be denied even if the bail-negating circumstances in the third paragraph of Section 5, Rule 114 are absent. In other words, the appellate court's denial of bail pending appeal where none of the said circumstances exists does not, by and of itself, constitute abuse of discretion. On the other hand, in the second situation, the appellate court exercises a more stringent discretion, that is, to carefully ascertain whether any of the enumerated circumstances in fact exists. If it so determines, it has no other option except to deny or revoke bail pending appeal. Conversely, if the appellate court grants bail pending appeal, grave abuse of discretion will thereby be committed.

3. ID.; ID.; ID.; ID.; ID.; JUDICIAL DISCRETION IN RESOLVING THE APPLICATION FOR BAIL PENDING APPEAL, ELUCIDATED.— Judicial discretion has been defined as "choice." Choice occurs where, between "two alternatives or among a possibly infinite number (of options)," there is "more than one possible outcome, with the selection of the outcome left to the decision maker." On the other hand, the establishment of a clearly defined rule of action is the end of discretion. x x x The judicial discretion granted to the proper court (the Court of Appeals in this case) to rule on applications for bail pending appeal must necessarily involve the exercise of judgment on the part of the court. The court must be allowed reasonable latitude to express its own view of the case, its appreciation of the facts and its understanding of the applicable law on the matter. In view of the grave caution required of it, the court should consider whether or not, under all circumstances, the accused will be present to abide by his punishment if his conviction is affirmed. It should also give due regard to any other pertinent matters beyond the record of the particular case, such as the record, character and reputation of the applicant, among other things. More importantly, the discretion to determine allowance or disallowance of bail pending appeal necessarily includes, at the very least, an initial determination that the appeal is not frivolous but raises a substantial question of law or fact which must be determined by the appellate court. In other words, a threshold requirement for the grant of bail is a showing that the appeal is not *pro forma* and merely intended for delay but presents a fairly debatable issue. This must be so; otherwise, the appellate courts will be deluged with frivolous and time-wasting appeals made for the purpose of taking advantage of a lenient attitude on bail pending appeal. Even more significantly, this comports with the very strong presumption on appeal that the lower court's exercise of discretionary power was sound, specially since the rules on criminal procedure require that no judgment shall be reversed or modified by the Court of Appeals except for substantial error.

4. ID.; ID.; ID.; ID.; ID.; ID.; THE ENUMERATION OF THE BAIL-NEGATING CIRCUMSTANCES IN THE 3RD PARAGRAPH OF SECTION 5, RULE 114 IS NOT EXCLUSIVE.— To limit the bail-negating circumstances to the five situations mentioned in the third paragraph of Section 5, Rule 114 is wrong. By

restricting the bail-negating circumstances to those expressly mentioned, petitioner applies the *expressio unius est exclusio alterius* rule in statutory construction. However, the very language of the third paragraph of Section 5, Rule 114 contradicts the idea that the enumeration of the five situations therein was meant to be exclusive. The provision categorically refers to "the following **or other similar circumstances**." Hence, under the rules, similarly relevant situations other than those listed in the third paragraph of Section 5, Rule 114 may be considered in the allowance, denial or revocation of bail pending appeal.

5. **ID.; ID.; ID.; CHANGES INTRODUCED BY ADMINISTRATIVE CIRCULAR NO. 12-94 AND A.M. NO. 00-5-03-SC ON THE MATTER OF BAIL APPLICATION PENDING APPEAL, DISCUSSED.—** The amendments introduced by Administrative Circular No. 12-94 made bail pending appeal (of a conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment) discretionary. Thus, Administrative Circular No. 12-94 laid down more stringent rules on the matter of post-conviction grant of bail. A.M. No. 00-5-03-SC modified Administrative Circular No. 12-94 by clearly identifying which court has authority to act on applications for bail pending appeal under certain conditions and in particular situations. More importantly, it reiterated the "tough on bail pending appeal" configuration of Administrative Circular No. 12-94. In particular, it amended Section 3 of the 1988 Rules on Criminal Procedure which entitled the accused to bail as a matter of right before final conviction. Under the present rule, bail is a matter of discretion upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment. Indeed, pursuant to the "tough on bail pending appeal" policy, the presence of bail-negating conditions mandates the denial or revocation of bail pending appeal such that those circumstances are deemed to be as grave as conviction by the trial court for an offense punishable by death, *reclusion perpetua* or life imprisonment where bail is prohibited.

6. **ID.; ID.; ID.; JUDICIAL DISCRETION IN GRANTING BAIL APPLICATION PENDING APPEAL MUST BE EXERCISED WITH GRAVE CAUTION AND ONLY FOR STRONG REASONS.—** After conviction by the trial court, the presumption of innocence terminates and, accordingly, the constitutional

right to bail ends. From then on, the grant of bail is subject to judicial discretion. At the risk of being repetitious, such discretion must be exercised with grave caution and only for strong reasons. Considering that the accused was in fact convicted by the trial court, allowance of bail pending appeal should be guided by a stringent-standards approach. This judicial disposition finds strong support in the history and evolution of the rules on bail and the language of Section 5, Rule 114 of the Rules of Court. It is likewise consistent with the trial court's initial determination that the accused should be in prison. Furthermore, letting the accused out on bail despite his conviction may destroy the deterrent effect of our criminal laws. This is especially germane to bail pending appeal because long delays often separate sentencing in the trial court and appellate review. In addition, at the post-conviction stage, the accused faces a certain prison sentence and thus may be more likely to flee regardless of bail bonds or other release conditions. Finally, permitting bail too freely in spite of conviction invites frivolous and time-wasting appeals which will make a mockery of our criminal justice system and court processes.

PERALTA*, J.*, *dissenting opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; THE RULING IN *OBOSA V. CA* IS NOT APPLICABLE; REASONS.— [T]he set of circumstances appearing in Section 5, Rule 114 of the Rules of Court brought about by Administrative Circular No. 12-94 has been retained in the present Rules. Notably, it was after the ruling of this Court in *Obosa v. Court of Appeals* that the present provisions of Secs. 5 and 7, Rule 114 of the 2000 Revised Rules of Criminal Procedure became effective. In canceling petitioner's bail bond and denying his application for bail pending appeal, the trial court and the CA, as well as the OSG in its Comment to the petition, relied on *Obosa v. CA,* where this Court ruled that bail cannot be granted as a matter of right even after an accused, who is charged with a capital offense, appeals his conviction for a non-capital crime. The said case, however, is not applicable. In *Obosa*, the petitioner therein was convicted and applied for bail pending appeal prior to the effectivity of the amendments brought about by Administrative Circular No. 12-94; thus, the set of circumstances, as now seen in the present Rules, was yet to be present. Granting *arguendo* that the present provisions of

Section 5, Rule 114 can be made applicable to petitioner Obosa, this Court, in that same case, still deemed him to be disqualified from the grant of bail on the basic reason that, aside from Obosa being convicted of two counts of homicide, circumstances a, b, d and e of Section 5, Rule 114 of the Rules of Court were present. In the present case, as will be discussed later, not one of the circumstances that would warrant the denial of bail is present.

2. **ID.; ID.; ID.; THE CIRCUMSTANCES MENTIONED IN SECTION 5, RULE 114 OF THE RULES SHOULD HAVE BEEN CONSIDERED IN RESOLVING THE ACCUSED'S APPLICATION FOR BAIL PENDING APPEAL.—** [T]he CA should have applied the provisions of Section 5, Rule 114 of the Rules of Court, wherein the appellate court is given the discretion to grant bail to the petitioner after considering the enumerated circumstances, the penalty imposed by the trial court having exceeded six years. Although this Court has held that the discretion to extend bail during the course of the appeal should be exercised with grave caution and for strong reasons, considering that the accused has been in fact convicted by the trial court, the set of circumstances succinctly provided in Section 5, Rule 114 of the Rules of Court should be considered. The said set of circumstances has been provided as a guide for the exercise of the appellate court's discretion in granting or denying the application for bail, pending the appeal of an accused who has been convicted of a crime where the penalty imposed by the trial court is imprisonment exceeding six (6) years. Otherwise, if it is intended that the said discretion be absolute, no such set of circumstances would have been necessarily included in the Rules.

3. **ID.; ID.; ID.; THE COURT HAS NO REASON TO DENY THE ACCUSED'S APPLICATION FOR BAIL PENDING APPEAL.—** [T]his Court finds no reason to deny petitioner his application for bail pending appeal. Petitioner is indisputably not a recidivist, quasi-recidivist, or habitual delinquent, or has he committed the crime aggravated by the circumstance of reiteration. He has also not previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without a valid justification. He did not commit the offense charged while under probation, parole, or conditional pardon. Lastly, as shown by his previous records and pointed out by petitioner, considering his conduct while out on bail during the trial of his case, his advanced age, and his current health condition, the probability of flight is nil

and there is no risk that he may commit another crime during the pendency of the appeal.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioner.
Capela, Law Firm collaborating counsel for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CORONA, *J.*:

Bail, the security given by an accused who is in the custody of the law for his release to guarantee his appearance before any court as may be required,[1] is the answer of the criminal justice system to a vexing question: what is to be done with the accused, whose guilt has not yet been proven, in the "dubious interval," often years long, between arrest and final adjudication?[2] Bail acts as a reconciling mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring the accused's presence at trial.[3]

Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, the accused who has been sentenced to prison must typically begin serving time immediately unless, on application, he is admitted to bail.[4] An accused not released on bail is incarcerated before an appellate court confirms that his conviction is legal and proper. An erroneously convicted accused who is denied bail loses his liberty to pay a debt to society he has never owed.[5] Even if the

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[1] Section 1, Rule 114, Rules of Court.

[2] Verilli, Donald, *The Eighth Amendment and the Right to Bail: Historical Perspectives*, 82 Columbia L.Rev. 328 (1982).

[3] *Id.*

[4] *See* Section 5, Rule 114, Rules of Court.

[5] Keller, Doug, *Resolving A "Substantial Question": Just Who Is Entitled to Bail Pending Appeal Under the Bail Reform Act of 1984?*, 60 Fla. L. Rev. 825 (2008).

conviction is subsequently affirmed, however, the accused's interest in bail pending appeal includes freedom pending judicial review, opportunity to efficiently prepare his case and avoidance of potential hardships of prison.[6] On the other hand, society has a compelling interest in protecting itself by swiftly incarcerating an individual who is found guilty beyond reasonable doubt of a crime serious enough to warrant prison time.[7] Other recognized societal interests in the denial of bail pending appeal include the prevention of the accused's flight from court custody, the protection of the community from potential danger and the avoidance of delay in punishment.[8] Under what circumstances an accused may obtain bail pending appeal, then, is a delicate balance between the interests of society and those of the accused.[9]

Our rules authorize the proper courts to exercise discretion in the grant of bail pending appeal to those convicted by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment. In the exercise of that discretion, the proper courts are to be guided by the fundamental principle that the **allowance of bail pending appeal should be exercised not with laxity but with grave caution and only for strong reasons**, considering that the accused has been in fact convicted by the trial court.[10]

THE FACTS

Charged with the murder of Rafael de las Alas, petitioner Jose Antonio Leviste was convicted by the Regional Trial Court of Makati City for the lesser crime of homicide and sentenced to suffer an indeterminate penalty of six years and one day of

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[6] Leibowitz, Debra, *Release Pending Appeal: A Narrow Definition of 'Substantial Question' Under the Bail Reform Act*, 54 FDMLR 1081 (1986).

[7] Keller, *supra*.

[8] Leibowitz, *supra* note 6.

[9] Keller, *supra*.

[10] *Yap v. Court of Appeals*, 411 Phil. 190, 202 (2001).

prision mayor as minimum to 12 years and one day of *reclusion temporal* as maximum.[11]

He appealed his conviction to the Court of Appeals.[12] Pending appeal, he filed an urgent application for admission to bail pending appeal, citing his advanced age and health condition, and claiming the absence of any risk or possibility of flight on his part.

The Court of Appeals denied petitioner's application for bail.[13] It invoked the bedrock principle in the matter of bail pending appeal, that the discretion to extend bail during the course of appeal should be exercised "with grave caution and only for strong reasons." Citing well-established jurisprudence, it ruled that bail is not a sick pass for an ailing or aged detainee or a prisoner needing medical care outside the prison facility. It found that petitioner

> … failed to show that he suffers from ailment of such gravity that his continued confinement during trial will permanently impair his health or put his life in danger. x x x Notably, the physical condition of [petitioner] does not prevent him from seeking medical attention while confined in prison, though he clearly preferred to be attended by his personal physician.[14]

For purposes of determining whether petitioner's application for bail could be allowed pending appeal, the Court of Appeals also considered the fact of petitioner's conviction. It made a preliminary evaluation of petitioner's case and made a *prima facie* determination that there was no reason substantial enough to overturn the evidence of petitioner's guilt.

Petitioner's motion for reconsideration was denied.[15]

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[11] Decision dated January 14, 2009 in Criminal Case No. 07-179 penned by Judge Elmo M. Alameda. *Rollo*, pp. 198-235.

[12] Notice of Appeal dated January 14, 2009. *Id.*, pp. 238-241.

[13] Resolution dated April 8, 2009 in CA-G.R. CR No. 32159 penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and concurred in by Associate Justices Jose C. Reyes, Jr. and Normandie B. Pizarro of the third Division of the Court of Appeals. *Id.*, pp. 36-45.

[14] *Id.*, p. 43.

[15] *Id.*, p. 47.

Petitioner now questions as grave abuse of discretion the denial of his application for bail, considering that none of the conditions justifying denial of bail under the third paragraph of Section 5, Rule 114 of the Rules of Court was present. Petitioner's theory is that, where the penalty imposed by the trial court is more than six years but not more than 20 years and the circumstances mentioned in the third paragraph of Section 5 are absent, bail **must** be granted to an appellant pending appeal.

THE ISSUE

The question presented to the Court is this: in an application for bail pending appeal by an appellant sentenced by the trial court to a penalty of imprisonment for more than six years, does the discretionary nature of the grant of bail pending appeal mean that bail should automatically be granted absent any of the circumstances mentioned in the third paragraph of Section 5, Rule 114 of the Rules of Court?

Section 5, Rule 114 of the Rules of Court provides:

Sec. 5. *Bail, when discretionary*. — **Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary**. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;

(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without a valid justification;

(c) That he committed the offense while under probation, parole, or conditional pardon;

(d) That the circumstances of his case indicate the probability of flight if released on bail; or

(e) That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu proprio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case. (emphasis supplied)

Petitioner claims that, in the absence of any of the circumstances mentioned in the third paragraph of Section 5, Rule 114 of the Rules of Court, an application for bail by an appellant sentenced by the Regional Trial Court to a penalty of more than six years' imprisonment should automatically be granted.

Petitioner's stance is contrary to fundamental considerations of procedural and substantive rules.

BASIC PROCEDURAL CONCERNS FORBID GRANT OF PETITION

Petitioner filed this special civil action for *certiorari* under Rule 65 of the Rules of Court to assail the denial by the Court of Appeals of his urgent application for admission to bail pending appeal. While the said remedy may be resorted to challenge an interlocutory order, such remedy is proper only where the interlocutory order was rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.[16]

Other than the sweeping averment that "[t]he Court of Appeals committed grave abuse of discretion in denying petitioner's application

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[16] *See* Section 1, Rule 65, RULES OF COURT.

for bail pending appeal despite the fact that none of the conditions to justify the denial thereof under Rule 114, Section 5 [is] present, much less proven by the prosecution,"[17] however, petitioner actually failed to establish that the Court of Appeals indeed acted with grave abuse of discretion. He simply relies on his claim that the Court of Appeals should have granted bail in view of the absence of any of the circumstances enumerated in the third paragraph of Section 5, Rule 114 of the Rules of Court. Furthermore, petitioner asserts that the Court of Appeals committed a grave error and prejudged the appeal by denying his application for bail on the ground that the evidence that he committed a capital offense was strong.

We disagree.

It cannot be said that the Court of Appeals issued the assailed resolution without or in excess of its jurisdiction. One, pending appeal of a conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is expressly declared to be **discretionary**. Two, the discretion to allow or disallow bail pending appeal in a case such as this where the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable is exclusively lodged by the rules with the appellate court. Thus, the Court of Appeals had jurisdiction to hear and resolve petitioner's urgent application for admission to bail pending appeal.

Neither can it be correctly claimed that the Court of Appeals committed grave abuse of discretion when it denied petitioner's application for bail pending appeal. **Grave abuse of discretion is not simply an error in judgment** but it is such a capricious and whimsical exercise of judgment which is tantamount to lack of jurisdiction.[18] **Ordinary abuse of discretion is insufficient**. The abuse of discretion must be grave, that is, the power is exercised in an arbitrary or despotic manner by reason

[17] *See* Petition, p. 14. *Rollo*, p. 16.

[18] *Dueñas, Jr. v. House of Representatives Electoral Tribunal*, G.R. No. 185401, 21 July 2009, 593 SCRA 316, 344.

of passion or personal hostility.[19] It must be so patent and gross as to amount to evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of the law. In other words, for a petition for *certiorari* to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion.[20]

Petitioner never alleged that, in denying his application for bail pending appeal, the Court of Appeals exercised its judgment capriciously and whimsically. No capriciousness or arbitrariness in the exercise of discretion was ever imputed to the appellate court. Nor could any such implication or imputation be inferred. As observed earlier, the Court of Appeals exercised grave caution in the exercise of its discretion. The denial of petitioner's application for bail pending appeal was not unreasonable but was the result of a thorough assessment of petitioner's claim of ill health. By making a preliminary appraisal of the merits of the case for the purpose of granting bail, the court also determined whether the appeal was frivolous or not, or whether it raised a substantial question. The appellate court did not exercise its discretion in a careless manner but followed doctrinal rulings of this Court.

At best, petitioner only points out the Court of Appeal's erroneous application and interpretation of Section 5, Rule 114 of the Rules of Court. However, **the extraordinary writ of *certiorari* will not be issued to cure errors in proceedings or erroneous conclusions of law or fact**.[21] In this connection, *Lee v. People*[22] is apropos:

> … ***Certiorari* may not be availed of where it is not shown that the respondent court lacked or exceeded its jurisdiction over the case, even if its findings are not correct**. Its questioned acts would at most constitute errors of law and not abuse of discretion correctible by *certiorari*.

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[19] *Id*.

[20] Id, p. 345.

[21] *Fortich v. Corona*, 352 Phil. 461 (1998).

[22] 441 Phil. 705 (2002).

In other words, *certiorari* will issue only to correct errors of jurisdiction and not to correct errors of procedure or mistakes in the court's findings and conclusions. An interlocutory order may be assailed by *certiorari* or prohibition only when it is shown that the court acted without or in excess of jurisdiction or with grave abuse of discretion. However, this Court generally frowns upon this remedial measure as regards interlocutory orders. To tolerate the practice of allowing interlocutory orders to be the subject of review by *certiorari* will not only delay the administration of justice but will also unduly burden the courts.[23] (emphasis supplied)

WORDING OF THIRD PARAGRAPH OF SECTION 5, RULE 114 CONTRADICTS PETITIONER'S INTERPRETATION

The third paragraph of Section 5, Rule 114 applies to two scenarios where the penalty imposed on the appellant applying for bail is imprisonment exceeding six years. The first scenario deals with the circumstances enumerated in the said paragraph (namely, recidivism, quasi-recidivism, habitual delinquency or commission of the crime aggravated by the circumstance of reiteration; previous escape from legal confinement, evasion of sentence or violation of the conditions of his bail without a valid justification; commission of the offense while under probation, parole or conditional pardon; circumstances indicating the probability of flight if released on bail; undue risk of committing another crime during the pendency of the appeal; or other similar circumstances) not present. The second scenario contemplates the existence of at least one of the said circumstances.

The implications of this distinction are discussed with erudition and clarity in the commentary of retired Supreme Court Justice Florenz D. Regalado, an authority in remedial law:

Under the present revised Rule 114, the availability of bail to an accused may be summarized in the following rules:

x x x x x x x x x

e. After conviction by the Regional Trial Court wherein a penalty of imprisonment exceeding 6 years but not more than 20 years is imposed,

[23] *Id.*

and not one of the circumstances stated in Sec. 5 or any other similar circumstance is present and proved, **bail is a matter of discretion** *(Sec. 5)*;

f. After conviction by the Regional Trial Court imposing a penalty of imprisonment exceeding 6 years but not more than 20 years, and any of the circumstances stated in Sec. 5 or any other similar circumstance is present and proved, **no bail shall be granted** by said court *(Sec. 5)*; x x x[24] (emphasis supplied)

Retired Court of Appeals Justice Oscar M. Herrera, another authority in remedial law, is of the same thinking:

Bail is either a matter of right or of discretion. It is a matter of right when the offense charged is not punishable by death, *reclusion perpetua* or life imprisonment. On the other hand, upon conviction by the Regional Trial Court of an offense not punishable death, *reclusion perpetua* or life imprisonment, bail becomes a matter of discretion.

Similarly, **if the court imposed a penalty of imprisonment exceeding six (6) years then bail is a matter of discretion, *except when any of the enumerated circumstances under paragraph 3 of Section 5, Rule 114 is present then bail shall be denied*.**[25] (emphasis supplied)

In the first situation, bail is a matter of sound judicial discretion. This means that, if none of the circumstances mentioned in the third paragraph of Section 5, Rule 114 is present, the appellate

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[24] Regalado, Florenz, II *Remedial Law Compendium* 417 (Tenth Revised Edition [2004]).

Justice Regalado was Vice-Chairman and, later, Co-Chairman of the Committee on Revision of the Rules of Court which proposed the present (2000) rules on criminal procedure (Rules 110-127 of the Rules of Court).

It should be noted, however, that Justice Regalado speaks of application for bail pending appeal in cases "wherein a penalty of imprisonment exceeding 6 years **but not more than 20 years** is imposed." (Emphasis supplied) A careful reading of the third paragraph of Section 5, Rule 114 does not impose the limit of "not more than 20 years."

[25] Herrera, Oscar, IV *Remedial Law 455-456* (2007).

Justice Herrera was Consultant to the Committee on Revision of the Rules of Court which proposed the present (2000) rules on criminal procedure (Rules 110-127 of the Rules of Court).

court has the discretion to grant or deny bail. An application for bail pending appeal may be denied even if the bail-negating[26] circumstances in the third paragraph of Section 5, Rule 114 are absent. In other words, the appellate court's denial of bail pending appeal where none of the said circumstances exists does not, by and of itself, constitute abuse of discretion.

On the other hand, in the second situation, the appellate court exercises a more stringent discretion, that is, to carefully ascertain whether any of the enumerated circumstances in fact exists. If it so determines, it has no other option except to deny or revoke bail pending appeal. Conversely, if the appellate court grants bail pending appeal, grave abuse of discretion will thereby be committed.

Given these two distinct scenarios, therefore, any application for bail pending appeal should be viewed from the perspective of two stages: (1) the determination of discretion stage, where the appellate court must determine whether any of the circumstances in the third paragraph of Section 5, Rule 114 is present; this will establish whether or not the appellate court will exercise sound discretion or stringent discretion in resolving the application for bail pending appeal and (2) the exercise of discretion stage where, assuming the appellant's case falls within the first scenario allowing the exercise of sound discretion, the appellate court may consider all relevant circumstances, other than those mentioned in the third paragraph of Section 5, Rule 114, including the demands of equity and justice;[27] on the basis thereof, it may either allow or disallow bail.

On the other hand, if the appellant's case falls within the second scenario, the appellate court's stringent discretion requires

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[26] These circumstances are herein referred to as "bail-negating" because the presence of any of them will negate the allowance of bail.

[27] Discretion implies that, in the absence of a positive law or fixed rule, the judge is to decide by his view of expediency or by the demands of equity and justice. (*Negros Oriental Planters Association, Inc. v. Presiding Judge of RTC-Negros Occidental, Branch 52, Bacolod City* , G.R. No. 179878, 24 December 2008, 575 SCRA 575 and *Luna v. Arcenas*, 34 Phil. 80 [1916] both citing *Goodwin v. Prime* [92 Me., 355]).

that the exercise thereof be primarily focused on the determination of the proof of the presence of any of the circumstances that are prejudicial to the allowance of bail. This is so because the existence of any of those circumstances is by itself sufficient to deny or revoke bail. **Nonetheless, a finding that none of the said circumstances is present will not automatically result in the grant of bail. Such finding will simply authorize the court to use the less stringent sound discretion approach.**

Petitioner disregards the fine yet substantial distinction between the two different situations that are governed by the third paragraph of Section 5, Rule 114. Instead, petitioner insists on a simplistic treatment that unduly dilutes the import of the said provision and trivializes the established policy governing the grant of bail pending appeal.

In particular, a careful reading of petitioner's arguments reveals that it interprets the third paragraph of Section 5, Rule 114 to cover **all situations** where the penalty imposed by the trial court on the appellant is imprisonment exceeding six years. For petitioner, in such a situation, the grant of bail pending appeal is always subject to limited discretion, that is, one **restricted to the determination of whether any of the five bail-negating circumstances exists**. The implication of this position is that, if any such circumstance is present, then bail will be denied. Otherwise, bail will be granted pending appeal.

Petitioner's theory therefore reduces the appellate court into a mere fact-finding body whose authority is limited to determining whether any of the five circumstances mentioned in the third paragraph of Section 5, Rule 114 exists. This unduly constricts its "discretion" into merely filling out the checklist of circumstances in the third paragraph of Section 5, Rule 114 in all instances where the penalty imposed by the Regional Trial Court on the appellant is imprisonment exceeding six years. In short, petitioner's interpretation severely curbs the discretion of the appellate court by requiring it to determine a singular factual issue — whether any of the five bail-negating circumstances is present.

However, judicial discretion has been defined as "choice."[28] Choice occurs where, between "two alternatives or among a possibly infinite number (of options)," there is "more than one possible outcome, with the selection of the outcome left to the decision maker."[29] On the other hand, the establishment of a clearly defined rule of action is the end of discretion.[30] Thus, by severely clipping the appellate court's discretion and relegating that tribunal to a mere fact-finding body in applications for bail pending appeal in all instances where the penalty imposed by the trial court on the appellant is imprisonment exceeding six years, petitioner's theory effectively renders nugatory the provision that "**upon conviction by the Regional Trial Court** of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, **admission to bail is discretionary**."

The judicial discretion granted to the proper court (the Court of Appeals in this case) to rule on applications for bail pending appeal must necessarily involve the exercise of judgment on the part of the court. The court must be allowed reasonable latitude to express its own view of the case, its appreciation of the facts and its understanding of the applicable law on the matter.[31] In view of the grave caution required of it, the court should consider whether or not, under all circumstances, the accused will be present to abide by his punishment if his conviction is affirmed.[32] It should also give due regard to any other pertinent matters beyond the record of the particular case, such as the record, character

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[28] Rosenberg, Maurice, *Judicial Discretion of the Trial Court, Viewed from Above*, 22 Syracuse L. Rev. 635, 659 (1971) cited in Painter, Mark and Welker, Paula, *Abuse of Discretion: What Should It Mean in Ohio Law?*, 29 Ohio N.U. L. Rev. 209 (2002).

[29] Steven Alan Childress & Martha S. Davis, 2 Standards of Review § 15.8, at 296 (1986) cited in Painter and Welker, *supra*.

[30] *Negros Oriental Planters Association, Inc. v. Presiding Judge of RTC-Negros Occidental, Branch 52, Bacolod City*, *supra* note 21.

[31] *Morada v. Tayao*, A.M. No. RTJ-93-978, 07 February 1994, 229 SCRA 723.

[32] *Reyes v. Court of Appeals*, 83 Phil. 658 (1949).

and reputation of the applicant,[33] among other things. More importantly, the discretion to determine allowance or disallowance of bail pending appeal necessarily includes, at the very least, an initial determination that the appeal is not frivolous but raises a substantial question of law or fact which must be determined by the appellate court.[34] In other words, a threshold requirement for the grant of bail is a showing that the appeal is not *pro forma* and merely intended for delay but presents a fairly debatable issue.[35] This must be so; otherwise, the appellate courts will be deluged with frivolous and time-wasting appeals made for the purpose of taking advantage of a lenient attitude on bail pending appeal. Even more significantly, this comports with the very strong presumption on appeal that the lower court's exercise of discretionary power was sound,[36] specially since the rules on criminal procedure require that no judgment shall

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[33] *Id*.

[34] *United States v. Motlow*, 10 F.2d 657 (1926) (Butler, Circuit Justice).

[35] *See D'Aquino v. United States*, 180 F.2d 271, 272 (1959) (Douglas, Circuit Justice).

Justice Douglas of the United States Supreme Court, in his capacity as a Circuit Justice, was one of the first judges to discuss the definition of "substantial question." He equated the phrase with an issue that is "fairly debatable." Later, he provided additional guidance to district courts trying to determine whether a defendant's appeal would raise a fairly debatable issue:

> [T]he first consideration is the soundness of the errors alleged. Are they, or any of them, likely to command the respect of the appellate judges? It is not enough that I am unimpressed. I must decide whether there is a school of thought, a philosophical view, a technical argument, an analogy, an appeal to precedent or to reason commanding respect that might possibly prevail.(*Herzog v. United States*, 75 S. Ct. 349, 351 (1955) (Douglas, Circuit Justice)

See also *United States v. Barbeau, 92 F. Supp. 196, 202 (D. Alaska 1950)*, *aff'd*, 193 F.2d 945 (9th Cir. 1951), *cert. denied*, 343 U.S. 968 (1952); *Warring v. United States*, 16 F.R.D. 524, 526 (D. Md. 1954); *United States v. Goo*, 10 F.R.D. 337, 338 (D. Hawaii 1950).

[36] *Luna v. Arcenas*, *supra* note 21 quoting 2 Encyclopedia of Pleading and Practice 416, 418.

be reversed or modified by the Court of Appeals except for substantial error.[37]

Moreover, to limit the bail-negating circumstances to the five situations mentioned in the third paragraph of Section 5, Rule 114 is wrong. By restricting the bail-negating circumstances to those expressly mentioned, petitioner applies the *expressio unius est exclusio alterius*[38] rule in statutory construction. However, the very language of the third paragraph of Section 5, Rule 114 contradicts the idea that the enumeration of the five situations therein was meant to be exclusive. The provision categorically refers to "the following **or other similar circumstances**." Hence, under the rules, similarly relevant situations other than those listed in the third paragraph of Section 5, Rule 114 may be considered in the allowance, denial or revocation of bail pending appeal.

Finally, laws and rules should not be interpreted in such a way that leads to unreasonable or senseless consequences. An absurd situation will result from adopting petitioner's interpretation that, where the penalty imposed by the trial court is imprisonment exceeding six years, bail ought to be granted if none of the listed bail-negating circumstances exists. Allowance of bail pending appeal in cases where the penalty imposed is more than six years of imprisonment will be more lenient than in cases where the penalty imposed does not exceed six years. While denial or revocation of bail in cases where the penalty imposed is more than six years imprisonment must be made only if any of the five bail-negating conditions is present, bail pending appeal in cases where the penalty imposed does not

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Thus, the general rule and one of the fundamental rules of appellate procedure is that decisions of a trial court which "lie in discretion" will not be reviewed on appeal, whether the case be civil or criminal, at law or in equity (*Cuan v. Chiang Kai Shek College, Inc*, G.R. No. 175936, 03 September 2007, 532 SCRA 172, 187-188).

[37] Section 10, Rule 114, RULES OF COURT.

[38] The express mention of one implies the exclusion of all others not mentioned.

exceed six years imprisonment may be denied even without those conditions.

Is it reasonable and in conformity with the dictates of justice that bail pending appeal be more accessible to those convicted of serious offenses, compared to those convicted of less serious crimes?

PETITIONER'S THEORY DEVIATES FROM HISTORY AND EVOLUTION OF RULE ON BAIL PENDING APPEAL

Petitioner's interpretation deviates from, even radically alters, the history and evolution of the provisions on bail pending appeal.

The relevant original provisions on bail were provided under Sections 3 to 6, Rule 110 of the 1940 Rules of Criminal Procedure:

> Sec. 3. *Offenses less than capital before conviction by the Court of First Instance.* — After judgment by a municipal judge and before conviction by the Court of First Instance, the defendant shall be admitted to bail as of right.
>
> Sec. 4. *Non-capital offenses after conviction by the Court of First Instance.* — After conviction by the Court of First Instance, defendant may, upon application, be bailed at the discretion of the court.
>
> Sec. 5. *Capital offense defined.* — A capital offense, as the term is used in this rule, is an offense which, under the law existing at the time of its commission, and at the time of the application to be admitted to bail, may be punished by death.
>
> Sec. 6. *Capital offense not bailable.* — No person in custody for the commission of a capital offense shall be admitted to bail if the evidence of his guilt is strong.

The aforementioned provisions were reproduced as Sections 3 to 6, Rule 114 of the 1964 Rules of Criminal Procedure and then of the 1985 Rules of Criminal Procedure. They were modified in 1988 to read as follows:

> Sec. 3. *Bail, a matter of right; exception.* — All persons in custody, shall **before final conviction** be entitled to bail as a matter of right, except those charged with a capital offense or an offense

which, under the law at the time of its commission and at the time of the application for bail, is punishable by *reclusion perpetua*, when evidence of guilt is strong.

Sec. 4. *Capital offense, defined*. — A capital offense, as the term is used in this Rules, is an offense which, under the law existing at the time of its commission, and at the time of the application to be admitted to bail, may be punished by death. (emphasis supplied)

The significance of the above changes was clarified in Administrative Circular No. 2-92 dated January 20, 1992 as follows:

The basic governing principle on the right of the accused to bail is laid down in Section 3 of Rule 114 of the 1985 Rules on Criminal Procedure, as amended, which provides:

> Sec. 3. Bail, a matter of right; exception. — All persons in custody, shall before final conviction, be entitled to bail as a matter of right, except those charged with a capital offense or an offense which, under the law at the time of its commission and at the time of the application for bail, is punishable by *reclusion perpetua*, when evidence of guilt is strong.

Pursuant to the aforecited provision, an accused who is charged with a capital offense or an offense punishable by *reclusion perpetua*, shall no longer be entitled to bail as a matter of right even if he appeals the case to this Court since his conviction clearly imports that the evidence of his guilt of the offense charged is strong.

Hence, for the guidelines of the bench and bar with respect to future as well as pending cases before the trial courts, this Court *en banc* lays down the following policies concerning the effectivity of the bail of the accused, to wit:

1) When an accused is charged with an offense which under the law existing at the time of its commission and at the time of the application for bail is punishable by a penalty lower than *reclusion perpetua* and is out on bail, and after trial is convicted by the trial court of the offense charged or of a lesser offense than that charged in the complaint or information, he may be allowed to remain free on his original bail pending the resolution of his appeal, unless the proper court directs otherwise pursuant to Rule 114, Sec. 2 (a) of the Rules of Court, as amended;

2) **When an accused is charged with a capital offense or an offense which under the law at the time of its commission and at the time of the application for bail is punishable by *reclusion perpetua* and is out on bail, and after trial is convicted by the trial court of a lesser offense than that charged in the complaint or information, the same rule set forth in the preceding paragraph shall be applied**;

3) When an accused is charged with a capital offense or an offense which under the law at the time of its commission and at the time of the application for bail is punishable by *reclusion perpetua* and is out on bail and after trial is convicted by the trial court of the offense charged, his bond shall be cancelled and the accused shall be placed in confinement pending resolution of his appeal.

As to criminal cases covered under the third rule abovecited, which are now pending appeal before his Court where the accused is still on provisional liberty, the following rules are laid down:

1) This Court shall order the bondsman to surrender the accused within ten (10) days from notice to the court of origin. The bondsman thereupon, shall inform this Court of the fact of surrender, after which, the cancellation of the bond shall be ordered by this Court;

2) The RTC shall order the transmittal of the accused to the National Bureau of Prisons thru the Philippine National Police as the accused shall remain under confinement pending resolution of his appeal;

3) If the accused-appellant is not surrendered within the aforesaid period of ten (10) days, his bond shall be forfeited and an order of arrest shall be issued by this Court. The appeal taken by the accused shall also be dismissed under Section 8, Rule 124 of the Revised Rules of Court as he shall be deemed to have jumped his bail. (emphasis supplied)

Amendments were further introduced in Administrative Circular No. 12-94 dated August 16, 1994 which brought about important changes in the said rules as follows:

SECTION 4. *Bail, a matter of right*. — All persons in custody shall: (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or

life imprisonment, be admitted to bail as a matter of right, with sufficient sureties, or be released on recognizance as prescribed by law of this Rule. (3a)

SECTION 5. *Bail, when discretionary.* — **Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, the court, on application, may admit the accused to bail.**

The court, in its discretion, may allow the accused to continue on provisional liberty under the same bail bond during the period of appeal subject to the consent of the bondsman.

If the court imposed a penalty of imprisonment exceeding six (6) years but not more than twenty (20) years, the accused shall be denied bail, or his bail previously granted shall be cancelled, upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That the accused is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;

(b) That the accused is found to have previously escaped from legal confinement, evaded sentence or has violated the conditions of his bail without valid justification;

(c) That the accused committed the offense while on probation, parole, under conditional pardon;

(d) That the circumstances of the accused or his case indicate the probability of flight if released on bail; or

(e) That there is undue risk that during the pendency of the appeal, the accused may commit another crime.

The appellate court may review the resolution of the Regional Trial Court, on motion and with notice to the adverse party. (n)

SECTION 6. *Capital offense, defined.* — A capital offense, as the term is used in these Rules, is an offense which, under the law existing at the time of its commission and at the time of the application to be admitted to bail, maybe punished with death. (4)

SECTION 7. *Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable.* — No person charged with a capital offense, or an offense punishable by *reclusion*

perpetua or life imprisonment, when evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal prosecution. (emphasis supplied)

The above amendments of Administrative Circular No. 12-94 to Rule 114 were thereafter amended by A.M. No. 00-5-03-SC to read as they do now.

The development over time of these rules reveals an orientation towards a more restrictive approach to bail pending appeal. It indicates a faithful adherence to the bedrock principle, that is, bail pending appeal should be allowed not with leniency but with grave caution and only for strong reasons.

The earliest rules on the matter made all grants of bail after conviction for a non-capital offense by the Court of First Instance (predecessor of the Regional Trial Court) discretionary. The 1988 amendments made applications for bail pending appeal favorable to the appellant-applicant. Bail before final conviction in trial courts for non-capital offenses or offenses not punishable by *reclusion perpetua* was a matter of right, meaning, admission to bail was a matter of right at any stage of the action where the charge was not for a capital offense or was not punished by *reclusion perpetua*.[39]

The amendments introduced by Administrative Circular No. 12-94 made bail pending appeal (of a conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment) discretionary. Thus, Administrative Circular No. 12-94 laid down more stringent rules on the matter of post-conviction grant of bail.

A.M. No. 00-5-03-SC modified Administrative Circular No. 12-94 by clearly identifying which court has authority to act on applications for bail pending appeal under certain conditions and in particular situations. More importantly, it reiterated the "tough on bail pending appeal" configuration of Administrative Circular No. 12-94. In particular, it amended Section 3 of the

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[39] Regalado, Florenz, II *REMEDIAL LAW COMPENDIUM* 273 (Fifth Revised Edition [1988]).

1988 Rules on Criminal Procedure which entitled the accused to bail as a matter of right before final conviction.[40] Under the present rule, bail is a matter of discretion upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment. Indeed, pursuant to the "tough on bail pending appeal" policy, the presence of bail-negating conditions mandates the denial or revocation of bail pending appeal such that those circumstances are deemed to be as grave as conviction by the trial court for an offense punishable by death, *reclusion perpetua* or life imprisonment where bail is prohibited.

Now, what is more in consonance with a stringent standards approach to bail pending appeal? What is more in conformity with an *ex abundante cautelam* view of bail pending appeal? Is it a rule which favors the automatic grant of bail in the absence of any of the circumstances under the third paragraph of Section 5, Rule 114? Or is it a rule that authorizes the denial of bail after due consideration of all relevant circumstances, even if none of the circumstances under the third paragraph of Section 5, Rule 114 is present?

The present inclination of the rules on criminal procedure to frown on bail pending appeal parallels the approach adopted in the United States where our original constitutional and procedural provisions on bail emanated.[41] While this is of course not to be followed blindly, it nonetheless shows that our treatment of bail

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[40] *See* Herrera, *supra* note 19, p. 457.

[41] In particular, in the United States, the history of bail pending appeal has been divided by one scholar on the matter into four distinct periods: (1st period) 1879 to 1934, (2nd period) 1934 to 1956, (third period) 1956 to 1984 and (post-1984 period) 1984 to present. The first period, during which the rules on the matter were just being developed, showed liberality in the grant of bail pending appeal. The second period produced a more restrictive rule, one which limited bail to defendants who could prove that their appeal would raise "a substantial question which should be determined by the appellate court." The third period saw the enactment of the Bail Reform Act of 1966 establishing a standard wherein bail may be allowed pending appeal unless it appears that the appeal is frivolous or taken for delay. Under that standard, the court could deny bail if the defendant was a flight risk or a danger to the community. Hence, bail pending appeal was

pending appeal is no different from that in other democratic societies.

In our jurisdiction, the trend towards a strict attitude towards the allowance of bail pending appeal is anchored on the principle that judicial discretion — particularly with respect to extending bail — should be exercised not with laxity but with caution and only for strong reasons.[42] In fact, it has even been pointed out that "grave caution that must attend the exercise of judicial discretion in granting bail to a convicted accused is best illustrated and exemplified in Administrative Circular No. 12-94 amending Rule 114, Section 5."[43]

Furthermore, this Court has been guided by the following:

> The importance attached to conviction is due to the underlying principle that bail should be granted only where it is uncertain whether the accused is guilty or innocent, and therefore, where that uncertainty is removed by conviction it would, generally speaking, be absurd to admit to bail. **After a person has been tried and convicted the presumption of innocence which may be relied upon in prior applications is rebutted, and the burden is upon the accused to show error in the conviction**. From another point of view it may be properly argued that the probability of ultimate punishment is so enhanced by the conviction that the accused is much more likely to attempt to escape if liberated on bail than before conviction.[44] (emphasis supplied)

As a matter of fact, endorsing the reasoning quoted above and relying thereon, the Court declared in *Yap v. Court of Appeals*[45] (promulgated in 2001 when the present rules were already effective), that **denial of bail pending appeal** is "**a matter of wise discretion**."

