PHILIPPINE REPORTS

VOL. 630

MARCH 18, 2010 TO MARCH 26, 2010

VOLUME 630

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

MARCH 18, 2010 TO MARCH 26, 2010

SUPREME COURT
MANILA
2014

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

MA. VIRGINIA OLIVIA VILLARUZ-DUEÑAS
COURT ATTORNEY VI & CHIEF, RECORDS DIVISION

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY V

FLOYD JONATHAN LIGOT TELAN
COURT ATTORNEY V & CHIEF, EDITORIAL DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY II

MARIA CORAZON RACELA MILLARES
COURT ATTORNEY II

SUPREME COURT OF THE PHILIPPINES

HON. REYNATO S. PUNO, Chief Justice
HON. ANTONIO T. CARPIO, Associate Justice
HON. RENATO C. CORONA, Associate Justice
HON. CONCHITA CARPIO MORALES, Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. ANTONIO EDUARDO B. NACHURA, Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. ARTURO D. BRION, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. LUCAS P. BERSAMIN, Associate Justice
HON. MARIANO C. DEL CASTILLO, Associate Justice
HON. ROBERTO A. ABAD, Associate Justice
HON. MARTIN S. VILLARAMA, JR., Associate Justice
HON. JOSE P. PEREZ, Associate Justice
HON. JOSE C. MENDOZA, Associate Justice

ATTY. MA. LUISA D. VILLARAMA, Clerk of Court En Banc
ATTY. FELIPA B. ANAMA, Assistant Clerk of Court En Banc

FIRST DIVISION

Chairperson

Hon. Reynato S. Puno

Members

Hon. Conchita Carpio Morales
Hon. Teresita J. Leonardo-De Castro
Hon. Lucas P. Bersamin
Hon. Martin S. Villarama, Jr.

Division Clerk of Court

Atty. Enriqueta E. Vidal

SECOND DIVISION

Chairperson

Hon. Antonio T. Carpio

Members

Hon. Arturo D. Brion
Hon. Mariano C. Del Castillo
Hon. Roberto A. Abad
Hon. Jose P. Perez

Division Clerk of Court

Atty. Ludichi Y. Nunag

THIRD DIVISION

Chairperson

Hon. Renato C. Corona

Members

Hon. Presbitero J. Velasco, Jr.
Hon. Antonio Eduardo B. Nachura
Hon. Diosdado M. Peralta
Hon. Jose C. Mendoza

Division Clerk of Court

Atty. Lucita A. Soriano

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[G.R. No. 153266. March 18, 2010]

VICTORIA C. GUTIERREZ, JOEL R. PEREZ, ARACELI L. YAMBOT, CORAZON F. SORIANO, LORNA P. TAMOR, ROMEO S. CONSIGNADO, DIVINA R. SULIT, ESTRELITA F. IRESARE, ROSALINDA L. ALPAY, AUREA L. ILAGAN AND ALL THE OTHER CONCERNED EMPLOYEES OF THE OFFICE OF THE SOLICITOR GENERAL, *petitioners, vs.* **DEPARTMENT OF BUDGET AND MANAGEMENT, HONORABLE SECRETARY EMILIA T. BONCODIN AND DIRECTOR LUZ M. CANTOR,** *respondents.* **UNIVERSITY OF THE PHILIPPINES, AMADO EUROPA, MERCEDITA REYES, CONCHITA ABARCAR, LUCIO ABERIN, BIENVENIDO BIONG, SOLOMON CELIZ, WILFREDO CORNEL, TOMAS FORIO, ROGELIO JUNTERIAL, JAIME PERALTA, PILAR RILLAS, WILFREDO SAGUN, JESUS SUGUITAN, LUIS TORRES, JOSE VERSOZA AND ALL THE OTHER CONCERNED INCUMBENT AND RETIRED EMPLOYEES OF THE SOCIAL SECURITY SYSTEM** *vs.* **SOCIAL SECURITY SYSTEM, CONSUELO A. TAGARO, REYNALDO S. CALLANO, AIDA A. MARTINEZ, PRISCILLA P. COSTES, RICELI C. MENDOZA, ARISTON CALVO, SAMSON**