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again favored. The post-1984 period is determined by the enactment and implementation of the Bail Reform Act of 1984. The law was purposely designed to make restrictive the allowance of bail pending appeal. As the Act's legislative history explains, prior law had "a presumption in favor of bail even after conviction" and Congress wanted to "eliminate" that presumption. (Keller, *supra* note 5.)

[42] *Obosa v. Court of Appeals*, G.R. No. 114350, 16 January 1997, 266 SCRA 281.

[43] *Id*.

[44] *Id.* See also *Yap v. Court of Appeals*, *supra* note 10.

[45] *Id*.

A FINAL WORD

Section 13, Article II of the Constitution provides:

> SEC. 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, **before conviction**, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. x x x (emphasis supplied)

After conviction by the trial court, the presumption of innocence terminates and, accordingly, the constitutional right to bail ends.[46] From then on, the grant of bail is subject to judicial discretion. At the risk of being repetitious, such discretion must be exercised with grave caution and only for strong reasons. Considering that the accused was in fact convicted by the trial court, allowance of bail pending appeal should be guided by a stringent-standards approach. This judicial disposition finds strong support in the history and evolution of the rules on bail and the language of Section 5, Rule 114 of the Rules of Court. It is likewise consistent with the trial court's initial determination that the accused should be in prison. Furthermore, letting the accused out on bail despite his conviction may destroy the deterrent effect of our criminal laws. This is especially germane to bail pending appeal because long delays often separate sentencing in the trial court and appellate review. In addition, at the post-conviction stage, the accused faces a certain prison sentence and thus may be more likely to flee regardless of bail bonds or other release conditions. Finally, permitting bail too freely in spite of conviction invites frivolous and time-wasting appeals which will make a mockery of our criminal justice system and court processes.

WHEREFORE, the petition is hereby *DISMISSED*.

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[46] See *Obosa v. Court of Appeals* and *Yap v. Court of Appeals*, *supra*. *See* also Bernas, Joaquin, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, p. 492 (2009).

The Court of Appeals is hereby directed to resolve and decide, on the merits, the appeal of petitioner Jose Antonio Leviste docketed as CA-G.R. CR No. 32159, with dispatch.

Costs against petitioner.

SO ORDERED.

Velasco, Jr. and *Nachura, JJ.,* concur.

Peralta, J., see Dissenting Opinion.

Mendoza, J., joins the dissent for reasons stated.

DISSENTING OPINION

PERALTA, *J.*:

The denial of an application for bail pending appeal on a case where the accused was charged with Murder but was convicted with Homicide seriously poses some important questions.

By denying the application for bail pending appeal of an accused who was charged with the crime of Murder but was convicted of the crime of Homicide, is this Court, in effect, saying that the evidence of guilt for the crime of Murder is strong despite the lower court's finding of proof beyond reasonable doubt of the crime of Homicide, a bailable offense?

By denying the application for bail pending appeal on the ground that the evidence of guilt for the crime of Murder is strong, is this court, in a way, unknowingly preempting the judgment of the Court of Appeals as to the main case?

In the event that the Court of Appeals sustains the conviction of the accused of the crime of Homicide, a bailable offense and the accused decides to file a Petition

for Certiorari before this Court, will the denial of the application for bail of the accused still be effective?

With due respect to the present *ponencia*, an affirmative response to the above questions would bring about some absurdities.

Section 13, Article III of the 1987 Philippine Constitution provides the following:

Sec. 13. ALL PERSONS, EXCEPT THOSE CHARGED WITH OFFENSES PUNISHABLE BY *RECLUSION PERPETUA* WHEN EVIDENCE OF GUILT IS STRONG, SHALL, BEFORE CONVICTION, BE BAILABLE BY SUFFICIENT SURETIES, OR BE RELEASED ON RECOGNIZANCE AS MAY BE PROVIDED BY LAW. THE RIGHT TO BAIL SHALL NOT BE IMPAIRED EVEN WHEN THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IS SUSPENDED. EXCESSIVE BAIL SHALL NOT BE REQUIRED.

The Philippine Constitution itself emphasizes the right of an accused to bail with the sole exception of those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong. Cases, like in the present case, when an accused is charged with Murder but was convicted with Homicide, mean only one thing, that the lower court found the evidence for the crime charged not strong, hence, the accused's conviction of a lesser offense. Therefore, the denial of the same accused's application for bail pending appeal on the ground that the evidence of his guilt for the crime charged is strong, would unintentionally be suggestive of the outcome of the appealed decision of the lower court. The discretion whether to grant the application for bail or not is given to the CA in cases such as the present one, on the reason that the same appellate court can review the factual findings of the lower court. However, this will no longer be the case if a Petition for *Certiorari* is filed with this Court as it is not a trier of facts. Hence, the existence of those queries brought about by the majority opinion casts confusion rather than an enlightenment on the present case.

The following discussion, in my opinion, should shed light on the matter:

Before this Court is a Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure which seeks to nullify and set aside the Resolutions[1] dated April 8, 2009 and July 14, 2009 of the Court of Appeals (CA).

The antecedent facts are the following:

Arising from a shooting incident that happened on January 12, 2007 at petitioner Jose Antonio Leviste's office where Rafael de las Alas died of gunshot wounds, petitioner was charged with murder under the Amended Information dated March 15, 2007 in Criminal Case No. 07-179 of the Regional Trial Court (RTC) of Makati City, Branch 150.

Petitioner, on February 23, 2007, filed an Urgent Application for Admission to Bail *Ex Abundanti Cautela*[2] on the ground that the evidence of the prosecution was not strong. The trial court, in its Order[3] dated May 21, 2007, granted petitioner's application for bail.

Subsequently, trial ensued and, on January 14, 2009, the trial court rendered its Decision[4] finding petitioner guilty beyond reasonable doubt of the crime of homicide, the dispositive portion of which reads:

> WHEREFORE, PREMISES CONSIDERED, accused Jose Antonio Leviste *y* Casals is hereby found guilty beyond reasonable doubt of the crime of homicide and is sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum, to twelve (12) years and one (1) day of *reclusion temporal* as maximum. Accused is further ordered to pay the heirs of the victim, Rafael de las Alas, the amount of Php50,000.00 as death indemnity and Php50,000.00 as moral damages.
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> Accused Jose Antonio Leviste *y* Casals shall be credited in the service of his sentence consisting of deprivation of liberty, with the full time during which he had undergone preventive imprisonment

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[1] *Rollo*, pp. 36-45.

[2] *Id.* at 150-154.

[3] *Id.* at 164-197.

[4] *Id.* at 198-235.

at the Makati City Jail from February 7, 2007 up to May 22, 2007 up provided that he agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.

Consequently, in its Order[5] dated January 14, 2009, the trial court canceled petitioner's bail bond, ruling that:

Accused Jose Antonio Leviste *y* Casals was charged with the crime of Murder, a capital offense or an offense which under the law at the time of its commission and at the time of the application for bail is punishable by *reclusion perpetua* to death. The accused is presently out on bail. After trial, the accused was however convicted of Homicide, a lesser offense than that charged in the Information. Accused was accordingly sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum, to twelve (12) years and one (1) day of *reclusion temporal* as maximum.

Sec. 5, Rule 114 of the Rules on Criminal Procedure which is deemed to have modified SC Administrative Circular No. 2-92 dated January 20, 1992, provides:

> *Bail, when discretionary.* — Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

In *Obosa v. Court of Appeals*, G.R. No. 114350, January 16, 1997, 266 SCRA 281, 78 SCAD 17, the Supreme Court, speaking thru the Third Division, stated:

> x x x that bail cannot be granted as a matter of right even after an accused, who is charged with a capital offense, appeals his conviction for a non-capital crime. Courts must exercise utmost caution in deciding applications for bail considering

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[5] *Id.* at 236-237.

that the accused on appeal may still be convicted of the original capital offense charged and that the risk attendant to jumping bail still subsists. In fact, trial courts would be well advised to leave the matter of bail, after conviction for a lesser crime than the capital offense originally charged, to the appellate court's sound discretion.

In view of the aforecited rules and prevailing jurisprudence on the matter, the bailbond posted by the accused for his provisional liberty is deemed cancelled. Accused being considered a national prisoner is ordered committed to the Makati City Jail, Makati City, pending his transfer to the New Bilibid Prison at Muntinlupa City.

SO ORDERED.

Petitioner filed a Notice of Appeal[6] dated January 14, 2009 and on January 15, 2009, filed with the CA an Urgent Application for Admission to Bail Pending Appeal and an Urgent *Ex Parte* Motion for Special Raffle and to Resolve the Attached Application for Admission to Bail. The CA, in its Resolution dated April 8, 2009, denied petitioner's application for bail pending appeal, the disposition reading:

IN VIEW OF THE FOREGOING REASONS, "the Urgent Application for Admission to Bail Pending Appeal" is hereby DENIED.

SO ORDERED.

The CA also denied petitioner's Motion for Reconsideration dated April 14, 2009 in its Resolution[7] dated July 14, 2009.

Hence, the present petition.

Petitioner states the following arguments:

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S APPLICATION FOR BAIL PENDING APPEAL DESPITE THE FACT THAT NONE OF THE CONDITIONS TO JUSTIFY THE DENIAL THEREOF UNDER RULE 114, SECTION 5 ARE PRESENT, MUCH LESS PROVEN BY THE PROSECUTION.

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[6] *Id*. at 238-239.

[7] *Id*. at 47.

THE COURT OF APPEALS GRAVELY ERRED IN IGNORING THE FACT THAT PETITIONER WAS CONVICTED OF HOMICIDE, A BAILABLE OFFENSE, AND THAT AS TWICE SHOWN IN THE PROCEEDINGS BELOW, THE EVIDENCE THAT PETITIONER COMMITTED THE CRIME OF MURDER IS NOT STRONG. THE COURT OF APPEALS UNJUSTLY PREJUDGED PETITIONER'S APPEAL BY CONCLUDING THAT THE EVIDENCE OF GUILT FOR MURDER IS STRONG, DESPITE THE FINDINGS OF THE TRIAL COURT TO THE CONTRARY.

THE COURT OF APPEALS SHOWED UNJUST BIAS IN ALLOWING PROSECUTOR VELASCO TO PARTICIPATE IN THE APPELLATE PROCEEDINGS.[8]

According to petitioner, the CA should have granted bail in view of the absence of any of the circumstances enumerated under paragraphs (a) to (e), Section 5, Rule 114. He adds that he is neither a recidivist, a quasi-recidivist or habitual delinquent, nor a flight risk; and there is no undue risk that he would commit another crime during the pendency of his appeal.

Petitioner further argues that the CA committed a grave error and prejudged the appeal by denying his application for bail on the ground that the evidence that he committed a capital offense was strong. He points out that the records show that the trial court already granted him bail, since it found that the prosecution had failed to demonstrate that the evidence of his guilt for the crime of murder was strong; and this was further confirmed when the trial court convicted him of the crime of homicide instead of murder. Hence, petitioner insists that the trial court's determination that he is not guilty of a capital offense should subsist even on appeal.

Anent the third issue, petitioner claims that the CA allowed Prosecutor Emmanuel Velasco to delay his application for bail by filing mere manifestations requesting the CA to provide him with copies of petitioner's motions and written submissions.

In its Comment dated November 20, 2009, the Office of the Solicitor General (OSG) contends that the CA committed no

[8] *Id.* at 16.

grave abuse of discretion in denying petitioner's application for bail pending appeal. Although the grant of bail is discretionary in non-capital offenses, if, as in this case, imprisonment has been imposed on the petitioner in excess of six (6) years and circumstances point to a considerable likelihood that he may flee if released on bail, then he must be denied bail, or his bail previously granted should be canceled. The OSG also reiterates the ruling in *Obosa v. Court of Appeals,*[9] which was relied upon by the CA in denying the application for bail, stating that after an accused has been tried and convicted, the presumption of innocence, which may be relied upon if prior application is rebutted, the burden is upon the accused to show error in the conviction. As to the claim of petitioner that the CA gravely abused its discretion in allowing Prosecutor Velasco to participate in the appellate proceedings, the OSG dismissed the said argument as without merit.

In his Manifestation and Motion dated December 9, 2009, petitioner contends that the OSG's arguments in its Comment are a mere rehash of the baseless justifications and arguments made by the CA in denying his application for bail, arguments which have already been tackled and refuted by him in the present petition.

Petitioner, in a Manifestation dated November 25, 2009, notified this Court that he had filed a Very Urgent Motion for a Medical Pass before the CA, as he had to undergo medical treatment at the soonest possible time.

In his December 21, 2009 Reply [to Respondent People of the Philippines' Comment dated 20 November 2009], petitioner reiterated the arguments he raised in his petition.

In a letter dated November 25, 2009, which was received by the Office of the Chief Justice on December 7, 2009, Mrs. Teresita C. de las Alas (wife), Ms. Dinna de las Alas-Sanchez (daughter), and Ms. Nazareth H. de las Alas (daughter) expressed consent to the grant of bail to the petitioner.

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[9] 334 Phil. 253 (1997).

The petition is impressed with merit.

Sections 5 and 7, Rule 114 of the 2000 Revised Rules on Criminal Procedure, as amended, provide that:

Sec. 5. *Bail, when discretionary*. – Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua,* or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. **However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.**

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be canceled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;

(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without a valid justification;

(c) That he committed the offense while under probation, parole, or conditional pardon;

(d) That the circumstances of his case indicate the probability of flight if released on bail; or

(e) That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu propio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case.

SEC. 7. Capital offense or an offense punishable by *reclusion perpetua* or life imprisonment, not bailable. – **No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.**

Prior to the affectivity of the above provisions, the governing rule in the granting or cancellation of bail was encapsulated in Administrative Circular No. 12-94,[10] stating that:

Sec. 3. *Bail, a matter of right; exception*. – All persons in custody shall, before final conviction, be entitled to bail as a matter of right, except those charged with a capital offense or an offense which, under the law at the time of its commission and at the time of the application for bail, is punishable by *reclusion perpetua*, when evidence of guilt is strong.

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SEC. 5 *Bail, When Discretionary*. – Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, the court, on application, may admit the accused to bail.

The court, in its discretion, may allow the accused to continue on provisional liberty under the same bail bond during the period of appeal subject to the consent of the bondsman.

If the court imposed a penalty of imprisonment exceeding six (6) years but not more than twenty (20) years, the accused shall be denied bail, or his bail previously granted shall be canceled, upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That the accused is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;

(b) That the accused is found to have previously escaped from legal confinement, evaded sentence, or has violated the conditions of his bail without valid justification;

[10] Dated October 1, 1994, amending the 1985 Rules of Criminal Procedure.

(c) That the accused committed the offense while on probation, parole, or under conditional pardon;

(d) That the circumstances of the accused or his case indicate the probability if flight of released on bail; or

(e) That there is undue risk that during the pendency of the appeal, the accused may commit another crime.

The appellate court may review the resolution of the Regional Trial Court, on motion and with notice to the adverse party.

As can be gleaned above, the set of circumstances appearing in Section 5, Rule 114 of the Rules of Court brought about by Administrative Circular No. 12-94 has been retained in the present Rules. Notably, it was after the ruling of this Court in *Obosa v. Court of Appeals*[11] that the present provisions of Secs. 5 and 7, Rule 114 of the 2000 Revised Rules of Criminal Procedure became effective.

In canceling petitioner's bail bond and denying his application for bail pending appeal, the trial court and the CA, as well as the OSG in its Comment to the petition, relied on *Obosa v. CA,*[12] where this Court ruled that bail cannot be granted as a matter of right even after an accused, who is charged with a capital offense, appeals his conviction for a non-capital crime. The said case, however, is not applicable. In *Obosa*, the petitioner therein was convicted and applied for bail pending appeal prior to the affectivity of the amendments brought about by Administrative Circular No. 12-94; thus, the set of circumstances, as now seen in the present Rules, was yet to be present. Granting *arguendo* that the present provisions of Section 5, Rule 114 can be made applicable to petitioner Obosa, this Court, in that same case, still deemed him to be disqualified from the grant of bail on the basic reason that, aside from Obosa being convicted of two counts of homicide, circumstances a, b, d and e of Section 5, Rule 114 of the Rules of Court were present. In the present case, as will be discussed later, not one of the

[11] *Supra* note 9.

[12] *Id*.

circumstances that would warrant the denial of bail is present.

Incidentally, magnified in the denial of petitioner's application for bail pending appeal was the reliance of the CA on the judgment of conviction rendered by the trial court. According to the CA, the evidence of guilt of the petitioner, as found by the trial court, was strong, therefore, the provisions of Section 7 of Rule 114 of the 2000 Revised Rules of Criminal Procedure were applicable, the crime charged being murder.

However, it must be remembered that although petitioner was charged with the crime of murder, he was convicted of the crime of homicide. Prior to the said conviction, the trial court, after bail hearing, granted bail to petitioner, thus:

> Accordingly, **for failure of the prosecution to demonstrate that the evidence of guilt of the accused Jose Antonio J. Leviste for the crime of Murder is strong** to foreclose his right to bail, the court hereby grants the motion and, allows the accused to post bail in the amount of ₱300,000.00 for his provisional liberty. Accused shall be discharged or released only upon the approval of his bail by the Court.
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> SO ORDERED.[13]

Ultimately, after the trial of the case, the trial court found petitioner guilty beyond reasonable doubt of the crime of homicide, not murder as originally charged, demonstrating the consistency of the trial court's findings in the bail hearing and in the actual trial of the said case. Nevertheless, the CA, in denying petitioner's application for bail, relied on Section 7, Rule 114 of the Rules of Court insisting that the evidence of guilt of the petitioner was strong. By ruling thus, the CA has not accorded respect to the factual findings of the trial court. It is a time-honored legal precept, in this regard that the findings of fact of the trial court are accorded great respect by appellate courts and should not be disturbed on appeal unless the trial court has overlooked, ignored, or disregarded some fact or circumstance of sufficient weight or significance which, if considered, would alter the

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[13] *Rollo,* p. 197. (Emphasis supplied.)

situation.[14] Moreover, there seems to be a disparity between the pronouncement of the CA that the trial court found the evidence of guilt of the petitioner strong and the explanation of why the former considered it to be so. The CA ruled that:

> From the judgment of conviction rendered by the trial court, **the prosecution had demonstrated that appellant's guilt is strong, after finding that accused failed to satisfy the requirements of self-defense to justify the shooting of the victim.** Said court carefully and meticulously evaluated the evidence on record and ruled that the claim of appellant that the victim was the agressor deserves disbelief considering that evidence at the scene of the crime indicated that the victim could not have fired the gun apparently placed in his hand; appellant's conduct in refusing to be subjected to paraffin test is not the natural tendency of a person claiming self-defense; and neither was appellant threatened or intimidated by the victim's averred pugnacious, quarrelsome or trouble-seeking character of the victim. And even assuming *arguendo* that there was unlawful aggression, the trial court found that the five (5) gunshot wounds (four) [4] shots even aimed at head, a vital organ) were not reasonable means to repel the same, and the evidence demonstrated a determined effort on the part of the appellant to kill the victim and not just to defend himself. **However, appellant was convicted of the lesser offense (homicide) since the qualifying circumstances of treachery, evident premeditation and cruelty or ignominy, alleged in the Amended Information, were not duly proven at the trial.**[15]

The above observation of the CA serves nothing but to bolster the earlier finding of the trial court that the prosecution was not able to present evidence that would prove that the guilt of the petitioner as to the crime charged (murder) was strong. Section 7, Rule 114 of the Rules of Court, clearly mandates that no person **charged** with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong. The provision distinctly refers to the crime charged and not the crime proven.

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[14] *People of the Philippines v. Dizon*, 329 Phil. 685, 695 (1996), citing *People v. Gomez*, 229 SCRA 138 (1994).

[15] *Rollo*, p. 44. (Emphasis supplied.)

The failure then of the prosecution to prove the existence of the circumstances to qualify the crime committed to murder, the crime charged, necessarily means that the evidence of his guilt of the said crime is not strong.

Ideally, what the CA should have done was to consolidate the application for bail with the petition filed before it because it is only in that manner by which the appellate court may ascertain whether the evidence of guilt of the accused for the crime charged is indeed strong, or in reverse, whether the lower court was right in convicting the accused of a lesser offense.

Above all else, the CA should have applied the provisions of Section 5, Rule 114 of the Rules of Court, wherein the appellate court is given the discretion to grant bail to the petitioner after considering the enumerated circumstances, the penalty imposed by the trial court having exceeded six years. Although this Court has held that the discretion to extend bail during the course of the appeal should be exercised with grave caution and for strong reasons, considering that the accused has been in fact convicted by the trial court,[16] the set of circumstances succinctly provided in Section 5, Rule 114 of the Rules of Court should be considered.

The said set of circumstances has been provided as a guide for the exercise of the appellate court's discretion in granting or denying the application for bail, pending the appeal of an accused who has been convicted of a crime where the penalty imposed by the trial court is imprisonment exceeding six (6) years. Otherwise, if it is intended that the said discretion be absolute, no such set of circumstances would have been necessarily included in the Rules. Thus, if the present ruling of the CA is upheld, anyone who has been charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment but convicted by the trial court of a lesser offense, would no longer be able to apply for bail pending one's appeal. And by that premise, the discretion accorded to the appellate court in granting or denying applications for bail for

[16] *Yap, Jr. v. Court of Appeals,* 411 Phil. 190, 202 (2001), citing *Obosa v. Court of Appeals*, *supra* note 9.

those who have been convicted by the trial court with imprisonment exceeding six (6) years as penalty would have to be rendered nugatory and the provisions of Section 5, Rule 114 of the 2000 Revised Rules of Criminal Procedure would also be rendered useless.

Therefore, applying the provisions of Section 5, Rule 114 of the 2000 Revised Rules of Criminal Procedure and after a careful perusal of the records and a learned consideration of the arguments of the parties, this Court finds no reason to deny petitioner his application for bail pending appeal. Petitioner is indisputably not a recidivist, quasi-recidivist, or habitual delinquent, or has he committed the crime aggravated by the circumstance of reiteration. He has also not previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without a valid justification. He did not commit the offense charged while under probation, parole, or conditional pardon. Lastly, as shown by his previous records and pointed out by petitioner,[17] considering his conduct while out on bail during the trial of his case, his advanced age,[18] and his current health condition,[19] the probability of flight is nil and there is no risk that he may commit another crime during the pendency of the appeal.

Also noted by this Court is the letter of the heirs of Rafael de las Alas giving their consent and stating that they have no objection to petitioner's application for bail. Although the said letter or consent can never be a basis for the grant of the application for bail, it serves as a reference for the petitioner's improbability to evade whatever negative result the grant of his appeal might bring. Nonetheless, what governs in this case is the discretion of the appellate court as guided by the provisions of Section 5, Rule 114 of the 2000 Revised Rules of Criminal Procedure.

Necessarily, due to the above discussion, I humbly dissent.

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[17] *Rollo*, p. 22.

[18] 69 years and 7 months old upon the filing of his petition.

[19] Manifestation dated November 25, 2009; *rollo*, pp. 327-328.

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[G.R. No. 191002. March 17, 2010]

ARTURO M. DE CASTRO, *petitioner, vs.* **JUDICIAL AND BAR COUNCIL (JBC) and PRESIDENT GLORIA MACAPAGAL-ARROYO,** *respondents.*

[G.R. No. 191032. March 17, 2010]

JAIME N. SORIANO, *petitioner, vs.* **JUDICIAL AND BAR COUNCIL (JBC),** *respondent.*

[G.R. No. 191057. March 17, 2010]

PHILIPPINE CONSTITUTION ASSOCIATION (PHILCONSA), *petitioner, vs.* **JUDICIAL AND BAR COUNCIL (JBC),** *respondent.*

[A.M. No. 10-2-5-SC. March 17, 2010]

IN RE APPLICABILITY OF SECTION 15, ARTICLE VII OF THE CONSTITUTION TO APPOINTMENTS TO THE JUDICIARY, ESTELITO P. MENDOZA, *petitioner,*

[G.R. No. 191149. March 17, 2010]

JOHN G. PERALTA, *petitioner, vs.* **JUDICIAL AND BAR COUNCIL (JBC),** *respondent.*

PETER IRVING CORVERA;CHRISTIAN ROBERT S. LIM; ALFONSO V. TAN, JR.; NATIONAL UNION OF PEOPLE'S LAWYERS; MARLOU B. UBANO; INTEGRATED BAR OF THE PHILIPPINES-DAVAO DEL SUR CHAPTER, represented by its Immediate Past President, ATTY. ISRAELITO P. TORREON, and the latter in his own personal

capacity as a MEMBER of the PHILIPPINE BAR; MITCHELL JOHN L. BOISER;BAGONG ALYANSANG BAYAN (BAYAN) CHAIRMAN DR. CAROLINA P. ARAULLO; BAYAN SECRETARY GENERAL RENATO M. REYES, JR.; CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE) CHAIRMAN FERDINAND GAITE; KALIPUNAN NG DAMAYANG MAHIHIRAP (KADAMAY) SECRETARY GENERAL GLORIA ARELLANO; ALYANSA NG NAGKAKAISANG KABATAAN NG SAMBAYANAN PARA SA KAUNLARAN (ANAKBAYAN) CHAIRMAN KEN LEONARD RAMOS; TAYO ANG PAG-ASA CONVENOR ALVIN PETERS; LEAGUE OF FILIPINO STUDENTS (LFS) CHAIRMAN JAMES MARK TERRY LACUANAN RIDON; NATIONAL UNION OF STUDENTS OF THE PHILIPPINES (NUSP) CHAIRMAN EINSTEIN RECEDES; COLLEGE EDITORS GUILD OF THE PHILIPPINES (CEGP) CHAIRMAN VIJAE ALQUISOLA; and STUDENT CHRISTIAN MOVEMENT OF THE PHILIPPINES (SCMP) CHAIRMAN MA. CRISTINA ANGELA GUEVARRA;WALDEN F. BELLO and LORETTA ANN P. ROSALES; WOMEN TRIAL LAWYERS ORGANIZATION OF THE PHILIPPINES, represented by YOLANDA QUISUMBING-JAVELLANA; BELLEZA ALOJADO DEMAISIP; TERESITA GANDIONCO-OLEDAN; MA. VERENA KASILAG-VILLANUEVA; MARILYN STA. ROMANA; LEONILA DE JESUS; and GUINEVERE DE LEON, *intervenors.*

[G.R. No. 191342. March 17, 2010]

ATTY. AMADOR Z. TOLENTINO, JR., (IBP Governor-Southern Luzon), and ATTY. ROLAND B. INTING

(IBP Governor-Eastern Visayas), *petitioners, vs.* **JUDICIAL AND BAR COUNCIL (JBC),** *respondent.*

[G.R. No. 191420. March 17, 2010]

PHILIPPINE BAR ASSOCIATION, INC., *petitioner, vs.* **JUDICIAL AND BAR COUNCIL and HER EXCELLENCY GLORIA MACAPAGAL-ARROYO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; *LOCUS STANDI*, DEFINED; DETERMINATION OF THE PARTY'S *LOCUS STANDI* IS REQUIRED IN PUBLIC OR CONSTITUTIONAL LITIGATIONS.—** Black defines *locus standi* as "a right of appearance in a court of justice on a given question." In public or constitutional litigations, the Court is often burdened with the determination of the *locus standi* of the petitioners due to the ever-present need to regulate the invocation of the intervention of the Court to correct any official action or policy in order to avoid obstructing the efficient functioning of public officials and offices involved in public service. It is required, therefore, that the petitioner must have a personal stake in the outcome of the controversy.

2. **ID.; ID.; ID.; ID.; TEST TO DETERMINE WHETHER A PARTY HAS *LOCUS STANDI*.—** It is true that as early as in 1937, in *People v. Vera*, the Court adopted the *direct injury test* for determining whether a petitioner in a public action had *locus standi.* There, the Court held that the person who would assail the validity of a statute must have "a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result."

3. **ID.; ID.; ID.; ID.; INSTANCES WHERE THE COURT WAIVED THE REQUIREMENT OF *LOCUS STANDI*.—** [T]he Court has also held that the requirement of *locus standi*, being a mere procedural technicality, can be waived by the Court in the exercise of its discretion. For instance, in 1949, in *Araneta v.*

Dinglasan, the Court liberalized the approach when the cases had "transcendental importance." Some notable controversies whose petitioners did not pass the *direct injury test* were allowed to be treated in the same way as in *Araneta v. Dinglasan*. In the 1975 decision in *Aquino v. Commission on Elections*, this Court decided to resolve the issues raised by the petition due to their "far-reaching implications," even if the petitioner had no personality to file the suit. The liberal approach of *Aquino v. Commission on Elections* has been adopted in several notable cases, permitting ordinary citizens, legislators, and civic organizations to bring their suits involving the constitutionality or validity of laws, regulations, and rulings.

4. ID.; ID.; ID.; ID.; ASSERTION OF PUBLIC RIGHT TO GAIN *LOCUS STANDI*, EXPLAINED.— [T]he assertion of a public right as a predicate for challenging a supposedly illegal or unconstitutional executive or legislative action rests on the theory that the petitioner represents the public in general. Although such petitioner may not be as adversely affected by the action complained against as are others, it is enough that he sufficiently demonstrates in his petition that he is entitled to protection or relief from the Court *in the vindication of a public right*. Quite often, as here, the petitioner in a public action sues as a *citizen* or *taxpayer* to gain *locus standi*. That is not surprising, for even if the issue may appear to concern only the public in general, such capacities nonetheless equip the petitioner with adequate interest to sue.

5. ID.; ID.; ID.; ID.; REQUISITE *LOCUS STANDI* SHOWN IN CASE AT BAR.— The Court rules that the petitioners have each demonstrated adequate interest in the outcome of the controversy as to vest them with the requisite *locus standi.* The issues before us are of transcendental importance to the people as a whole, and to the petitioners in particular. Indeed, the issues affect everyone (including the petitioners), regardless of one's personal interest in life, because they concern *that* great doubt about the authority of the incumbent President to appoint not only the successor of the retiring incumbent Chief Justice, but also others who may serve in the Judiciary, which already suffers from a far too great number of vacancies in the ranks of trial judges throughout the country.

6. **ID.; ID.; ID.; ID.; CIRCUMSTANCES SHOWING THE RIPENESS OF THE CONTROVERSY FOR JUDICIAL DETERMINATION.—** The ripeness of the controversy for judicial determination may not be doubted. The challenges to the authority of the JBC to open the process of nomination and to continue the process until the submission of the list of nominees; the insistence of some of the petitioners to compel the JBC through *mandamus* to submit the short list to the incumbent President; the counter-insistence of the intervenors to prohibit the JBC from submitting the short list to the incumbent President on the ground that said list should be submitted instead to the next President; the strong position that the incumbent President is already prohibited under Section 15, Article VII from making any appointments, including those to the Judiciary, starting on May 10, 2010 until June 30, 2010; and the contrary position that the incumbent President is not so prohibited are only some of the real issues for determination. All such issues establish the ripeness of the controversy, considering that for some the short list must be submitted *before* the vacancy actually occurs by May 17, 2010. The outcome will not be an abstraction, or a merely hypothetical exercise. The resolution of the controversy will surely settle – with finality – the nagging questions that are preventing the JBC from moving on with the process that it already began, or that are reasons persuading the JBC to desist from the rest of the process.

7. **ID.; ID.; EXECUTIVE DEPARTMENT; MIDNIGHT APPOINTMENTS BAN; THE FRAMERS OF THE CONSTITUTION NEVER INTENDED TO EXTEND THE PROHIBITION AGAINST PRESIDENTIAL APPOINTMENTS UNDER SECTION 15, ARTICLE VII OF THE CONSTITUTION TO THE APPOINTMENT OF MEMBERS OF THE SUPREME COURT.—** The records of the deliberations of the Constitutional Commission reveal that the framers devoted time to meticulously drafting, styling, and arranging the Constitution. Such meticulousness indicates that the organization and arrangement of the provisions of the Constitution were not arbitrarily or whimsically done by the framers, but purposely made to reflect their intention and manifest their vision of what the Constitution should contain. The Constitution consists of 18 Articles, three of which embody the allocation of the awesome powers of

government among the three great departments, the Legislative (Article VI), the Executive (Article VII), and the Judicial Departments (Article VIII). The arrangement was a true recognition of the principle of separation of powers that underlies the political structure. x x x As can be seen, Article VII is devoted to the Executive Department, and, among others, it lists the powers vested by the Constitution in the President. The presidential power of appointment is dealt with in Sections 14, 15 and 16 of the Article. x x x Had the framers intended to extend the prohibition contained in Section 15, Article VII to the appointment of Members of the Supreme Court, they could have explicitly done so. They could not have ignored the meticulous ordering of the provisions. They would have *easily* and *surely* written the prohibition made explicit in Section 15, Article VII as being equally applicable to the appointment of Members of the Supreme Court in Article VIII itself, most likely in Section 4 (1), Article VIII. That such specification was not done only reveals that the prohibition against the President or Acting President making appointments within two months before the next presidential elections and up to the end of the President's or Acting President's term does not refer to the Members of the Supreme Court.

8. **ID.; ID.; ID.; SECTION 4 (1), ARTICLE VIII OF THE CONSTITUTION IS A DEFINITE MANDATE FOR THE PRESIDENT TO APPOINT A MEMBER OF THE SUPREME COURT WITHIN 90 DAYS FROM THE OCCURRENCE OF THE VACANCY.—** [T]he usage in Section 4(1), Article VIII of the word *shall* – an imperative, operating to impose a duty that may be enforced – should not be disregarded. Thereby, Section 4(1) imposes on the President the *imperative duty* to make an appointment of a Member of the Supreme Court within 90 days from the occurrence of the vacancy. The failure by the President to do so will be a clear disobedience to the Constitution. The 90-day limitation fixed in Section 4(1), Article VIII for the President to fill the vacancy in the Supreme Court was undoubtedly a special provision to establish a *definite mandate* for the President as the appointing power, and cannot be defeated by mere judicial interpretation in *Valenzuela* to the effect that Section 15, Article VII prevailed because it was "couched in *stronger negative language*." Such interpretation even turned out to be conjectural, in light of the records of

the Constitutional Commission's deliberations on Section 4 (1), Article VIII.

9. ID.; ID.; ID.; MIDNIGHT APPOINTMENTS BAN; RULING IN *VALENZUELA*, REVERSED.— *Valenzuela* arbitrarily ignored the express intent of the Constitutional Commission to have Section 4 (1), Article VIII stand *independently of* any other provision, least of all one found in Article VII. It further ignored that the two provisions had no irreconcilable conflict, regardless of Section 15, Article VII being couched in the negative. As judges, we are not to unduly interpret, and should not accept an interpretation that defeats the intent of the framers. Consequently, prohibiting the incumbent President from appointing a Chief Justice on the premise that Section 15, Article VII extends to appointments in the Judiciary cannot be sustained. A misinterpretation like *Valenzuela* should not be allowed to last after its false premises have been exposed. It will not do to merely distinguish *Valenzuela* from these cases, for the result to be reached herein is entirely incompatible with what *Valenzuela* decreed. Consequently, *Valenzuela* now deserves to be quickly sent to the dustbin of the unworthy and forgettable. We reverse *Valenzuela.*

10. ID.; ID.; ID.; ID.; SECTION 15, ARTICLE VII OF THE CONSTITUTION DOES NOT APPLY AS WELL TO OTHER APPOINTMENTS IN THE JUDICIARY.— Given the background and rationale for the prohibition in Section 15, Article VII, we have no doubt that the Constitutional Commission confined the prohibition to appointments made in the Executive Department. The framers did not need to extend the prohibition to appointments in the Judiciary, because their establishment of the JBC and their subjecting the nomination and screening of candidates for judicial positions to the unhurried and deliberate *prior* process of the JBC ensured that there would no longer be midnight appointments to the Judiciary. If midnight appointments in the mold of *Aytona* were made in haste and with irregularities, or made by an outgoing Chief Executive in the last days of his administration out of a desire to subvert the policies of the incoming President or for partisanship, the appointments to the Judiciary made after the establishment of the JBC would not be suffering from such defects because of the JBC's prior processing of candidates. Indeed, it is axiomatic in statutory construction that the ascertainment of the purpose

of the enactment is a step in the process of ascertaining the intent or meaning of the enactment, because the reason for the enactment must necessarily shed considerable light on "the law of the statute," *i.e.*, the intent; hence, the enactment should be construed with reference to its intended scope and purpose, and the court should seek to carry out this purpose rather than to defeat it. x x x [T]he non-applicability of Section 15, Article VII to appointments in the Judiciary was confirmed by then Senior Associate Justice Regalado to the JBC itself when it met on March 9, 1998 to discuss the question raised by some sectors about the "constitutionality of xxx appointments" to the Court of Appeals in light of the forthcoming presidential elections. He assured that "on the basis of the (Constitutional) Commission's records, the election ban had no application to appointments to the Court of Appeals."

11. ID.; ID.; ID.; ID.; THE FACT THAT SECTIONS 14 AND 16, ARTICLE VII REFER ONLY TO APPOINTMENTS WITHIN THE EXECUTIVE DEPARTMENT RENDERS CONCLUSIVE THAT SECTION 15 APPLIES ONLY TO EXECUTIVE DEPARTMENT.— Of the 23 sections in Article VII, three (*i.e.*, Section 14, Section15, and Section 16) concern the appointing powers of the President. Section 14 speaks of the power of the *succeeding* President to revoke appointments made by an Acting President, and evidently refers only to appointments in the Executive Department. It has no application to appointments in the Judiciary, because *temporary* or *acting* appointments can only undermine the independence of the Judiciary due to their being revocable at will. The letter and spirit of the Constitution safeguard that independence. Also, there is no law in the books that authorizes the *revocation* of appointments in the Judiciary. Prior to their mandatory retirement or resignation, judges of the first and second level courts and the Justices of the third level courts may only be removed for cause, but the Members of the Supreme Court may be removed only by impeachment. Section 16 covers only the presidential appointments that require confirmation by the Commission on Appointments. Thereby, the Constitutional Commission restored the requirement of confirmation by the Commission on Appointments after the requirement was removed from the 1973 Constitution. Yet, because of Section 9 of Article VIII, the restored requirement did not include appointments to the

Judiciary. Section 14, Section 15, and Section 16 are obviously of the same character, in that they affect the power of the President to appoint. The fact that Section 14 and Section 16 refer only to appointments within the Executive Department renders conclusive that Section 15 also applies only to the Executive Department. This conclusion is consistent with the rule that every part of the statute must be interpreted with reference to the context, *i.e.* that every part must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. It is absurd to assume that the framers deliberately situated Section 15 *between* Section 14 and Section 16, if they intended Section 15 to cover *all* kinds of presidential appointments. If that was their intention in respect of appointments to the Judiciary, the framers, if only to be clear, would have easily and surely inserted a similar prohibition in Article VIII, most likely within Section 4 (1) thereof.

12. **ID.; ID.; ID.; ID.; TO HOLD THAT SECTION 15 EXTENDS TO APPOINTMENTS TO THE JUDICIARY UNDERMINES THE INTENT OF THE CONSTITUTION OF ENSURING THE INDEPENDENCE OF THE THREE DEPARTMENTS.—** To hold like the Court did in *Valenzuela* that Section 15 extends to appointments to the Judiciary further undermines the intent of the Constitution of ensuring the independence of the Judicial Department from the Executive and Legislative Departments. Such a holding will tie the Judiciary and the Supreme Court to the fortunes or misfortunes of political leaders vying for the Presidency in a presidential election. Consequently, the wisdom of having the new President, instead of the current incumbent President, appoint the next Chief Justice is itself suspect, and cannot ensure judicial independence, because the appointee can also become beholden to the appointing authority. In contrast, the appointment by the incumbent President does not run the same risk of compromising judicial independence, precisely because her term will end by June 30, 2010.

13. **ID.; ID.; ID.; ID.; AUTHORITY OF THE OUTGOING PRESIDENT TO APPOINT NEW CHIEF JUSTICE OF THE SUPREME COURT WITHIN THE PERIOD OF PROHIBITION STATED IN SECTION 15, ARTICLE VII, UPHELD; CASE AT BAR.—** The argument has been raised to the effect that there will be no need for the incumbent President to appoint during the prohibition period the successor of Chief Justice Puno within

the context of Section 4 (1), Article VIII, because anyway there will still be about 45 days of the 90 days mandated in Section 4(1), Article VIII remaining. The argument is flawed, because it is focused only on the coming vacancy occurring from Chief Justice Puno's retirement by May 17, 2010. It ignores the need to apply Section 4(1) to *every* situation of a vacancy in the Supreme Court. The argument also rests on the fallacious assumption that there will still be time remaining in the 90-day period under Section 4(1), Article VIII. The fallacy is easily demonstrable, as the OSG has shown in its comment. Section 4 (3), Article VII requires the regular elections to be held on the second Monday of May, letting the elections fall on May 8, at the earliest, or May 14, at the latest. If the regular presidential elections are held on May 8, the period of the prohibition is 115 days. If such elections are held on May 14, the period of the prohibition is 109 days. Either period of the prohibition is longer than the full mandatory 90-day period to fill the vacancy in the Supreme Court. The result is that there are *at least* 19 occasions (*i.e.*, the difference *between* the *shortest possible period* of the ban of 109 days *and* the 90-day mandatory period for appointments) in which the outgoing President would be in no position to comply with the constitutional duty to fill up a vacancy in the Supreme Court. It is safe to assume that the framers of the Constitution could not have intended such an absurdity. In fact, in their deliberations on the mandatory period for the appointment of Supreme Court Justices under Section 4 (1), Article VIII, the framers neither discussed, nor mentioned, nor referred to the ban against midnight appointments under Section 15, Article VII, or its effects on the 90-day period, or *vice versa*. They did not need to, because they never intended Section 15, Article VII to apply to a vacancy in the Supreme Court, or in any of the lower courts.