L. MOLAO, MANUEL SABUTAN, VILMA GONZALES, RUTH C. MAPANAO, NELSON M. BELGIRA, JESUS ANTONIO G. DERIJE *vs.* **UNIVERSITY OF SOUTHERN MINDANAO, CONFEDERATION OF INDEPENDENT UNIONS IN THE PUBLIC SECTOR (CIU), ESTHER I. ABADIANO AND OTHER FORTY ONE THOUSAND INDIVIDUAL TEACHERS INTERVENORS, ELPIDIO F. FERRER, MARIKINA CITY FEDERATION OF PUBLIC SCHOOL TEACHERS, INC., REPRESENTED BY ITS PRESIDENT ELPIDIO F. FERRER, AND ALL OTHER INDIVIDUAL PUBLIC SCHOOL TEACHERS IN CENTRAL LUZON, NORTHERN LUZON, SOUTHERN TAGALOG, NATIONAL CENTRAL REGION, CAR AND MINDANAO REPRESENTED BY THEIR RESPECTIVE ATTORNEYS-IN-FACT, ATTORNEYS DANTE ILAYA AND VIRGINIA SUAREZ-PINLAC AND ACTION AND SOLIDARITY FOR THE EMPOWERMENT OF TEACHERS (ASSERT), REPRESENTED BY ITS PRESIDENT AMABLE TUIBEIO, *ET AL.*, HARRIS M. SINOLINDING, KALANTONGAN P. AKIL, DAUNDI B. BAKONG, TERESITA C. DE GUZMAN, QUEENIE A. HABIBUN, JOSE T. MAUN, VIVIENLE P. MARAGGUN, SAAVEDRA M. MANTIKAYAN, GIJIT C. PARON, IRWIN R. QUINAIN, DATUMANONG O. TAGITICAN AND HYDIE P. WONG, AND ALL OTHER CONCERNED EMPLOYEES OF THE COTABATO FOUNDATION COLLEGE OF SCIENCE AND TECHNOLOGY (CFCST)** *vs.* **COTABATO FOUNDATION COLLEGE OF SCIENCE AND TECHNOLOGY AND DEPARTMENT OF BUDGET AND MANAGEMENT, FRANCISCA C. CASTRO, DARIO C. VARGAS, MA. DEBBIE M. RESMA, RAMON P. CASIL, TERESITA C. BUSADRE, CRISTINA V. MANALO, SAUL SAN RAMON, ALEXIS R. REBURIANO, ROSALITO D. ROSA, DR. FERNANDO C. JAVIER, DR. ROSEMARIE M.**

YAGUIE, DR. GIL T. MAGBANUA, AND ALL OTHER CONCERNED PUBLIC SCHOOL TEACHERS OF QUEZON CITY *vs.* **DEPARTMENT OF BUDGET AND MANAGEMENT, WILMA Q. NOBLEZA, ELEANOR M. CASTRO, JOSE B. BUSTILLO, JR., ABELARDO E. DE GUZMAN, EDWIN F. FABRIQUIER, *ET AL.*** *vs.* **DBM SECRETARY ROMULO NERI AND DEPARTMENT OF BUDGET AND MANAGEMENT, EVA VALDEZ FERIA, WILHELMINA BALDO, ROSE MARIE L. YCASA, GLORIA G. IGNACIO AND HJI. AKMAD A. ALSAD AND OTHER TWELVE THOUSAND FIVE HUNDRED INDIVIDUAL TEACHERS, BUREAU OF PLANT INDUSTRY EMPLOYEES ASSOCIATION, MARY ANN GUERRERO, *ET AL.*,** *intervenors.*

[G.R. No. 159007. March 18, 2010]

ESTRELLITA C. AMPONIN, JUDITH A. CUDAL, ROMEO A. PAGALAN, MARISSA F. PARIÑAS, AND RAYMOND F. FLORES, *ET AL.*, *petitioners, vs.* **COMMISSION ON AUDIT, GUILERMO N. CARAGUE, IN HIS CAPACITY AS CHAIRMAN, RAUL C. FLORES, IN HIS CAPACITY AS COMMISSIONER, COMMISSION ON AUDIT, AND EMMANUEL M. DALMAN, IN HIS CAPACITY AS COMMISSIONER, COMMISSION ON AUDIT,** *respondents.*

[G.R. No. 159029. March 18, 2010]

AUGUSTO R. NIEVES, BONIFACIO H. ATIVO, TARCELA P. DETERA, NILDA G. CIELO, ANTHONY M. BRAVO, MARIA LOURDES G. BARROZO, ANTONIO E. FUENTES, ALFREDO D. DONOR, RICO B. NAVA, SR., DOLORES C. HUIDEM AND ALL THE OTHER CONCERNED, EMPLOYEES OF THE SORSOGON STATE COLLEGE, *petitioners, vs.* **DEPARTMENT OF**