14. **ID.; ID.; JUDICIAL DEPARTMENT; TO RELY ON SECTION 12 OF THE JUDICIARY ACT OF 1948 IN ORDER TO FORESTALL THE NEED TO APPOINT THE NEXT CHIEF JUSTICE SOONEST IS TO DEFY THE INTENT OF THE CONSTITUTION.—** A review of Sections 4(1) and 9 of Article VIII shows that the Supreme Court is composed of a Chief Justice and 14 Associate Justices, who all shall be appointed by the President from a list of at least three nominees prepared by the JBC for every vacancy, which appointments require no

confirmation by the Commission on Appointments. With reference to the Chief Justice, he or she is appointed by the President as Chief Justice, and the appointment is never in an acting capacity. The express reference to a Chief Justice abhors the idea that the framers contemplated an *Acting* Chief Justice to head the membership of the Supreme Court. Otherwise, they would have simply written so in the Constitution. Consequently, to rely on Section 12 of the Judiciary Act of 1948 in order to forestall the imperative need to appoint the next Chief Justice soonest is to defy the plain intent of the Constitution. For sure, the framers intended the position of Chief Justice to be permanent, not one to be occupied in an acting or temporary capacity. In relation to the scheme of things under the present Constitution, Section 12 of the Judiciary Act of 1948 only responds to a rare situation in which the new Chief Justice is not yet appointed, or in which the incumbent Chief Justice is unable to perform the duties and powers of the office. It ought to be remembered, however, that it was enacted because the Chief Justice appointed under the 1935 Constitution was subject to the confirmation of the Commission on Appointments, and the confirmation process might take longer than expected. The appointment of the next Chief Justice by the incumbent President is preferable to having the Associate Justice who is first in precedence take over. Under the Constitution, the heads of the Legislative and Executive Departments are popularly elected, and whoever are elected and proclaimed at once become the leaders of their respective Departments. However, the lack of any appointed occupant of the office of Chief Justice harms the independence of the Judiciary, because the Chief Justice is the head of the entire Judiciary. The Chief Justice performs functions absolutely significant to the life of the nation. With the entire Supreme Court being the Presidential Electoral Tribunal, the Chief Justice is the Chairman of the Tribunal. There being no obstacle to the appointment of the next Chief Justice, aside from its being mandatory for the incumbent President to make within the 90-day period from May 17, 2010, there is no justification to insist that the successor of Chief Justice Puno be appointed by the next President.

15. ID.; ID.; ID.; JUDICIAL AND BAR COUNCIL (JBC); DUTY OF THE JBC TO SUBMIT TO THE PRESIDENT THE LIST OF NOMINEES TO FILL THE VACANCY IN THE SUPREME

COURT, EXPLAINED.— Under the Constitution, it is mandatory for the JBC to submit to the President the list of nominees to fill a vacancy in the Supreme Court in order to enable the President to appoint one of them *within* the 90-day period from the occurrence of the vacancy. The JBC has no discretion to submit the list to the President *after* the vacancy occurs, because that shortens the 90-day period allowed by the Constitution for the President to make the appointment. For the JBC to do so will be unconscionable on its part, considering that it will thereby *effectively* and *illegally* deprive the President of the ample time granted under the Constitution to reflect on the qualifications of the nominees named in the list of the JBC before making the appointment. The duty of the JBC to submit a list of nominees *before* the start of the President's mandatory 90-day period to appoint is ministerial, but its selection of the candidates whose names will be in the list to be submitted to the President lies within the discretion of the JBC.

16. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; NATURE AND REQUISITES.—** *Mandamus* shall issue when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act that the law specifically enjoins as a duty resulting from an office, trust, or station. It is proper when the act against which it is directed is not one addressed to the discretion of the tribunal or officer. *Mandamus* is not available to direct the exercise of a judgment or discretion in a particular way. For *mandamus* to lie, the following requisites must be complied with: (*a*) the plaintiff has a clear legal right to the act demanded; (*b*) it must be the duty of the defendant to perform the act, because it is mandated by law; (*c*) the defendant unlawfully neglects the performance of the duty enjoined by law; (*d*) the act to be performed is ministerial, not discretionary; and (*e*) there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.

17. **ID.; ID.; ID.; THE PETITION FOR *MANDAMUS* IS PREMATURE.—** [W]e find no sufficient grounds to grant the petitions for *mandamus* and to issue a writ of *mandamus* against the JBC. The actions for that purpose are premature, because it is clear that the JBC still has until May 17, 2010, *at the latest*, within which to submit the list of nominees to the President to fill the vacancy created by the compulsory retirement of Chief Justice Puno.

18. ID.; ID.; PROHIBITION; A WRIT OF PROHIBITION DOES NOT LIE AGAINST THE JBC.— Soriano's petition for prohibition in G.R. No. 191032, which proposes to prevent the JBC from intervening in the process of nominating the successor of Chief Justice Puno, lacks merit. x x x [T]he petition for prohibition in G.R. No. 191342 is similarly devoid of merit. The challenge mounted against the composition of the JBC based on the allegedly unconstitutional allocation of a vote each to the *ex oficio* members from the Senate and the House of Representatives, thereby prejudicing the chances of some candidates for nomination by raising the minimum number of votes required in accordance with the rules of the JBC, is not based on the petitioners' actual interest, because they have not alleged in their petition that they were nominated to the JBC to fill some vacancies in the Judiciary.

ABAD, *J.*, *concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; AN ACTUAL CONTROVERSY IS RIPE FOR ADJUDICATION IN CASE AT BAR.— Under the circumstances, the controversy is already ripe for adjudication for, assuming that the ban on midnight appointment does not apply to the judiciary as the petitioners would have it, then the JBC's suspension of its selection process would constitute a violation of its duty under the Constitution to carry on with such process until it is able to submit the desired list to the incumbent President. x x x As mandated by the Constitution, the incumbent President should be able to fill up the vacancy within 90 days of its occurrence. This presupposes that the incumbent President should have the list on or before May 17, the day the vacancy occurs, so she can comply with her duty under the Constitution to make the appointment within the 90-day period provided by it. Of course, the circumstances is such that the period for appointing the Chief Justice's replacement will span the tenure of the incumbent President (for 44 days) and her successor (for 46 days), but it is the incumbent's call whether to exercise the power or pass it on. Again, assuming as correct petitioners' view that the ban on midnight appointments does not apply to the judiciary, the JBC's suspension of its selection process places it in default, given its above duty in regard to the submission of its list of nominees to the President within a time constraint. Under the

same assumption, moreover, the petitioner citizens and members of the bar would have a demandable right or interest in having the JBC proceed with its selection process and submit its list of nominees in time for the incumbent President or her successor to fill up the vacancy within the period required by the Constitution.

2. **ID.; ID.; ID.; JUDICIAL AND BAR COUNCIL (JBC); RESTRICTION ON THE PRESIDENT'S APPOINTING POWER TO CHOOSE HIS APPOINTEE ONLY FROM THE JBC SHORT LIST, EXPLAINED.—** [W]hile the President can freely choose to appoint any person who meets the basic qualifications for a position in the Executive Department, he does not have such freedom of choice when it comes to appointments in the judiciary. In the latter case, the Constitution provides in Section 9 of Article VIII that the President can choose his appointee only from a JBC short list of its nominees. x x x This restriction on the President's appointing power is not a small matter. First. The JBC from whose list of nominees the President will make his appointment is under the supervision of the Supreme Court itself. Indeed, it is headed by the Chief Justice as its presiding officer. The JBC is not a subordinate agency of the Executive Department; the President has neither control nor supervision over it. Second. The JBC makes its own vetting rules and procedures. The Constitution of course provides for the qualifications of members of the judiciary but this has not prevented the JBC from establishing grounds for disqualifying candidates, such as the pendency of administrative or criminal cases against them. Third. The JBC announces any vacancy in the judiciary in newspapers of large circulations. Secret recruitment and trading for votes in the coming elections is out. Fourth. Anyone who has the basic qualifications can apply for a vacancy or be nominated to it. Thus, the opportunity to be recommended by the JBC for appointment is open or otherwise unrestricted. Political connection is not a consideration that the JBC entertains in short listing its nominees. Fifth. The JBC invites the public to comment on or submit opposition to the nomination of candidates to a vacancy. And it holds public hearings in which each candidate is queried about his qualifications, affiliations, and other personal circumstances. Sixth. The names in the list submitted by the JBC to the President are not negotiable. x x x Thus, the incumbent

President was forced to choose from the few names on the list that she had. In reality, a President's choice of Chief Justice is in fact first a choice of the JBC before it is that of the President. Easily there should at least be 20,000 lawyers who are 40 years of age and have 15 years of law practice of some kind who could qualify for Chief Justice. Yet, the President can choose only from a list of three, four, or five lawyers that the JBC draws up for him. Consequently, the idea that the outgoing incumbent President can take advantage of her appointment of a Chief Justice to buy votes in the coming elections is utterly ridiculous. She has no control over the JBC's actions.

NACHURA, *J.*, *separate opinion*:

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; ACTUAL CASE OR CONTROVERSY, EXPLAINED.—** As an essential ingredient for the exercise of the power of judicial review, an **actual case or controversy** involves a conflict of legal rights, an assertion of opposite legal claims susceptible to judicial resolution. The controversy must be **justiciable**—definite and concrete—touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on one hand, and a denial thereof, on the other; that is, the case must concern a real and not a merely theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. The rationale for this requirement is to prevent the courts through avoidance of premature adjudication from entangling themselves in abstract disagreements, and for us to be satisfied that the case does not present a hypothetical injury or a claim contingent upon some event that has not and indeed may never transpire.

2. **ID.; ID.; ID.; ID.; REQUISITES OF JUSTICIABILITY.— [J]usticiability** requires (1) that there be an actual controversy between or among the parties to the dispute; (2) that the interests of the parties be adverse; (3) that the matter in controversy be capable of being adjudicated by judicial power; and (4) that the determination of the controversy will result in practical relief to the complainant.

3. ID.; ID.; ID.; ID.; THERE IS NO ACTUAL CONTROVERSY THAT IS RIPE FOR JUDICIAL DETERMINATION IN CASE AT BAR.— [T]he Court does not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging. While Mendoza and the other petitioners espouse worthy causes, they have presented before this Court issues which are still subject to **unforeseen** possibilities. In other words, the issues they raised are **hypothetical and unripe for judicial determination**. At this point, **several contingent events are still about to unfold**. The JBC, after it has screened the applicants, may decide to submit the shortlist of nominees either before or after the retirement of Chief Justice Puno. If it decides to submit the list after May 17, 2010, it may opt to transmit said list of nominees to President Macapagal-Arroyo or to the next President. If the list is transmitted to her, the incumbent President may **either appoint or not appoint** the replacement of Chief Justice Puno. We cannot assume that the JBC will do one thing or the other. Neither can we truly predict what the incumbent President will do if such a shortlist is transmitted to her. For us to do so would be to engage in conjecture and to undertake a purely hypothetical exercise. **Thus, the situation calling for the application of either of the conflicting constitutional provisions will arise only when still other contingent events occur**. What if the JBC does not finish the screening process during the subject period? What if the President does not make the appointment? Verily, these consolidated petitions involve "uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all," similar to the recently decided *Lozano v. Nograles*, which this Court dismissed through the pen of Chief Justice Puno. **As no positive act has yet been committed by respondents, the Court must not intervene**. Again, to borrow the words of Chief Justice Puno in *Lozano*, "judicial review is effective largely because it is not available simply at the behest of a partisan faction, but is exercised only to remedy a particular, concrete injury." x x x Here, as shown above, no positive act has been performed by either the JBC or the President to warrant judicial intervention. To repeat for emphasis, before this Court steps in to wield its awesome power of deciding cases, there must first be an **actual controversy ripe for judicial adjudication**. Here, the allegations in all the petitions are conjectural or anticipatory. No actual controversy between real litigants exists. These consolidated petitions, in other words,

are a "purely academic exercise." Hence, any resolution that this Court might make would constitute an attempt at abstraction that can only lead to barren legal dialectics and sterile conclusions unrelated to actualities. x x x **The Court must not be unduly burdened with petitions raising abstract, hypothetical, or contingent questions.**

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS* DOES NOT LIE.— It is clear from the narrated facts that there is yet no list to submit. The JBC is still in the process of screening applicants for the position. Since there is no list to be submitted, there can be no deferment of its submission. De Castro and Peralta have not shown or even alleged that the JBC **has refused or has been unlawfully neglecting** to submit its list, if it is already in existence, to the incumbent President. *Mandamus* is proper only to compel the performance, **when refused**, of a ministerial duty. The *mandamus* petition therefore has no leg to stand on as it presents no actual case ripe for judicial determination.

5. ID.; ID.; PROHIBITION; PREMATURE.— [A]bsent a shortlist of nominees for Chief Justice prepared by the JBC, there is yet nothing that the Court can prohibit the JBC from **submitting** to the incumbent President. The JBC has not even intimated concretely that it will perform the act sought to be prohibited—submitting a list to the incumbent President. The JBC merely started the screening process. Let it be noted that a writ of prohibition is issued to command a respondent to desist from further proceeding in the action or matter specified. Likewise, without a shortlist, there is nothing that this Court can mandate the JBC to submit to the President.

6. ID.; ID.; DECLARATORY RELIEF; A PLEA TO INTERPRET TWO CONFLICTING CONSTITUTIONAL PROVISIONS FOR THE GUIDANCE OF THE JBC IS IN THE NATURE OF A DECLARATORY RELIEF.— As to the petition filed by Estelito Mendoza, while it is captioned as an administrative matter, **the same is in the nature of a petition for declaratory relief**. Mendoza pleads that this Court interpret two apparently conflicting provisions of the Constitution—Article VII, Section 15 and Article VIII, Section 4(1). Petitioner Mendoza specifically prays for such a ruling "**for the guidance of the [JBC]**," a relief evidently in the nature of a declaratory judgment.

BRION, *J.*, *separate opinion*:

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUISITE BEFORE THE COURT MAY EXERCISE ITS JUDICIAL POWER, ELUCIDATED.—** The basic requisite before this Court can rule is the presence of an actual case calling for the exercise of judicial power. This is a requirement that the Constitution itself expressly imposes; in granting the Court judicial power and in defining the grant, the Constitution expressly states that judicial power includes the duty to settle ***actual*** controversies involving rights which are legally demandable and enforceable. Thus, the Court does not issue advisory opinions, nor do we pass upon hypothetical cases, feigned problems or friendly suits collusively arranged between parties without real adverse interests. Courts cannot adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging they may be. As a condition precedent to the exercise of judicial power, an actual controversy between litigants must first exist. An actual case or controversy exists when a case involves a clash of legal rights or an assertion of opposite legal claims that the courts can resolve through the application of law and jurisprudence. The case cannot be abstract or hypothetical as it must be a concrete dispute touching on the legal relations of parties having adverse legal interests. A justiciable controversy admits of specific relief through a decree that is conclusive in character, whereas an opinion only advises what the law would be upon a hypothetical state of facts. An actual case is ripe for adjudication when the act being challenged has a direct adverse effect on the individual challenging it.

2. **ID.; ID.; ID.; ID.; THE PETITION FOR *CERTIORARI* AND *MANDAMUS* FAILS TO PRESENT ANY JUSTICIABLE CONTROVERSY.—** On its face, this petition fails to present any justiciable controversy that can be the subject of a ruling from this Court. **As a petition for *certiorari***, it must first show as a minimum requirement that the JBC is a tribunal, board or officer exercising judicial or quasi-judicial functions and is acting outside its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. **A petition for *mandamus*,** on the other hand, at the very least must show that a tribunal, corporation, board or officer unlawfully neglects the performance of an act which the law specifically enjoins as a

duty." The petition facially fails to characterize the JBC as a council exercising judicial or quasi-judicial functions, and in fact states that the JBC does not have any judicial function. It cannot so characterize the JBC because it really does not exercise judicial or quasi-judicial functions. It is not involved in the determination of rights and obligations based on the constitution, laws and regulations; it is an administrative body under the supervision of the Supreme Court and was created principally to nominate appointees to the Judiciary. As such, it deals solely with the screening of applicants who wish to have the privilege of applying for judicial positions. x x x Given these timelines and the May 17, 2010 vacancy date – considered with the allegations regarding the nature of the JBC's functions and its actions that we are asked to judicially notice – the De Castro petition filed on February 9, 2010 clearly does not present a justiciable case for the issuance of a writ of *certiorari*. The petition cannot make an incorrect and misleading characterization of the JBC action, citing our judicial notice as basis, and then proceed to claim that grave abuse of discretion has been committed. The study of the question of submitting a list to the President in the JBC's step-by-step application and nomination process is not a grave abuse of discretion simply because the petition calls it so for purposes of securing a justiciable case for our consideration. Since the obligation to submit a list will not accrue until immediately before or at the time the vacancy materializes (as the petition's prayer in fact admits), no duty can likewise be said to have as yet been neglected or violated to serve as basis for the special civil action of *mandamus*. The JBC's study of the applicable constitutional issue, as part of the JBC's nomination process, cannot be "tantamount to a refusal to perform its constitutionally-mandated duty." *Presently, what exists is a purely potential controversy that has not ripened into a concrete dispute where rights have been violated or can already be asserted.*

3. ID.; ID.; ID.; ID.; THE PETITIONS FOR PROHIBITION PRESENT ACTUAL CONTROVERSIES THAT ARE RIPE FOR ADJUDICATION.— In the simplest terms, the JBC – by its own admission in its Comment and by Soriano's and Tolentino's own admissions in their petitions – is now in the process of preparing its submission of nominees for the vacancy to be created by the retirement of the incumbent Chief Justice, and

has already completed the initial phases of this preparation. Soriano and Tolentino want to stop this process and compel the JBC to immediately discontinue its activities, apparently on the theory that nomination is part of the appointment process. While their cited grounds and the intrinsic merits of these grounds vary, the Soriano and Tolentino petitions, on their faces, present actual justiciable controversies that are ripe for adjudication. Section 15, Article VII of the Constitution embodies a ban against appointments by the incumbent President two months before the election up to the end of her term. A ruling from this Court (*Valenzuela*) is likewise in place confirming the validity of this ban against the Judiciary, or at least against the appointment of lower court judges. A vacancy in the position of Chief Justice will occur on May 17, 2010, within the period of the ban, and the JBC is admittedly preparing the submission of its list of nominees for the position of Chief Justice to the President. Under the terms of Section 15, Article VII and the obtaining facts, a *prima facie* case exists supporting the petition for violation of the election ban.

4. **ID.; ID.; EXECUTIVE DEPARTMENT; THE AUTHORITY TO APPOINT THE CHIEF JUSTICE IS LODGED IN THE PRESIDENT.—** History tells us that, without exception, the Chief Justice of the Supreme Court has always been appointed by the head of the Executive Department. x x x The Chief Justices under the American regime were appointed by the President of the United States; one Chief Justice each was appointed under the Commonwealth and under the Japanese Military Administration; and thereafter all the Chief Justices were appointed by the Philippine President. In every case, the appointing authority was the Chief Executive. The use of the generic term "Members of the Supreme Court" under Section 9, Article VIII in delineating the appointing authority under the 1987 Constitution, is not new. This was the term used in the present line of Philippine Constitutions, from 1935 to 1987, and the inclusion of the Chief Justice with the general term "Member of the Court" has never been in doubt. In fact, Section 4(1) of the present Constitution itself confirms that the Chief Justice is a Member of the Court when it provides that the Court *"may sit en banc or, in its discretion, in divisions of three, five, or seven Members."* The Chief Justice is a Member of the *En Banc* and of the First Division – in fact, he is the

Chair of the *En Banc* and of the First Division – but even as Chair is counted in the total membership of the *En Banc* or the Division for all purposes, particularly of quorum. Thus, at the same time that Section 4(1) speaks of a "Supreme Court. . . composed of one Chief Justice and fourteen Associate Justices," it likewise calls all of them Members in defining how they will sit in the Court. Thus, both by law and history, the Chief Justice has always been a Member of the Court – although, as a *primus inter pares* – appointed by the President together with every other Associate Justice.

5. ID.; ID.; SECTION 15, ARTICLE VII *VIS-À-VIS* SECTIONS 4(1) AND 9, ARTICLE VIII, CONSTRUED; CONFLICT BETWEEN THESE PROVISIONS EXISTS WHEN THEY OPERATE IN TANDEM OR AGAINST ONE ANOTHER.— Section 15 on its face disallows any appointment in clear negative terms (*shall not make*) without specifying the appointments covered by the prohibition. From this literal reading springs the argument that no exception is provided (except the exception found in Section 15 itself) so that even the Judiciary is covered by the ban on appointments. On the other hand, Section 4(1) is likewise very clear and categorical in its terms: any vacancy in the Court *shall be filled within 90 days from its occurrence*. In the way of Section 15, Section 4(1) is also clear and categorical and provides no exception; the appointment refers solely to the Members of the Supreme Court and does not mention any period that would interrupt, hold or postpone the 90-day requirement. Section 9 may offer more flexibility in its application as the mandate for the President is to issue appointments within 90 days *from submission* of the list, without specifying when the submission should be made. From their wordings, urgency leaps up from Section 4(1) while no such message emanates from Section 9; in the latter the JBC appears free to determine when a submission is to be made, obligating the President to issue appointments within 90 days from the submission of the JBC list. From this view, the appointment period under Section 9 is one that is flexible and can move. Thus, in terms of conflict, Sections 4(1) and Sections 15 can be said to be directly in conflict with each other, while a conflict is much less evident from a comparison of Sections 9 and 15. This conclusion answers the *verba legis* argument of the Peralta petition that when the words or terms of a statute or provision

is clear and unambiguous, then no interpretation is necessary as the words or terms shall be understood in their ordinary meaning. In this case, the individual provisions, in themselves, are clear; the conflict surfaces when they operate in tandem or against one another.

6. ID.; ID.; ID.; MIDNIGHT APPOINTMENT BAN; *VALENZUELA'S* APPLICATION TO THE FILING UP OF A VACANCY IN THE SUPREME COURT IS A MERE *OBITER DICTUM*.— What appears very clear from the [Valenzuela] decision, however, is that the factual situation the Court ruled upon, in the exercise of its supervision of court personnel, was the appointment by the President *of two RTC judges* during the period of the ban. It is clear from the decision, too, that no immediate appointment was ever made to the Court for the replacement of retired Justice Ricardo Francisco as the JBC failed to meet on the required nominations prior to the onset of the election ban. [I]t appears clear to me that *Valenzuela* should be read and appreciated for what it is – a ruling made *on the basis of the Court's supervision over judicial personnel* that upholds the election ban as against the appointment of lower court judges appointed pursuant to the period provided by Section 9 of Article VIII. Thus, *Valenzuela's* application to the filling up of a vacancy in the Supreme Court is a mere *obiter dictum* as the Court is largely governed by Section 4(1) with respect to the period of appointment. The Section 4(1) period, of course and as already mentioned above, has impact uniquely its own and different from that created by the period provided for the lower court under Section 9.

7. ID.; ID.; ID.; ID.; THE IMPORTANCE OF EVERY MEMBER AND A SITTING CHIEF JUSTICE IS THE COMPELLING REASON WHY APPOINTMENT IN THE SUPREME COURT SHOULD BE EXEMPT FROM THE COVERAGE OF THE ELECTION BAN.— The Chief Justice is the head of the Judiciary in the same manner that the President is the Chief Executive and the Senate President and the Speaker of the House head the two Houses of Congress. The Constitution ensures, through clear and precise provisions, that continuity will prevail in every branch by defining how replacement and turnover of power shall take place. Thus, after every election to be held in May, a turn over of power is mandated on the following 30th of June for all elective officials. For the Supreme Court where continuity

is by the appointment of a replacement, the Constitution requires that the replacement Member of the Court, including the Chief Justice, should be appointed within 90 days from the occurrence of the vacancy. This is the sense of urgency that the Constitution imparts and is far different from the appointment of the justices and judges of the lower courts where the requirement is 90 days from the JBC's submission of its list. This constitutional arrangement is what the application of Section 15, Article VII to the appointment of Members of the Supreme Court will displace. The Peralta petition argues that the appointment of a Chief Justice is not all that important because the law anyway provides for an Acting Chief Justice. While this is arguably true, Peralta misunderstands the true worth of a duly appointed Chief Justice. He forgets, too, that a Supreme Court without a Chief Justice in place is not a whole Supreme Court; it will be a Court with only 14 members who would act and vote on all critical matters before it. The importance of the presence of one Member of the Court can and should never be underestimated, particularly on issues that may gravely affect the nation. Many a case has been won or lost on the basis of one vote. On an issue of the constitutionality of a law, treaty or statute, a tie vote – which is possible in a 14 member court – means that the constitutionality is upheld. This was our lesson in *Isagani Cruz v. DENR Secretary*. More than the vote, Court deliberation is the core of the decision-making process and one voice is less is not only a vote less but a contributed opinion, an observation, or a cautionary word less for the Court. One voice can be a big difference if the missing voice is that of the Chief Justice. Without meaning to demean the capability of an Acting Chief Justice, the ascendancy in the Court of a permanent sitting Chief Justice cannot be equaled. He is the first among equals – a *primus inter pares* – who sets the tone for the Court and the Judiciary, and who is looked up to on all matters, whether administrative or judicial. To the world outside the Judiciary, he is the personification of the Court and the whole Judiciary. And this is not surprising since, as Chief Justice, he not only chairs the Court *en banc*, but chairs as well the Presidential Electoral Tribunal that sits in judgment over election disputes affecting the President and the Vice-President. Outside of his immediate Court duties, he sits as Chair of the Judicial and Bar Council, the Philippine Judicial Academy and, by constitutional command, presides over the impeachment of the President. To

be sure, the Acting Chief Justice may be the ablest, but he is not the Chief Justice without the mantle and permanent title of the Office, and even his presence as Acting Chief Justice leaves the Court with one member less. Sadly, this member is the Chief Justice; even with an Acting Chief Justice, the Judiciary and the Court remain headless.

8. **ID.; ID.; ID.; ID.; THE ELECTION BAN IMPOSED BY SECTION 15, ARTICLE VII SHALL APPLY TO APPOINTMENT OF LOWER COURT JUSTICES AND JUDGES.—** [A]n interpretation that Section 15, Article VII will similarly prevail over Section 4(1), Article VIII is clearly misplaced. The structure, arrangement and intent of the Constitution and the public policy reasons behind them simply speak against the interpretation that appointments of Members of the Court should be subject to the election ban. These are all discussed above and need not be repeated here. Principles of constitutional interpretation, too, militate against an interpretation that would give primacy to one branch of government over another in the absence of very compelling reasons. Each branch of government is in place for a particular reason and each one should be given every opportunity to operate to its fullest capacity and potential, again unless very compelling reasons exist for the primacy of one over the other. No such compelling reason so far exists or has been cited. Based on the values that the disputed provisions embody, what we need to balance are the integrity of our electoral process and the protection needed to achieve this goal, as against the Judiciary's need for independence and strength enforced through a Supreme Court that is at its full strength. To be sure, the nation and our democracy need one as well as the other, for ultimately both contribute to our overall national strength, resiliency, and stability. Thus, we must, to the extent possible, give force and effect to both and avoid sacrificing one for the other. To do this and to achieve the policy of insulating our constitutional process from the evils of vote-buying, influence peddling and other practices that affect the integrity of our elections, while at the same time recognizing the Judiciary's and the nation's need to have a full Supreme Court immediately after a vacancy occurs, Section 4(1) of Article VIII should be recognized as a narrow exception granted to the Judiciary in recognition of its proven needs. This is a narrow exception as the election ban of Section 15, Article VII, shall

apply with full force and effect on the appointment of lower court justices and judges.

CARPIO MORALES, *J.*, *dissenting opinion*:

1. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTRUCTION; CONSTITUTIONAL DRAFTSMANSHIP STYLE IS THE WEAKEST AID IN ARRIVING AT A CONSTITUTIONAL CONSTRUCTION.—** It is unfortunate that the *ponencia* chiefly relies on the trivialities of draftsmanship style in arriving at a constitutional construction. The petitioner in *Anak Mindanao Party-List Group v. The Executive Secretary* raised a similar argument, but the Court held: x x x **It is a precept, however, that inferences drawn from title, chapter or section headings are entitled to very little weight. And so must reliance on sub-headings, or the lack thereof, to support a strained deduction be given the weight of helium**. Secondary aids may be consulted to remove, not to create doubt. AMIN's thesis unsettles, more than settles the order of things in construing the Constitution. **Its interpretation fails to clearly establish that the so-called "ordering" or arrangement of provisions in the Constitution was consciously adopted to imply a signification in terms of government hierarchy from where a constitutional mandate can *per se* be derived or asserted. It fails to demonstrate that the "ordering" or layout was not simply a matter of style in constitutional drafting but one of intention in government structuring.** With its inherent ambiguity, the proposed interpretation cannot be made a basis for declaring a law or governmental act unconstitutional.
2. **ID.; ID.; ID.; THE ALLOCATION OF THREE ARTICLES IN THE CONSTITUTION TO THE THREE DEPARTMENTS WAS ADOPTED IN RECOGNITION OF THE PRINCIPLE OF SEPARATION OF POWERS.—** [T]he allocation of three Articles in the Constitution devoted to the respective dynamics of the three Departments was deliberately adopted by the framers to allocate the vast powers of government among the three Departments in recognition of the principle of separation of powers. The equation, however, does not end there. Such kind of formulation detaches itself from the concomitant system of checks and balances. Section sequencing alone of Sections 14, 15 and 16 of Article VII, as explained in the **<u>fourth ratiocination</u>**, does not suffice to signify functional structuring.

That the power of judicial appointment was lodged in the President is a recognized measure of limitation on the power of the judiciary, which measure, however, is counterbalanced by the election ban due to the need to insulate the judiciary from the political climate of presidential elections. To abandon this interplay of checks and balances on the mere inference that the establishment of the JBC could de-politicize the process of judicial appointments lacks constitutional mooring.

3. **ID.; ID.; EXECUTIVE DEPARTMENT; MIDNIGHT APPOINTMENTS BAN; THE CLEAR INTENT OF THE FRAMERS OF THE CONSTITUTION IS FOR THE BAN ON MIDNIGHT APPOINTMENTS TO APPLY TO THE JUDICIARY.— The constitutional prohibition in Section 15 found its roots in the case of *Aytona v. Castillo***, where among the "midnight" or "last minute" appointments voided to abort the abuse of presidential prerogatives or partisan efforts to fill vacant positions were <u>one in the Supreme Court</u> and two in the Court of Appeals. Heeding *Aytona*'s admonition, the Constitutional Commission (ConCom) saw it fit to provide for a comprehensive ban on midnight appointments, finding that the establishment of the JBC is not enough to safeguard or insulate judicial appointments from politicization. The ConCom deliberations reveal: x x x <u>The clear intent of the framers is thus for the ban on midnight appointments to apply to the judiciary</u>.

4. **ID.; ID.; ID.; ID.; TO HOLD THAT THE BAN ON MIDNIGHT APPOINTMENTS UNDER SECTION 15, ARTICLE VII OF THE CONSTITUTION DOES NOT APPLY TO APPOINTMENTS IN THE JUDICIARY REVOLTS AGAINST ALL THE RULES IN STATUTORY CONSTRUCTION.—** To hold that the ban on midnight appointments applies only to executive positions, and not to vacancies in the judiciary and independent constitutional bodies, is to make the prohibition practically useless. It bears noting that Section 15, Article VII of the Constitution already allows the President, by way of exception, to make temporary appointments in the Executive Department during the prohibited period. Under this view, there is virtually no restriction on the President's power of appointment during the prohibited period. <u>The</u> <u>general rule is clear</u> since the prohibition applies to ALL kinds of midnight appointments. The Constitution made no distinction. *Ubi lex non distinguit nec nos distinguere debemos*. <u>The exception is likewise clear</u>.

Expressio unius et exclusio alterius. The express mention of one person, thing or consequence implies the exclusion of all others. There is no clear circumstance that would indicate that the enumeration in the exception was not intended to be exclusive. Moreover, the fact that Section 15 was couched in negative language reinforces the exclusivity of the exception. x x x **[J]urisprudence is replete with guiding principles to ascertain the true meaning of the Constitution when the provisions as written appear unclear and the proceedings as recorded provide little help:** x x x We think it safer to construe the constitution from what appears upon its face." The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers' understanding thereof**.** The clear import of Section 15 of Article VII is readily apparent. The people may not be of the same caliber as Justice Regalado, but they simply could not read into Section 15 something that is not there. *Casus omissus pro omisso habendus est*. What complicates the *ponencia* is its great preoccupation with Section 15 of Article VII, particularly its fixation with sentences or phrases that are neither written nor referred to therein. *Verba legis non est recedendum, index animi sermo est*. There should be no departure from the words of the statute, for speech is the index of intention. IN FINE, all rules of statutory construction virtually revolt against the interpretation arrived at by the *ponencia*.

5. **ID.; ID.; ID.; ID.; *VALENZUELA* RULING SHOULD NOT BE REVERSED.—** [T]he *ponencia* faults *Valenzuela* for not according weight and due consideration to the opinion of Justice Florenz Regalado. It accords high regard to the opinion expressed by Justice Regalado as a former ConCom Member, to the exception of the opinion of all others similarly situated. It bears noting that the Court had spoken in one voice in *Valenzuela*. The *ponencia* should not hastily reverse, on the sole basis of Justice Regalado's opinion, the Court's unanimous *en banc* decision penned by Chief Justice Andres Narvasa, and concurred in by, *inter alia*, Associate Justices who later became Chief Justices – Hilario Davide, Jr., Artemio Panganiban and Reynato Puno.

6. **ID.; ID.; ID.; ID.; THE 90-DAY PERIOD IN SECTION 4 (1) OF ARTICLE VIII IS DEEMED SUSPENDED DURING THE PERIOD OF PROHIBITION IN SECTION 15 OF ARTICLE VII WHEN**

THERE IS LEGAL OR PHYSICAL IMPOSSIBILITY OF COMPLIANCE WITH THE DUTY TO FILL THE VACANCY WITHIN THE SAID PERIOD; INSTANCES WHEN THERE WOULD BE LEGAL OR PHYSICAL IMPOSSIBILITY, CITED.— Respecting the rationale for suspending the 90-day period, in cases where there is physical or legal impossibility of compliance with the duty to fill the vacancy within the said period, the fulfillment of the obligation is released because the law cannot exact compliance with what is impossible. In the present case, there can only arise a **legal impossibility** when the JBC list is submitted or the vacancy occurred during the appointments ban and the 90-day period would expire before the end of the appointments ban, in which case the fresh 90-day period should start to run at noon of June 30. This was the factual antecedent respecting the trial court judges involved in *Valenzuela*. There also arises a legal impossibility when the list is submitted or the vacancy occurred prior to the ban and no appointment was made before the ban starts, rendering the lapse of the 90-day period within the period of the ban, in which case the remaining period should resume to run at noon of June 30. The outgoing President would be released from non-fulfillment of the constitutional obligation, and the duty devolves upon the new President. Considering also that Section 15 of Article VII is an express limitation on the President's power of appointment, the running of the 90-day period is deemed **suspended** during the period of the ban which takes effect only once every six years. This view differs from *Valenzuela* in that it does not implement Section 15 of Article VII so as to breach Section 4(1) of Article VIII. Instead of disregarding the 90-day period in the observance of the ban on midnight appointments, the more logical reconciliation of the two subject provisions is to consider the ban as having the effect of suspending the duty to make the appointment within 90 days from the occurrence of the vacancy. Otherwise stated, since there is a ban, then there is no duty to appoint as the power to appoint does not even exist. Accordingly, the 90-day period is suspended once the ban sets in and begins or continues to run only upon the expiration of the ban. One situation which could result in **physical impossibility** is the inability of the JBC to constitute a quorum for some reasons beyond their control, as that depicted by Justice Arturo Brion in his Separate Opinion, in which case the 90-day period could

lapse without fulfilling the constitutional obligation. Another such circumstance which could frustrate the *ponencia*'s depiction of the inflexibility of the period is a "no-takers" situation where, for some reason, there are no *willin*g qualified nominees to become a Member of the Court. Some might find this possibility remote, but then again, the situation at hand or the "absurdity" of a 19-day overlapping vacuum may have also been perceived to be rare.

7. **ID.; ID.; ID.; ID.; THE SUPREME COURT CAN FUNCTION EFFECTIVELY DURING THE MIDNIGHT APPOINTMENT BAN WITHOUT A SITTING CHIEF JUSTICE.— As a member of the Court, I strongly take exception to the *ponencia*'s implication that the Court cannot function without a sitting Chief Justice.** To begin with, judicial power is vested in one Supreme Court and not in its individual members, much less in the Chief Justice alone. Notably, after Chief Justice Puno retires, the Court will have 14 members left, which is more than sufficient to constitute a quorum. The fundamental principle in the system of laws recognizes that there is only one Supreme Court from whose decisions all other courts are required to take their bearings. While most of the Court's work is performed by its three divisions, the Court remains one court — single, unitary, complete and supreme. Flowing from this is the fact that, while individual justices may dissent or only partially concur, when the Court states what the law is, it speaks with only one voice. The Court, as a collegial body, operates on a "one member, one vote" basis, whether it sits *en banc* or in divisions. The competence, probity and independence of the Court *en banc*, or those of the Court's Division to which the Chief Justice belongs, have never depended on whether the member voting as Chief Justice is merely an acting Chief Justice or a duly appointed one.

APPEARANCES OF COUNSEL

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Arturo M. de Castro for his own behalf in G.R. No. 191002.

Jaime N. Soriano for his own behalf.

M. M. Lazaro, & Associates for petitioner in G.R. No. 191057.

Benjamin P. Lozada III, et al., for movant-intervenor Atty. Marlon B. Ubano.

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D E C I S I O N

BERSAMIN, *J.*:

The compulsory retirement of Chief Justice Reynato S. Puno by May 17, 2010 occurs just days after the coming presidential elections on May 10, 2010. Even before the event actually happens, it is giving rise to many legal dilemmas. May the incumbent President appoint his successor, considering that Section 15, Article VII (Executive Department) of the Constitution prohibits the President or Acting President from making appointments within two months immediately before the next presidential elections and up to the end of his term, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety? What is the relevance of Section 4 (1), Article VIII (Judicial Department) of the Constitution, which provides that any vacancy in the Supreme Court shall be filled within 90 days from the occurrence thereof, to the matter of the appointment of his successor? May the Judicial and Bar Council (JBC) resume the process of screening the candidates nominated or being considered to succeed Chief Justice Puno, and submit the list of nominees to the incumbent President even during the period of the prohibition under Section 15, Article VII? Does *mandamus* lie to compel the submission of the shortlist of nominees by the JBC?

Precís of the Consolidated Cases

Petitioners Arturo M. De Castro and John G. Peralta respectively commenced G.R. No. 191002[1] and G.R. No. 191149[2] as special civil actions for *certiorari* and *mandamus*, praying that the JBC be compelled to submit to the incumbent President the list of at least three nominees for the position of the next Chief Justice.

In G.R. No. 191032,[3] Jaime N. Soriano, *via* his petition for prohibition, proposes to prevent the JBC from conducting its search, selection and nomination proceedings for the position of Chief Justice.

In G.R. No. 191057, a special civil action for *mandamus*,[4] the Philippine Constitution Association (PHILCONSA) wants the JBC to submit its list of nominees for the position of Chief Justice to be vacated by Chief Justice Puno upon his retirement on May 17, 2010, because the incumbent President is not covered by the prohibition that applies only to appointments in the Executive Department.

In Administrative Matter No. 10-2-5-SC,[5] petitioner Estelito M. Mendoza, a former Solicitor General, seeks a ruling from the Court for the guidance of the JBC on whether Section 15, Article VII applies to appointments to the Judiciary.

In G.R. No. 191342,[6] which the Court consolidated on March 9, 2010 with the petitions earlier filed, petitioners Amador Z. Tolentino, Jr. and Roland B. Inting, Integrated Bar of the Philippines (IBP) Governors for Southern Luzon and Eastern Visayas, respectively, want to enjoin and restrain the JBC from submitting a list of nominees for the position of Chief Justice

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[1] Filed on February 9, 2010.

[2] Begun on February 23, 2010.

[3] Initiated on February 10, 2010.

[4] Commenced on February 11, 2010.

[5] Dated February 15, 2010.

[6] Filed on March 8, 2010.

to the President for appointment during the period provided for in Section 15, Article VII.

All the petitions now before the Court pose as the principal legal question whether the incumbent President can appoint the successor of Chief Justice Puno upon his retirement. That question is undoubtedly impressed with transcendental importance to the Nation, because the appointment of the Chief Justice is any President's most important appointment.

A precedent frequently cited is *In Re Appointments Dated March 30, 1998 of Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta as Judges of the Regional Trial Court of Branch 62, Bago City and of Branch 24, Cabanatuan City, respectively* (*Valenzuela*),[7] by which the Court held that Section 15, Article VII prohibited the exercise by the President of the power to appoint to judicial positions during the period therein fixed.