BUDGET AND MANAGEMENT AND HONORABLE SECRETARY EMILIA T. BONCODIN, *respondents.*

[G.R. No. 170084. March 18, 2010]

KAPISANAN NG MGA MANGGAGAWA SA BUREAU OF AGRICULTURAL STATISTICS (KMB), EVELYN C. TIDON, RIPOL O. ABALOS, BEATRIZ L. HUBILLA, MA. CHERYL J. TAJONERA, LOLITA DE HERNANDEZ, FLORA M. MABAMBA, DELILAH G. BASSIG AND ALL CONCERNED INCUMBENT AND RETIRED EMPLOYEES OF THE BUREAU OF AGRICULTURAL STATISTICS, DEPARTMENT OF AGRICULTURE, *petitioners, vs.* **DEPARTMENT OF BUDGET AND MANAGEMENT AND HONORABLE SECRETARY ROMULO NERI,** *respondents.*

[G.R. No. 172713. March 18, 2010]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **EPIFANIO P. RECANA, MERCEDES AMURAO, ERASMO APOSTOL, FLORENDO ASUNCION, FIORELLO JOSEFINA BALTAZAR, *ET AL.*,** *respondents.*

[G.R. No. 173119. March 18, 2010]

INSURANCE COMMISSION OFFICERS AND EMPLOYEES, REPRESENTED BY INSURANCE COMMISSION EMPLOYEES WELFARE ASSOCIATION (ICEWA), *ET AL.*, *petitioners, vs.* **DEPARTMENT OF BUDGET AND MANAGEMENT AND/OR HONORABLE SECRETARY ROLANDO G. ANDAYA, JR.,** *respondents.*

[G.R. No. 176477. March 18, 2010]

FIBER INDUSTRY DEVELOPMENT AUTHORITY EMPLOYEES ASSOCIATION (FIDAEA), REMEDIOS V. J. ABGONA, CELERINA T. HILARIO, QUIRINO U. SANTOS, GRACE AURORA F. PASTORES, RHISA V. PEGENIA, *ET AL.*, *petitioners, vs.* **DEPARTMENT OF BUDGET AND MANAGEMENT AND/OR HONORABLE SECRETARY ROLANDO G. ANDAYA, JR.,** *respondents.*

[G.R. No. 177990. March 18, 2010]

BUREAU OF ANIMAL INDUSTRY EMPLOYEES ASSOCIATION (BAIEA), LORY C. BANGALISAN, EDGARDO VINCULADO, LORENZO J. ABARCA, ROLANDO M. VASQUEZ, ALFREDO B. DUCUSIN, *ET AL.*, *petitioners, vs.* **DEPARTMENT OF BUDGET AND MANAGEMENT AND/OR HONORABLE SECRETARY ROLANDO G. ANDAYA, JR.,** *respondents.*

[A.M. No. 06-4-02-SB. March 18, 2010]

RE: REQUEST OF SANDIGANBAYAN FOR AUTHORITY TO USE THEIR SAVINGS TO PAY THEIR COLA DIFFERENTIAL FROM JULY 1, 1989 TO MARCH 16, 1999

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT (R.A.) 6758 (THE COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989); DID NOT PROHIBIT THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM) FROM IDENTIFYING WHAT ALLOWANCES ARE DEEMED INTEGRATED INTO THE STANDARDIZED SALARY RATES. — In this case, the DBM promulgated NCC 59 [and CCC 10]. But, instead of identifying some of the additional exclusions that Section 12 of R.A. 6758 permits it

to make, the DBM made a list of what allowances and benefits are deemed integrated into the standardized salary rates. More specifically, NCC 59 identified the x x x allowances/additional compensation that are deemed integrated. x x x R.A. 6758 did not prohibit the DBM from identifying for the purpose of implementation what fell into the class of "all allowances."

2. ID.; ID.; ID.; THE ENUMERATED EXCLUSIONS IN SECTION 12 OF R.A. 6758 REMAIN EXCLUSIVE UNTIL THE DBM ISSUES THE CORRESPONDING RULES AND REGULATIONS. — With respect to what employees' benefits fell outside the term apart from those that the law specified, the DBM, said this Court in a case, needed to promulgate rules and regulations identifying those excluded benefits. This leads to the inevitable conclusion that until and unless the DBM issues such rules and regulations, the enumerated exclusions in items (1) to (6) remain exclusive.