In G.R. No. 191002, De Castro submits that the conflicting opinions on the issue expressed by legal luminaries – one side holds that the incumbent President is prohibited from making appointments within two months immediately before the coming presidential elections and until the end of her term of office as President on June 30, 2010, while the other insists that the prohibition applies only to appointments to executive positions that may influence the election and, anyway, paramount national interest justifies the appointment of a Chief Justice during the election ban – has impelled the JBC to defer the decision to whom to send its list of at least three nominees, whether to the incumbent President or to her successor.[8] He opines that the JBC is thereby arrogating unto itself "the judicial function that is not conferred upon it by the Constitution," which has limited it to the task of recommending appointees to the Judiciary, but has not empowered it to "finally resolve constitutional questions, which is the power vested only in the Supreme Court under

[7] A.M. No. 98-5-01-SC, November 9, 1998, 298 SCRA 408.

[8] Petition in G.R. No. 191002, pp. 3-4.

the Constitution." As such, he contends that the JBC acted with grave abuse of discretion in deferring the submission of the list of nominees to the President; and that a "final and definitive resolution of the constitutional questions raised above would diffuse (*sic*) the tension in the legal community that would go a long way to keep and maintain stability in the judiciary and the political system."[9]

In G.R. No. 191032, Soriano offers the view that the JBC committed a grave abuse of discretion amounting to lack or excess of its jurisdiction when it resolved unanimously on January 18, 2010 to open the search, nomination, and selection process for the position of Chief Justice to succeed Chief Justice Puno, because the appointing authority for the position of Chief Justice is the Supreme Court itself, the President's authority being limited to the appointment of the Members of the Supreme Court. Hence, the JBC should not intervene in the process, unless a nominee is not yet a Member of the Supreme Court.[10]

For its part, PHILCONSA observes in its petition in G.R. No. 191057 that "unorthodox and exceptional circumstances spawned by the discordant interpretations, due perhaps to a perfunctory understanding, of Sec. 15, Art. VII in relation to Secs. 4(1), 8(5) and 9, Art. VIII of the Constitution" have bred "a frenzied inflammatory legal debate on the constitutional provisions mentioned that has divided the bench and the bar and the general public as well, because of its dimensional impact to the nation and the people," thereby fashioning "transcendental questions or issues affecting the JBC's proper exercise of its "principal function of recommending appointees to the Judiciary" by submitting only to the President (not to the next President) "a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy" from which the members of the Supreme Court and judges of the lower courts may be appointed."[11] PHILCONSA further believes and submits that

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

[10] Petition in G.R. No. 191032, pp. 4-8.

[11] Petition in G.R. No. 191057, pp. 1-2.

now is the time to revisit and review *Valenzuela,* the "strange and exotic Decision of the Court *en banc*."[12]

Peralta states in his petition in G.R. No. 191149 that *mandamus* can compel the JBC "to immediately transmit to the President, within a reasonable time, its nomination list for the position of chief justice upon the mandatory retirement of Chief Justice Reynato S. Puno, in compliance with its mandated duty under the Constitution" in the event that the Court resolves that the President can appoint a Chief Justice even during the election ban under Section 15, Article VII of the Constitution.[13]

The petitioners in G.R. No. 191342 insist that there is an actual controversy, considering that the "JBC has initiated the process of receiving applications for the position of Chief Justice and has in fact begun the evaluation process for the applications to the position," and "is perilously near completing the nomination process and coming up with a list of nominees for submission to the President, entering into the period of the ban on midnight appointments on March 10, 2010," which "only highlights the pressing and compelling need for a writ of prohibition to enjoin such alleged ministerial function of submitting the list, especially if it will be cone within the period of the ban on midnight appointments."[14]

Antecedents

These cases trace their genesis to the controversy that has arisen from the forthcoming compulsory retirement of Chief Justice Puno on May 17, 2010, or seven days after the presidential election. Under Section 4(1), in relation to Section 9, Article VIII, *that* "vacancy shall be filled within ninety days from the occurrence thereof" from a "list of at least three nominees prepared by the Judicial and Bar Council for every vacancy."

On December 22, 2009, Congressman Matias V. Defensor, an *ex officio* member of the JBC, addressed a letter to the

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[12] *Id.*, p. 11.

[13] Petition in G.R. No. 191149.

[14] Petition in G.R. No. 191342.

JBC, requesting that the process for nominations to the office of the Chief Justice be commenced immediately.

In its January 18, 2010 meeting *en banc*, therefore, the JBC passed a resolution,[15] which reads:

> The JBC, in its *en banc* meeting of January 18, 2010, unanimously agreed to start the process of filling up the position of Chief Justice to be vacated on May 17, 2010 upon the retirement of the incumbent Chief Justice Honorable Reynato S. Puno.
>
> It will publish the opening of the position for applications or recommendations; deliberate on the list of candidates; publish the names of candidates; accept comments on or opposition to the applications; conduct public interviews of candidates; and prepare the shortlist of candidates.
>
> As to the time to submit this shortlist to the proper appointing authority, in the light of the Constitution, existing laws and jurisprudence, the JBC welcomes and will consider all views on the matter.
>
> 18 January 2010.
>
> (sgd.)
MA. LUISA D. VILLARAMA
Clerk of Court &
Ex-Officio Secretary
Judicial and Bar Council

As a result, the JBC opened the position of Chief Justice for application or recommendation, and published for that purpose its *announcement* dated January 20, 2010,[16] *viz*:

> The Judicial and Bar Council (JBC) announces the opening for application or recommendation, of the position of CHIEF JUSTICE OF THE SUPREME COURT, which will be vacated on 17 May 2010 upon the retirement of the incumbent Chief Justice, HON. REYNATO S. PUNO.

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[15] http://jbc.judiciary.gov.ph/announcements/JBCreCJ.pdf

[16] http://jbc.judiciary.gov.ph/announcements/jbc_announce_2009/jan22%20%2710.pdf

Applications or recommendations for this position must be submitted not later than 4 February 2010 (Thursday) to the JBC Secretariat xxx:

The *announcement* was published on January 20, 2010 in the *Philippine Daily Inquirer* and *The Philippine Star*.[17]

Conformably with its existing practice, the JBC "automatically considered" for the position of Chief Justice the five most senior of the Associate Justices of the Court, namely: Associate Justice Antonio T. Carpio; Associate Justice Renato C. Corona; Associate Justice Conchita Carpio Morales; Associate Justice Presbitero J. Velasco, Jr.; and Associate Justice Antonio Eduardo B. Nachura. However, the last two declined their nomination through letters dated January 18, 2010 and January 25, 2010, respectively.[18]

Others either applied or were nominated. Victor Fernandez, the retired Deputy Ombudsman for Luzon, applied, but later formally withdrew his name from consideration through his letter dated February 8, 2010. Candidates who accepted their nominations *without conditions* were Associate Justice Renato C. Corona; Associate Justice Teresita J. Leonardo-De Castro; Associate Justice Arturo D. Brion; and Associate Justice Edilberto G. Sandoval (Sandiganbayan). Candidates who accepted their nominations *with conditions* were Associate Justice Antonio T. Carpio and Associate Justice Conchita Carpio Morales.[19] Declining their nominations were Atty. Henry Villarica (*via* telephone conversation with the Executive Officer of the JBC on February 5, 2010) and Atty. Gregorio M. Batiller, Jr. (*via* telephone conversation with the Executive Officer of the JBC on February 8, 2010).[20]

The JBC excluded from consideration former RTC Judge Florentino Floro (for failure to meet the standards set by the JBC rules); and Special Prosecutor Dennis Villa-Ignacio of

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[17] Comment of the JBC, p. 3.

[18] *Id*.

[19] *Id.*, pp. 4-5.

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

the Office of the Ombudsman (due to cases pending in the Office of the Ombudsman).[21]

In its meeting of February 8, 2010, the JBC resolved to proceed to the next step of announcing the names of the following candidates to invite the public to file their sworn complaint, written report, or opposition, if any, not later than February 22, 2010, to wit: Associate Justice Carpio, Associate Justice Corona, Associate Justice Carpio Morales, Associate Justice Leonardo-De Castro, Associate Justice Brion, and Associate Justice Sandoval. The *announcement* came out in the *Philippine Daily Inquirer* and *The Philippine Star* issues of February 13, 2010.[22]

Issues

Although it has already begun the process for the filling of the position of Chief Justice Puno in accordance with its rules, the JBC is not yet decided on when to submit to the President its list of nominees for the position due to the controversy now before us being yet unresolved. In the meanwhile, time is marching in quick step towards May 17, 2010 when the vacancy occurs upon the retirement of Chief Justice Puno.

The actions of the JBC have sparked a vigorous debate not only among legal luminaries, but also among non-legal quarters, and brought out highly disparate opinions on whether the incumbent President can appoint the next Chief Justice or not. Petitioner Mendoza notes that in *Valenzuela,* which involved the appointments of two judges of the Regional Trial Court, the Court addressed this issue now before us as an administrative matter "to avoid any possible polemics concerning the matter," but he opines that the polemics leading to *Valenzuela* "would be miniscule [*sic*] compared to the "polemics" that have now erupted in regard to the current controversy," and that unless "put to a halt, and this may only be achieved by a ruling from the Court, the integrity of the process and the credibility of

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[21] *Id.*

[22] *Id.*, p. 6.

whoever is appointed to the position of Chief Justice, may irreparably be impaired."[23]

Accordingly, we reframe the issues as submitted by each petitioner in the order of the chronological filing of their petitions.

G.R. No. 191002

a. Does the JBC have the power and authority to resolve the constitutional question of whether the incumbent President can appoint a Chief Justice during the election ban period?

b. Does the incumbent President have the power and authority to appoint during the election ban the successor of Chief Justice Puno when he vacates the position of Chief Justice on his retirement on May 17, 2010?

G.R. No. 191032

a. Is the power to appoint the Chief Justice vested in the Supreme Court *en banc*?

G.R. No. 191057

a. Is the constitutional prohibition against appointment under Section 15, Article VII of the Constitution applicable only to positions in the Executive Department?

b. Assuming that the prohibition under Section 15, Article VII of the Constitution also applies to members of the Judiciary, may such appointments be excepted because they are impressed with public interest or are demanded by the exigencies of public service, thereby justifying these appointments during the period of prohibition?

c. Does the JBC have the authority to decide whether or not to include and submit the names of nominees who manifested interest to be nominated for the position of Chief Justice on the understanding that his/her nomination will be submitted to the *next* President in view of the

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[23] Petition in A.M. No. 10-2-5-SC, pp. 5-6.

prohibition against presidential appointments from March 11, 2010 until June 30, 2010?

A. M. No. 10-2-5-SC

a. Does Section 15, Article VII of the Constitution apply to appointments to positions in the Judiciary under Section 9, Article VIII of the Constitution?

b. May President Gloria Macapagal-Arroyo make appointments to the Judiciary after March 10, 2010, including that for the position of Chief Justice after Chief Justice Puno retires on May 17, 2010?

G.R. No. 191149

a. Does the JBC have the discretion to withhold the submission of the short list to President Gloria Macapagal-Arroyo?

G.R. No. 191342

a. Does the JBC have the authority to submit the list of nominees to the incumbent President without committing a grave violation of the Constitution and jurisprudence prohibiting the incumbent President from making midnight appointments two months immediately preceding the next presidential elections until the end of her term?

b. Is any act performed by the JBC, including the vetting of the candidates for the position of Chief Justice, constitutionally invalid in view of the JBC's illegal composition allowing each member from the Senate and the House of Representatives to have one vote each?

On February 16, 2010, the Court directed the JBC and the Office of the Solicitor General (OSG) to comment on the consolidated petitions, except that filed in G.R. No. 191342.

On February 26, 2010, the JBC submitted its comment, reporting therein that the next stage of the process for the selection of the nominees for the position of Chief Justice would

be the public interview of the candidates and the preparation of the short list of candidates, "including the interview of the constitutional experts, as may be needed."[24] It stated:[25]

Likewise, the JBC has yet to take a position on when to submit the shortlist to the proper appointing authority, in light of Section 4 (1), Article VIII of the Constitution, which provides that vacancy in the Supreme Court shall be filled within ninety (90) days from the occurrence thereof, Section 15, Article VII of the Constitution concerning the ban on Presidential appointments "two (2) months immediately before the next presidential elections and up to the end of his term" and Section 261 (g), Article XXII of the Omnibus Election Code of the Philippines.

12. Since the Honorable Supreme Court is the final interpreter of the Constitution, the JBC will be guided by its decision in these consolidated Petitions and Administrative Matter.

On February 26, 2010, the OSG also submitted its comment, essentially stating that the incumbent President can appoint the successor of Chief Justice Puno upon his retirement by May 17, 2010.

The OSG insists that: (*a*) a writ of prohibition cannot issue to prevent the JBC from performing its principal function under the Constitution to recommend appointees in the Judiciary; (*b*) the JBC's function to recommend is a "continuing process," which does not begin with each vacancy or end with each nomination, because the goal is "to submit the list of nominees to Malacañang on the very day the vacancy arises";[26] the JBC was thus acting within its jurisdiction when it commenced and set in motion the process of selecting the nominees to be submitted to the President for the position of Chief Justice to be vacated by Chief Justice Puno;[27] (*c*) petitioner Soriano's theory that it is the Supreme Court, not the President, who has the power to

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[24] Comment of the JBC, p. 6.

[25] *Id.*, p. 7; bold emphasis is in the original text.

[26] Comment of the OSG, pp. 13-14.

[27] *Id.*, p. 14.

appoint the Chief Justice, is incorrect, and proceeds from his misinterpretation of the phrase "members of the Supreme Court" found in Section 9, Article VIII of the Constitution as referring only to the Associate Justices, to the exclusion of the Chief Justice;[28] (*d*) a writ of *mandamus* can issue to compel the JBC to submit the list of nominees to the President, considering that its duty to prepare the list of at least three nominees is unqualified, and the submission of the list is a ministerial act that the JBC is mandated to perform under the Constitution; as such, the JBC, the nature of whose principal function is executive, is not vested with the power to resolve who has the authority to appoint the next Chief Justice and, therefore, has no discretion to withhold the list from the President;[29] and (*e*) a writ of *mandamus* cannot issue to compel the JBC to include or exclude particular candidates as nominees, considering that there is no imperative duty on its part to include in or exclude from the list particular individuals, but, on the contrary, the JBC's determination of who it nominates to the President is an exercise of a discretionary duty.[30]

The OSG contends that the incumbent President may appoint the next Chief Justice, because the prohibition under Section 15, Article VII of the Constitution does not apply to appointments in the Supreme Court. It argues that any vacancy in the Supreme Court must be filled within 90 days from its occurrence, pursuant to Section 4(1), Article VIII of the Constitution;[31] that in their deliberations on the mandatory period for the appointment of Supreme Court Justices, the framers neither mentioned nor referred to the ban against midnight appointments, or its effects on such period, or vice versa;[32] that had the framers intended the prohibition to apply to Supreme Court appointments, they could have easily expressly stated so

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[28] *Id.*, p. 15.

[29] *Id.*, pp. 20-24.

[30] *Id.*, pp. 25-27.

[31] *Id.*, pp. 29-30.

[32] *Id*.

in the Constitution, which explains why the prohibition found in Article VII (Executive Department) was not written in Article VIII (Judicial Department); and that the framers also incorporated in Article VIII ample restrictions or limitations on the President's power to appoint members of the Supreme Court to ensure its independence from "political vicissitudes" and its "insulation from political pressures,"[33] such as stringent qualifications for the positions, the establishment of the JBC, the specified period within which the President shall appoint a Supreme Court Justice.

The OSG posits that although *Valenzuela* involved the appointment of RTC Judges, the situation now refers to the appointment of the next Chief Justice to which the prohibition does not apply; that, at any rate, *Valenzuela* even recognized that there might be "the imperative need for an appointment during the period of the ban," like when the membership of the Supreme Court should be "so reduced that it will have no quorum, or should the voting on a particular important question requiring expeditious resolution be divided";[34] and that *Valenzuela* also recognized that the filling of vacancies in the Judiciary is undoubtedly in the public interest, most especially if there is any compelling reason to justify the making of the appointments during the period of the prohibition.[35]

Lastly, the OSG urges that there are now undeniably compelling reasons for the incumbent President to appoint the next Chief Justice, to wit: (*a*) a deluge of cases involving sensitive political issues is "quite expected";[36] (*b*) the Court acts as the

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[33] *Id., pp. 32-33.*

[34] *Id.*, pp. 34-35.

[35] *Id*.

[36] *Id.*, pp. 35-36. The OSG posits:

National interest compels the President to make such appointment for it is particularly during this crucial period when national leaders are seeking fresh mandates from the people that the Supreme Court, more than at any other time, represents stability. Hence, a full court is ideal to ensure not only due deliberation on and careful consideration of issues but also expeditious disposition of cases.

Presidential Electoral Tribunal (PET), which, sitting *en banc*, is the sole judge of all contests relating to the election, returns, and qualifications of the President and Vice President and, as such, has "the power to correct manifest errors on the statement of votes (SOV) and certificates of canvass (COC)";[37] (*c*) if history has shown that during *ordinary times* the Chief Justice was appointed immediately upon the occurrence of the vacancy, from the time of the effectivity of the Constitution, there is now even more reason to appoint the next Chief Justice immediately upon the retirement of Chief Justice Puno;[38] and (*d*) should the next Chief Justice come from among the incumbent Associate Justices of the Supreme Court, thereby causing a vacancy, it also becomes incumbent upon the JBC to start the selection process for the filling up of the vacancy in accordance with the constitutional mandate.[39]

On March 9, 2010, the Court admitted the following comments/ oppositions-in-intervention, to wit:

(*a*) The opposition-in-intervention dated February 22, 2010 of Atty. Peter Irving Corvera (Corvera);[40]

(*b*) The opposition-in-intervention dated February 22, 2010 of Atty. Christian Robert S. Lim (Lim);

Indeed, such function becomes especially significant in view of the fact that this is the first time that the whole country will experience automated elections.

[37] *Id.*, pp. 36-37. The OSG stresses:

The possible fallouts or serious aftermath of allowing a vacuum in the position of the Chief Justice may be greater and riskier than the consequences or repercussions of inaction. Needless to state, the appointment of the Chief Justice of this Honorable Court (*sic*) **is the most important appointment vested by the 1987 Constitution to** (*sic*) **the President.**

[38] *Id.*, p. 37.

[39] *Id.*, p. 38.

[40] Filed by Atty. Pitero M. Reig.

(*c*) The opposition-in-intervention dated February 23, 2010 of Atty. Alfonso V. Tan, Jr. (Tan);

(*d*) The comment/opposition-in-intervention dated March 1, 2010 of the National Union of People's Lawyers (NUPL);

(*e*) The opposition-in-intervention dated February 25, 2010 of Atty. Marlou B. Ubano (Ubano);

(*f*) The opposition-in-intervention dated February 25, 2010 of Integrated Bar of the Philippines-Davao del Sur Chapter and its Immediate Past President, Atty. Israelito P. Torreon (IBP- Davao del Sur);

(*g*) The opposition-in-intervention dated February 26, 2010 of Atty. Mitchell John L. Boiser (Boiser);

(*h*) The consolidated comment/opposition-in-intervention dated February 26, 2010 of BAYAN Chairman Dr. Carolina P. Araullo; BAYAN Secretary General Renato M. Reyes, Jr.; Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE) Chairman Ferdinand Gaite; Kalipunan ng Damayang Mahihirap (KADAMAY) Secretary General Gloria Arellano; Alyansa ng Nagkakaisang Kabataan ng Samayanan Para sa Kaunlaran (ANAKBAYAN) Chairman Ken Leonard Ramos; Tayo ang Pag-asa Convenor Alvin Peters; League of Filipino Students (LFS) Chairman James Mark Terry Lacuanan Ridon; National Union of Students of the Philippines (NUSP) Chairman Einstein Recedes, College Editors Guild of the Philippines (CEGP) Chairman Vijae Alquisola; and Student Christian Movement of the Philippines (SCMP) Chairman Ma. Cristina Angela Guevarra (BAYAN *et al.*);

(*i*) The opposition-in-intervention dated March 3, 2010 of Walden F. Bello and Loretta Ann P. Rosales (Bello *et al.*); and

(*j*) The consolidated comment/opposition-in-intervention dated March 4, 2010 of the Women Trial Lawyers

Organization of the Philippines (WTLOP), represented by Atty. Yolanda Quisumbing-Javellana; Atty. Belleza Alojado Demaisip; Atty. Teresita Gandionco-Oledan; Atty. Ma. Verena Kasilag-Villanueva; Atty. Marilyn Sta. Romana; Atty. Leonila de Jesus; and Atty. Guinevere de Leon (WTLOP).

Intervenors Tan, WTLOP, BAYAN *et al*., Corvera, IBP Davao del Sur, and NUPL take the position that De Castro's petition was bereft of any basis, because under Section 15, Article VII, the outgoing President is constitutionally banned from making any appointments from March 10, 2010 until June 30, 2010, including the appointment of the successor of Chief Justice Puno. Hence, *mandamus* does not lie to compel the JBC to submit the list of nominees to the outgoing President if the constitutional prohibition is already in effect. Tan adds that the prohibition against midnight appointments was applied by the Court to the appointments to the Judiciary made by then President Ramos, with the Court holding that the duty of the President to fill the vacancies within 90 days from occurrence of the vacancies (for the Supreme Court) or from the submission of the list (for all other courts) was not an excuse to violate the constitutional prohibition.

Intervenors Tan, Ubano, Boiser, Corvera, NULP, BAYAN *et al.*, and Bello *et al*. oppose the insistence that *Valenzuela* recognizes the possibility that the President may appoint the next Chief Justice if exigent circumstances warrant the appointment, because that recognition is *obiter dictum*; and aver that the absence of a Chief Justice or even an Associate Justice does not cause epic damage or absolute disruption or paralysis in the operations of the Judiciary. They insist that even without the successor of Chief Justice Puno being appointed by the incumbent President, the Court is allowed to sit and adjudge *en banc* or in divisions of three, five or seven members at its discretion; that a full membership of the Court is not necessary; that petitioner De Castro's fears are unfounded and baseless, being based on a mere possibility, the occurrence of which is entirely unsure; that it is not in the national interest

to have a Chief Justice whose appointment is unconstitutional and, therefore, void; and that such a situation will create a crisis in the judicial system and will worsen an already vulnerable political situation.

Intervenors Tan, Ubano, WTLOP, Bello *et al*., IBP Davao del Sur, Corvera, and Boiser regard De Castro's argument that a permanent Chief Justice is imperative for the stability of the judicial system and the political situation in the country when the election-related questions reach the Court as false, because there is an existing law on filling the void brought about by a vacancy in the office of Chief Justice; that the law is Section 12 of the Judiciary Act of 1948, which has not been repealed by *Batas Pambansa Blg*. 129 or any other law; that a temporary or an acting Chief Justice is not anathema to judicial independence; that the designation of an acting Chief Justice is not only provided for by law, but is also dictated by practical necessity; that the practice was intended to be enshrined in the 1987 Constitution, but the Commissioners decided not to write it in the Constitution on account of the settled practice; that the practice was followed under the 1987 Constitution, when, in 1992, at the end of the term of Chief Justice Marcelo B. Fernan, Associate Justice Andres Narvasa assumed the position as Acting Chief Justice prior to his official appointment as Chief Justice; that said filling up of a vacancy in the office of the Chief Justice was acknowledged and even used by analogy in the case of the vacancy of the Chairman of the Commission on Elections, per *Brillantes v. Yorac*, 192 SCRA 358; and that the history of the Supreme Court has shown that this rule of succession has been repeatedly observed and has become a part of its tradition.

Intervenors Ubano, Boiser, NUPL, Corvera, and Lim maintain that the *Omnibus Election Code* penalizes as an election offense the act of any government official who appoints, promotes, or gives any increase in salary or remuneration or privilege to any government official or employee during the period of 45 days before a regular election; that the provision covers all appointing heads, officials, and officers of a government office,

agency or instrumentality, including the President; that for the incumbent President to appoint the next Chief Justice upon the retirement of Chief Justice Puno, or during the period of the ban under the *Omnibus Election Code,* constitutes an election offense; that even an appointment of the next Chief Justice prior to the election ban is fundamentally invalid and without effect because there can be no appointment until a vacancy occurs; and that the vacancy for the position can occur only by May 17, 2010.

Intervenor Boiser adds that De Castro's prayer to compel the submission of nominees by the JBC to the incumbent President is off-tangent because the position of Chief Justice is still not vacant; that to speak of a list, much more a submission of such list, before a vacancy occurs is glaringly premature; that the proposed advance appointment by the incumbent President of the next Chief Justice will be unconstitutional; and that no list of nominees can be submitted by the JBC if there is no vacancy.

All the intervenors-oppositors submit that Section 15, Article VII makes no distinction between the kinds of appointments made by the President; and that the Court, in *Valenzuela*, ruled that the appointments by the President of the two judges during the prohibition period were void.

Intervenor WTLOP posits that Section 15, Article VII of the 1987 Constitution does not apply only to the appointments in the Executive Department, but also to judicial appointments, contrary to the submission of PHILCONSA; that Section 15 does not distinguish; and that *Valenzuela* already interpreted the prohibition as applicable to judicial appointments.

Intervenor WTLOP further posits that petitioner Soriano's contention that the power to appoint the Chief Justice is vested, not in the President, but in the Supreme Court, is utterly baseless, because the Chief Justice is also a Member of the Supreme Court as contemplated under Section 9, Article VIII; and that, at any rate, the term "members" was interpreted in *Vargas v. Rillaroza* (G.R. No. L-1612, February 26, 1948) to refer to the Chief Justice and the Associate Justices of the Supreme

Court; that PHILCONSA's prayer that the Court pass a resolution declaring that persons who manifest their interest as nominees, but with conditions, shall not be considered nominees by the JBC is diametrically opposed to the arguments in the body of its petition; that such glaring inconsistency between the allegations in the body and the relief prayed for highlights the lack of merit of PHILCONSA's petition; that the role of the JBC cannot be separated from the constitutional prohibition on the President; and that the Court must direct the JBC to follow the rule of law, *that is*, to submit the list of nominees only to the next duly elected President after the period of the constitutional ban against midnight appointments has expired.

Oppositor IBP Davao del Sur opines that the JBC – because it is neither a judicial nor a quasi-judicial body – has no duty under the Constitution to resolve the question of whether the incumbent President can appoint a Chief Justice during the period of prohibition; that even if the JBC has already come up with a short list, it still has to bow to the strict limitations under Section 15, Article VII; that should the JBC defer submission of the list, it is not arrogating unto itself a judicial function, but simply respecting the clear mandate of the Constitution; and that the application of the general rule in Section 15, Article VII to the Judiciary does not violate the principle of separation of powers, because said provision is an exception.

Oppositors NUPL, Corvera, Lim and BAYAN *et al.* state that the JBC's act of nominating appointees to the Supreme Court is purely ministerial and does not involve the exercise of judgment; that there can be no default on the part of the JBC in submitting the list of nominees to the President, considering that the call for applications only begins from the occurrence of the vacancy in the Supreme Court; and that the commencement of the process of screening of applicants to fill the vacancy in the office of the Chief Justice only begins from the retirement on May 17, 2010, for, prior to this date, there is no definite legal basis for any party to claim that the submission or non-submission of the list of nominees to the President by the JBC is a matter of right under law.

The main question presented in all the filings herein – because it involves two seemingly conflicting provisions of the Constitution – imperatively demands the attention and resolution of this Court, the only authority that can resolve the question definitively and finally. The imperative demand rests on the ever-present need, *first*, to safeguard the independence, reputation, and integrity of the entire Judiciary, particularly this Court, an institution that has been unnecessarily dragged into the harsh polemics brought on by the controversy; *second*, to settle once and for all the doubt about an outgoing President's power to appoint to the Judiciary within the long period starting two months before the presidential elections until the end of the presidential term; and *third*, to set a definite guideline for the JBC to follow in the discharge of its primary office of screening and nominating qualified persons for appointment to the Judiciary.

Thus, we resolve.

Ruling of the Court

***Locus Standi* of Petitioners**

The preliminary issue to be settled is whether or not the petitioners have *locus standi*.

Black defines *locus standi* as "a right of appearance in a court of justice on a given question."[41] In public or constitutional litigations, the Court is often burdened with the determination of the *locus standi* of the petitioners due to the ever-present need to regulate the invocation of the intervention of the Court to correct any official action or policy in order to avoid obstructing the efficient functioning of public officials and offices involved in public service. It is required, therefore, that the petitioner must have a personal stake in the outcome of the controversy, for, as indicated in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*:[42]

The question on legal standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure

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[41] Black's *Law Dictionary*, 941 (6th Ed. 1991).

[42] G.R. No. 155001, May 5, 2003, 402 SCRA 612.

that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."[43] Accordingly, it has been held that the interest of a person assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of.[44]

It is true that as early as in 1937, in *People v. Vera*,[45] the Court adopted the *direct injury test* for determining whether a petitioner in a public action had *locus standi.* There, the Court held that the person who would assail the validity of a statute must have "a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result." *Vera* was followed in *Custodio v. President of the Senate*,[46] *Manila Race Horse Trainers' Association v. De la Fuente*,[47] *Anti-Chinese League of the Philippines v. Felix,*[48] and *Pascual v. Secretary of Public Works.*[49]

Yet, the Court has also held that the requirement of *locus standi*, being a mere procedural technicality, can be waived by the Court in the exercise of its discretion. For instance, in

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[43] Citing *Kilosbayan, Inc. v. Morato*, G.R. No. 118910, July 17, 1995, 246 SCRA 540, 562-563, *citing Baker v. Carr*, 369 U.S. 186, 7 L. Ed. 633 (1962).

[44] Citing *Kilosbayan, Inc. v. Morato, supra*; *Bayan v. Zamora*, G.R. No. 138570, October 10, 2000; 342 SCRA 449, 478.

[45] 65 Phil. 56.

[46] G.R. No. 117, November 7, 1945 (Unreported).

[47] G.R. No. 2947, January 11, 1959 (Unreported).

[48] 77 Phil. 1012 (1947).

[49] 110 Phil. 331 (1960).

1949, in *Araneta v. Dinglasan*,[50] the Court liberalized the approach when the cases had "transcendental importance." Some notable controversies whose petitioners did not pass the *direct injury test* were allowed to be treated in the same way as in *Araneta v. Dinglasan*.[51] In the 1975 decision in *Aquino v. Commission on Elections*,[52] this Court decided to resolve the issues raised by the petition due to their "far-reaching implications," even if the petitioner had no personality to file the suit. The liberal approach of *Aquino v. Commission on Elections* has been adopted in several notable cases, permitting ordinary citizens, legislators, and civic organizations to bring their suits involving the constitutionality or validity of laws, regulations, and rulings.[53]

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[50] 84 Phil. 368 (1949)

[51] *E.g.*, *Chavez v. Public Estates Authority,* G.R. No. 133250, July 9, 2002, 384 SCRA 152 (in which the Court ruled that the enforcement of the constitutional right to information and the equitable diffusion of natural resources are matters of transcendental importance which clothe the petitioner with *locus standi)*; *Bagong Alyansang Makabayan v. Zamora,* G.R. Nos. 138570, 138572, 138587, 138680, 138698, October 10, 2000, 342 SCRA 449 (in which the Court held that "given the transcendental importance of the issues involved, the Court may relax the standing requirements and allow the suit to prosper despite the lack of direct injury to the parties seeking judicial review" of the Visiting Forces Agreement); *Lim v. Executive Secretary*, G.R. No. 151445, April 11, 2002, 380 SCRA 739 (in which the Court, albeit conceding that the petitioners might not file suit in their capacity as taxpayers without a showing that *Balikatan* 02-01 involved the exercise of Congress' taxing or spending powers, reiterated *Bagong Alyansang Makabayan v. Zamora,* declaring that cases of transcendental importance must be settled promptly and definitely and the standing requirements may be relaxed); and *Osmeña v. Commission on Elections,* G.R. No. 100318, 100308, 100417,100420, July 30, 1991, 199 SCRA 750 (in which the Court held that where serious constitutional questions were involved, the *transcendental importance* to the public of the cases demanded that they be settled promptly and definitely, brushing aside technicalities of procedure).

[52] G.R. No. L-40004, January 31, 1975, 62 SCRA 275.

[53] *E.g., Tañada v. Tuvera,* G.R. No. 63915, April 24, 1985, 136 SCRA 27 (in which the Court held that it is sufficient that the petitioner is a citizen interested in the execution of the law, because the question is one

However, the assertion of a public right as a predicate for challenging a supposedly illegal or unconstitutional executive or legislative action rests on the theory that the petitioner represents the public in general. Although such petitioner may not be as adversely affected by the action complained against as are others, it is enough that he sufficiently demonstrates in his petition that he is entitled to protection or relief from the Court *in the vindication of a public right*.

Quite often, as here, the petitioner in a public action sues as a *citizen* or *taxpayer* to gain *locus standi*. That is not surprising, for even if the issue may appear to concern only the public in general, such capacities nonetheless equip the petitioner with adequate interest to sue. In *David v. Macapagal-Arroyo*,[54] the Court aptly explains why:

> Case law in most jurisdictions now allows both "citizen" and "taxpayer" standing in public actions. The distinction was first laid

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of public duty and the enforcement of a public right, and the people are the real party-in-interest); *Legaspi v. Civil Service Commission,* G.R. No. 72119, May 29, 1987, 150 SCRA 530 (in which the Court declared that where an assertion of a public right is involved, the requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen and is part of the general public which possesses the right); *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan,* No. 81311, June 30, 1988, 163 SCRA 371 (in which the Court disregarded objections to taxpayers' lack of personality to sue in determining the validity of the VAT Law); *Albano v. Reyes,* G.R. No. 83551, July 11, 1989, 175 SCRA 264 (in which the Court pronounced that although no expenditure of public funds was involved in the questioned contract, the petitioner was nonetheless clothed with the legal personality under the disclosure provision of the Constitution to question it, considering its important role in the economic development of the country and the magnitude of the financial consideration involved, indicating that public interest was definitely involved); and *Association of Small Landowners in the Philippines, Inc. v. Sec. of Agrarian Reform,* G.R. No. 78742, July 14, 1989, 175 SCRA 343 (in which the Court ruled that it had the discretion to waive the requirement of *locus standi* in determining the validity of the implementation of the Comprehensive Agrarian Reform Program, although the petitioners were not, strictly speaking, covered by the definition of *proper party*).

[54] *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160.

down in *Beauchamp v. Silk*,[55] where it was held that the plaintiff in a taxpayer's suit is in a different category from the plaintiff in a citizen's suit. **In the former, the plaintiff is affected by the expenditure of public funds, while in the latter, he is but the mere instrument of the public concern.** As held by the New York Supreme Court in *People ex rel Case v. Collins*:[56] "**In matter of mere public right, however…the people are the real parties…It is at least the right, if not the duty, of every citizen to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied**." With respect to taxpayer's suits, *Terr v. Jordan*[57] held that "**the right of a citizen and a taxpayer to maintain an action in courts to restrain the unlawful use of public funds to his injury cannot be denied.**"[58]

Petitioners De Castro (G.R. No. 191002), Soriano (G.R. No. 191032) and Peralta (G.R. No. 191149) all assert their right as citizens filing their petitions on behalf of the public who are directly affected by the issue of the appointment of the next Chief Justice. De Castro and Soriano further claim standing as taxpayers, with Soriano averring that he is affected by the continuing proceedings in the JBC, which involve "unnecessary, if not, illegal disbursement of public funds."[59]

PHILCONSA alleges itself to be a non-stock, non-profit organization existing under the law for the purpose of defending, protecting, and preserving the Constitution and promoting its growth and flowering. It also alleges that the Court has recognized its legal standing to file cases on constitutional issues in several cases.[60]

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[55] 275 Ky 91, 120 SW2d 765 (1938).

[56] 19 Wend. 56 (1837).

[57] 232 NC 48, 59 SE2d 359 (1950).

[58] Bold emphasis is in the original text.

[59] Petition in G.R. No. 191032, p. 2.

[60] Petition in G.R. No. 191057, pp. 3-4; citing the cases of *PHILCONSA v. Gimenez*, 15 SCRA 479; *PHILCONSA v. Mathay*, 18 SCRA 300; *PHILCONSA v. Enriquez*, 235 SCRA 506; and *Lambino v. COMELEC*, 505 SCRA 160.

In A.M. No. 10-2-5-SC, Mendoza states that he is a citizen of the Philippines, a member of the Philippine Bar engaged in the active practice of law, and a former Solicitor General, former Minister of Justice, former Member of the Interim Batasang Pambansa and the Regular Batasang Pambansa, and former member of the Faculty of the College of Law of the University of the Philippines.

The petitioners in G.R. No. 191342 are the Governors of the Integrated Bar of the Philippines (IBP) for Southern Luzon and Eastern Visayas. They allege that they have the legal standing to enjoin the submission of the list of nominees by the JBC to the President, for "[a]n adjudication of the proper interpretation and application of the constitutional ban on midnight appointments with regard to respondent JBC's function in submitting the list of nominees is well within the concern of petitioners, who are duty bound to ensure that obedience and respect for the Constitution is upheld, most especially by government offices, such as respondent JBC, who are specifically tasked to perform crucial functions in the whole scheme of our democratic institution." They further allege that, reposed in them as members of the Bar, is a clear legal interest in the process of selecting the members of the Supreme Court, and in the selection of the Chief Justice, considering that the person appointed becomes a member of the body that has constitutional supervision and authority over them and other members of the legal profession.[61]

The Court rules that the petitioners have each demonstrated adequate interest in the outcome of the controversy as to vest them with the requisite *locus standi.* The issues before us are of transcendental importance to the people as a whole, and to the petitioners in particular. Indeed, the issues affect everyone (including the petitioners), regardless of one's personal interest in life, because they concern *that* great doubt about the authority of the incumbent President to appoint not only the successor of the retiring incumbent Chief Justice, but also others who may serve in the Judiciary, which already suffers from a far

[61] Petition in G.R. No. 191342, pp. 2-3.

too great number of vacancies in the ranks of trial judges throughout the country.

In any event, the Court retains the broad discretion to waive the requirement of legal standing in favor of any petitioner when the matter involved has transcendental importance, or otherwise requires a liberalization of the requirement.[62]

Yet, if any doubt still lingers about the *locus standi* of any petitioner, we dispel the doubt now in order to remove any obstacle or obstruction to the resolution of the essential issue squarely presented herein. We are not to shirk from discharging our solemn duty by reason alone of an obstacle more technical than otherwise. In *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*,[63] we pointed out: "Standing is a peculiar concept in constitutional law because in some cases, suits are not brought by parties who have been personally injured by the operation of a law or any other government act but by concerned citizens, taxpayers or voters who actually sue in the public interest." But even if, strictly speaking, the petitioners "are not covered by the definition, it is still within the wide discretion of the Court to waive the requirement and so remove the

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[62] See, for instance, *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, August 15, 2000, 338 SCRA 81 (where the petitioner questioned the validity of the deployment and utilization of the Marines to assist the PNP in law enforcement, asserting that IBP was the official organization of Filipino lawyers tasked with the bounden duty to uphold the rule of law and the Constitution, but the Court held that the IBP had not shown that it was so tasked: "In this case, a reading of the petition shows that the IBP has advanced constitutional issues which deserve the attention of this Court in view of their seriousness, novelty and weight as precedents. Moreover, because peace and order are under constant threat and lawless violence occurs in increasing tempo, undoubtedly aggravated by the Mindanao insurgency problem, the legal controversy raised in the petition almost certainly will not go away. It will stare us in the face again. It, therefore, behooves the Court to relax the rules on standing and to resolve the issue now, rather than later," and went on to resolve the issues because the petitioner advanced constitutional issues that deserved the attention of the Court in view of their seriousness, novelty, and weight as precedents).

[63] *Supra,* note 42, p. 645.

impediment to its addressing and resolving the serious constitutional questions raised."[64]

Justiciability

Intervenor NUPL maintains that there is no actual case or controversy that is appropriate or ripe for adjudication, considering that although the selection process commenced by the JBC is going on, there is yet no final list of nominees; hence, there is no imminent controversy as to whether such list must be submitted to the incumbent President, or reserved for submission to the incoming President.

Intervenor Tan raises the lack of any actual justiciable controversy that is ripe for judicial determination, pointing out that petitioner De Castro has not even shown that the JBC has already completed its selection process and is now ready to submit the list to the incumbent President; and that petitioner De Castro is merely presenting a hypothetical scenario that is clearly not sufficient for the Court to exercise its power of judicial review.

Intervenors Corvera and Lim separately opine that De Castro's petition rests on an overbroad and vague allegation of political tension, which is insufficient basis for the Court to exercise its power of judicial review.

Intervenor BAYAN *et al*. contend that the petitioners are seeking a mere advisory opinion on what the JBC and the President should do, and are not invoking any issues that are justiciable in nature.

Intervenors Bello *et al*. submit that there exist no conflict of legal rights and no assertion of opposite legal claims in any of the petitions; that PHILCONSA does not allege any action taken by the JBC, but simply avers that the conditional manifestations of two Members of the Court, accented by the divided opinions and interpretations of legal experts, or associations of lawyers and law students on the issues published in the daily

[64] *Id.*

newspapers are "matters of paramount and transcendental importance to the bench, bar and general public"; that PHILCONSA fails not only to cite any legal duty or allege any failure to perform the duty, but also to indicate what specific action should be done by the JBC; that Mendoza does not even attempt to portray the matter as a controversy or conflict of rights, but, instead, prays that the Court should "rule for the guidance of" the JBC; that the fact that the Court supervises the JBC does not automatically imply that the Court can rule on the issues presented in the Mendoza petition, because supervision involves oversight, which means that the subordinate officer or body must first act, and if such action is not in accordance with prescribed rules, then, and only then, may the person exercising oversight order the action to be redone to conform to the prescribed rules; that the Mendoza petition does not allege that the JBC has performed a specific act susceptible to correction for being illegal or unconstitutional; and that the Mendoza petition asks the Court to issue an advisory ruling, not to exercise its power of supervision to correct a wrong act by the JBC, but to declare the state of the law in the absence of an actual case or controversy.

We hold that the petitions set forth an actual case or controversy that is ripe for judicial determination. The reality is that the JBC already commenced the proceedings for the selection of the nominees to be included in a short list to be submitted to the President for consideration of which of them will succeed Chief Justice Puno as the next Chief Justice. Although the position is not yet vacant, the fact that the JBC began the process of nomination pursuant to its rules and practices, although it has yet to decide whether to submit the list of nominees to the incumbent outgoing President or to the next President, makes the situation ripe for judicial determination, because the next steps are the public interview of the candidates, the preparation of the short list of candidates, and the "interview of constitutional experts, as may be needed."

A part of the question to be reviewed by the Court is whether the JBC properly initiated the process, there being an insistence

from some of the oppositors-intervenors that the JBC could only do so once the vacancy has occurred (*that is*, after May 17, 2010). Another part is, of course, whether the JBC may resume its process until the short list is prepared, in view of the provision of Section 4(1), Article VIII, which unqualifiedly requires the President to appoint one from the short list to fill the vacancy in the Supreme Court (be it the Chief Justice or an Associate Justice) within 90 days from the occurrence of the vacancy.

The ripeness of the controversy for judicial determination may not be doubted. The challenges to the authority of the JBC to open the process of nomination and to continue the process until the submission of the list of nominees; the insistence of some of the petitioners to compel the JBC through *mandamus* to submit the short list to the incumbent President; the counter-insistence of the intervenors to prohibit the JBC from submitting the short list to the incumbent President on the ground that said list should be submitted instead to the next President; the strong position that the incumbent President is already prohibited under Section 15, Article VII from making any appointments, including those to the Judiciary, starting on May 10, 2010 until June 30, 2010; and the contrary position that the incumbent President is not so prohibited are only some of the real issues for determination. All such issues establish the ripeness of the controversy, considering that for some the short list must be submitted *before* the vacancy actually occurs by May 17, 2010. The outcome will not be an abstraction, or a merely hypothetical exercise. The resolution of the controversy will surely settle – with finality – the nagging questions that are preventing the JBC from moving on with the process that it already began, or that are reasons persuading the JBC to desist from the rest of the process.

We need not await the occurrence of the vacancy by May 17, 2010 in order for the principal issue to ripe for judicial determination by the Court. It is enough that one alleges conduct arguably affected with a constitutional interest, but seemingly proscribed by the Constitution. A reasonable certainty of the

occurrence of the perceived threat to a constitutional interest is sufficient to afford a basis for bringing a challenge, provided the Court has sufficient facts before it to enable it to intelligently adjudicate the issues.[65] Herein, the facts are not in doubt, for only legal issues remain.

Substantive Merits

I
Prohibition under Section 15, Article VII does not apply to appointments to fill a vacancy in the Supreme Court or to other appointments to the Judiciary

Two constitutional provisions are seemingly in conflict.

The first, Section 15, Article VII (Executive Department), provides:

> Section 15. Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

The other, Section 4 (1), Article VIII (Judicial Department), states:

> Section 4. (1). The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in its discretion, in division of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.

In the consolidated petitions, the petitioners, with the exception of Soriano, Tolentino and Inting, submit that the incumbent President can appoint the successor of Chief Justice Puno upon his retirement on May 17, 2010, on the ground that the prohibition against presidential appointments under Section 15, Article VII does not extend to appointments in the Judiciary.

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[65] See *Buckley v. Valeo*, 424 U.S. 1, 113-118 (1976); *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 138-148 (1974).

The Court agrees with the submission.

First. The records of the deliberations of the Constitutional Commission reveal that the framers devoted time to meticulously drafting, styling, and arranging the Constitution. Such meticulousness indicates that the organization and arrangement of the provisions of the Constitution were not arbitrarily or whimsically done by the framers, but purposely made to reflect their intention and manifest their vision of what the Constitution should contain.

The Constitution consists of 18 Articles, three of which embody the allocation of the awesome powers of government among the three great departments, the Legislative (Article VI), the Executive (Article VII), and the Judicial Departments (Article VIII). The arrangement was a true recognition of the principle of separation of powers that underlies the political structure, as Constitutional Commissioner Adolfo S. Azcuna (later a worthy member of the Court) explained in his sponsorship speech:

> We have in the political part of this Constitution opted for the separation of powers in government because we believe that the only way to protect freedom and liberty is to separate and divide the awesome powers of government. Hence, we return to the separation of powers doctrine and the legislative, executive and judicial departments.[66]

As can be seen, Article VII is devoted to the Executive Department, and, among others, it lists the powers vested by the Constitution in the President. The presidential power of appointment is dealt with in Sections 14, 15 and 16 of the Article.

Article VIII is dedicated to the Judicial Department and defines the duties and qualifications of Members of the Supreme Court, among others. Section 4(1) and Section 9 of this Article are the provisions specifically providing for the appointment of Supreme Court Justices. In particular, Section 9 states that the

[66] *Record of Proceedings and Debates of the Constitutional Commission*, Vol. V., p. 912, October 12, 1998.

appointment of Supreme Court Justices can only be made by the President upon the submission of a list of at least three nominees by the JBC; Section 4(1) of the Article mandates the President to fill the vacancy *within* 90 days from the occurrence of the vacancy.

Had the framers intended to extend the prohibition contained in Section 15, Article VII to the appointment of Members of the Supreme Court, they could have explicitly done so. They could not have ignored the meticulous ordering of the provisions. They would have *easily* and *surely* written the prohibition made explicit in Section 15, Article VII as being equally applicable to the appointment of Members of the Supreme Court in Article VIII itself, most likely in Section 4 (1), Article VIII. That such specification was not done only reveals that the prohibition against the President or Acting President making appointments within two months before the next presidential elections and up to the end of the President's or Acting President's term does not refer to the Members of the Supreme Court.

Although *Valenzuela*[67] came to hold that the prohibition covered even judicial appointments, it cannot be disputed that the *Valenzuela* dictum did not firmly rest on the deliberations of the Constitutional Commission. Thereby, the confirmation made to the JBC by then Senior Associate Justice Florenz D. Regalado of this Court, a former member of the Constitutional Commission, about the prohibition not being intended to apply to the appointments to the Judiciary, which confirmation *Valenzuela* even expressly mentioned, should prevail.

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[67] *Supra,* note 6, pp. 426-427, stating:

Considering the respective reasons for the time frames for filling vacancies in the courts and the restriction on the President's power of appointment, it is this Court's view that, as a general proposition, in case of conflict, the former should yield to the latter. Surely, the prevention of vote-buying and similar evils outweighs the need for avoiding delays in filling up of court vacancies or the disposition of some cases. Temporary vacancies can abide the period of the ban which, incidentally and as earlier pointed out, comes to exist only once in every six years. Moreover, those occurring in the lower courts can be filled temporarily by designation. But prohibited appointments are long-lasting and permanent in their effects.

Relevantly, *Valenzuela* adverted to the intent of the framers in the genesis of Section 4 (1), Article VIII, *viz*:

V. *Intent of the Constitutional Commission*

The journal of the Commission which drew up the present Constitution discloses that the original proposal was to have an eleven-member Supreme Court. Commissioner Eulogio Lerum wanted to increase the number of Justices to fifteen. He also wished to ensure that that number would not be reduced for any appreciable length of time (even only temporarily), and to this end proposed that any vacancy "must be filled within two months from the date that the vacancy occurs." His proposal to have a 15-member Court was not initially adopted. Persisting however in his desire to make certain that the size of the Court would not be decreased for any substantial period as a result of vacancies, Lerum proposed the insertion in the provision (anent the Court's membership) of the same mandate that "IN CASE OF ANY VACANCY, THE SAME SHALL BE FILLED WITHIN TWO MONTHS FROM OCCURRENCE THEREOF." He later agreed to suggestions to make the period three, instead of two, months. As thus amended, the proposal was approved. As it turned out, however, the Commission ultimately agreed on a fifteen-member Court. **Thus it was that the section fixing the composition of the Supreme Court came to include a command to fill up any vacancy therein within 90 days from its occurrence**.

They may, as earlier pointed out, in fact influence the results of elections and, for that reason, their making is considered an election offense.

To the contention that may perhaps be asserted, that Sections 4 (1) and 9 of Article VIII should prevail over Section 15 of Article VII, because they may be considered *later* expressions of the people when they adopted the Constitution, it suffices to point out that the Constitution must be construed in its entirety as one, single, instrument.

To be sure, instances may be conceived of the imperative need for an appointment, during the period of the ban, not only in the executive but also in the Supreme Court. This may be the case should the membership of the court be so reduced that it will have no quorum or should the voting on a particularly important question requiring expeditious resolution be evenly divided. Such a case, however, is covered by neither Section 15 of Article VII nor Sections 4 (1) and 9 of Article VIII.

In this connection, it may be pointed out that that instruction that any "vacancy *shall be* filled within ninety days" (in the last sentence of Section 4 (1) of Article VIII) contrasts with the prohibition in Section 15, Article VII, which is couched *in stronger negative language* – that "a President or Acting President *shall not* make appointments…"

The commission later approved a proposal of Commissioner Hilario G. Davide, Jr. (now a Member of this Court) to add to what is now Section 9 of Article VIII, the following paragraph: "WITH RESPECT TO LOWER COURTS, THE PRESIDENT SHALL ISSUE THE APPOINTMENT WITHIN NINETY DAYS FROM THE SUBMISSION OF THE LIST" (of nominees by the Judicial and Bar Council to the President). Davide stated that his purpose was to provide a "uniform rule" for lower courts. According to him, the 90-day period should be counted from submission of the list of nominees to the President in view of the possibility that the President might reject the list submitted to him and the JBC thus need more time to submit a new one.

On the other hand, Section 15, Article VII – which in effect deprives the President of his appointing power "two months immediately before the next presidential elections up to the end of his term" – was approved without discussion.[68]

However, the reference to the records of the Constitutional Commission did not advance or support the result in *Valenzuela*. Far to the contrary, the records disclosed the express intent of the framers to enshrine in the Constitution, upon the initiative of Commissioner Eulogio Lerum, "a command [to the President] to fill up any vacancy therein within 90 days from its occurrence," which even *Valenzuela* conceded.[69] The exchanges during deliberations of the Constitutional Commission on October 8, 1986 further show that the filling of a vacancy in the Supreme Court within the 90-day period was a *true mandate* for the President, *viz*:

MR. DE CASTRO. I understand that our justices now in the Supreme Court, together with the Chief Justice, are only 11.

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[68] *Id.*, pp. 422-423.

[69] *Id.*, p. 423.

MR. CONCEPCION. Yes.

MR. DE CASTRO. **And the second sentence of this subsection reads: "Any vacancy shall be filled within ninety days from the occurrence thereof."**

MR. CONCEPCION. **That is right**.

MR. DE CASTRO. **Is this now a mandate to the executive to fill the vacancy?**

MR. CONCEPCION. **That is right. That is borne out of the fact that in the past 30 years, seldom has the Court had a complete complement**.[70]

Moreover, the usage in Section 4(1), Article VIII of the word *shall* – an imperative, operating to impose a duty that may be enforced[71] – should not be disregarded. Thereby, Section 4(1) imposes on the President the *imperative duty* to make an appointment of a Member of the Supreme Court within 90 days from the occurrence of the vacancy. The failure by the President to do so will be a clear disobedience to the Constitution.

The 90-day limitation fixed in Section 4(1), Article VIII for the President to fill the vacancy in the Supreme Court was undoubtedly a special provision to establish a *definite mandate* for the President as the appointing power, and cannot be defeated by mere judicial interpretation in *Valenzuela* to the effect that Section 15, Article VII prevailed because it was "couched in *stronger negative language*." Such interpretation even turned out to be conjectural, in light of the records of the Constitutional Commission's deliberations on Section 4 (1), Article VIII.

How *Valenzuela* justified its pronouncement and result is hardly warranted. According to an authority on statutory construction:[72]

[70] *Record of Proceedings and Debates of the Constitutional Commission*, Vol. V., pp. 632-633.

[71] *Dizon v. Encarnacion*, G.R. No. 18615, December 24, 1963, 9 SCRA 714.

[72] Crawford, Earl. T., *The Construction of Statutes*, Thomas Law Book Company, St. Louis, Missouri, 262-264 (1940).

xxx the court should seek to avoid any conflict in the provisions of the statute by endeavoring to harmonize and reconcile every part so that each shall be effective. It is not easy to draft a statute, or any other writing for that matter, which may not in some manner contain conflicting provisions. But what appears to the reader to be a conflict may not have seemed so to the drafter. Undoubtedly, each provision was inserted for a definite reason. Often by considering the enactment in its entirety, what appears to be on its face a conflict may be cleared up and the provisions reconciled.

Consequently, that construction which will leave every word operative will be favored over one which leaves some word or provision meaningless because of inconsistency. But a word should not be given effect, if to do so gives the statute a meaning contrary to the intent of the legislature. On the other hand, if full effect cannot be given to the words of a statute, they must be made effective as far as possible. Nor should the provisions of a statute which are inconsistent be harmonized at a sacrifice of the legislative intention. It may be that two provisions are irreconcilable; if so, the one which expresses the intent of the law-makers should control. And the arbitrary rule has been frequently announced that where there is an irreconcilable conflict between the different provisions of a statute, the provision last in order of position will prevail, since it is the latest expression of the legislative will. Obviously, the rule is subject to deserved criticism. It is seldom applied, and probably then only where an irreconcilable conflict exists between different sections of the same act, and after all other means of ascertaining the meaning of the legislature have been exhausted. Where the conflict is between two statutes, more may be said in favor of the rule's application, largely because of the principle of implied repeal.

In this connection, PHILCONSA's urging of a revisit and a review of *Valenzuela* is timely and appropriate. *Valenzuela* arbitrarily ignored the express intent of the Constitutional Commission to have Section 4 (1), Article VIII stand *independently of* any other provision, least of all one found in Article VII. It further ignored that the two provisions had no irreconcilable conflict, regardless of Section 15, Article VII being couched in the negative. As judges, we are not to unduly

interpret, and should not accept an interpretation that defeats the intent of the framers.[73]

Consequently, prohibiting the incumbent President from appointing a Chief Justice on the premise that Section 15, Article VII extends to appointments in the Judiciary cannot be sustained. A misinterpretation like *Valenzuela* should not be allowed to last after its false premises have been exposed.[74] It will not do to merely distinguish *Valenzuela* from these cases, for the result to be reached herein is entirely incompatible with what *Valenzuela* decreed. Consequently, *Valenzuela* now deserves to be quickly sent to the dustbin of the unworthy and forgettable.

We reverse *Valenzuela*.

Second. Section 15, Article VII does not apply as well to all *other* appointments in the Judiciary.

There is no question that one of the reasons underlying the adoption of Section 15 as part of Article VII was to eliminate *midnight appointments* from being made by an *outgoing* Chief Executive in the mold of the appointments dealt with in the leading case of *Aytona v. Castillo*.[75] In fact, in *Valenzuela*, the Court so observed, stating that:

> xxx it appears that Section 15, Article VII is directed against two types of appointments: (1) those made for buying votes and (2) those made for partisan considerations. The first refers to those appointments made within the two months preceding a Presidential election and are similar to those which are declared election offenses in the Omnibus Election Code, *viz.*:

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[73] *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.*, 4 SCRA 285, (1962).

[74] According to *Arizona v. Rumsey,* 467 U. S. 203, 212 (1984): "Although adherence to precedent is not rigidly required in constitutional cases, any departure from the doctrine of *stare decisis* demands special justification." The special justification for the reversal of *Valenzuela* lies in its intrinsic unsoundness.

[75] G.R. No. L-19313, January 19, 1962, 4 SCRA 1.

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The second type of appointments prohibited by Section 15, Article VII consists of the so-called "midnight" appointments. In *Aytona v. Castillo*, it was held that after the proclamation of Diosdado Macapagal as duly elected President, President Carlos P. Garcia, who was defeated in his bid for reelection, became no more than a "caretaker" administrator whose duty was to "prepare for the orderly transfer of authority to the incoming President." Said the Court:

> **"The filling up of vacancies in important positions, if few, and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and appointee's qualifications may undoubtedly be permitted. But the issuance of 350 appointments in one night and the planned induction of almost all of them in a few hours before the inauguration of the new President may, with some reason, be regarded by the latter as an abuse of Presidential prerogatives, the steps taken being apparently a mere partisan effort to fill all vacant positions irrespective of fitness and other conditions, and thereby to deprive the new administration of an opportunity to make the corresponding appointments."**

As indicated, the Court recognized that there may well be appointments to important positions which have to be made even after the proclamation of the new President. **Such appointments, so long as they are "few and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications," can be made by the outgoing President.** Accordingly, several appointments made by President Garcia, which were shown to have been well considered, were upheld.

Section 15, Article VII has a broader scope than the *Aytona* ruling. It may not unreasonably be deemed to contemplate not only "midnight" appointments – those made obviously for partisan reasons as shown by their number and the time of their making – but also appointments presumed made for the purpose of influencing the outcome of the Presidential election.

On the other hand, the exception in the same Section 15 of Article VII – allowing appointments to be made during the period of the ban therein provided – is much narrower than that recognized in *Aytona*. The exception allows only the making of *temporary*

appointments to *executive* positions when continued vacancies will *prejudice public service or endanger public safety*. Obviously, the article greatly restricts the appointing power of the President during the period of the ban.

Considering the respective reasons for the time frames for filling vacancies in the courts and the restriction on the President's power of appointment, it is this Court's view that, as a general proposition, in case of conflict, the former should yield to the latter. Surely, the prevention of vote-buying and similar evils outweighs the need for avoiding delays in filling up of court vacancies or the disposition of some cases. Temporary vacancies can abide the period of the ban which, incidentally and as earlier pointed out, comes to exist only once in every six years. Moreover, those occurring in the lower courts can be filled temporarily by designation. But prohibited appointments are long-lasting and permanent in their effects. They may, as earlier pointed out, in fact influence the results of elections and, for that reason, their making is considered an election offense.[76]

Given the background and rationale for the prohibition in Section 15, Article VII, we have no doubt that the Constitutional Commission confined the prohibition to appointments made in the Executive Department. The framers did not need to extend the prohibition to appointments in the Judiciary, because their establishment of the JBC and their subjecting the nomination and screening of candidates for judicial positions to the unhurried and deliberate *prior* process of the JBC ensured that there would no longer be midnight appointments to the Judiciary. If midnight appointments in the mold of *Aytona* were made in haste and with irregularities, or made by an outgoing Chief Executive in the last days of his administration out of a desire to subvert the policies of the incoming President or for partisanship,[77] the appointments to the Judiciary made after the

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[76] *Supra,* note 6, pp. 424-426; bold underscoring supplied for emphasis.

[77] *Aytona v. Castillo*, *supra*, note 74, pp. 8-10 (N.B. — In the time material to *Aytona*, there were judges of the Court of First Instance who were appointed to districts that had no vacancies, because the incumbents had not qualified for other districts to which they had been supposedly transferred or promoted; at any rate, the appointments still required confirmation by the Commission on Appointments).

establishment of the JBC would not be suffering from such defects because of the JBC's prior processing of candidates. Indeed, it is axiomatic in statutory construction that the ascertainment of the purpose of the enactment is a step in the process of ascertaining the intent or meaning of the enactment, because the reason for the enactment must necessarily shed considerable light on "the law of the statute," *i.e.*, the intent; hence, the enactment should be construed with reference to its intended scope and purpose, and the court should seek to carry out this purpose rather than to defeat it.[78]

Also, the intervention of the JBC eliminates the danger that appointments to the Judiciary can be made for the purpose of buying votes in a coming presidential election, or of satisfying partisan considerations. The experience from the time of the establishment of the JBC shows that even candidates for judicial positions at any level backed by people influential with the President could not always be assured of being recommended for the consideration of the President, because they first had to undergo the vetting of the JBC and pass muster there. Indeed, the creation of the JBC was *precisely* intended to de-politicize the Judiciary by doing away with the intervention of the Commission on Appointments. This insulating process was absent from the *Aytona* midnight appointment.

<u>*Third*</u>. As earlier stated, the non-applicability of Section 15, Article VII to appointments in the Judiciary was confirmed by then Senior Associate Justice Regalado to the JBC itself when it met on March 9, 1998 to discuss the question raised by some sectors about the "constitutionality of xxx appointments" to the Court of Appeals in light of the forthcoming presidential elections. He assured that "on the basis of the (Constitutional) Commission's records, the election ban had no application to appointments to the Court of Appeals."[79] This confirmation was *accepted* by the JBC, which then submitted to the President

[78] Crawford, *op. cit., supra*, note 72, pp. 248-249.

[79] *Supra,* note 6, p. 413.

for consideration the nominations for the eight vacancies in the Court of Appeals.[80]

The fault of *Valenzuela* was that it accorded no weight and due consideration to the confirmation of Justice Regalado. *Valenzuela* was weak, because it relied on interpretation to determine the intent of the framers rather than on the deliberations of the Constitutional Commission. Much of the unfounded doubt about the President's power to appoint during the period of prohibition in Section 15, Article VII could have been dispelled since its promulgation on November 9, 1998, had *Valenzuela* properly acknowledged and relied on the confirmation of a distinguished member of the Constitutional Commission like Justice Regalado.

Fourth. Of the 23 sections in Article VII, three (*i.e.*, Section 14, Section 15, and Section 16) concern the appointing powers of the President.

Section 14 speaks of the power of the *succeeding* President to revoke appointments made by an Acting President,[81] and evidently refers only to appointments in the Executive Department. It has no application to appointments in the Judiciary, because *temporary* or *acting* appointments can only undermine the independence of the Judiciary due to their being revocable at will.[82] The letter and spirit of the Constitution safeguard that independence. Also, there is no law in the books that authorizes the *revocation* of appointments in the Judiciary. Prior to their mandatory retirement or resignation, judges of the first and second level courts and the Justices of the third level courts may only be removed for cause, but the Members of the Supreme Court may be removed only by impeachment.

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[80] *Id.*

[81] Section 14. Appointments extended by an Acting President shall remain effective, unless revoked by the elected President within ninety days from his assumption or reassumption of office.

[82] Cruz, I., *Philippine Political Law*, 253 (2002); also *Rilloraza v. Vargas*, 80 Phil. 297 (1948).

Section 16 covers only the presidential appointments that require confirmation by the Commission on Appointments. Thereby, the Constitutional Commission restored the requirement of confirmation by the Commission on Appointments after the requirement was removed from the 1973 Constitution. Yet, because of Section 9 of Article VIII, the restored requirement did not include appointments to the Judiciary.[83]

Section 14, Section 15, and Section 16 are obviously of the same character, in that they affect the power of the President to appoint. The fact that Section 14 and Section 16 refer only to appointments within the Executive Department renders conclusive that Section 15 also applies only to the Executive Department. This conclusion is consistent with the rule that every part of the statute must be interpreted with reference to the context, *i.e.* that every part must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[84] It is absurd to assume that the framers deliberately situated Section 15 *between* Section 14 and Section 16, if they intended Section 15 to cover *all* kinds of presidential appointments. If that was their intention in respect of appointments to the Judiciary, the framers, if only to be clear, would have easily and surely inserted a similar prohibition in Article VIII, most likely within Section 4 (1) thereof.

Fifth. To hold like the Court did in *Valenzuela* that Section 15 extends to appointments to the Judiciary further undermines the intent of the Constitution of ensuring the independence of the Judicial Department from the Executive and Legislative Departments. Such a holding will tie the Judiciary and the Supreme Court to the fortunes or misfortunes of political

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[83] *Record of Proceedings and Debates of the Constitutional Commission*, Vol. V., p. 908, which indicates that in his sponsorship speech delivered on October 12, 1986 on the floor of the Constitutional Commission, Commissioner Teofisto Guingona explained that "[a]ppointments to the judiciary shall not be subject to confirmation by the Commission on Appointments."

[84] Rodriguez, *Statutory Construction*, 171 (1999).

leaders vying for the Presidency in a presidential election. Consequently, the wisdom of having the new President, instead of the current incumbent President, appoint the next Chief Justice is itself suspect, and cannot ensure judicial independence, because the appointee can also become beholden to the appointing authority. In contrast, the appointment by the incumbent President does not run the same risk of compromising judicial independence, precisely because her term will end by June 30, 2010.

Sixth. The argument has been raised to the effect that there will be no need for the incumbent President to appoint during the prohibition period the successor of Chief Justice Puno within the context of Section 4 (1), Article VIII, because anyway there will still be about 45 days of the 90 days mandated in Section 4(1), Article VIII remaining.

The argument is flawed, because it is focused only on the coming vacancy occurring from Chief Justice Puno's retirement by May 17, 2010. It ignores the need to apply Section 4(1) to *every* situation of a vacancy in the Supreme Court.

The argument also rests on the fallacious assumption that there will still be time remaining in the 90-day period under Section 4(1), Article VIII. The fallacy is easily demonstrable, as the OSG has shown in its comment.

Section 4 (3), Article VII requires the regular elections to be held on the second Monday of May, letting the elections fall on May 8, at the earliest, or May 14, at the latest. If the regular presidential elections are held on May 8, the period of the prohibition is 115 days. If such elections are held on May 14, the period of the prohibition is 109 days. Either period of the prohibition is longer than the full mandatory 90-day period to fill the vacancy in the Supreme Court. The result is that there are *at least* 19 occasions (*i.e.*, the difference *between* the *shortest possible period* of the ban of 109 days *and* the 90-day mandatory period for appointments) in which the outgoing President would be in no position to comply with the constitutional duty to fill up a vacancy in the Supreme Court. It is safe to assume that the framers of the Constitution could not have

intended such an absurdity. In fact, in their deliberations on the mandatory period for the appointment of Supreme Court Justices under Section 4 (1), Article VIII, the framers neither discussed, nor mentioned, nor referred to the ban against midnight appointments under Section 15, Article VII, or its effects on the 90-day period, or *vice versa*. They did not need to, because they never intended Section 15, Article VII to apply to a vacancy in the Supreme Court, or in any of the lower courts.

Seventh. As a matter of fact, *in an extreme case*, we can even raise a doubt on whether a JBC list is necessary at all for the President – any President – to appoint a Chief Justice if the appointee is to come from the ranks of the sitting justices of the Supreme Court.

Sec. 9, Article VIII says:

> xxx. The Members of the Supreme Court xxx shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for any vacancy. Such appointments need no confirmation.
>
> xxx xxx xxx

The provision clearly refers to an appointee coming into the Supreme Court from the outside, *that is*, a non-member of the Court aspiring to become one. It speaks of candidates for the Supreme Court, not of those who are already members or sitting justices of the Court, all of whom have previously been vetted by the JBC.

Can the President, therefore, appoint any of the incumbent Justices of the Court as Chief Justice?

The question is not squarely before us at the moment, but it should lend itself to a deeper analysis if and when circumstances permit. It should be a good issue for the proposed Constitutional Convention to consider in the light of Senate President Juan Ponce Enrile's statement that the President can appoint the Chief Justice from among the sitting justices of the Court even without a JBC list.

II

The Judiciary Act of 1948

The posture has been taken that no urgency exists for the President to appoint the successor of Chief Justice Puno, considering that the Judiciary Act of 1948 can still address the situation of having the next President appoint the successor.

Section 12 of the Judiciary Act of 1948 states:

> Section 12. *Vacancy in Office of Chief Justice*. — In case of a vacancy in the office of Chief Justice of the Supreme Court or of his inability to perform the duties and powers of his office, they shall devolve upon the Associate Justice who is first in precedence, until such disability is removed, or another Chief Justice is appointed and duly qualified. This provision shall apply to every Associate Justice who succeeds to the office of Chief Justice.

The provision calls for an *Acting* Chief Justice in the event of a vacancy in the office of the Chief Justice, or in the event that the Chief Justice is unable to perform his duties and powers. In either of such circumstances, the duties and powers of the office of the Chief Justice shall devolve upon the Associate Justice who is first in precedence until a new Chief Justice is appointed or until the disability is removed.

Notwithstanding that there is no pressing need to dwell on this peripheral matter after the Court has hereby resolved the question of consequence, we do not find it amiss to confront the matter now.

We cannot agree with the posture.

A review of Sections 4(1) and 9 of Article VIII shows that the Supreme Court is composed of a Chief Justice and 14 Associate Justices, who all shall be appointed by the President from a list of at least three nominees prepared by the JBC for every vacancy, which appointments require no confirmation by the Commission on Appointments. With reference to the Chief Justice, he or she is appointed by the President as Chief Justice, and the appointment is never in an acting capacity.

The express reference to a Chief Justice abhors the idea that the framers contemplated an *Acting* Chief Justice to head the membership of the Supreme Court. Otherwise, they would have simply written so in the Constitution. Consequently, to rely on Section 12 of the Judiciary Act of 1948 in order to forestall the imperative need to appoint the next Chief Justice soonest is to defy the plain intent of the Constitution.

For sure, the framers intended the position of Chief Justice to be permanent, not one to be occupied in an acting or temporary capacity. In relation to the scheme of things under the present Constitution, Section 12 of the Judiciary Act of 1948 only responds to a rare situation in which the new Chief Justice is not yet appointed, or in which the incumbent Chief Justice is unable to perform the duties and powers of the office. It ought to be remembered, however, that it was enacted because the Chief Justice appointed under the 1935 Constitution was subject to the confirmation of the Commission on Appointments, and the confirmation process might take longer than expected.

The appointment of the next Chief Justice by the incumbent President is preferable to having the Associate Justice who is first in precedence take over. Under the Constitution, the heads of the Legislative and Executive Departments are popularly elected, and whoever are elected and proclaimed at once become the leaders of their respective Departments. However, the lack of any appointed occupant of the office of Chief Justice harms the independence of the Judiciary, because the Chief Justice is the head of the entire Judiciary. The Chief Justice performs functions absolutely significant to the life of the nation. With the entire Supreme Court being the Presidential Electoral Tribunal, the Chief Justice is the Chairman of the Tribunal. There being no obstacle to the appointment of the next Chief Justice, aside from its being mandatory for the incumbent President to make within the 90-day period from May 17, 2010, there is no justification to insist that the successor of Chief Justice Puno be appointed by the next President.

Historically, under the present Constitution, there has been no wide gap between the retirement and the resignation of an

incumbent Chief Justice, on one hand, and the appointment to and assumption of office of his successor, on the other hand. As summarized in the comment of the OSG, the chronology of succession is as follows:

1. When Chief Justice Claudio Teehankee retired on April 18, 1988, Chief Justice Pedro Yap was appointed on the same day;
2. When Chief Justice Yap retired on July 1, 1988, Chief Justice Marcelo Fernan was appointed on the same day;
3. When Chief Justice Fernan resigned on December 7, 1991, Chief Justice Andres Narvasa was appointed the following day, December 8, 1991;
4. When Chief Justice Narvasa retired on November 29, 1998, Chief Justice Hilario Davide, Jr. was sworn into office the following early morning of November 30, 1998;
5. When Chief Justice Davide retired on December 19, 2005, Chief Justice Artemio Panganiban was appointed the next day, December 20, 2005; and
6. When Chief Justice Panganiban retired on December 6, 2006, Chief Justice Reynato S. Puno took his oath as Chief Justice at midnight of December 6, 2006.[85]

III

Writ of *mandamus* does not lie against the JBC

May the JBC be compelled to submit the list of nominees to the President?

Mandamus shall issue when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act that the law specifically enjoins as a duty resulting from an office, trust, or station.[86] It is proper when the act against which

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[85] Comment of the OSG, p. 37.

[86] Section 3, Rule 65, 1997 *Rules of Civil Procedure*.

it is directed is one addressed to the discretion of the tribunal or officer. *Mandamus* is not available to direct the exercise of a judgment or discretion in a particular way.[87]

For *mandamus* to lie, the following requisites must be complied with: (*a*) the plaintiff has a clear legal right to the act demanded; (*b*) it must be the duty of the defendant to perform the act, because it is mandated by law; (*c*) the defendant unlawfully neglects the performance of the duty enjoined by law; (*d*) the act to be performed is ministerial, not discretionary; and (*e*) there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.

Section 8(5) and Section 9, Article VIII, mandate the JBC to submit a list of at least three nominees to the President for every vacancy in the Judiciary:

> Section 8. xxx
>
> (5) The Council **shall have the principal function of recommending appointees** to the Judiciary. xxx
>
> Section 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from **a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy.** Such appointments need no confirmation.
>
> For the lower courts, **the President shall issue the appointments within ninety days from the submission of the list.**

However, Section 4(1) and Section 9, Article VIII, mandate the President to fill the vacancy in the Supreme Court within 90 days from the occurrence of the vacancy, and within 90 days from the submission of the list, in the case of the lower courts. The 90-day period is directed at the President, not at the JBC. Thus, the JBC should start the process of selecting the candidates to fill the vacancy in the Supreme Court *before* the occurrence of the vacancy.

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[87] *JG Summit Holdings, Inc. v. Court of Appeals*, G.R. No. 124293, November 20, 2000, 345 SCRA 143.

Under the Constitution, it is mandatory for the JBC to submit to the President the list of nominees to fill a vacancy in the Supreme Court in order to enable the President to appoint one of them *within* the 90-day period from the occurrence of the vacancy. The JBC has no discretion to submit the list to the President *after* the vacancy occurs, because that shortens the 90-day period allowed by the Constitution for the President to make the appointment. For the JBC to do so will be unconscionable on its part, considering that it will thereby *effectively* and *illegally* deprive the President of the ample time granted under the Constitution to reflect on the qualifications of the nominees named in the list of the JBC before making the appointment.

The duty of the JBC to submit a list of nominees *before* the start of the President's mandatory 90-day period to appoint is ministerial, but its selection of the candidates whose names will be in the list to be submitted to the President lies within the discretion of the JBC. The object of the petitions for *mandamus* herein should only refer to the duty to submit to the President the list of nominees for every vacancy in the Judiciary, because in order to constitute unlawful neglect of duty, there must be an unjustified delay in performing that duty.[88] For *mandamus* to lie against the JBC, therefore, there should be an unexplained delay on its part in recommending nominees to the Judiciary, that is, in submitting the list to the President.

The distinction between a ministerial act and a discretionary one has been delineated in the following manner:

The distinction between a ministerial and discretionary act is well delineated. A **purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done.** If the **law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary** and not ministerial. The **duty is ministerial**

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[88] *Nery v. Gamolo*, A.M. No. P-01-1508, February 7, 2003, 397 SCRA 110, citing *Musni v. Morales*, 315 SCRA 85, 86 (1999).

only when the discharge of the same requires neither the exercise of official discretion or judgment.[89]

Accordingly, we find no sufficient grounds to grant the petitions for *mandamus* and to issue a writ of *mandamus* against the JBC. The actions for that purpose are premature, because it is clear that the JBC still has until May 17, 2010, *at the latest*, within which to submit the list of nominees to the President to fill the vacancy created by the compulsory retirement of Chief Justice Puno.

IV

Writ of prohibition does not lie against the JBC

In light of the foregoing disquisitions, the conclusion is ineluctable that only the President can appoint the Chief Justice. Hence, Soriano's petition for prohibition in G.R. No. 191032, which proposes to prevent the JBC from intervening in the process of nominating the successor of Chief Justice Puno, lacks merit.

On the other hand, the petition for prohibition in G.R. No. 191342 is similarly devoid of merit. The challenge mounted against the composition of the JBC based on the allegedly unconstitutional allocation of a vote each to the *ex officio* members from the Senate and the House of Representatives, thereby prejudicing the chances of some candidates for nomination by raising the minimum number of votes required in accordance with the rules of the JBC, is not based on the petitioners' actual interest, because they have not alleged in their petition that they were nominated to the JBC to fill some vacancies in the Judiciary. Thus, the petitioners lack *locus standi* on that issue.

WHEREFORE, the Court:

1. Dismisses the petitions for *certiorari* and *mandamus* in G.R. No. 191002 and G.R. No. 191149, and the petition for *mandamus* in G.R. No. 191057 for being premature;

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[89] *Espiridion v. Court of Appeals*, G.R. No. 146933, June 8, 2006, 490 SCRA 273.

2. Dismisses the petitions for prohibition in G.R. No. 191032 and G.R. No. 191342 for lack of merit; and

3. Grants the petition in A.M. No. 10-2-5-SC and, accordingly, directs the Judicial and Bar Council:

(*a*) To resume its proceedings for the nomination of candidates to fill the vacancy to be created by the compulsory retirement of Chief Justice Reynato S. Puno by May 17, 2010;

(*b*) To prepare the short list of nominees for the position of Chief Justice;

(*c*) To submit to the incumbent President the short list of nominees for the position of Chief Justice on or before May 17, 2010; and

(*d*) To continue its proceedings for the nomination of candidates to fill other vacancies in the Judiciary and submit to the President the short list of nominees corresponding thereto in accordance with this decision.

SO ORDERED.

Leonardo-de Castro and *Perez, JJ.,* concur.

Villarama, Jr., J., The C.J., certifies that *J*. Villarama voted in favor of the decision of *J*. Bersamin.

Velasco, Jr., J., joins the separate opinion of *J*. Nachura.

Nachura, J., see separate opinion.

Brion, J., see separate opinion.

Abad, J., see concurring opinion.

Peralta, Del Castillo and *Mendoza, JJ.,* concur in the result and join Justice Brion in his separate opinion.

Carpio Morales, J., see dissenting opinion.

Puno, C.J., no part, JBC a respondent.

Carpio, J., no part, as Senior Associate Justice, he is involved either way.

Corona, J., no part.

CONCURRING OPINION

ABAD, *J.*:

Chief Justice Reynato S. Puno will retire on May 17, 2010. Article VIII, Section 9[1] of the 1987 Constitution requires the President to choose his successor from at least three nominees of the Judicial and Bar Council (JBC). On January 18, 2010 the JBC passed a unanimous resolution[2] to start the process of filling up the anticipated vacancy. Indeed, it invited applications and nominations for the position through newspapers, later announced the names of candidates to it, and finally received endorsements in favor of and oppositions against such candidates.

Ordinarily, the JBC would already be holding public interviews of candidates to the office to be followed by a deliberation and the eventual submission of a shortlist of nominees to the President. The Constitution provides that any vacancy in the Supreme Court "shall be filled within ninety days" from its occurrence.[3] Since the position of Chief Justice will be vacant on May 17, 2010 when Chief Justice Puno shall have retired, the President has to fill up the vacancy during the period May 17 to August 15, 2010.

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[1] Article VIII, Sec. 9. The members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation. For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

[2] http://jbc.judiciary.gov.ph/announcements/JBCreCJ.pdf.

[3] Article VIII, Section 4(1). The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or, in its discretion, in divisions of three, five, or seven Members. **Any vacancy shall be filled within ninety days from the occurrence thereof**.

But by some unforeseen happenstance, that vacancy (May 18) will occur during the period of the midnight appointments ban (March 10 to June 30), a ban intended to prevent an outgoing president from buying votes using such appointments or robbing the incoming president of the opportunity to fill up important positions with people he will be working with. Article VII, Section 15, of the Constitution prohibits the outgoing President from making appointments "two months immediately before the next presidential elections and up to the end of his term," except temporary appointments in the interest of public service or public safety.[4] The midnight appointments ban this year is in force from March 10 (two months before the elections) to June 30 (the end of the incumbent President's term), a period of 112 days.

Issues to be addressed

Quite ably, the majority opinion already addressed the several issues raised by the petitions and the oppositions to them. I join that opinion and would add a few thoughts on what I believe to be the key issues in this case, namely:

1. Whether or not the case presents an actual controversy that is ripe for this Court's adjudication; and

2. Whether or not the Constitutional ban on midnight appointments applies to the judiciary.

Discussion

One. Invoking the fundamental rule that judicial power is the duty of the courts of justice to settle "actual controversies involving rights which are legally demandable and enforceable," the National Union of People's Lawyers (NUPL) claims that no actual controversy exists in this case as to warrant judicial

[4] Article VII, Sec. 15. Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

determination of the issue of whether or not the Constitutional ban on midnight appointment applies to the judiciary since the JBC has not as yet prepared a final list of its nominees to current vacancies in the courts. BAYAN, COURAGE, KADAMAY, LFS, NUSTP, CEGP, SCMP, and BAYAN claim that what the petitioners seek is a mere advisory opinion from the Court, something that it has no power to give.

The Constitution provides that judicial power is the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable.[5] The court will not act on an action for damages for a slap on the plaintiff's face if the defendant is still to deliver that slap. The law must have established a right which has in fact been violated.

Here, the Constitution imposes on the JBC the duty to recommend to the President those whom he can appoint to the judiciary when a vacancy occurs.[6] In the case of a vacancy in the Supreme Court, it is implicit that the JBC must submit a list of at least three nominees to the President on time to enable him to fulfill his duty to fill up the vacancy within 90 days after it occurs.[7] Those who have an interest in the fulfillment of this duty has the right to insist that it be done.

But the JBC appears reluctant or unwilling to perform its above duty in the case of the forthcoming May 17, 2010 vacancy in the office of the Chief Justice. It expressed a desire to determine, initially, from views submitted to it by others and, later, from what the Court might provide it by way of guidance, whether it can submit its list of nominees to the incumbent President during the ban on midnight appointments that sets in on March 10. Indeed, the JBC said in its resolution of January 18, 2010 that, while it would start the selection process, it was yet to determine when and to whom to submit its shortlist of nominees. It saw an apparent conflict between the provisions

[5] Article VIII, Section 1, 1987 Constitution of the Philippines.

[6] *Id.*, Section 5.

[7] *Id.*, Section 9 in relation to Section 4(1).

of Section 4(1) of Article VIII (the ban on midnight appointments) and Section 15 of Article VII (the need to fill up the vacancy within 90 days of its occurrence) of the 1987 Constitution.