3. ID.; ID.; ID.; THE INCLUSION OF COST OF LIVING ALLOWANCE (COLA) IN THE STANDARDIZED SALARY RATES IS PROPER; REASON. — [T]he Court finds the inclusion of COLA in the standardized salary rates proper. In *National Tobacco Administration v. Commission on Audit*, the Court ruled that the enumerated fringe benefits in items (1) to (6) have one thing in common—they belong to one category of privilege called allowances which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions. Consequently, if these allowances are consolidated with the standardized salary rates, then the government official or employee will be compelled to spend his personal funds in attending to his duties. x x x Clearly, COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty. As defined, cost of living refers to "the level of prices relating to a range of everyday items" or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption." Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates.

4. ID.; ID.; ID.; INFLATION CONNECTED ALLOWANCE (ICA) RECEIVED BY OFFICIALS AND EMPLOYEES OF THE INSURANCE COMMISSION IS DEEMED INTEGRATED INTO THE STANDARDIZED SALARY RATES. — In this case, ICA, like COLA, falls under the general rule of integration. The DBM specifically identified it as an allowance or additional compensation integrated into the standardized salary rates. By its very nature, ICA is granted due to inflation and upon determination that the current salary of officials and employees of the Insurance Commission is insufficient to address the problem. The DBM determines whether a need for ICA exists and the fund from which it will be taken. The Insurance Commission cannot, on its own, determine what allowances are necessary and then grant them to its officials and employees without the approval of the DBM.

5. ID.; ID.; ID.; REQUISITE FOR ENTITLEMENT TO ICA, NOT MET. — ICA does not qualify under the second sentence of Section 12 of R.A. 6758 since the employees failed to show that they were actually receiving it as of June 30, 1989 or immediately prior to the implementation of R.A. 6758. The Commissioner of the Insurance Commission requested for authority to grant ICA from the DBM for the years 1981 and 1984 only. There is no evidence that the ICA were paid in subsequent years. In the absence of a subsequent authorization granting or restoring ICA to the officials and employees of the Insurance Commission, there can be no valid legal basis for its continued grant from July 1, 1986.

6. ID.; ID.; ID.; THE DISALLOWANCE OF ALLOWANCES AND FRINGE BENEFITS OF COA PERSONNEL ASSIGNED TO THE GSIS IS VALID; REASONS. — As aptly pointed out by the COA, Section 18 of R.A. 6758 was complete in itself and was operative without the aid of any supplementary or enabling legislation. The implementing rules and regulations were necessary only for those provisions, such as item (7) of Section 12, which requires further clarification and interpretation. Thus, notwithstanding the initial non-publication of CCC 10, the disallowance of petitioners' allowances and fringe benefits as COA auditing personnel assigned to the GSIS was valid upon the effectivity of R.A. 6758. x x x In upholding the disallowance, the Court ruled in *Villareña v. Commission on Audit* that valid

reasons exist to treat COA officials differently from other national government officials. The primary function of an auditor is to prevent irregular, unnecessary, excessive or extravagant expenditures of government funds. To be able to properly perform their constitutional mandate, COA officials need to be insulated from unwarranted influences, so that they can act with independence and integrity.

7. ID.; ID.; ID.; THE INTEGRATION OF COLA INTO THE STANDARDIZED SALARY RATES IS STILL VALID DESPITE THE NON-PUBLICATION OF CCC 10 AND NCC 59. — [T]he integration of COLA into the standardized salary rates is not dependent on the publication of CCC 10 and NCC 59. This benefit is deemed included in the standardized salary rates of government employees since it falls under the general rule of integration—"all allowances." More importantly, the integration was not by mere legal fiction since it was factually integrated into the employees' salaries. Records show that the government employees were informed by their respective offices of their new position titles and their corresponding salary grades when they were furnished with the Notices of Position Allocation and Salary Adjustment (NPASA). The NPASA provided the breakdown of the employee's gross monthly salary as of June 30, 1989 and the composition of his standardized pay under R.A. 6758. Notably, the COLA was considered part of the employee's monthly income. In truth, petitioners never really suffered any diminution in pay as a consequence of the consolidation of COLA into their standardized salary rates. There is thus nothing in these cases which can be the subject of a back pay since the amount corresponding to COLA was never withheld from petitioners in the first place. Consequently, the non-publication of CCC 10 and NCC 59 in the Official Gazette or newspaper of general circulation does not nullify the integration of COLA into the standardized salary rates upon the effectivity of R.A. 6758.