Eventually, after taking some steps in the selection process, the JBC held the process in abeyance, unable to decide as yet when and to whom it will submit its list of nominees for the position that Chief Justice Puno will vacate on May 17, 2010. Under the circumstances, the controversy is already ripe for adjudication for, assuming that the ban on midnight appointment does not apply to the judiciary as the petitioners would have it, then the JBC's suspension of its selection process would constitute a violation of its duty under the Constitution to carry on with such process until it is able to submit the desired list to the incumbent President. If my subdivision neighbor begins constructing a shed in his yard and tells me that he has ordered 20 pigs to raise there, I will not wait till the pigs arrive and defecate before I bring an action to abate a nuisance.

As mandated by the Constitution, the incumbent President should be able to fill up the vacancy within 90 days of its occurrence. This presupposes that the incumbent President should have the list on or before May 17, the day the vacancy occurs, so she can comply with her duty under the Constitution to make the appointment within the 90-day period provided by it. Of course, the circumstances is such that the period for appointing the Chief Justice's replacement will span the tenure of the incumbent President (for 44 days) and her successor (for 46 days), but it is the incumbent's call whether to exercise the power or pass it on.

Again, assuming as correct petitioners' view that the ban on midnight appointments does not apply to the judiciary, the JBC's suspension of its selection process places it in default, given its above duty in regard to the submission of its list of nominees to the President within a time constraint. Under the same assumption, moreover, the petitioner citizens and members of the bar would have a demandable right or interest in having the JBC proceed with its selection process and submit its list

of nominees in time for the incumbent President or her successor to fill up the vacancy within the period required by the Constitution.

Alternatively, assuming that an actual controversy has not yet developed as to warrant action on the petitions filed in this case, the Court has the authority, as an incident of its power of supervision over the JBC,[8] to see to it that the JBC faithfully executes its duties as the Constitution requires of it.

In its Resolution of January 18, 2010, the JBC confesses uncertainty regarding when and to whom to submit its list of nominees for the May 17, 2010 vacancy in the office of Chief Justice in view of the apparently conflicting provisions of the Constitution. Further, in its comment in this case, the JBC declared that it "will be guided by [the Court's] decision in these consolidated Petitions and Administrative Matter." Consequently, as an incident of its Constitutional duty to supervise the JBC, the Court can, to insure JBC's faithful compliance with the Constitution, resolve the issue of whether or not the ban on midnight appointments applies to the judiciary.

Two. Citing "*In Re: Appointments dated March 30, 1998 of Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta as Judges of the Regional Trial Court of Branch 62, Bago City and of Branch 24, Cabanatuan City*,"[9] the oppositors claim that the ban on midnight appointments applies to the judiciary. After examining the reasons for the two apparently conflicting provisions, the Court said that the need to fill up vacancies in the judiciary within the period the Constitution provides must yield to the ban on Presidential midnight appointments. The Court explained this ruling:

Considering the respective reasons for the time frames for filling vacancies in the courts and the restriction on the President's power of appointment, it is this Court's view that, as a general proposition, in case of conflict, the former should yield to the latter. Surely, the prevention of vote-buying and similar evils outweighs the need for avoiding delays in filling up of court vacancies or the disposition of some cases.

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[8] *Id.*, Section 8(1).
[9] 358 Phil. 896 (1998).

Temporary vacancies can abide the period of the ban which, incidentally and as earlier pointed out, comes to exist only once in every six years. Moreover, those occurring in the lower courts can be filled temporarily by designation. But prohibited appointments are long-lasting and permanent in their effects. They may, as earlier pointed out, in fact influence the results of elections and, for that reason, their making is considered an election offense.[10]

But the above assumes that the outgoing incumbent President can make appointments in the judiciary during the period of the ban "to buy votes" and commit "similar evils" like denying the incoming President the opportunity to consider other appointees in the light of his new policies, a point former President Diosdado Macapagal made in *Aytona v. Castillo*.[11]

The fact, however, is that while the President can freely choose to appoint any person who meets the basic qualifications for a position in the Executive Department, he does not have such freedom of choice when it comes to appointments in the judiciary. In the latter case, the Constitution provides in Section 9 of Article VIII that the President can choose his appointee only from a JBC short list of its nominees.

Sec. 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. x x x

This restriction on the President's appointing power is not a small matter.

First. The JBC from whose list of nominees the President will make his appointment is under the supervision of the Supreme Court itself. Indeed, it is headed by the Chief Justice as its presiding officer. The JBC is not a subordinate agency of the Executive Department; the President has neither control nor supervision over it.

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[10] *Id.* at 915-916.

[11] 4 SCRA 1, 8 (1962).

Second. The JBC makes its own vetting rules and procedures. The Constitution of course provides for the qualifications of members of the judiciary[12] but this has not prevented the JBC from establishing grounds for disqualifying candidates, such as the pendency of administrative or criminal cases against them.

Third. The JBC announces any vacancy in the judiciary in newspapers of large circulations. Secret recruitment and trading for votes in the coming elections is out.

Fourth. Anyone who has the basic qualifications can apply for a vacancy or be nominated to it. Thus, the opportunity to be recommended by the JBC for appointment is open or otherwise unrestricted. Political connection is not a consideration that the JBC entertains in short listing its nominees.

Fifth. The JBC invites the public to comment on or submit opposition to the nomination of candidates to a vacancy. And it holds public hearings in which each candidate is queried about his qualifications, affiliations, and other personal circumstances.

Sixth. The names in the list submitted by the JBC to the President are not negotiable. On July 24, 2009 the Executive Secretary returned to JBC its list of six nominees for two vacancies in the Court, requesting additional names that the incumbent President can choose from. Obviously, the President was unhappy with the names on the list. But the JBC declined the request, the pertinent portion of which reads:

We wish to inform you that the six (6) nominees of the JBC were chosen after a long and thorough selection process. Among others, their public and private track record, experience and possession of the required qualities of competence, integrity, probity and independence were carefully studies and considered by the JBC. They are all highly qualified for the two (2) vacancies in the Supreme Court and indeed, your letter of July 26, 2009 does not assail and hence, concedes the qualification of the six (6) nominees.

With due respect, the JBC cannot acquiesce to your request to expand the short list of nominees submitted to your office. The

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[12] Section 7(1) and (3), Article VIII, 1987 Constitution of the Philippines.

decision whether to include three or more than three name in the short list of the nominees exclusively belongs to the JBC. It is one of the important innovations in the 1987 Constitution designed to depoliticize appointments in the Judiciary and promote its independence. This discretion given to the JBC is the lynchpin of its autonomy and it cannot be compromised in the tiniest degree without impairing the delicate check and balance in the appointment of members of the Judiciary installed in our Constitution. The JBC, voting unanimously, cannot therefore accede to your request in light of the imperatives of the Constitution.

Thus, the incumbent President was forced to choose from the few names on the list that she had.

In reality, a President's choice of Chief Justice is in fact first a choice of the JBC before it is that of the President. Easily there should at least be 20,000 lawyers who are 40 years of age and have 15 years of law practice of some kind who could qualify for Chief Justice. Yet, the President can choose only from a list of three, four, or five lawyers that the JBC draws up for him. Consequently, the idea that the outgoing incumbent President can take advantage of her appointment of a Chief Justice to buy votes in the coming elections is utterly ridiculous. She has no control over the JBC's actions.

Further, the idea that the incoming President should have the opportunity to choose a Chief Justice who will support his policies does not also make sense. The Supreme Court that the Chief Justice heads is not a support agency under the President. One of the functions of the Supreme Court is to provide a Constitutional check on abuses of the Executive Department.

The proposition that a Chief Justice will always be beholden to the President who appoints him is a myth. Former President Estrada appointed Chief Justice Hilario G. Davide, Jr. who presided over his impeachment and administered the oath to the incumbent President at the heels of EDSA II while President Estrada still sat in Malacañang. Chief Justices Artemio V. Panganiban and Reynato S. Puno voted against positions taken by the administration of the incumbent President who appointed

them both to their position. These Chief Justices like those before them were first choices of the JBC before they were those of the Presidents concerned.

I thus reiterate my concurrence with the main decision.

SEPARATE OPINION

NACHURA, *J.*:

"No amount of exigency can make this Court exercise a power where it is not proper."[1]

I am deeply impressed by the very well written *ponencia* of Justice Lucas P. Bersamin. However, I am unable to concur in all of his conclusions. Instead, I vote to dismiss all the petitions because they have utterly failed to present a justiciable controversy.

The Antecedents

In recent weeks, two potential scenarios have gripped the public mind. The first is the specter of the failure of our first ever automated election which has evoked numerous doomsday predictions. The second is the possibility of the appointment by President Gloria Macapagal Arroyo of the Chief Justice of the Supreme Court—after the compulsory retirement of incumbent Chief Justice Reynato S. Puno on May 17, 2010. This has generated frenzied debates in media, in various lawyers' assemblies, in the academe, and in coffee shops. It has even spawned a number of rallies and demonstrations by civil society groups and by self-styled constitutional experts.

It does not matter that these two situations are merely possibilities, that they are conjectural and speculative at this moment in time. They have, nonetheless, captured the public

[1] Chief Justice Reynato S. Puno in *Atty. Oliver O. Lozano and Atty. Evangeline J. Lozano-Endriano v. Speaker Prospero C. Nograles, Representative, Majority, House of Representatives; Louis "Barok" C. Biraogo v. Speaker Prospero C. Nograles, Speaker of the House of Representatives, Congress of the Philippines,* G.R. Nos. 187883 & 187910, June 16, 2009.

imagination, and have ushered an open season for unfettered discussion and for dire prognostication.

Not unexpectedly, the controversy posed by the second scenario— involving concerns closest to home—has arrived in this Court through various petitions and interventions.

The core issue is whether the sitting President of the Philippines, Gloria Macapagal Arroyo, can validly appoint the Chief Justice of the Supreme Court when the incumbent Chief Justice, Reynato S. Puno, compulsorily retires on May 17, 2010, in light of two apparently conflicting provisions of the Constitution.

Article VII, Section 15, provides a constitutional limitation on the President's power of appointment, *viz.*:

Sec. 15. **Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments**, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.[2]

On the other hand, Article VIII, Section 4(1) contains an express mandate for the President to appoint the Members of the Supreme Court within ninety days from the occurrence of a vacancy, thus—

Sec. 4(1). The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or, in its discretion, in divisions of three, five, or seven Members. **Any vacancy shall be filled within ninety days from the occurrence thereof**.[3]

in relation to Article VIII, Section 9, which states that—

Sec. 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation. Any vacancy shall be filled within ninety days from the occurrence thereof.

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[2] Emphasis supplied.

[3] Emphasis supplied.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

The perceived conflict was resolved in administrative matter, *In Re Appointments Dated March 30, 1998 of Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta as Judges of the Regional Trial Court of Branch 62, Bago City and of Branch 24, Cabanatuan City, respectively.*[4] Therein, the Court was confronted with the question of whether the appointments of the concerned RTC judges, issued within two months before the presidential election in 1998, were valid. The Court answered that, in the given situation, Article VII, Section 15, has primacy over Article VIII, Section 4(1), because the former was "couched in stronger negative language." Accordingly, the appointments were nullified. However, *Valenzuela's* applicability to the present controversy is challenged by most of herein petitioners.

The petitions were filed following certain acts of the Judicial and Bar Council (JBC) related to the constitutional procedure for the appointment of Supreme Court justices, specifically in the matter of the appointment of Chief Justice Puno's successor. On January 18, 2010, the JBC passed a Resolution which relevantly reads:

> The JBC, in its *en banc* meeting of January 18, 2010, unanimously agreed to start the process of filling up the position of Chief Justice to be vacated on May 17, 2010 upon the retirement of the incumbent Chief Justice Honorable Reynato S. Puno.
>
> It will publish the opening of the position for applications or recommendations; deliberate on the list of candidates; publish the names of candidates; accept comments on or opposition to the applications; conduct public interviews of candidates; and prepare the shortlist of candidates.
>
> As to the time to submit this shortlist to the proper appointing authority, in the light of the Constitution, existing laws and jurisprudence, the JBC welcomes and will consider all views on the matter.[5]

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[4] A.M. No. 98-5-01-SC, November 9, 1998, 298 SCRA 408.

[5] http://jbc.judiciary.gov.ph/announcements/JBCreCJ.pdf (visited: March 11, 2010).

On January 20, 2010, the JBC formally announced the opening, for application or recommendation, of the position of Chief Justice of this Court, thus—

> The Judicial and Bar Council (JBC) announces the opening for application or recommendation, of the position of CHIEF JUSTICE OF THE SUPREME COURT, which will be vacated on 17 May 2010 upon the retirement of the incumbent Chief Justice, HON. REYNATO S. PUNO.
>
> Applications or recommendations for this position must be submitted not later than 4 February 2010 (Thursday) to the JBC Secretariat. x x x.[6]

In its February 8, 2010 meeting, the JBC decided to proceed with the process of announcing to the public the names of the candidates for the position. Included in the list of applicants are: (1) Brion, Arturo D.; (2) Carpio, Antonio T.; (3) Corona, Renato C.; (4) Carpio Morales, Conchita; (5) Leonardo-de Castro, Teresita J.; and (6) Sandoval, Edilberto G.[7]

These developments, having already engendered near-hysterical debates, impelled a number of petitioners to file suit. However, obviously hedging against the possibility that the cases would be disallowed on the ground of prematurity, petitioners came to Court using different procedural vehicles.

In G.R. No. 191002, petitioner Arturo de Castro entreats the Court to issue a writ of *mandamus* to compel the JBC to send the list of nominees for Chief Justice to the incumbent President when the position becomes vacant upon the retirement of Chief Justice Puno on May 17, 2010.

The Philippine Constitution Association (PHILCONSA) and John Peralta, petitioners in G.R. Nos. 191057 and 191149, respectively, plead for the same relief.

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[6] http://jbc.judiciary.gov.ph/announcements/jbc_announce_2009/jan.22'10.pdf (visited: March 11, 2010).

[7] Comment of the JBC, p. 6.

In G.R. No. 191032, Jaime Soriano seeks the issuance by the Court of a writ prohibiting the JBC from continuing with its proceedings, particularly the screening of applicants for Chief Justice, based on the hypothesis that the authority to appoint the Chief Justice pertains exclusively to the Supreme Court. He posits that it is the Court that must commence its own internal proceeding to select the successor of Chief Justice Puno.

Amador Tolentino, Jr., in G.R. No. 191342, asks this Court to enjoin and restrain the JBC from submitting the list of nominees for judiciary positions, including that of Chief Justice, to the incumbent President during the period covered in Article VII, Section 15 of the Constitution.

In a cleverly crafted petition which he denominated an administrative matter, former Solicitor General Estelito P. Mendoza filed A.M. No. 10-2-5-SC, imploring this Court to rule, **for the guidance of the JBC**, whether the constitutional prohibition in Article VII, Section 15, applies to positions in the judiciary and whether the incumbent President may appoint the successor of Chief Justice Puno upon the latter's retirement.

Notably, although the petitions sport different appellations (for *mandamus*, or prohibition, or even as an administrative matter), they (except the Soriano petition) share a common bottom line issue, *i.e.,* a definitive ruling on whether, in light of the perceived conflict between Article VII, Section 15, and Article VIII, Section 4(1), the incumbent President can validly appoint a Chief Justice after Chief Justice Puno retires on May 17, 2010.

Thus, the Court consolidated the petitions and required the JBC and the Office of the Solicitor General (OSG) to file their respective comments.

Significantly, the JBC, in its February 25, 2010 Comment, stated:

> 11. ***The next stage of the process which will be the public interview of the candidates, and the preparation of the shortlist of candidates have yet to be undertaken by the***

> ***JBC as of this date, including the interview of the constitutional experts, as may be needed.***
>
> ***Likewise, the JBC has yet to take a position on when to submit the shortlist to the proper appointing authority*, in light of Section 4(1), Article VIII of the Constitution, which provides that vacancy in the Supreme Court shall be filled within ninety (90) days from the occurrence thereof, Section 15, Article VIII of the Constitution concerning the ban on Presidential appointments "two (2) months immediately before the next presidential elections and up to the end of his term" and Section 261(g), Article XXII of the Omnibus Election Code of the Philippines**.[8]

On the other hand, the OSG, in its Comment dated February 26, 2010, took the position that the incumbent President of the Philippines can appoint the successor of Chief Justice Puno when he retires on May 17, 2010, because the prohibition in Article VII, Section 15, of the Constitution does not apply to appointments in the Supreme Court.

Meanwhile, several motions for intervention with oppositions-in-intervention were received by the Court.

Oppositors-Intervenors Antonio Gregorio III, Peter Irving Corvera, Walden Bello, Loretta Ann Rosales, and National Union of Peoples' Lawyers uniformly contend in their pleadings **that the consolidated petitions should be dismissed outright, because of the absence of an actual case or controversy ripe for judicial adjudication and because of petitioners' lack of legal standing to institute the cases**.

Oppositor-Intervenor Mitchell John Boiser posits, among others, that the petitions for *mandamus* are **premature** because there is yet no final list of nominees and the position of Chief Justice is not yet vacant.

Oppositors-Intervenors Yolanda Quisumbing-Javellana, Belleza Alojado Demaisip, Teresita Gandionco-Oledan, Ma. Verena Kasilag-Villanueva, Marilyn Sta. Romana, Leonila de Jesus,

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[8] Italics supplied.

and Guinevere de Leon contend, among others, that the incumbent President is prohibited from making appointments within the period prescribed in Article VII, Section 15; that the next President will still have ample time to appoint a Chief Justice when Chief Justice Puno retires on May 17, 2010 before the 90-day period for appointment mandated in Article VIII, Section 4(1) expires; and that in the interim, the duties of the Chief Justice can be exercised by the most senior of the incumbent Supreme Court justices.

My Position

After careful perusal of the pleadings and painstaking study of the applicable law and jurisprudence, I earnestly believe that the consolidated petitions should be dismissed, because **they do not raise an actual case or controversy ripe for judicial determination.**

As an essential ingredient for the exercise of the power of judicial review, an a**ctual case or controversy** involves a conflict of legal rights, an assertion of opposite legal claims susceptible to judicial resolution.[9] The controversy must be **justiciable**—definite and concrete—touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on one hand, and a denial thereof, on the other; that is, the case must concern a real and not a merely theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[10] The rationale for this requirement is to prevent the courts through avoidance of premature adjudication from entangling

[9] *Congressman Enrique T. Garcia of the 2nd District of Bataan v. The Executive Secretary*, *The Secretary of the Department of Energy, Caltex Philippines, Inc., Petron Corporation, and Pilipinas Shell Corporation,* G.R. No. 157584, April 2, 2009.

[10] *Information Technology Foundation of the Philippines v. Commission on Elections*, G.R. No. 159139, June 15, 2005, 460 SCRA 291, 312-313.

themselves in abstract disagreements, and for us to be satisfied that the case does not present a hypothetical injury or a claim contingent upon some event that has not and indeed may never transpire.[11]

Thus, **justiciability** requires (1) that there be an actual controversy between or among the parties to the dispute; (2) that the interests of the parties be adverse; (3) that the matter in controversy be capable of being adjudicated by judicial power; and (4) that the determination of the controversy will result in practical relief to the complainant.[12]

By these standards, the consolidated petitions do not present a justiciable controversy because of the absence of clashing legal rights. The JBC has merely started the selection process by accepting applications and nominations for the position of Chief Justice. This is only the initial stage of the procedure for appointment of a Chief Justice. By the JBC's own admission, it has yet to undertake the public interview of the applicants; it has yet to prepare the shortlist and to decide whether it needs to interview constitutional experts.

Arturo de Castro and John Peralta justify the propriety of the filing of their respective petitions for *certiorari* and *mandamus* by a common thread: **that the JBC has deferred its decision as to whom to submit the list of nominees**.[13] They are then asking the Court to compel the JBC to submit **the list** to the incumbent President.

De Castro's and Peralta's submission tends to mislead the Court. It is clear from the narrated facts that there is yet no list to submit. The JBC is still in the process of screening applicants for the position. Since there is no list to be submitted, there can be no deferment of its submission. De Castro and Peralta have not shown or even alleged that the JBC **has refused or has been**

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[11] *Office of the Governor v. Select Committee of Inquiry,* 271 Conn. 540, 570, 858 A.2d 709 (2004).

[12] *Astoria Federal Mortgage Corporation v. Matschke,* 111 Conn. App. 462, 959 A.2d 652 (2008).

[13] De Castro petition, p. 5; and Peralta petition, p. 1.

unlawfully neglecting[14] to submit its list, if it is already in existence, to the incumbent President. *Mandamus* is proper only to compel the performance, **when refused**, of a ministerial duty.[15] The *mandamus* petition therefore has no leg to stand on as it presents no actual case ripe for judicial determination.

PHILCONSA, for its part, contends that two applicants for the post, Justices Carpio and Carpio Morales, manifested their interest in their nomination on the condition that the same will be submitted to the next President. According to PHILCONSA, this fact "has created a dilemma/quandary to respondent JBC whether to exclude [from] or include [in the list] the names of said two Senior Justices."[16] It then prays for this Court to rule on the issue.

PHILCONSA, like de Castro and Peralta, is not completely truthful. From its comment, it appears that, as early as February 10, 2010, the JBC had already included the two justices, despite their conditional acceptance of their nominations, in the list of applicants for the post. There is no quandary to speak of.

To justify their petitions for prohibition, Jaime Soriano and Amador Tolentino, Jr. allege that the JBC has already started the screening process for Chief Justice.[17] Thus, they claim that

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[14] Section 3 of Rule 65 pertinently provides that:

Sec. 3. *Petition for mandamus*.—When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

[15] *Pefianco v. Moral*, 379 Phil. 468, 479 (2000).

[16] PHILCONSA petition, p. 5.

[17] Soriano petition, p. 4; and Tolentino petition, p. 2.

the Court can now resolve the constitutional question and issue the writ **prohibiting the JBC from submitting** the list of nominees to the incumbent President.

As earlier mentioned, absent a shortlist of nominees for Chief Justice prepared by the JBC, there is yet nothing that the Court can prohibit the JBC from **submitting** to the incumbent President. The JBC has not even intimated concretely that it will perform the act sought to be prohibited—submitting a list to the incumbent President. The JBC merely started the screening process. Let it be noted that a writ of prohibition is issued to command a respondent to desist from further proceeding in the action or matter specified.[18] Likewise, without a shortlist, there is nothing that this Court can mandate the JBC to submit to the President.

As to the petition filed by Estelito Mendoza, while it is captioned as an administrative matter, **the same is in the nature of a petition for declaratory relief**. Mendoza pleads that this Court interpret two apparently conflicting provisions of the Constitution—Article VII, Section 15 and Article VIII, Section 4(1). Petitioner Mendoza specifically prays for such a ruling "**for the guidance of the [JBC]**," a relief evidently in the nature of a declaratory judgment.

Settled is the rule that petitions for declaratory relief are outside the jurisdiction of this Court.[19] Moreover, **the Court**

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[18] Section 2 of Rule 65 provides that:

Sec. 2.—*Petition for prohibition*.—When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

[19] Article VIII, Section 5 of the Constitution does not include petitions for declaratory relief among those within the original jurisdiction of the Supreme Court. Section 1 of Rule 63 further provides that:

does not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging.[20] While Mendoza and the other petitioners espouse worthy causes, they have presented before this Court issues which are still subject to **unforeseen** possibilities. In other words, the issues they raised are **hypothetical and unripe for judicial determination**.

At this point, **several contingent events are still about to unfold**. The JBC, after it has screened the applicants, may decide to submit the shortlist of nominees either before or after the retirement of Chief Justice Puno. If it decides to submit the list after May 17, 2010, it may opt to transmit said list of nominees to President Macapagal-Arroyo or to the next President. If the list is transmitted to her, the incumbent President may **either appoint or not appoint** the replacement of Chief Justice Puno. We cannot assume that the JBC will do one thing or the other. Neither can we truly predict what the incumbent President will do if such a shortlist is transmitted to her. For us to do so would be to engage in conjecture and to undertake a purely hypothetical exercise.

Thus, the situation calling for the application of either of the conflicting constitutional provisions will arise only when still other contingent events occur. What if the JBC does not finish the screening process during the subject period? What if the President does not make the appointment? Verily, these consolidated petitions involve "uncertain contingent future events that may not occur as anticipated, or indeed may not

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Sec. 1.—*Who may file petition.*—Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

[20] *Albay Electric Cooperative, Inc., Edgardo A. San Pablo, and Evan Calleja v. Hon. Rafael P. Santelices, in his capacity as the Presiding Judge of the Regional Trial Court of Legazpi City, Branch No. 2, and Mayon International Hotel, Inc.,* G.R. No. 132540, April 16, 2009.

occur at all," similar to the recently decided *Lozano v. Nograles*,[21] which this Court dismissed through the pen of Chief Justice Puno. **As no positive act has yet been committed by respondents, the Court must not intervene**. Again, to borrow the words of Chief Justice Puno in *Lozano*, "judicial review is effective largely because it is not available simply at the behest of a partisan faction, but is exercised only to remedy a particular, concrete injury."

Further, the Mendoza petition cannot be likened to the administrative matter in *In Re Appointments of Hon. Valenzuela & Hon. Vallarta*,[22] over which the Court assumed jurisdiction. In that case, the President appointed judges within the constitutional ban and transmitted the appointments to the Chief Justice. Clearly, an actual controversy ripe for judicial determination existed in that case because a positive act had been performed by the President in violation of the Constitution. Here, as shown above, no positive act has been performed by either the JBC or the President to warrant judicial intervention.

To repeat for emphasis, before this Court steps in to wield its awesome power of deciding cases, there must first be an **actual controversy ripe for judicial adjudication**. Here, the allegations in all the petitions are conjectural or anticipatory. No actual controversy between real litigants exists.[23] These consolidated petitions, in other words, are a "purely academic exercise." Hence, any resolution that this Court might make would constitute an attempt at abstraction that can only lead to barren legal dialectics and sterile conclusions unrelated to actualities.[24]

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[21] *Supra* note 1.

[22] 358 Phil. 896 (1998).

[23] See *Confederation of Sugar Producers Association, Inc. v. Department of Agrarian Reform*, G.R. No. 169514, March 30, 2007, 519 SCRA 582, 620; *Board of Optometry v. Hon. Colet*, 328 Phil. 1187, 1206 (1996); and *Abbas v. Commission on Elections*, G.R. Nos. 89651 & 89965, November 10, 1989, 179 SCRA 287, 300.

[24] *Sec. Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 429 (1998); *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).

Moreover, the function of the courts is to determine controversies between litigants and **not to give advisory opinions**.[25] Here, petitioners are asking this Court to render an advisory opinion on what the JBC and the President should do. To accede to it is tantamount to an incursion into the functions of the executive department.[26] This will further inappropriately make the Court an adviser of the President. Chief Justice Enrique Fernando, in his concurring opinion in *Director of Prisons v. Ang Cho Kio*,[27] specifically counseled against this undue portrayal by the Court of the alien role of adviser to the President, thus—

> Moreover, I would assume that those of us entrusted with judicial responsibility could not be unaware that we may be laying ourselves open to the charge of presumptuousness. Considering that the exercise of judicial authority does not embrace the alien role of a presidential adviser, an indictment of officiousness may be hard to repel. It is indefinitely worse if the advice thus gratuitously offered is ignored or disregarded. The loss of judicial prestige may be incalculable. Thereafter, there may be less than full respect for court decisions. It would impair the confidence in its ability to live up to its trust not only on the part of immediate parties to the litigation but of the general public as well. Even if the teaching of decided cases both here and in the Philippines is not as clear therefore, there should be, to say the least, the utmost reluctance on the part of any court to arrogate for itself such a prerogative, the exercise of which is fraught with possibilities of such undesirable character.

The *ponencia* holds that "we need not await the occurrence of the vacancy by May 17, 2010 in order to have the principal issue be ripe for judicial determination." That may very well be desirable. But still, there must be the palpable presence of an actual controversy because, again, as discussed above, this Court does not issue advisory opinions. The Court only adjudicates actual cases that present definite and concrete controversies touching on the legal relations of the parties having adverse legal interests.

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[25] *Automotive Industry Workers Alliance v. Romulo*, G.R. No. 157509, January 18, 2005, 449 SCRA 1, 10.

[26] See *Sec. Guingona, Jr. v. Court of Appeals*, *supra* note 24.

[27] 33 Phil. 494, 510 (1970).

The *ponencia* also sought refuge in the American cases of *Buckley v. Valeo*[28] and *Regional Rail Reorganization Act Cases*[29] to support its position that "the reasonable certainty of the occurrence of the perceived threat to a constitutional interest is sufficient to afford a basis for bringing a challenge, provided the Court has sufficient facts before it to enable it to intelligently adjudicate the issues." The cited American cases only considered the issue of ripeness and did not confront the absence of an actual case or controversy. Further, in *Buckley*, the members of the Commission were already appointed under the statute being challenged as unconstitutional, and they were about to exercise powers under the likewise challenged provisions of the statute. Thus, in those cases, there was the inevitability of the operation of a challenged statute against the appellants. No such situation exists in the cases before us.

Here, the factual and legal setting is entirely different. The JBC only started the screening of the applicants. It has not yet transmitted a list to the President, as, in fact, it still has to make the list. The President has not yet made an appointment for there is yet no vacancy and no shortlist has yet been transmitted to her. The constitutional provisions in question are not yet in operation; they may not even be called into operation. It is not time for the Court to intervene.

A final note. If petitioners only want guidance from this Court, then, let it be stated that enough guidance is already provided by the Constitution, the relevant laws, and the prevailing jurisprudence on the matter. **The Court must not be unduly burdened with petitions raising abstract, hypothetical, or contingent questions**. As fittingly phrased by Chief Justice Puno in *Lozano* –

> Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately

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[28] 424 US 1 (1976).

[29] 419 US 102 (1974).

render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.[30]

With the above disquisition, I find no compelling need to discuss the other issues raised in the consolidated petitions.

In light of the foregoing, I vote for the dismissal of the consolidated petitions.

SEPARATE OPINION

BRION, *J.*:

I **AGREE** with the conclusion that the President can appoint the Chief Justice and Members of the Supreme Court two months before a presidential election up to the end of the President's term, but **DISAGREE** with the conclusion that the authority to appoint extends to the whole Judiciary.

I. Prefatory Statement

The debate, in and out of this Court, on the issues these consolidated cases pose, have been differently described to be at varying levels of severity and intensity. What we in Court do know is the multiplicity of petitions and interventions filed, generating arguments of varying shades of validity. Sad but true, what we need in considering all these submissions is simplification and focus on the critical issues, not the mass of opinions that merely pile on top of one another. Based on this standard, this Opinion shall endeavor to be brief, succinct but clear, and may not be the academic treatise lay readers and even lawyers customarily expect from the Court.

The constitutional provisions whose interpretation and application are disputed (*the disputed provisions*) are Section 15, Article VII (the Article on the Executive Department) and Sections 4(1) and 9 of Article VIII (on the Judicial Department). Not often mentioned but critical to the consideration of the disputed provision is Section 8, Article VIII on the **Judicial**

[30] *Supra* note 1.

and Bar Council (*JBC*) – the entity whose acts are under scrutiny in the dispute.

Section 15 of Article VII provides:

Section 15. Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

On the other hand, the relevant Judicial Department provisions read:

Section 4(1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in its discretion, in division of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.

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Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

(2) The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired justice for two years, and the representative of the private sector for one year.

(3) The Clerk of the Supreme Court shall be the Secretary *ex officio* of the Council and shall keep a record of its proceedings.

(4) The regular members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations of the Council.

(5) The Council shall have the principal functions of recommending appointees to the Judiciary. It may exercise other functions and duties as the Supreme Court may assign to it.

Section 9. The Members of the Supreme Court and the judges of the lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointment needs no confirmation.

For the lower courts, the President shall issue the appointment within ninety days from the submission of the list.

These provisions are quoted together to stress the role the JBC plays in the appointment process, and that it is effectively an *adjunct* of the Supreme Court: the Council is under the ***supervision*** of the Court, but is *fully independent in undertaking its main function*; the Chief Justice is the Chair, with the SC Clerk of Court as the Secretary; the emoluments of Council members are determined by the Court with the Council budget a part of the SC budget; and the SC may assign functions and duties to the Council.

II. The Questions of Standing & Justiciability

I completely agree with the *ponencia's* ruling on the parties' standing, their *locus standi*, to bring their petitions and interventions in their capacities as citizens and lawyers who stand to be affected by our ruling as lawyers or by the impact of our ruling on the nation and the all-important electoral exercise we shall hold in May 2010. Jurisprudence is replete with precedents on the liberal appreciation of the *locus standi* rule on issues that are of transcendental concern to the nation,[1] and the petitioners very well qualify under these rulings. In this sense, *locus standi* is not a critical issue in the present case.

[1] *Roque v. Commission on Elections*, G.R. No. 188456, September 10, 2009; *Garcillano v. House of Representatives*, G.R. No. 170388, December 23, 2008; *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, 171424, May 3, 2006, 489 SCRA 160, 224; *Agan Jr. v. Philippine International Air Terminals Co., Inc.*, 450 Phil 744. 803-804 (2003); *Bayan v. Executive Secretary Zamora*, 396 Phil 623, 548-650 (2000); *Kilosbayan, Incorporated v. Guingona, Jr.*, G.R. No. 113375, May 5, 1994, 232 SCRA 110, 138; *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrariam Reform*, G.R. Nos. 78742, 79310, 79744, 79777, July 14, 1989, 175 SCRA 343 365; and *Araneta v. Dinglasan*, 84 Phil 368, 373 (1949).

In fact, the concern voiced out during the Court's deliberations, is more on how participation can be limited to those who have substantial contributions, through their submissions, to the resolution of the grave issues before the Court.

While the rule on *locus standi* can be relaxed, the rule on the need for an actual justiciable case that is ripe for adjudication addresses a different concern and cannot be similarly treated. **I disagree with the *ponencia's* ruling on justiciability as I believe some of the petitions before us do not reach the required level of justiciability; others, however, qualify as discussed below so that my disagreement with the lack of justiciability of some of the petitions need not hinder the Court's consideration of the main issue at hand.**

The basic requisite before this Court can rule is the presence of an actual case calling for the exercise of judicial power. This is a requirement that the Constitution itself expressly imposes; in granting the Court judicial power and in defining the grant, the Constitution expressly states that judicial power includes the duty to settle ***actual*** controversies involving rights which are legally demandable and enforceable.[2] Thus, the Court does not issue advisory opinions, nor do we pass upon hypothetical cases, feigned problems or friendly suits collusively arranged between parties without real adverse interests. Courts cannot adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging they may be. As a condition precedent to the exercise of judicial power, an actual controversy between litigants must first exist.[3]

An actual case or controversy exists when a case involves a clash of legal rights or an assertion of opposite legal claims that the courts can resolve through the application of law and jurisprudence. The case cannot be abstract or hypothetical as it must be a concrete dispute touching on the legal relations of

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[2] Section 1, par. 2, Article VIII, CONSTITUTION.

[3] See: *Guingona, Jr., v. Court of Appeals*, 354 Phil. 426 (1998); see also: *Director of Prisons v. Ang Cho Kio*, 33 Phil. 494 (1970).

parties having adverse legal interests. A justiciable controversy admits of specific relief through a decree that is conclusive in character, whereas an opinion only advises what the law would be upon a hypothetical state of facts. An actual case is ripe for adjudication when the act being challenged has a direct adverse effect on the individual challenging it.[4]

In the justiciable cases this Court has passed upon, particularly in cases involving constitutional issues, we have held that the Court also has the duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules. The Court carries the symbolic function of educating the bench and the bar on the extent of protection given by constitutional guarantees.[5]

Separately from the above concept of claims involving demandable rights and obligations (but no less real in the strict constitutional sense), is the authority of the Supreme Court to rule on matters arising in the exercise of its power of supervision.

Under Section 6 of Article VIII of the Constitution, the Supreme Court is granted the power of administrative supervision over all courts and the personnel thereof. Pursuant to this power, the Court issues administrative circulars and memoranda to promote the efficient and effective administration of justice, and holds judges and court personnel administratively accountable for lapses they may commit.[6] Through these circulars, memoranda and administrative matters and cases, the Court likewise interprets laws relevant to its power of supervision.[7] The Court likewise issues rules concerning, among others, the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, and the Integrated Bar.[8]

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[4] *Id.*

[5] *Salonga v. Ernani Cruz Pano, et al.*, 219 Phil. 402, 429-430 (1985).

[6] See for example, *In Re: List of Judges who failed to comply with Administrative Circular No. 10-94, dated June 29, 1994*, 439 Phil. 118 (2002).

[7] CONSTITUTION, Article VIII, Section, 6.

[8] *Id.*, Article VIII, Section 5(5).

This aspect of the power of the Court – its power of supervision – is particularly relevant in this case since the JBC was created *"under the supervision of the Supreme Court,"* with the *"principal function of recommending appointees to the Judiciary*." In the same manner that the Court cannot dictate on the lower courts on how they should decide cases except through the appeal and review process provided by the Rules of Court, so also cannot the Court intervene in the JBC's authority to discharge its principal function. In this sense, the JBC is fully independent as shown by A.M. No. 03-11-16-SC or *Resolution Strengthening The Role and Capacity of the Judicial and Bar Council and Establishing the Offices Therein.* In both cases, however and unless otherwise defined by the Court (as in A.M. No. 03-11-16-SC), the Court can supervise by ensuring the legality and correctness of these entities' exercise of their powers as to means and manner, and interpreting for them the constitutional provisions, laws and regulations affecting the means and manner of the exercise of their powers as the Supreme Court is the final authority on the interpretation of these instruments. A prime example of the exercise of the Court's power of supervision is *In Re: Appointments dated March 30, 1998 of Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta as Judges of the Regional Trial Court of Branch 62, Bago City, and of Branch 24, Cabanatuan City, respectively*, A.M. No. 98-5-01-SC, November 9, 1998 (hereinafter referred to as *Valenzuela*) where the Court nullified the oath of office taken by Judge Valenzuela, while at the same time giving its interpretation of how the election ban against appointment operates on the Judiciary, thereby setting the guidelines on how Section 15, Article VII is to be read and interpreted. The *Valenzuela* case shall be discussed more fully below.

a. <u>The De Castro Petition</u>

In his petition for *certiorari* and *mandamus*, Arturo De Castro (in **G.R. 191002**) seeks the review of the action of the JBC deferring the sending to the incumbent President of the list of nominees for the position of Chief Justice, and seeks as well

to compel the JBC to send this list to the incumbent President when the position of Chief Justice becomes vacant. He posits that the JBC's decision to defer action on the list is both a grave abuse of discretion and a refusal to perform a constitutionally-mandated duty that may be compelled by *mandamus*.[9]

On its face, this petition fails to present any justiciable controversy that can be the subject of a ruling from this Court. **As a petition for *certiorari***, it must first show as a minimum requirement that the JBC is a tribunal, board or officer exercising judicial or quasi-judicial functions and is acting outside its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.[10] **A petition for *mandamus*,** on the other hand, at the very least must show that a tribunal, corporation, board or officer unlawfully neglects the performance of an act which the law specifically enjoins as a duty."[11]

The petition facially fails to characterize the JBC as a council exercising judicial or quasi-judicial functions, and in fact states that the JBC does not have any judicial function.[12] It cannot so characterize the JBC because it really does not exercise judicial or quasi-judicial functions. It is not involved in the determination of rights and obligations based on the constitution, laws and regulations; it is an administrative body under the supervision of the Supreme Court and was created principally to nominate appointees to the Judiciary.[13] As such, it deals solely with the screening of applicants who wish to have the privilege of applying for judicial positions.

From the point of view of substance, the petition admits that the vacancy for the position of Chief Justice will not occur until May 17, 2010, and alleges that the JBC has resolved "to

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[9] De Castro petition, p. 5.

[10] RULES OF COURT, Rule 65, Section 1.

[11] RULES OF COURT, Rule 65, Section 3.

[12] De Castro petition, par. 8, page 5.

[13] See: Constitutional Provision on the JBC, pp. 4-5 of this opinion.

defer the decision to whom to send the list of 3 nominees, whether to the incumbent President or to the next President following the May 11, 2010 national elections in view of Section 15, Article VII of the Constitution that bans appointments during the election period,"[14] citing various newspaper clippings *and the judicial notice of this Court*.[15]

As suggested, we take ***judicial notice*** of the JBC action on the nomination process for the position of Chief Justice, as circulated in the media and as evidenced by official JBC records, and we note that the JBC has taken preliminary steps but not conclusive action on the submission of a list of nominees for the position of Chief Justice.[16] So far, the JBC has announced the forthcoming vacancy, the opening of the position to applicants,[17] the announcement of nominees, and the invitation for comments.[18] These are confirmed in the JBC's Comment dated February 25, 2010 which further states that "the next stage of the process will be the public interview of the candidates, and the preparation of the shortlist of candidates have yet to be undertaken.. ..including the interview of the constitutional experts as may be needed."[19] Thus, this Court is fully aware, based *on its official knowledge that the petition cites*, of the extent of JBC developments in the nomination process, and the petition cannot invoke our judicial notice to validly allege that the JBC has deferred action on the matter. For the petition insist that a deferment has taken place is to mislead this Court on a matter that is within its official knowledge.

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[14] De Castro petition, p. 3.

[15] De Castro petition, p. 4.

[16] Judicial notice is taken of the publications cited, as well as the records on which these publications are based.

[17] JBC Announcement dated January 20, 2010, part of the record on file with the JBC and with the Court, and published in the Phil. Daily Inquirer on January 21, 2010.

[18] JBC Announcement dated 11 February, 2010, part of the record on file with the JBC and with the Court, and published in the Phil. Daily Inquirer on Feb. 13, 2010.

[19] JBC Comment, dated Feb. 25, 2010, p. 6.

Neither the Constitution nor the Rules of Procedure of the JBC[20] categorically states when a list of nominees for a vacant Supreme Court position shall be submitted to the President, although the Constitution gives the President 90 days within which to fill the vacancy.[21] This presidential deadline implies that the JBC should submit its list of nominees before, or at the latest, on the day the vacancy materializes so as not to shorten the 90-day period given to the President within which to act.

Given these timelines and the May 17, 2010 vacancy date – considered with the allegations regarding the nature of the JBC's functions and its actions that we are asked to judicially notice – the De Castro petition filed on February 9, 2010 clearly does not present a justiciable case for the issuance of a writ of *certiorari*. The petition cannot make an incorrect and misleading characterization of the JBC action, citing our judicial notice as basis, and then proceed to claim that grave abuse of discretion has been committed. The study of the question of submitting a list to the President in the JBC's step-by-step application and nomination process is not a grave abuse of discretion simply because the petition calls it so for purposes of securing a justiciable case for our consideration.[22]

Since the obligation to submit a list will not accrue until immediately before or at the time the vacancy materializes (as the petition's prayer in fact admits), no duty can likewise be said to have as yet been neglected or violated to serve as basis for the special civil action of *mandamus*. The JBC's study of the applicable constitutional issue, as part of the JBC's nomination process, cannot be "tantamount to a refusal to perform its constitutionally-mandated duty." *Presently, what exists is a purely potential controversy that has not ripened into a concrete dispute where rights have been violated or can already be asserted.*

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[20] JBC-009, October 18, 2000.

[21] CONSTITUTION, Article VIII, Section 4(1).

[22] See: allegation of grave abuse, De Castro petition, p.5.

In these lights, the Court should dismiss the De Castro petition outright. Similarly, the oppositions filed by way of intervening in and anchored on the De Castro petition should similarly be dismissed.

b. <u>The Peralta Petition</u>.

John G. Peralta's petition (**G.R. 191149**) is likewise for *certiorari* and *mandamus*. Like De Castro's, he failed to allege that the JBC exercises judicial or quasi-judicial functions – a must in any petition for *certiorari.* In fact the Peralta petition can be described as an imperfect carbon copy of De Castro's petition since it similarly asks for the "review of the JBC action in deferring to transmit to the incumbent President the list of nominees for appointment of a new Chief Justice, and to compel the JBC to send the same to the incumbent President for appointment of a Chief Justice, when the position becomes vacant upon the mandatory retirement of the Honorable Chief Justice Reynato S. Puno."

Peralta only differs from De Castro because it does not allege "deferment" on the basis of media reports and judicial notice; instead, it attaches the January 18, 2010 resolution of the JBC as Annex "A" and cites this as a basis. An examination of Annex "A", however, shows that the JBC did not in fact resolve to defer the submission of the list of nominees; the JBC merely stated that – *"As to the time to submit this shortlist to the proper appointing authority, in light of the Constitution, existing laws and jurisprudence, the JBC welcomes and will consider all view on the matter."* This is not a deferment, nor is it a refusal to perform a duty assigned by law as the duty to submit a list of nominees will not mature until a vacancy has or is about to occur.

For the same absence of a justiciable case, the Peralta petition for *certiorari* and *mandamus* and all related interventions should be dismissed outright.

c. <u>The PHILCONSA Petition</u>.

The petition of The Philippine Constitutional Association (PHILCONSA, **G.R. 191057**) is for *mandamus* under Rule 65 of the Rules of Court.

It seeks to compel the JBC to include the names of Senior Justices Antonio Carpio and Conchita Carpio Morales, and Prosecutor Dennis Villa Ignacio, in the list of nominees for the position of Chief Justice although these nominees have manifested that they want their names submitted to the incoming, not to the incumbent, President of the Philippines.

The petition also seeks various declarations by this Court, among them, that Section 15, Article VIII should apply only to the Executive Department and not to the Judiciary; and that the Decision of this Court in *Valenzuela* should be set aside and overruled.

As basis, the petition alleges that the issues raised in the petition have spawned "a frenzied inflammatory debate on the constitutional provisions". . . that has "divided the bench and the bar and the general public as well." It likewise posits that due to the positions the nominees have taken, a "final authoritative pronouncement" from this Court on the meaning and construction of Sections 4(1), 8(5) and 9, Article VIII. . .in relation with Section 15, Article VII" is necessary. The petition grounds itself, too, on the needs of public interest and public service.

On the whole, the PHILCONSA petition merely asks for a declaration from this Court of the meaning and interpretation of the constitutional provisions on the appointment of the Chief Justice, the Members of the Court, and the Judiciary in general during the election ban period.

As we did with the Castro petition and based on the same standards we discussed above, we hold that the PHILCONSA petition presents no justiciable controversy that can be the basis for its consideration as a petition for *mandamus* and for its adjudication on the merits. *On its face, the petition defines no specific duty that the JBC should exercise and has neglected to exercise, and presents no right that has been violated nor any basis to assert any legal right.*[23] Like the

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[23] Pursuant to Section 3, Rule 65 of the Rules of Court, a petition for *mandamus* must allege the unlawful neglect to perform an act which the law specifically enjoins as resulting from an office.

De Castro petition, it only presents to the Court a potential controversy that has not ripened.

Consequently, the Court should rule that the PHILCONSA petition should be dismissed outright together with any intervention supporting or opposing this petition.

d. The Mendoza Petition

The Mendoza petition (**A.M. 10-2-5-SC**) is unique as even its docket case number will show; it is presented as an administrative matter for the Court's consideration pursuant to its power of supervision over judges and over the JBC,[24] following the lead taken in the *Valenzuela* case (an ***A.M.*** case).

The cited *Valenzuela* case is rooted in a situation not far different from the present case; a vacancy in the Court[25] had occurred and a difference of opinion arose between the Executive and the Court on the application of Section 15, Article VII, in relation with Section 4(1) and 9 of Article VIII, of the Constitution. An exchange of letters took place between the Palace and the Court on their respective positions. In the meanwhile, the President appointed two RTC judges (Valenzuela and Vallarta) within the two-month period prior to the election. The Palace forwarded the judges' appointments to the Court, thus confronting Chief Justice Narvasa with the question of whether – given the election ban under Section 15, Article VII that *prima facie* applies – he should transmit the appointment papers to the appointed judges so they could take their oaths in accordance with existing practice. At that point, the Court decided to treat the matter as an "administrative matter" that was ripe for adjudication.

An administrative matter that is entered in the Court's docket is either an administrative case (***A.C.***) or an administrative matter (***A.M.***) submitted to the Court for its consideration and action pursuant to its power of supervision. An A.C. case involves disciplinary and other actions over members of the Bar, based

[24] CONSTITUTION, Article VIII, Section 8(1).

[25] Upon the retirement of Associate Justice Ricardo J. Francisco.

on the Court's supervision over them arising from the Supreme Court's authority to promulgate rules relating to the admission to the practice of law and to the Integrated Bar. Closely related to A.C. cases are the Bar Matter (***B.M.***) cases particularly involving admission to the practice of law.[26] An A.M. is a matter based on the Supreme Court's power of supervision: under Section 6, Article VIII, this refers to administrative supervision over all courts and the personnel thereof; under Section 8, it refers to supervision over the JBC.

In using an administrative matter as its medium, the Mendoza petition cites as basis the effect of a complete election ban on judicial appointments (in view of the already high level of vacancies and the backlog of cases) and submits this as an administrative matter that the Court, *in the exercise of its supervision over the Judiciary*, should act upon. At the same time, it cites the "public discourse and controversy" now taking place because of the application of the election ban on the appointment of the Chief Justice, citing in this regard the very same reasons mentioned in *Valenzuela* about the need to resolve the issue and avoid the recurrence of conflict between the Executive and the Judiciary on the matter; and the need to "avoid any possible polemics concerning the matter."[27] The petition mentions as well that the Court addressed the election ban issue in *Valenzuela* as an A.M. case, and apparently takes the lead from this decided A.M. matter.

An undeniable feature of the Mendoza petition, compared to *Valenzuela*, is its lack of any clear and specific point where an actual actionable case arose (the appointment of two RTC judges during the election ban period) calling for a determination of how the Chief Justice and the Court should act. The Mendoza petition, however, does not look up to the Court's supervisory authority over lower court personnel pursuant to Section 6 of Article VIII of the Constitution, in the way the Court did in *Valenzuela*. **Expressly, the Mendoza petition looks up**

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[26] CONSTITUTION, Article VIII, Section 5(5).

[27] Mendoza petition, pp. 5 and 6.

to the Court's supervisory authority over the JBC, an authority that the Court in fact asserted in *Valenzuela* when, in the exercise of *"its power of supervision over the Judicial and Bar Council,"* it "INSTRUCTED" the JBC *"to defer all actions on the matter of nominations to fill up the lone vacancy in the Supreme Court or any other vacancy until further orders."*

From the time of *Valenzuela* up to the present, the governing law and the relationships between the Court and the JBC have not changed; the supervisory relationship still exists full strength. The JBC is now in fact waiting for the Court's action on how it regards the *Valenzuela* ruling – whether the Court will reiterate, modify or completely abandon it. The JBC expressly admitted its dilemna in its Comment when it said: *"Since the Honorable Court is the final interpreter of the Constitution, the JBC will be guided by its decision in these consolidated Petitions and Administrative Matter."* Under these plain terms, the JBC recognizes that a controversy exists on the issue of submitting a shortlist to the President and it will not act except with guidance from this Court. **This is a point no less critical, *from the point of view of supervision*, than the appointment of the two judges during the election ban period in *Valenzuela.***

That the JBC has taken this stance is not surprising given the two petitions for prohibition filed by Jaime N. Soriano (**G.R. No. 191032**) and Atty. Amador Z. Tolentino, Jr., (**G.R. No. 191342**) that, on their face, show a cause of action ripe for adjudication.

d.1 The Soriano and Tolentino Petitions

Soriano seeks to bar the JBC from continuing the selection processes on the ground that the Supreme Court, not the President, appoints the Chief Justice. Tolentino, on the other hand, seeks the issuance of a writ of prohibition under Rule 65 of the 1997 Rules of Court, among others, to enjoin and restrain the JBC from submitting a list of nominees for judiciary positions to the incumbent President, on the ground that an existing election

ban against appointments is in place under Section 15, Article VII of the Constitution.

In the simplest terms, the JBC – by its own admission in its Comment and by Soriano's[28] and Tolentino's[29] own admissions in their petitions – is now in the process of preparing its submission of nominees for the vacancy to be created by the retirement of the incumbent Chief Justice, and has already completed the initial phases of this preparation. Soriano and Tolentino want to stop this process and compel the JBC to immediately discontinue its activities, apparently on the theory that nomination is part of the appointment process

While their cited grounds and the intrinsic merits of these grounds vary, the Soriano and Tolentino petitions, on their faces, present actual justiciable controversies that are ripe for adjudication. Section 15, Article VII of the Constitution embodies a ban against appointments by the incumbent President two months before the election up to the end of her term. A ruling from this Court (*Valenzuela*) is likewise in place confirming the validity of this ban against the Judiciary, or at least against the appointment of lower court judges. A vacancy in the position of Chief Justice will occur on May 17, 2010, within the period of the ban, and the JBC is admittedly preparing the submission of its list of nominees for the position of Chief Justice to the President. Under the terms of Section 15, Article VII and the obtaining facts, a *prima facie* case exists supporting the petition for violation of the election ban.

d.2. Supervision over the JBC.

That the JBC – now under a different membership – needs guidance on the course of action it should take on the constitutional issues posed, can best be understood when the realities behind the constitutional provisions are examined.

A **first reality** is that the JBC cannot, *on its own due to lack of the proper authority*, determine the appropriate course

[28] Soriano petition, p. 4.

[29] Tolentino petition, p. 2

of action to take under the Constitution. Its principal function is to recommend appointees to the Judiciary and it has no authority to interpret constitutional provisions, even those affecting its principal function; the authority to undertake constitutional interpretation belongs to the courts alone.

A **second reality** is that the disputed constitutional provisions do not stand alone and cannot be read independently of one another; the Constitution and its various provisions have to be read and interpreted as one seamless whole,[30] giving sufficient emphasis to every aspect in accordance with the hierarchy of our constitutional values. *The disputed provisions should be read together and, as reflections of the will of the people, should be given effect to the extent that they should be reconciled.*

The **third reality**, closely related to the second, is that in resolving the coverage of the election ban *vis-à-vis* the appointment of the Chief Justice and the Members of the Court, provisions of the Constitution other than the disputed provisions must be taken into account. In considering when and how to act, the JBC has to consider that:

1. The President has a term of six years which **begins at noon of June 30** following the election, which implies that the outgoing President remains President up to that time. (*Section 4, Article VII*). The President assumes office at the beginning of his or her term, with provision for the situations where the President fails to qualify or is unavailable at the beginning of his term (*Section 7, Article VII*).

2. The Senators and the Congressmen begin their respective terms also at **midday of June 30** (*Sections 4 and 7, Article VI*). The Congress convenes on the **4th Monday of July** for its regular session, but the President may call a special session at any time. (*Section 15, Article VI*)

3. The *Valenzuela* case cited as authority for the position that the election ban provision applies to the whole Judiciary, only

[30] *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, February 21, 1991, 194 SCRA 317, 330.

decided the issue with respect to lower court judges, specifically, those covered by Section 9, Article VIII of the Constitution. Any reference to the filling up of vacancies in the Supreme Court pursuant to Section 4(1), Article VIII constitutes *obiter dictum* as this issue was not directly in issue and was not ruled upon.

These provisions and interpretation of the *Valenzuela* ruling – when read together with disputed provisions, related with one another, and considered with the May 17, 2010 retirement of the current Chief Justice – bring into focus certain unavoidable realities, as follows:

1. If the election ban would apply fully to the Supreme Court, the incumbent President cannot appoint a Member of the Court beginning March 10, 2010, all the way up to June 30, 2010.

2. The retirement of the incumbent Chief Justice – May 17, 2010 – falls within the period of the election ban. (*In an extreme example where the retirement of a Member of the Court falls on or very close to the day the election ban starts, the Office of the Solicitor General calculates in its Comment that the whole 90 days given to the President to make appointment would be covered by the election ban.*)

3. Beginning May 17, 2010, the Chief Justice position would be vacant, giving rise to the question of whether an Acting Chief Justice can act in his place. While this is essentially a Supreme Court concern, the Chief Justice is the *ex officio* Chair of the JBC; hence it must be concerned and be properly guided.

4. The appointment of the new Chief Justice has to be made within 90 days from the time the vacancy occurs, which translates to a deadline of August 15, 2010.

5. The deadline for the appointment is fixed (as it is not reckoned from the date of submission of the JBC list, as in the lower courts) which means that the JBC ideally will have to make its list available at the start of the 90-day period so that its process will not eat up the 90-day period granted the President.

6. After noon of June 30, 2010, the JBC representation from Congress would be vacant; the current representatives' mandates to act for their principals extend only to the end of their present terms; thus, the JBC shall be operating at that point at less than its full membership.

7. Congress will not convene until the 4th Monday of July, 2010, but would still need to organize before the two Houses of Congress can send their representatives to the JBC – a process may extend well into August, 2010.

8. In July 2010, one regular member of the JBC would vacate his post. Filling up this vacancy requires a presidential appointment and the concurrence of the Commission on Appointments.

9. Last but not the least, the prohibition in Section 15, Article VII is that "a President or Acting President shall not make appointments." This prohibition is expressly addressed to the President and covers the act of appointment; the prohibition is not against the JBC in the performance of its function of "recommending appointees to the Judiciary" – an act that is one step away from the act of making appointments.

d.3. Conclusion on the Mendoza Petition

Given the justiciable Soriano and Tolentino petitions that directly address the JBC and its activities, the impact of the above-outlined realities on the grant of a writ of prohibition, and the undeniable supervision that the Supreme Court exercises over the JBC as well as its role as the interpreter of the Constitution – **sufficiently compelling reason exists to recognize the Mendoza petition as a properly filed A.M. petition** that should fully be heard in these proceedings **to fully ventilate the supervisory aspect of the Court's relationship with the JBC and to reflect, once again, how this Court views the issues first considered in *Valenzuela*.** The Court's supervision over the JBC, the latter's need for guidance, and the existence of an actual controversy that the Soriano and Tolentino cite, save the Mendoza petition from

being one for declaratory relief, which petition is originally cognizable by the Regional Trial Court, not by this Court.[31]

To summarize the preliminary considerations of locus standi and justiciability and the outstanding issues for resolution, the main issue in these consolidated cases continues to be whether Section 15, Article VII of the Constitution limiting the authority of the President of the Philippines to exercise her power of appointment shall prevail over the mandate, provided under Sections 4(1) and 9, Article VIII, that appointments to the Supreme Court shall be within 90 days from the occurrence of the vacancy, and within 90 days from the JBC's submission of its list of nominees for the lower courts. A sub-issue is the continued effectiveness and strength of the *Valenzuela* case as guide and precedent in resolving the above issue. **All these should be read in the context of the petitions for prohibition and the Mendoza A.M. petition, as the De Castro and the PHILCONSA petitions suffer from lack of justiciability and prematurity.**

III. The Merits of the Petitions

a. The Soriano Petition.

The Soriano petition presents a very novel interpretation of Section 9, Article VIII in its position that the authority to appoint the Chief Justice is lodged in the Court, not in the President.

The correctness of this reading of the law is contradicted by both history and by the law itself.

History tells us that, without exception, the Chief Justice of the Supreme Court has always been appointed by the head of the Executive Department. Thus, Chief Justices Cayetano Arellano, Victorino Mapa, Manuel Araullo, Ramon Avancena, Jose Abad Santos, Jose Yulo, Manuel Moran and all the Chief

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[31] Under Section 1, Rule 63 of the Rules of Court, a petition for declaratory relief is available only before breach or violation of the deed or instrument whose terms are sought to be clarified.

Justices after Philippine independence were appointed by the Chief Executive. The only difference in their respective appointments is the sovereignty under which they were appointed.

The Chief Justices under the American regime were appointed by the President of the United States; one Chief Justice each was appointed under the Commonwealth and under the Japanese Military Administration; and thereafter all the Chief Justices were appointed by the Philippine President. In every case, the appointing authority was the Chief Executive.

The use of the generic term "Members of the Supreme Court" under Section 9, Article VIII in delineating the appointing authority under the 1987 Constitution, is not new. This was the term used in the present line of Philippine Constitutions, from 1935 to 1987, and the inclusion of the Chief Justice with the general term "Member of the Court" has never been in doubt.[32] In fact, Section 4(1) of the present Constitution itself confirms that the Chief Justice is a Member of the Court when it provides that the Court *"may sit en banc or, in its discretion, in divisions of three, five, or seven Members."* The Chief Justice is a Member of the *En Banc* and of the First Division – in fact, he is the Chair of the *En Banc* and of the First Division – but even as Chair is counted in the total membership of the *En Banc* or the Division for all purposes, particularly of quorum. Thus, at the same time that Section 4(1) speaks of a "Supreme Court. . . composed of one Chief Justice and fourteen Associate Justices," it likewise calls all of them Members in defining how they will sit in the Court.

Thus, both by law and history, the Chief Justice has always been a Member of the Court – although, as a *primus inter pares* – appointed by the President together with every other Associate Justice. For this reason, we should dismiss the Soriano petition for lack of merit.

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[32] See: *Vargas v. Rilloraza*, 80 Phil. 297, 342 (1948).

b. The Tolentino and Mendoza Petitions; the OSG and JBC Comments

This is only a Separate Opinion, not a *ponencia*, and rather than recite or tabulate the various positions taken in these submissions, I shall instead discuss the issues based on *topically* arranged subdivisions and introduce the various positions as arguments, for or against, without always naming the source. This is solely for ease of presentation, clarity and continuity rather than for any devious reason.

b.1. Does a conflict of provisions textually exist?

No need exists to further recite Section 15, Article VII, on the one hand, and Sections 4(1) and 9, Article VIII, on the other, as they are already quoted at the start of this Opinion. I do not believe any of the parties, though, will dispute that a conflict exists even from the text of these provisions alone.

Section 15 on its face disallows any appointment in clear negative terms (*shall not make*) without specifying the appointments covered by the prohibition. From this literal reading springs the argument that no exception is provided (except the exception found in Section 15 itself) so that even the Judiciary is covered by the ban on appointments.

On the other hand, Section 4(1) is likewise very clear and categorical in its terms: any vacancy in the Court *shall be filled within 90 days from its occurrence*. In the way of Section 15, Section 4(1) is also clear and categorical and provides no exception; the appointment refers solely to the Members of the Supreme Court and does not mention any period that would interrupt, hold or postpone the 90-day requirement.

Section 9 may offer more flexibility in its application as the mandate for the President is to issue appointments within 90 days *from submission* of the list, without specifying when the submission should be made. From their wordings, urgency leaps up from Section 4(1) while no such message emanates from Section 9; in the latter the JBC appears free to determine when a submission is to be made, obligating the President to issue appointments within 90 days from the submission of the JBC

list. From this view, the appointment period under Section 9 is one that is flexible and can move.

Thus, in terms of conflict, Sections 4(1) and Sections 15 can be said to be directly in conflict with each other, while a conflict is much less evident from a comparison of Sections 9 and 15. This conclusion answers the *verba legis* argument of the Peralta petition that when the words or terms of a statute or provision is clear and unambiguous, then no interpretation is necessary as the words or terms shall be understood in their ordinary meaning. In this case, the individual provisions, in themselves, are clear; the conflict surfaces when they operate in tandem or against one another.

b.2. The Valenzuela Ruling.

The *Valenzuela* decision gives the full flavor of how the election ban issue arose because of Chief Justice Narvasa's very candid treatment of the facts and the issue. *Valenzuela* openly stated that at the root of the dispute was the then existing vacancy in the Court and the difference of opinion on the matter between the Executive and the Court on the application of Section 15, Article VII, in relation with Section 4(1) and 9 of Article VIII, of the Constitution.

What appears very clear from the decision, however, is that the factual situation the Court ruled upon, in the exercise of its supervision of court personnel, was the appointment by the President *of two RTC judges* during the period of the ban. It is clear from the decision, too, that no immediate appointment was ever made to the Court for the replacement of retired Justice Ricardo Francisco as the JBC failed to meet on the required nominations prior to the onset of the election ban.

From this perspective, it appears clear to me that *Valenzuela* should be read and appreciated for what it is – a ruling made *on the basis of the Court's supervision over judicial personnel* that upholds the election ban as against the appointment of lower court judges appointed pursuant to the period provided by Section 9 of Article VIII. Thus, *Valenzuela's* application

to the filling up of a vacancy in the Supreme Court is a mere *obiter dictum* as the Court is largely governed by Section 4(1) with respect to the period of appointment. The Section 4(1) period, of course and as already mentioned above, has impact uniquely its own and different from that created by the period provided for the lower court under Section 9.

I find it interesting that Peralta largely justifies his position that the JBC should now be prohibited from proceeding with the nomination process based on *Valenzuela* as the prevailing rule that should be followed under the principle of *stare decisis*. Peralta apparently misappreciates the reach and real holding of *Valenzuela*, as explained and clarified above. A ruling involving the appointment of lower court judges under Section 9, Article VIII cannot simply be bodily lifted and applied *in toto* to the appointment of Members of the Supreme Court under Section 4(1) of the same Article.

Because of his misappreciation, Peralta is likewise mistaken in his appeal to the principle of *stare decisis*. The stability of judgments is indeed a glue that Judiciary and the litigating public cannot do without if we are to have a working and stable justice system. Because of this role, the principle is one that binds all courts, including this Court, and the litigating public. The principle, however, is not open-ended and contains its own self-limitations; it applies only to actions in all future *similar* cases and to none other. Where ample room for distinction exists, as in this case, then *stare decisis* does not apply.

Another aspect of *stare decisis* that must be appreciated is that Supreme Court rulings are not written in stone so that they will remain unerased and applicable for all times. The Supreme Court's review of rulings and their binding effects is a continuing one so that a ruling in one era may be declared by the Court at some future time to be no longer true and should thus be abandoned and changed. The best and most unforgettable example of this kind of change happened in the United States when the US Supreme Court overturned the ruling in *Plessy v. Fergusson*[33] that upheld

[33] 163 U.S. 537 (1896).

the constitutionality of racial segregation under the "separate but equal" doctrine. After half a century, the US Court completely abandoned this ruling in the now famous *Brown v. Board of Education* when it ruled that separate but equal is inherently unequal in the context of public education.[34] I mention this, if only as a reminder to one and all, that the terms of the *Valenzuela* ruling, if truly applicable even to appointments to this Court, is not written in stone and remains open for review by this Court.

Valenzuela rests on the reasoning that the evil that Section 15 seeks to remedy – vote buying, midnight appointments and partisan reasons to influence the results of the election – is so pervasive so that the Section 15 ban should prevail over everything else. The Court, however, forgot in some statements in this case that hand in hand with Section 15 is Section 4(1) where the framers also recognized, in clear and absolute terms, that a vacancy in the Court should be filled up because of the importance of having a Supreme Court with its full and complete membership. Completeness has a heightened meaning when the missing Member is the head of the Judiciary and the Court in the person of the Chief Justice.

The separate realities that Section 15, Article VII and Section 4(1) bring to the fore now confront us with the question of prioritizing our constitutional values in terms of two provisions that effectively operate in their separate spheres, but which conflict when they directly confront one another. The direct question is: should we really implement Section 15 above everything else, even at the expense of having an incomplete Supreme Court, or should we recognize that both provisions should be allowed to operate within their own separate spheres with one provision being an exception to the other, instead of saying that one provision should absolutely prevail over the other?

What *Valenzuela* failed to consider, because it was looking at the disputed provisions *from the prism of two RTC judges*,

[34] 347 U.S. 483 (1954).

is that the reasons for the application of Section 15, Article VII may not at all exist in appointments to the Supreme Court.

In the first place, Section 4(1) covers only the appointment of 15 Members, not in their totality, but singly and individually as Members disappear from the Court and are replaced. Thus, the evil that the *Aytona* case[35] sought to remove – mass midnight appointments – will not be present.

Secondly, partisanship is hardly a reason that would apply to the Supreme Court except when the Members of the Court individually act in violation of their oaths or directly transgress our graft and corruption laws. Let it be remembered that the Constitution itself has entrusted to the Court the final and definitive recourse in election contest involving the President, the Vice-President and Members of Congress. Because of this reposed trust on the Supreme Court as a body, reasons of partisanship can hardly be a reason to systemically place the whole Supreme Court under a ban on appointments during the election period.

Of course, partisanship is an objection that can apply to individual Members of the Court and even to the applicants for the position of Chief Justice. But this is a different question that should not result in placing the system of appointments to the Court within the coverage of the election ban; objections *personal to individual Members and to individual applicants* are matters addressed to the JBC and to the final appointing authority – the President. It is for reasons of these possible individual objections that the JBC and even the Office of the President are open to comments and objections.

Incidentally, the incumbent President is not up for re-election by operation of the Constitution so that a partisanship objection in the President's favor has no basis. If any, an objection *personal* to the Supreme Court applicant may be raised because of perceived bias or partisanship in favor of the President's choice in the elections. This would be a meaningless objection,

[35] *Aytona v. Castillo*, G.R. No. L-19313, January 19, 1962, 4 SCRA 1.

however, if it is considered that the same objection can be raised against a Supreme Court nominee appointed by the incoming President; this new appointee will sit in judgment in the electoral dispute that follows the presidential elections and can be chosen for bias towards the new President and his party. In this sense, an objection on the basis of personal bias is not at all an appropriate consideration when the issue is systemic in its application – the application of the election ban on appointments to Supreme Court appointments.

In any case, the comments made on this point in the petitions are conjectural and speculative and can hardly be the bases for adjudication on the merits. If records of the Court will matter, the duly proven facts on record about the immediately past Chief Justices speak for themselves with respect to partisanship in favor of the sitting President. It is a matter of public record that Chief Justices Davide, Panganiban and Puno did not try to please their respective incumbent Presidents, and instead ruled in the way that the law, jurisprudence and the requirements of public interests dictated.

The Mendoza petition presents some very compelling reasons why the Supreme Court, if not the whole Judiciary, should be exempt from the coverage of the election ban that Section 15, Article VII imposes.

The Chief Justice is the head of the Judiciary in the same manner that the President is the Chief Executive and the Senate President and the Speaker of the House head the two Houses of Congress. The Constitution ensures, through clear and precise provisions, that continuity will prevail in every branch by defining how replacement and turnover of power shall take place. Thus, after every election to be held in May, a turn over of power is mandated on the following 30th of June for all elective officials.

For the Supreme Court where continuity is by the appointment of a replacement, the Constitution requires that the replacement Member of the Court, including the Chief Justice, should be appointed within 90 days from the occurrence of the vacancy. This is the sense of urgency that the Constitution imparts and

is far different from the appointment of the justices and judges of the lower courts where the requirement is 90 days from the JBC's submission of its list. This constitutional arrangement is what the application of Section 15, Article VII to the appointment of Members of the Supreme Court will displace.

The Peralta petition argues that the appointment of a Chief Justice is not all that important because the law anyway provides for an Acting Chief Justice. While this is arguably true, Peralta misunderstands the true worth of a duly appointed Chief Justice. He forgets, too, that a Supreme Court without a Chief Justice in place is not a whole Supreme Court; it will be a Court with only 14 members who would act and vote on all critical matters before it.

The importance of the presence of one Member of the Court can and should never be underestimated, particularly on issues that may gravely affect the nation. Many a case has been won or lost on the basis of one vote. On an issue of the constitutionality of a law, treaty or statute, a tie vote – which is possible in a 14 member court – means that the constitutionality is upheld. This was our lesson in *Isagani Cruz v. DENR Secretary*.[36]

More than the vote, Court deliberation is the core of the decision-making process and one voice is less is not only a vote less but a contributed opinion, an observation, or a cautionary word less for the Court. One voice can be a big difference if the missing voice is that of the Chief Justice.

Without meaning to demean the capability of an Acting Chief Justice, the ascendancy in the Court of a permanent sitting Chief Justice cannot be equaled. He is the first among equals – a *primus inter pares* – who sets the tone for the Court and the Judiciary, and who is looked up to on all matters, whether administrative or judicial. To the world outside the Judiciary, he is the personification of the Court and the whole Judiciary. And this is not surprising since, as Chief Justice, he not only chairs the Court *en banc*, but chairs as well the Presidential

[36] 400 Phil. 940 (2000).

Electoral Tribunal that sits in judgment over election disputes affecting the President and the Vice-President. Outside of his immediate Court duties, he sits as Chair of the Judicial and Bar Council, the Philippine Judicial Academy and, by constitutional command, presides over the impeachment of the President.[37] To be sure, the Acting Chief Justice may be the ablest, but he is not the Chief Justice without the mantle and permanent title of the Office, and even his presence as Acting Chief Justice leaves the Court with one member less. Sadly, this member is the Chief Justice; even with an Acting Chief Justice, the Judiciary and the Court remain headless.

The intent of the framers of the Constitution to extend to the Court a fixed period that will assure the nation that the Court's membership shall immediately be filled, is evidenced no less than by the Constitutional Commission's own deliberations where the following exchange took place:

> Mr. De Castro: I understand that our justices now in the Supreme Court, together with the Chief Justice, are only 11.
>
> Mr. ConcepcionLYes.
>
> Mr. De Castro: **And the second sentence of this subsection reads: Any vacancy shall be filled within ninety days from the occurrence thereof."**
>
> Mr. Concepcion: That is right.
>
> Mr. De Castro: **Is this a now a mandate to the executive to fill the vacancy.**
>
> Mr. Concepcion: That is right. **That is borne out of the fact that in the past 30 years, seldom has the Court had a complete complement.**

This exchange, to my mind, removes any remaining doubt about the framers' recognition of the need to always have a full Court.

b.3. Construction of the Disputed Provisions

A notable aspect of the *Valenzuela* ruling in the context of constitutional interpretation, is its conclusion that in a conflict

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[37] CONSTITUTION, Article XI, Section 2(6).

between two provisions – one in the Article on the Executive Department and the other an Article in the Judicial Department – one of them should completely give way and the other should prevail. This is a very unusual approach in interpretation, particularly if the apparently conflicting provisions are from the Constitution – an instrument that has painstakingly been deliberated upon by the best and the brightest minds in the country. For, the rule in constitutional interpretation is that the constitution must be appreciated and interpreted as one single instrument, with apparently conflicting provisions reconciled and harmonized in a manner that will give all of them full force and effect.[38]

Where, as in *Valenzuela*, the Chief Justice of the Supreme Court, no less, appeared to have given up the benefit of an immediate appointment of Members of the Supreme Court, then extremely compelling reasons must have driven the Court to its conclusion. I fully understood though the former Chief Justice's conclusion in this case when I realized that he was not effectively ruling on Section 4(1) of Article VIII, and was in fact ruling on a case involving lower court judges.

For indeed, the reasons the former Chief Justice cited in *Valenzuela* justify the application of the Section 15, Article VII as against the rule on appointment of lower court judges under Section 9, Article VIII. As I have shown above, Section 9 does not impose a hard and fast rule on the period to be observed, apparently because the urgency of the appointment may not be as great as in the appointment of Members of the Supreme Court. The period for appointment can move at the discretion of the JBC, although the exercise of this discretion also carries its own butt-in and implicit limits.

The former Chief Justice's reason weightier reason arose from the *Aytona* where mass appointments were recognized as an evil that could affect the integrity of our elections. Because of the number of appointments that may currently be involved

[38] See: *Marcelino v. Cruz*, G.R. No. L-42428, March 14, 1983, 121 SCRA 51.

if appointments to lower courts are allowed before the May 2010 election (*around 537 vacancies at a 24.5% vacancy rate at the first and second level courts according to the figures of the Mendoza petition*)[39] and the power and influence judges may exert over their local communities, an exemption from the election ban may indeed bring about (or at least give the appearance of bringing about) the evils that the framers of the Constitution and this Court itself sought to remedy under Section 15, Article VII and the *Aytona* decision, respectively.

For this reason, I do not disagree with *Valenzuela* for its ruling on lower court judges; Section 15, Article VII may indeed prevail over Section 9, Article VIII.

In contrast with this conclusion, an interpretation that Section 15, Article VII will similarly prevail over Section 4(1), Article VIII is clearly misplaced. The structure, arrangement and intent of the Constitution and the public policy reasons behind them simply speak against the interpretation that appointments of Members of the Court should be subject to the election ban. These are all discussed above and need not be repeated here.

Principles of constitutional interpretation, too, militate against an interpretation that would give primacy to one branch of government over another in the absence of very compelling reasons. Each branch of government is in place for a particular reason and each one should be given every opportunity to operate to its fullest capacity and potential, again unless very compelling reasons exist for the primacy of one over the other. No such compelling reason so far exists or has been cited.

Based on the values that the disputed provisions embody, what we need to balance are the integrity of our electoral process and the protection needed to achieve this goal, as against the Judiciary's need for independence and strength enforced through a Supreme Court that is at its full strength. To be sure, the nation and our democracy need one as well as the other, for

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[39] Mendoza petition, p. 3.

ultimately both contribute to our overall national strength, resiliency, and stability. Thus, we must, to the extent possible, give force and effect to both and avoid sacrificing one for the other.

To do this and to achieve the policy of insulating our constitutional process from the evils of vote-buying, influence peddling and other practices that affect the integrity of our elections, while at the same time recognizing the Judiciary's and the nation's need to have a full Supreme Court immediately after a vacancy occurs, Section 4(1) of Article VIII should be recognized as a narrow exception granted to the Judiciary in recognition of its proven needs. This is a narrow exception as the election ban of Section 15, Article VII, shall apply with full force and effect on the appointment of lower court justices and judges.

c. <u>Guidelines for the Judicial and Bar Council</u>

The resolution of the present dispute can only be complete if clear guidelines are given to the JBC on how it shall conduct itself under the present circumstances pursuant to this Court's ruling. The Court should therefore direct the JBC to:

A. forthwith proceed with its normal processes for the submission of the list of nominees for the vacancy to be created by the retirement of Chief Justice Reynato S. Puno, to be submitted to the President *on or before the day before the retirement of the Chief Justice;*

B. in the course of preparing its list of nominees, determine with certainty the nominees' readiness to accept the nomination as well as the appointment they may receive from the President, deleting from the list the nominees who will refuse to confirm their full readiness to accept without conditions either their nomination or their appointment, if they will be appointed;

C. proceed with its normal processes for the preparation of the lists for the vacancies for the lower courts, to

be submitted to the Office of the President as soon as the election ban on appointments is lifted; and

D. in all other matters not otherwise falling under the above, conduct itself in accordance with this Decision.

In light of all the foregoing, I vote to:

1. **Dismiss** the De Castro and Peralta petitions and for not being justiciability and for prematurity.

2. **Dismiss** the Soriano and the Tolentino petitions for lack of merit.

3. **Dismiss** all petitions and motions for interventions supporting or opposing the above petitions.

4. **Grant** the Mendoza petition and declare for the JBC's guidance that:

   a. Section 4(1), Article VIII is an exception to the coverage of Section 15, Article VII; appointments to the Supreme Court are not subject to the election ban under Section 15, Article VII so that the JBC can submit its list of nominees for the expected vacancy for the retirement of Chief Justice Reynato S. Puno, on or before the vacancy occurs, for the President's consideration and action pursuant to Section 4(1), Article VIII ;

   b. Reiterate our ruling in *In re: Valenzuela and Vallarta* that no other appointments of judges of the lower courts can be made within the election ban period, pursuant to Section 15, Article VII.

DISSENTING OPINION

CARPIO MORALES, *J.*:

"Although the Chief Justice is *primus inter pares,* he cannot legally decide a case on his own because of the Court's nature as a collegial

body. Neither can the Chief Justice, by himself, overturn the decision of the Court, whether of a division or the *en banc*."

— Associate Justice Renato C. Corona in

Complaint of Mr. Aurelio Indencia Arrienda against Justice Puno, 499 Phil. 1, 14 (2005)

Primus Inter pares. First among equals. The Latin maxim indicates that a person is the most senior of a group of people sharing the same rank or office. The phrase has been used to describe the status, condition or role of the prime minister in most parliamentary nations, the high-ranking prelate in several religious orders, and the chief justice in many supreme courts around the world.[1]

The inclination to focus on the *inter pares* without due emphasis on the *primus/prima*[2] has spawned contemporary discourse that revives the original tug-of-war between domination and parity, which impasse the conceived maxim precisely intended to resolve.

In the present case, several arguments attempt to depict a mirage of doomsday scenarios arising from the impending vacancy of the *primus* in the Court as a springboard for their plea to avert a supposed undermining of the independence of the judiciary. In reality, **the essential question boils down to the limitation on the appointing power of the President**.

The *ponencia* of Justice Bersamin holds that the incumbent President can appoint the next Chief Justice upon the retirement of Chief Justice Reynato S. Puno on May 17, 2010 since the prohibition during election period[3] does not extend to appointments

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[1] *Vide* http://en.wikipedia.org/wiki/Primus_inter_pares (visited: March 10, 2010).

[2] Feminine ablative of *primus* (first among her equals).

[3] CONSTITUTION, Art. VII, Sec. 15. Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall **not** make appointments, *except* temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety. (emphasis, italics and underscoring supplied)

in the judiciary, thereby reversing *In re appointments of Hon. Valenzuela & Hon. Vallarta*.[4]

The *ponencia* additionally holds that the Judicial and Bar Council (JBC) has until May 17, 2010, at the latest, within which to submit to the President the list of nominees for the position of Chief Justice.

I DISSENT.

Constitutional draftsmanship style is the weakest aid in arriving at a constitutional construction

The **first ratiocination** adverts to the "organization and arrangement of the provisions of the Constitution" that was, as the *ponencia* declares, purposely made by the framers of the Constitution to "reflect their intention and manifest their vision" of the charter's contents.

It is unfortunate that the *ponencia* chiefly relies on the trivialities of draftsmanship style in arriving at a constitutional construction. The petitioner in *Anak Mindanao Party-List Group v. The Executive Secretary*[5] raised a similar argument, but the Court held:

> AMIN goes on to proffer the concept of "ordering the law" which, so it alleges, can be said of the Constitution's distinct treatment of these three areas, as reflected in separate provisions in different parts of the Constitution. It argues that the Constitution did not intend an over-arching concept of agrarian reform to encompass the two other areas, and that how the law is ordered in a certain way should not be undermined by mere executive orders in the guise of administrative efficiency.
>
> The Court is not persuaded.

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[4] 358 Phil. 896 (1998).

[5] G.R. No. 166052, August 29, 2007, 531 SCRA 583, where the petitioner assailed the placing of the National Commission on Indigenous Peoples as an attached agency of the Department of Agrarian Reform on the ground that, *inter alia*, policy and program coordination between allegedly conceptually different government agencies is unconstitutional.

The interplay of various areas of reform in the promotion of social justice is not something implausible or unlikely. Their interlocking nature cuts across labels and works against a rigid pigeonholing of executive tasks among the members of the President's official family. Notably, the Constitution inhibited from identifying and compartmentalizing the composition of the Cabinet. In vesting executive power in one person rather than in a plural executive, the evident intention was to invest the power holder with energy.

AMIN takes premium on the severed treatment of these reform areas in marked provisions of the Constitution. **It is a precept, however, that inferences drawn from title, chapter or section headings are entitled to very little weight. And so must reliance on sub-headings, or the lack thereof, to support a strained deduction be given the weight of helium**.

Secondary aids may be consulted to remove, not to create doubt. AMIN's thesis unsettles, more than settles the order of things in construing the Constitution. **Its interpretation fails to clearly establish that the so-called "ordering" or arrangement of provisions in the Constitution was consciously adopted to imply a signification in terms of government hierarchy from where a constitutional mandate can *per se* be derived or asserted. It fails to demonstrate that the "ordering" or layout was not simply a matter of style in constitutional drafting but one of intention in government structuring.** With its inherent ambiguity, the proposed interpretation cannot be made a basis for declaring a law or governmental act unconstitutional.[6] (emphasis and underscoring supplied)

Concededly, the allocation of three Articles in the Constitution devoted to the respective dynamics of the three Departments was deliberately adopted by the framers to allocate the vast powers of government among the three Departments in recognition of the principle of separation of powers.

The equation, however, does not end there. Such kind of formulation detaches itself from the concomitant system of checks and balances. Section sequencing alone of Sections 14, 15 and 16 of Article VII, as explained in the **fourth ratiocination**, does not suffice to signify functional structuring.

[6] *Id.* at 601-603.

That the power of judicial appointment was lodged in the President is a recognized measure of limitation on the power of the judiciary, which measure, however, is counterbalanced by the election ban due to the need to insulate the judiciary from the political climate of presidential elections. To abandon this interplay of checks and balances on the mere inference that the establishment of the JBC could de-politicize the process of judicial appointments lacks constitutional mooring.

The establishment of the JBC is not sufficient to curtail the evils of midnight appointments in the judiciary

The constitutional prohibition in Section 15 found its roots in the case of *Aytona v. Castillo*,[7] where among the "midnight" or "last minute" appointments voided to abort the abuse of presidential prerogatives or partisan efforts to fill vacant positions were <u>one in the Supreme Court</u> and two in the Court of Appeals.

Heeding *Aytona*'s admonition, the Constitutional Commission (ConCom) saw it fit to provide for a comprehensive ban on midnight appointments, finding that the establishment of the JBC is not enough to safeguard or insulate judicial appointments from politicization. The ConCom deliberations reveal:

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Would the distinguished proponent accept an amendment to his amendment to limit this prohibition to members of collegiate courts? The judges of the lower courts perhaps would not have the same category or the same standing as the others mentioned here.

[7] G.R. No. L-19313, January 19, 1962, 4 SCRA 1, 8.

MR. DAVIDE:	Pursuant to the post amendment, we already included here government-owned or controlled corporations or their subsidiaries which are not even very sensitive positions. So with more reason that the prohibition should apply to appointments in these bodies.
THE PRESIDENT:	Does the Committee accept?
FR. BERNAS:	What is common among these people — Ministers, Deputy Ministers, heads of bureaus or offices — is that they are under the control of the President.
MR. GUINGONA:	That is correct.
FR. BERNAS:	Whereas, the other offices the Commissioner mentioned are independent offices.
MR. DAVIDE:	The idea of the proposal is that about the end of the term of the President, he may prolong his rule indirectly by appointing people to these sensitive positions, like the commissions, the Ombudsman, the **JUDICIARY**, so he could perpetuate himself in power even beyond his term of office; therefore foreclosing the right of his successor to make appointments to these positions. We should realize that the term of the President is six years and under what we had voted on, there is no reelection for him. Yet he can continue to rule the country through appointments made about the end of his term to these sensitive positions.
FR. BERNAS:	At any rate, there are other checks as far as the appointment of those officers is concerned.

MR. DAVIDE: Only insofar as the Commission on Appointments is concerned for offices which would require consent, and the Judicial Bar Council insofar as the judiciary is concerned.

FR. BERNAS: We leave the matter to the body for a vote.[8] (capitalization and emphasis supplied)

The clear intent of the framers is thus for the ban on midnight appointments to apply to the judiciary. The succeeding interpellations[9] suggest no departure from this intent.

For almost half a century, the seeds of *Aytona,* as nurtured and broadened by the Constitution, have grown into an established doctrine that has weathered legal storms like *Valenzuela*.

The **second ratiocination** in the *ponencia* could thus not remove an added constitutional safeguard by pretending to have examined and concluded that the establishment of the JBC had eliminated all encompassing forms of political maneuverings during elections. Otherwise, reading into the Constitution such conclusion so crucial to the scheme of checks and balances, which is neither written nor tackled, undermines the noticeable silence or restraint exercised by the framers themselves from making a definitive analysis.

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[8] *RECORD OF THE 1986 CONSTITUTIONAL COMMISSION,* Vol. 2, July 31, 1986, RCC No. 44 (CD Format).

[9] *Id.* Following were the deliberations concerning the prohibition on **nepotism,** wherein the deletion of the word "judiciary" was reflected in the final text of Section 13, Article VII of the Constitution:

MR. TINGSON: Madam President, may I just ask one question of the proponent?

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Even though *the members of the President's family are related to him,* shall we bar the men of probity, honesty and specialized technical knowledge from being appointed?

To illustrate, the instance given in the **fifth ratiocination** that having the new President appoint the next Chief Justice cannot ensure judicial independence because the appointee can also become beholden to the appointing authority bears an inconsistent stance. It does not admit or recognize that the

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MR. DAVIDE: That is precisely the core or the meat and the heart of the prohibition. In effect, it is just extending it to these sensitive positions that I have mentioned.

MR. TINGSON: But in a sense would that not be counterproductive?

MR. DAVIDE: If that is the thinking of the Commissioner, he should rather propose for the deletion of the entire sentence since that is really its effect.

MR. TINGSON: Will the Commissioner join me if I do?

MR. DAVIDE: No. As a matter of fact, I am expanding the prohibition. But if the Commissioner's position is that we might be prohibiting these capable men who are *relatives* of the President, then the deletion would be proper, which I am not in favor of.

MR. TINGSON: Madam President, we have already limited the presidency to one term, predicated on the fact that he will now become a statesman rather than a partisan politician. Then he will be acting for the good of our country; that is, we base that philosophy with that predicate. So I am just wondering why we should not utilize these men who, according to Commissioner Uka, happen to have committed a crime of being related to the President.

MR. DAVIDE: Is the Commissioner proposing that as an amendment to my amendment?

MR. TINGSON: I would like to.

MR. DAVIDE: In the sense that the Commissioner's amendment is to delete the entire sentence?

MR. TINGSON: Is that the Commissioner's thinking also?

MR. DAVIDE: No, I am entirely for the opposite.

MR. TINGSON: Then, I am not insisting anymore.

MR. DAVIDE: If the Commissioner is introducing it as an amendment, I am sorry, I have to reject his proposal.

mechanism of removal by impeachment eliminates the evils of political indebtedness. In any event, that level of reasoning overlooks the risk of compromising judicial independence when the outgoing President faces the Court in the charges that may be subsequently filed against her/him, and when the appointing President is up for re-election in the peculiar situation contemplated by Section 4, Article VII of the Constitution.

THE PRESIDENT:	So, let us now proceed to the amendment of Commissioner Davide.
MR. GUINGONA:	Madam President, may I just offer one more amendment to the distinguished proponent? After the word "JUDICIARY," we insert: EXCEPT JUDGES OF THE METROPOLITAN TRIAL COURTS.
MR. DAVIDE:	To avoid any further complication, I would agree to delete "JUDICIARY."
MR. GUINGONA:	Thank you.
MR. DAVIDE:	So, on line 5, the only amendment would consist of the following: after the word "as," insert MEMBERS OF THE CONSTITUTIONAL COMMISSIONS OR THE OFFICE OF THE OMBUDSMAN.
THE PRESIDENT:	Does the Committee prefer to throw this to the body?
MR. REGALADO:	We prefer that we submit it to the body.
VOTING	
THE PRESIDENT:	Those in favor of this proposed amendment of Commissioner Davide on page 9, line 5, to include these two offices: the constitutional commissions and the office of the Ombudsman, please raise their hand. (Several Members raised their hand.)

Those against the proposed amendment will please raise their hand. (Few Members raised their hand.)

The results show 24 votes in favor and 9 against; the amendment is approved.

MR. ROMULO: Madam President, we are almost at the end of our long journey. I ask for continued patience on the part of everyone. We are now on Section 20. We have consolidated all the amendments for presentation by one person; and that is, Commissioner Sarmiento. Will the Chair recognize him please? (emphasis, italics and underscoring supplied).

All rules of statutory construction revolt against the interpretation arrived at by the *ponencia*

It is simplistic and unreliable for the *ponencia* to contend that had the framers intended to extend the ban in Article VII to appointments in the judiciary, they would have easily and surely written so in Article VIII, for it backlashes the question that had the framers intended to exclude judicial appointments in Article VIII from the prohibition in Article VII, they would have easily and surely written so in the excepting proviso in Article VII.

Taking into account how the framers painstakingly rummaged through various sections of the Constitution and came up with only one exception with the need to specify the executive department, it insults the collective intelligence and diligence of the ConCom to postulate that it intended to exclude the judiciary but missed out on that one.

To hold that the ban on midnight appointments applies only to executive positions, and not to vacancies in the judiciary and independent constitutional bodies, is to make the prohibition practically useless. It bears noting that Section 15, Article VII of the Constitution already allows the President, by way of exception, to make temporary appointments in the Executive Department during the prohibited period. Under this view, there is virtually no restriction on the President's power of appointment during the prohibited period.

The general rule is clear since the prohibition applies to ALL kinds of midnight appointments. The Constitution made no distinction. *Ubi lex non distinguit nec nos distinguere debemos.*

The exception is likewise clear. *Expressio unius et exclusio alterius.* The express mention of one person, thing or consequence implies the exclusion of all others.[10] There is no clear

[10] *The Iloilo City Zoning Board of Adjustment & Appeals v. Gegato-Abecia Funeral Homes, Inc.*, 462 Phil. 803, 815 (2003).

circumstance that would indicate that the enumeration in the exception was not intended to be exclusive. Moreover, the fact that Section 15 was couched in negative language reinforces the exclusivity of the exception.

Under the rules of statutory construction, exceptions, as a general rule, should be strictly but reasonably construed; they extend only so far as their language fairly warrants, and *all doubts should be resolved in favor of the general provisions rather than the exception*. Where a general rule is established by statute with exceptions, the court will not curtail the former nor add to the latter by implication.[11] (italics in the original; underscoring supplied)

The proclivity to innovate legal concepts is enticing. Lest the basic rule be forgotten, it helps to once more recite that when the law is clear, it is not susceptible to interpretation and must be applied regardless of who may be affected, even if the law may be harsh or onerous.[12]

In its **third ratiocination**, the *ponencia* faults *Valenzuela* for not according weight and due consideration to the opinion of Justice Florenz Regalado. It accords high regard to the opinion expressed by Justice Regalado as a former ConCom Member, to the exception of the opinion of all others similarly situated.

It bears noting that the Court had spoken in one voice in *Valenzuela*. The *ponencia* should not hastily reverse, on the sole basis of Justice Regalado's opinion, the Court's unanimous *en banc* decision penned by Chief Justice Andres Narvasa, and concurred in by, *inter alia*, Associate Justices who later became Chief Justices – Hilario Davide, Jr., Artemio Panganiban and Reynato Puno.

The line of reasoning is specious. If that is the case and for accuracy's sake, we might as well reconvene all ConCom members and put the matter to a vote among them.

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[11] *Samson v. Court of Appeals*, G.R. No. L-43182, November 25, 1986, 145 SCRA 654, 659.

[12] *Pascual v. Pascual-Bautista*, G.R. No. 84240, March 25, 1992, 207 SCRA 561, 568.

Providentially, **jurisprudence is replete with guiding principles to ascertain the true meaning of the Constitution when the provisions as written appear unclear and the proceedings as recorded provide little help:**

While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers' understanding thereof.[13] (underscoring supplied)

The clear import of Section 15 of Article VII is readily apparent. The people may not be of the same caliber as Justice Regalado, but they simply could not read into Section 15 something that is not there. *Casus omissus pro omisso habendus est*.

What complicates the *ponencia* is its great preoccupation with Section 15 of Article VII, particularly its fixation with sentences or phrases that are neither written nor referred to therein. *Verba legis non est recedendum, index animi sermo est*. There should be no departure from the words of the statute, for speech is the index of intention.

IN FINE, all rules of statutory construction virtually revolt against the interpretation arrived at by the *ponencia*.

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[13] *Francisco, Jr., v. The House of Representatives*, 460 Phil. 830, 887 (2003), citing *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, February 22, 1991, 194 SCRA 317, 337-338.

The 90-day period to fill a vacancy in the Supreme Court is suspended during the ban on midnight appointments

Although practically there is no constitutional crisis or conflict involved upon the retirement of the incumbent Chief Justice, the *ponencia* illustrates the inapplicability of the 90-day mandate to every situation of vacancy in the Supreme Court (*i.e.*, the 19-day vacuum articulated in the **sixth ratiocination**) if only to buttress its thesis that judicial appointment is an exception to the midnight appointments ban. The contemplated situation, however, supports the idea that the 90-day period is suspended during the effectivity of the ban.

I submit that the more important and less complicated question is *whether the 90-day period in Section 4(1) of Article VIII*[14] *runs during the period of prohibition in Section 15 of Article VII.*

In response to that question, the *ponencia* declares that it is the President's "imperative duty to make an appointment of a Member of the Supreme Court within 90 days from the occurrence of the vacancy [and that t]he failure by the President to do so will be a clear disobedience to the Constitution."[15]

The *ponencia* quotes certain records of the ConCom deliberations which, however, only support the view that the number of Justices should "not be reduced for any appreciable length of time" and it is a "mandate to the executive to fill the vacancy." Notably, there is no citation of any debate on how the framers reckoned or determined an appreciable length of time of 90 days, in which

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[14] CONSTITUTION, Art. VIII, Sec. 4 (1). The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in its discretion, in division of three, five, or seven members. Any vacancy shall be filled within **ninety days** from the occurrence thereof. (emphasis and underscoring supplied)

[15] Decision, p. 37.

case a delay of one day could already bring about the evils it purports to avoid and spell a culpable violation of the Constitution. On the contrary, that the addition of one month to the original proposal of 60 days was approved without controversy[16] ineluctably shows that the intent was *not* to strictly impose an inflexible timeframe.

Respecting the rationale for suspending the 90-day period, in cases where there is physical or legal impossibility of compliance with the duty to fill the vacancy within the said period, the fulfillment of the obligation is released because the law cannot exact compliance with what is impossible.

In the present case, there can only arise a **legal impossibility** when the JBC list is submitted or the vacancy occurred during the appointments ban and the 90-day period would expire before the end of the appointments ban, in which case the fresh 90-day period should start to run at noon of June 30. This was the factual antecedent respecting the trial court judges involved in *Valenzuela*. There also arises a legal impossibility when the list is submitted or the vacancy occurred prior to the ban and no appointment was made before the ban starts, rendering the lapse of the 90-day period within the period of the ban, in which case the remaining period should resume to run at noon of June 30. The outgoing President would be released from non-fulfillment of the constitutional obligation, and the duty devolves upon the new President.

Considering also that Section 15 of Article VII is an express limitation on the President's power of appointment, the running of the 90-day period is deemed <u>**suspended**</u> during the period of the ban which takes effect only once every six years.

This view differs from *Valenzuela* in that it does not implement Section 15 of Article VII so as to breach Section 4(1) of Article VIII. Instead of disregarding the 90-day period in the observance of the ban on midnight appointments, the more logical reconciliation of the two subject provisions is to consider the

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[16] *Infra* note 18.

ban as having the effect of suspending the duty to make the appointment within 90 days from the occurrence of the vacancy. Otherwise stated, since there is a ban, then there is no duty to appoint as the power to appoint does not even exist. Accordingly, the 90-day period is suspended once the ban sets in and begins or continues to run only upon the expiration of the ban.

One situation which could result in **physical impossibility** is the inability of the JBC to constitute a quorum for some reasons beyond their control, as that depicted by Justice Arturo Brion in his Separate Opinion, in which case the 90-day period could lapse without fulfilling the constitutional obligation.

Another such circumstance which could frustrate the *ponencia*'s depiction of the inflexibility of the period is a "no-takers" situation where, for some reason, there are no *willin*g qualified nominees to become a Member of the Court.[17] Some might find this possibility remote, but then again, the situation at hand or the "absurdity"[18] of a 19-day overlapping vacuum may have also been perceived to be rare.

The **<u>seventh ratiocination</u>** is admittedly a non-issue. Suffice it to state that the Constitution is clear that the appointment must come "from a list x x x prepared by the Judicial and Bar Council."

The Supreme Court can function effectively during the midnight appointments ban without an appointed Chief Justice

The *ponencia* also holds that the JBC has until May 17,

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[17] There is no problem in the case of lower courts since the 90-day period starts from the submission of the list to the President. Parenthetically, over and above the alleged level of importance and urgency between the Court and the lower courts, the lack of applicants for judicial posts in the province is a practical reason why the 90-day period for lower courts is reckoned from the submission of the JBC list. Otherwise, one could just imagine the countless constitutional violations incurred by the President.

[18] <u>*Vide*</u> Decision, p. 45.

2010, at the latest, within which to submit to the President the list of nominees for the position of Chief Justice. It declares that the JBC should start the process of selecting the candidates to fill the vacancy in the Supreme Court before the occurrence of the vacancy, explaining that the 90-day period in the proviso, "Any vacancy shall be filled within ninety days from the occurrence thereof," is addressed to the President, not to the JBC.

Such interpretation is absurd as it takes the application and nomination stages in isolation from the whole appointment process. For the *ponencia*, the filling of the vacancy only involves the President, and the JBC was not considered when the period was increased from 60 days to 90 days. The sense of the Concom is the exact opposite.[19]

The flaw in the reasoning is made more evident when the vacancy occurs by virtue of death of a member of the Court. In that instance, the JBC could never anticipate the vacancy, and could never submit a list to the President before the 90-day period.

Sustaining the view means[20] that in case the President appoints as Chief Justice a sitting member of the Court, from a JBC list which includes, for instance, incumbent justices and "outsiders," the JBC must forthwith submit a list of nominees for the post left vacant by the sitting member-now new Chief Justice. This thus calls for the JBC, *in anticipation*, to also commence and conclude another nomination process to fill the vacancy, and *simultaneously* submit a list of nominees for such vacancy, together with the list of nominees for the position of Chief Justice.

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[19] RECORD OF THE 1986 CONSTITUTIONAL COMMISSION, Vol. 1, July 14, 1986, RCC No. 29 (CD Format. Commissioner Romulo stated that "[t]he sense of the Committee is that 60 days is awfully short and that the [Judicial and Bar] Council, as well as the President, may have difficulties with that."

[20] In which case the Court's complement remains incomplete with still 14 members.

If the President appoints an "outsider" like Sandiganbayan Justice Edilberto Sandoval as Chief Justice, however, the JBC's toil and time in the second nomination process are put to waste.

It is ironic for the *ponencia* to state on the one hand that the President would be deprived of ample time to reflect on the qualifications of the nominees, and to show on the other hand that the President has, in recent history, filled the vacancy in the position of Chief Justice in one or two days.

It is ironic for the *ponencia* to recognize that the President may need as much as 90 days of reflection in appointing a member of the Court, and yet abhor the idea of an acting Chief Justice in the interregnum as provided for by law,[21] confirmed by tradition,[22] and settled by jurisprudence[23] to be an internal matter.

The express allowance of a 90-day period of vacancy rebuts any policy argument on the necessity to avoid a vacuum of even a single day in the position of an appointed Chief Justice.

As a member of the Court, I strongly take exception to the *ponencia*'s implication that the Court cannot function without a sitting Chief Justice.

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[21] REPUBLIC ACT No. 296 (Judiciary Act of 1948), Section 12 states that in case of a vacancy in the office of Chief Justice, the Associate Justice who is first in precedence may act as Chief Justice until one is appointed and duly qualified.

[22] Since the time of Chief Justice Cayetano Arellano, this rule of succession has been observed throughout the Court's history whenever the position of Chief Justice is temporarily vacant for any reason. *Vide* Revised copy of Special Order No. 826 (March 16, 2010) issued by Chief Justice Reynato S. Puno who goes on wellness and sabbatical leave from March 18-30, 2010 designating Senior Associate Justice Antonio T. Carpio as acting Chief Justice effective March 18, 2010 until Chief Justice Puno reports back to work.

[23] Cf. *Brillantes, Jr. v. Yorac*, G.R. No. 93867, December 18, 1990, 192 SCRA 358.

To begin with, judicial power is vested in one Supreme Court[24] and not in its individual members, much less in the Chief Justice alone. Notably, after Chief Justice Puno retires, the Court will have 14 members left, which is more than sufficient to constitute a quorum.

The fundamental principle in the system of laws recognizes that there is only one Supreme Court from whose decisions all other courts are required to take their bearings. While most of the Court's work is performed by its three divisions, the Court remains one court — single, unitary, complete and supreme. Flowing from this is the fact that, while individual justices may dissent or only partially concur, when the Court states what the law is, it speaks with only one voice.[25]

The Court, as a collegial body, operates on a "one member, one vote" basis, whether it sits *en banc* or in divisions. The competence, probity and independence of the Court *en banc*, or those of the Court's Division to which the Chief Justice belongs, have never depended on whether the member voting as Chief Justice is merely an acting Chief Justice or a duly appointed one.

IN LIGHT OF THE FOREGOING, I vote to hold, for the guidance of the Judicial and Bar Council, that the incumbent President is constitutionally proscribed from appointing the successor of Chief Justice Reynato S. Puno upon his retirement on May 17, 2010 until the ban ends at 12:00 noon of June 30, 2010.

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[24] CONSTITUTION, Art. VIII, Sec. 1.

[25] *Complaint of Mr. Aurelio Indencia Arrienda against Justice Puno*, 499 Phil. 1, 14-15 (2005).

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Petition for — A judge has no legal standing to file a petition for certiorari since he is just a nominal party in a case. (Judge Barillo *vs*. Hon. Lantion, G.R. No. 159117, Mar. 10, 2010) p. 39

— Even if judges have the requisite legal standing, the petition will still not prosper, because whatever judgment

that is reached, the same can no longer have any practical legal effect or in the nature of things, can no longer be enforced. *(Id.)*

— Verification of the petition for certiorari is not an absolute necessity where the material facts alleged are a matter of record and the questions raised are mainly of law. (Palma *vs*. Judge Galvez, G.R. No. 165273, Mar. 10, 2010) p. 86

— When proper. *(Id.)*

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— Section 15, Article VII vis-a-vis Sections 4(1) and 9, Article VIII of the Constitution, construed; conflict between these provisions exists when they operate in tandem or against one another. (De Castro vs. JBC, G.R. No. 191002, Mar. 17, 2010; *Brion, J., separate opinion*) p. 629

— The allocation of three articles in the Constitution to the three departments was adopted in recognition of the principle of separation of powers. (De Castro *vs*. JBC, G.R. No. 191002, Mar. 17, 2010; *Carpio Morales, J., dissenting opinion*) p. 629

— To hold that the ban on midnight appointments under Section 15, Article VII of the Constitution does not apply to appointments in the judiciary revolts against all the rules in statutory construction. *(Id.)*

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— Substantial evidence is required to prove liability of employee for grave misconduct; substantial evidence, explained. *(Id.)*

— The employees' act of misrepresenting that they could either influence the outcome of the case or help set a case for agenda by the court en banc, a case of. *(Id.)*

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— Filing of motions seeking affirmative relief, without qualification and without questioning the propriety of the service of summons, considered voluntary submission to the jurisdiction of the court. (Palma *vs*. Judge Galvez, G.R. No. 165273, Mar. 10, 2010) p. 86

— General rule to question court's jurisdiction, explained. (Bernardo *vs*. Heirs of Eusebio Villegas, G.R. No. 183357, Mar. 15, 2010) p. 450

— Principle of estoppel from questioning court's jurisdiction based on justice and equity, applied. *(Id.)*

— Tax declaration indicating the assessed value of the property, considered in determining court's jurisdiction. *(Id.)*

— The judgment of a court of competent jurisdiction may not be interfered with by any court of concurrent jurisdiction; reason. (Tiu *vs.* First Plywood Corp., G.R. No. 176123, Mar. 10, 2010) p. 120

— The special appearance of the party's counsel for the purpose of assailing the court's jurisdiction over its person, through a motion to dismiss, not deemed a voluntary submission to the jurisdiction of the said court. (Lhuillier *vs*. British Airways, G.R. No. 171092, Mar. 15, 2010) p. 365

— The various branches of the Regional Trial Courts should not, cannot and are not permitted to intervene with their

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— Instances when moral damages may be recovered in an action upon a breach of contract of carriage. (Sulpicio Lines, Inc. *vs*. Curso, G.R. No. 157009, Mar. 17, 2010) p. 546

— Purpose; conditions for the award. *(Id.)*

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Petition for — A plea to interpret two conflicting constitutional provisions for the guidance of the Judicial and Bar Council (JBC) is in the nature of a declaratory relief. (De Castro *vs*. JBC, G.R. No. 191002, Mar. 17, 2010; *Nachura, J., separate opinion*) p. 629

DENIAL OF THE ACCUSED

Defense of — Considered as negative, self-serving and undeserving of any weight in law, unless substantiated by clear and convincing proof. (Sps. Manuel C. Rafols, Jr. and Lolita B. Rafols *vs*. Atty. Barrios, Jr., A.C. No. 4973, Mar. 15, 2010) p. 213

— The presumption of regularity in the performance of official duty coupled with the trial court's finding of the credibility of the prosecution witnesses prevail over self-serving denial. (People *vs*. Fabian, G.R. No. 181040, Mar. 15, 2010) p. 419

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Practice of teaching profession — Good moral character is a continuing requirement which one must possess in the practice of the teaching profession. (Puse *vs*. De Los Santos-Puse, G.R. No. 183678, Mar. 15, 2010) p. 483

EMPLOYMENT, CONDITIONS OF

Project employee — Interval or gaps separated one employment contract of the project employee from another contract. (William Uy Construction Corp. *vs*. Trinidad, G.R. No. 183250, Mar. 12, 2010) p. 185

— Length of service is not the controlling determinant of the employment tenure thereof. *(Id.)*

— Remains as such regardless of the number of years and the various projects he worked for the company. *(Id.)*

— Reporting requirement for the termination of the employment of project employee must be complied with by the employer. *(Id.)*

EMPLOYMENT, TERMINATION OF

Abandonment as a ground — Failure to report back for work despite several notices constitutes abandonment; pendency of an employee's complaint for illegal dismissal is not a valid excuse. (Cobarrubias *vs.* Saint Louis University, Inc., G.R. No. 176717, Mar. 17, 2010) p. 556

Acquittal of employee in a criminal case — Will not preclude a determination in a labor case that he is guilty of acts inimical to the employer's interests. (Reno Foods, Inc. and/or Vicente Khu *vs.* Nagkakaisang Lakas ng Manggagawa-KATIPUNAN, G.R No. 164016, Mar. 15, 2010) p. 247

Due process requirement — Failure of employer to make a determination of the sufficiency of evidence supporting the decision of the local labor union to expel employees is a direct consequence of the non-observance by employer of due process in the dismissal of employees. (General Milling Corp. *vs.* Casio, G.R. No. 149552, Mar. 10, 2010) p. 12

— Substantive and procedural due process, when not complied with. *(Id.)*

— The law requires the employer to furnish the employee sought to be dismissed with two written notices before termination of employment can be legally effected. *(Id.)*

— The twin requirements of notice and hearing constitute the essential elements of procedural due process. *(Id.)*

— Two aspects which characterize the concept of due process under the Labor Code. *(Id.)*

Financial assistance — Award of financial assistance shall not be given to validly terminated employee, whose offenses are iniquitous or reflective of some depravity in his moral

character. (Reno Foods, Inc. and/or Vicente Khu *vs*. Nagkakaisang Lakas ng Manggagawa-KATIPUNAN, G.R No. 164016, Mar. 15, 2010) p. 247

— Award of financial assistance to a dishonest employee is not only against the law but also a retrogressive public policy; reason. *(Id.)*

Length of service and previously clean employment record — Cannot simply erase the gravity of the betrayal exhibited by a malfeasant employee. (Reno Foods, Inc. and/or Vicente Khu *vs*. Nagkakaisang Lakas ng Manggagawa-KATIPUNAN, G.R No. 164016, Mar. 15, 2010) p. 247

Rights of illegally dismissed employees — Entitled to full backwages and reinstatement or separation pay if reinstatement is no longer possible; attorney's fees also justified if dismissed employees are compelled to litigate to seek redress for their dismissal. (General Milling Corp. *vs.* Casio, G.R. No. 149552, Mar. 10, 2010) p. 12

Separation pay — An employee dismissed for just cause is not entitled to an award of separation pay. (Reno Foods, Inc. and/or Vicente Khu *vs*. Nagkakaisang Lakas ng Manggagawa-KATIPUNAN, G.R No. 164016, Mar. 15, 2010) p. 247

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— Principle of estoppel in jurisdiction, explained. *(Id.)*

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Circumstantial evidence — A judgment based on circumstantial evidence can be sustained when the circumstances, considered together, point to the accused as the culprit to the exclusion of all others. (Diega *vs*. People, G.R. No. 173510, Mar. 15, 2010) p. 385

EXECUTIVE DEPARTMENT

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Ban on Midnight Appointments — Authority of the outgoing president to appoint the new Chief Justice of the Supreme Court within the period of prohibition stated in Section 15, Article VII, upheld. (De Castro *vs*. JBC, G.R. No. 191002, Mar. 17, 2010) p. 629

— Section 15, Article VII of the Constitution does not apply as well to other appointments in the judiciary. *(Id.)*

— The clear intent of the framers of the Constitution is for the ban on midnight appointments to apply to the judiciary. (De Castro vs. JBC, G.R. No. 191002, Mar. 17, 2010; *Carpio Morales, J., dissenting opinion*) p. 629

— The election ban imposed by Section 15, Article VII shall apply to appointment of lower court justices and judges. (De Castro vs. JBC, G.R. No. 191002, Mar. 17, 2010; *Brion, J., separate opinion*) p. 629

— The fact that Sections 14 and 16, Article VII refer only to appointments within the Executive Department renders conclusive that Section 15 applies only to the Executive Department. (De Castro *vs*. JBC, G.R. No. 191002, Mar. 17, 2010) p. 629

— The framers of the Constitution never intended to extend the prohibition against presidential appointments under Section 15, Article VII of the Constitution to the appointment of members of the Supreme Court. *(Id.)*

— The importance of every member and a sitting Chief Justice is the compelling reason why appointment in the Supreme Court should be exempt from the coverage of the election ban. (De Castro *vs*. JBC, G.R. No. 191002, Mar. 17, 2010; *Brion, J., separate opinion*) p. 629

— The 90-day period in Section 4(1), Article VIII is deemed suspended during the period of prohibition in Section 15, Article VII when there is legal or physical impossibility of compliance with the duty to fill the vacancy within the said period; instances when there would be legal or physical impossibility, cited. (De Castro *vs*. JBC, G.R. No. 191002, Mar. 17, 2010; *Carpio Morales, J., dissenting opinion*) p. 629

— To hold that Section 15, Article VII extends to appointments to the judiciary undermines the intent of the Constitution of ensuring the independence of the three departments. (De Castro vs. JBC, G.R. No. 191002, Mar. 17, 2010) p. 629

— Valenzuela ruling should not be reversed. (De Castro *vs.* JBC, G.R. No. 191002, Mar. 17, 2010; *Carpio Morales, J., dissenting opinion*) p. 629

— Valenzuela's application to the filling up of a vacancy in the Supreme Court is a mere obiter dictum. (De Castro *vs*. JBC, G.R. No. 191002, Mar. 17, 2010; *Brion, J., separate opinion*) p. 629

Power of appointment — Section 4(1), Article VIII of the Constitution is a definite mandate for the President to appoint a member of the Supreme Court within 90 days from the occurrence of the vacancy. (De Castro *vs*. JBC, G.R. No. 191002, Mar. 17, 2010) p. 629

EXEMPLARY DAMAGES

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EXTRAJUDICIAL CONFESSION

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FOREIGN CORPORATIONS

Act of doing business — Acts that do not constitute "doing business," enumerated. (Cargill, Inc. *vs*. Intra Strata Assurance Corp., G.R. No. 168266, Mar. 15, 2010) p. 320

— A foreign company that merely imports molasses from a Philippine exporter, without opening an office or appointing an agent in the Philippines, is not doing business in the Philippines. *(Id.)*

— A foreign corporation "doing business" in the Philippines without proper license cannot maintain any action before the Philippine Courts. *(Id.)*

— Phrase "doing business," explained. *(Id.)*

— To constitute "doing business," it must be proved that the business activities of the corporation are not just casual or occasional but so systematic and regular as to manifest continuity and permanence of activity. *(Id.)*

— To constitute "doing business," the activity undertaken should bring direct profits to the foreign corporation. *(Id.)*

— To constitute "doing business," the series of transactions entered into by the parties signify an intent to establish a continuous business in the Philippines. *(Id.)*

ILLEGAL RECRUITMENT IN LARGE SCALE

Conviction for — A person convicted of illegal recruitment may likewise be found guilty of estafa. (People *vs*. Chua, G.R. No. 184058, Mar. 10, 2010) p. 135

Elements — Cited. (People *vs*. Chua, G.R. No. 184058, Mar. 10, 2010) p. 135

Liability of offenders — An employee who actively and consciously participated in the recruitment process may be held liable therefor as principal by direct participation, together with the principal. (People *vs*. Chua, G.R. No. 184058, Mar. 10, 2010) p. 135

Nature — A malum prohibitum; intent is immaterial. (People *vs*. Chua, G.R. No. 184058, Mar. 10, 2010) p. 135

JUDGES

Conduct required — Respondent judge was decidedly lackadaisical in the management of the affairs of his sala. (Judge Barillo *vs*. Hon. Lantion, G. R. No. 159117, Mar. 10, 2010) p. 39

— Respondent judge's deportment fell below the level required of the members of the bench. *(Id.)*

Gross misconduct and gross ignorance of the law — There must be a showing of outright bad faith. (Judge Barillo *vs*. Hon. Lantion, G. R. No. 159117, Mar. 10, 2010) p. 39

Misconduct — Defined. (Judge Barillo *vs*. Hon. Lantion, G.R. No. 159117, Mar. 10, 2010) p. 39

Simple misconduct — As a consequence of infractions committed, the trial court was subjected to distrust and accusations of partiality. (Judge Barillo *vs*. Hon. Lantion, G.R. No. 159117, Mar. 10, 2010) p. 39

JUDGMENTS

Annulment of — In a petition for annulment of judgment on the ground of lack of jurisdiction, the petitioner need not allege that the ordinary remedies of new trial, reconsideration or appeal were no longer available through no fault of his; reason. (Tiu *vs*. First Plywood Corp., G.R. No. 176123, Mar. 10, 2010) p. 120

Doctrine of finality of judgment — Explained; rationale. (Tiu *vs*. First Plywood Corp., G.R. No. 176123, Mar. 10, 2010) p. 120

Res judicata — Conclusiveness of judgment, explained. (Sps. Torres *vs*. Medina, G.R. No. 166730, Mar. 10, 2010) p. 101

— Elements. *(Id.)*

— Explained; rationale. *(Id.)*

— Test in determining the existence of identity of causes of action. *(Id.)*

JUDICIAL AND BAR COUNCIL (JBC)

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Judicial review — Requisite before the court may exercise its judicial power, elucidated. (De Castro *vs*. JBC, G.R. No. 191002, Mar. 17, 2010; *Brion, J., separate opinion*) p. 629

Judiciary Act of 1948 — To rely on Section 12 of the Judiciary Act of 1948 in order to forestall the need to appoint the next Chief Justice soonest is to defy the intent of the Constitution. (De Castro *vs*. JBC, G.R. No. 191002, Mar. 17, 2010) p. 629

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— Circumstances showing the ripeness of the controversy for judicial determination. (De Castro *vs*. JBC, G.R. No. 191002, Mar. 17, 2010) p. 629

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— Determination of the party's locus standi is required in public or constitutional litigations. (De Castro *vs*. JBC, G.R. No. 191002, Mar. 17, 2010) p. 629

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— The court's power of judicial review over the Law Creating a Legislative District of Malolos City (R.A No. 9591), discussed. (Aldaba *vs*. COMELEC, G.R. No. 188078, Mar. 15, 2010) p. 537

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JUSTIFYING CIRCUMSTANCES

Self-defense — Doctrine of rational equivalence, not applicable. (Espinosa *vs*. People, G.R. No. 181071, Mar. 15, 2010) p. 432

LABOR ORGANIZATIONS

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LAND REGISTRATION

Torrens system — A party who acquires a valid title over the property and who has never relinquished said title to anybody else possesses a superior title over subsequent purchasers for value. (Roa *vs*. Heirs of Santiago Ebora, G.R. No. 161137, Mar. 15, 2010) p. 238

— A transferee acquires no better right than that of the transferor. *(Id.)*

LEASE

Duty of lessor — Legal duty of the lessor under a lease contract containing a right of first refusal clause, elucidated. (PUP *vs*. Golden Horizon Realty Corp., G.R. No. 183612, Mar. 15, 2010) p. 462

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— The right of first refusal is enforceable. *(Id.)*

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Doctrine of — Assertion of public right to gain locus standi, explained. (De Castro *vs*. JBC, G.R. No. 191002, Mar. 17, 2010) p. 629

— Defined; determination of the party's locus standi is required in public or constitutional litigations. *(Id.)*

— Instances where the court waived the requirement of locus standi. *(Id.)*

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MALOLOS CITY, LAW CREATING A LEGISLATIVE DISTRICT OF (R.A. NO. 9591)

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— R.A. No. 9591 contravenes the requirement in Section 5(3), Article VI of the Constitution. *(Id.)*

MALVERSATION OF PUBLIC FUNDS THROUGH FALSIFICATION OF PUBLIC DOCUMENTS

Commission of — Participation of the accused, not proven with moral certainty. (Bahilidad *vs*. People, G.R. No. 185195, Mar. 17, 2010) p. 567

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— Nature. (De Castro vs. JBC, G.R. No. 191002, Mar. 17, 2010) p. 629

— Requisites. *(Id.)*

— When petition for mandamus is premature. *(Id.)*

MARITIME INDUSTRY AUTHORITY (MARINA)

Jurisdiction — Primary jurisdiction over matters relating to the issuance of a certificate of public convenience lodged with the Maritime Industry Authority (MARINA), not the Court of Appeals. (Sta. Clara Shipping Corp. *vs*. San Pablo, G.R. No. 169493, Mar. 15, 2010) p. 336

— The appellate court should give deference to the exercise by the MARINA of its sound administrative discretion in applying its special knowledge, experience and expertise on technical and intricate factual matters before it. *(Id.)*

MARRIAGE, ANNULMENT OF

Psychological incapacity as a ground — A comprehensive examination of the party alleged to be suffering from a psychological disorder is required. (Suazo *vs*. Suazo, G.R. No. 164493, Mar. 12, 2010) p. 157

— Application of Article 36 of the Family Code is confined to the most serious cases of personality disorder, clearly demonstrative of an utter insensitivity or inability to give meaning and significance to marriage. *(Id.)*

— Habitual drunkenness, gambling and refusal to find a job do not show psychological incapacity, absent proof that

they are manifestations of an incapacity rooted in some debilitating psychological illness. *(Id.)*

— Physical violence, standing alone, does not constitute psychological incapacity. *(Id.)*

— Psychological incapacity must exist at the time of the celebration of the marriage. *(Id.)*

— Requisites, cited. *(Id.)*

MORAL DAMAGES

Award of — Brothers and sisters of a deceased passenger are not entitled to moral damages in an action predicated upon a breach of contract of carriage. (Sulpicio Lines, Inc. *vs*. Curso, G.R. No. 157009, Mar. 17, 2010) p. 546

— Instances when moral damages may be recovered in an action upon a breach of contract of carriage. *(Id.)*

— Purpose; conditions for the award. *(Id.)*

MORTGAGES

Extrajudicial foreclosure of mortgage — The extrajudicial foreclosure of the mortgage and the eventual conviction of the mortgagor for violation of B.P. Blg. 22 do not amount to double compensation; indemnity award is distinct from the underlying obligation of the check. (Sps. Torres *vs*. Medina, G.R. No. 166730, Mar. 10, 2010) p. 101

— The mortgagee's filing of a case against the mortgagor for violation of B.P. Blg. 22 will not bar him from later on electing to foreclose the property; reason. *(Id.)*

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Presumption of innocence — Absent contrary evidence, the sheriff is presumed to have performed his official duty of posting the notices of sale within the reglementary period. (Tiu *vs*. First Plywood Corp., G.R. No. 176123, Mar. 10, 2010) p. 120

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Petition for — Premature in case at bar. (De Castro *vs*. JBC, G.R. No. 191002, Mar. 17, 2010; *Nachura, J., separate opinion*) p. 629

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— Habitual drunkenness, gambling and refusal to find a job does not show psychological incapacity, absent proof that they are manifestations of an incapacity rooted in some debilitating psychological illness. *(Id.)*

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— Inconsistencies in the testimonies of witnesses, when referring to minor, trivial or inconsequential circumstances, even strengthen the credibility of the witnesses, because they eliminate doubts that such testimony had been coached or rehearsed. (People *vs*. Lauga, G.R. No. 186228, Mar. 15, 2010) p. 522

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— Not affected by initial silence of the witness especially when there is a threat against him and his family. (Diega *vs*. CA, G.R. No. 173510, Mar. 15, 2010) p. 385

— Not diminished by the belated disclosure of the incident. *(Id.)*

— People react differently to what was observed depending on their situation and state of mind. *(Id.)*

— Positive assertions of the witnesses deserve more credence and evidentiary weight than the negative averments of the appellant. *(Id.)*

— Rape was sufficiently established by the victim's testimony, supported by medico-legal findings. (People *vs*. Lauga, G.R. No. 186228, Mar. 15, 2010) p. 522

— Stands in the absence of ill-motive to falsely testify against the accused. (Diega *vs*. CA, G.R. No. 173510, Mar. 15, 2010) p. 385

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