8. ID.; ID.; ID.; THE CONTINUED GRANT OF COLA TO THE UNIFORMED PERSONNEL TO THE EXCLUSION OF OTHER GOVERNMENT OFFICIALS IS NOT VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION; REASONS. — [T]he Court is not persuaded that the continued grant of COLA to the uniformed personnel

to the exclusion of other national government officials run afoul the equal protection clause of the Constitution. The fundamental right of equal protection of the laws is not absolute, but is subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another. The classification must also be germane to the purpose of the law and must apply to all those belonging to the same class. x x x It is clear from the first paragraph of Section 11 that Congress intended the uniformed personnel to be continually governed by their respective compensation laws. Thus, the military is governed by R.A. 6638, as amended by R.A. 9166 while the police is governed by R.A. 6648, as amended by R.A. 6975. Certainly, there are valid reasons to treat the uniformed personnel differently from other national government officials. Being in charged of the actual defense of the State and the maintenance of internal peace and order, they are expected to be stationed virtually anywhere in the country. They are likely to be assigned to a variety of low, moderate, and high-cost areas. Since their basic pay does not vary based on location, the continued grant of COLA is intended to help them offset the effects of living in higher cost areas.

APPEARANCES OF COUNSEL

Miguel Y. Badando for petitioners in G.R. No. 173119.

Bacungan & Descalzo Law Offices for petitioners in G. R. No. 170084.

Joselito A. Oliveros for petitioners in G. R. No. 159029.

Defensor Briones Villamor Tolentino and Galandines Law Offices for petitioners in G. R. No. 153266.

Rowena Candice M. Ruiz and Mary Grace R. Chua for Department of Budget and Management.

Yu Esguerra and Guloy-Par Law Firm for petitioners in G. R. No. 159007.

Victoria Lim Law Offices for intervenors Eva Valdez Feria, *et al*.

Ruga Delfin & Caringal Law Offices for intervenor Confederation of Independent Unions.

Elizabeth Soza for respondent COA Chairman.

Honorata O. Victoria and Ruel E. Asubar for Esther I. Abadiano, *et al*.

Virginia Suarez-Pinlac for Bureau of Plant Industry Employees Association, *et al*.

Danilo P. Cariaga for respondents.

D E C I S I O N

ABAD, *J*.:

These consolidated cases question the inclusion of certain allowances and fringe benefits into the standardized salary rates for offices in the national government, state universities and colleges, and local government units as required by the Compensation and Position Classification Act of 1989 and implemented through the challenged National Compensation Circular 59 (NCC 59).

The Facts and the Case

Congress enacted in 1989 Republic Act (R.A.) 6758, called the Compensation and Position Classification Act of 1989 to rationalize the compensation of government employees. Its Section 12 directed the consolidation of allowances and additional compensation already being enjoyed by employees into their standardized salary rates. But it exempted certain additional compensations that the employees may be receiving from such consolidation. Thus:

Section 12. Consolidation of Allowances and Compensation. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Pursuant to the above, the Department of Budget and Management (DBM) issued NCC 59 dated September 30, 1989,[1] covering the offices of the national government, state universities and colleges, and local government units. NCC 59 enumerated the specific allowances and additional compensations which were deemed integrated in the basic salaries and these included the Cost of Living Allowance (COLA) and Inflation Connected Allowance (ICA). The DBM re-issued and published NCC 59 on May 3, 2004.[2]

The DBM also issued Corporate Compensation Circular (CCC) 10 dated October 2, 1989,[3] covering all government-owned or controlled corporations and government financial institutions. The DBM re-issued this circular on February 15, 1999[4] and published it on March 16, 1999. Accordingly, the Commission on Audit (COA) disallowed the payments of honoraria and other allowances which were deemed integrated into the standardized salary rates. Employees of government-owned or controlled corporations questioned the validity of CCC 10 due to its non-publication. In *De Jesus v. Commission on Audit*,[5] this Court declared CCC 10 ineffective because of such non-publication. Until then, it ordered the COA to pass on audit the employees' honoraria which they were receiving prior to the effectivity of R.A. 6758.

Meanwhile, the DBM also issued Budget Circular 2001-03 dated November 12, 2001,[6] clarifying that only the exempt allowances under Section 12 of R.A. 6758 may continue to be granted the employees; all others were deemed integrated in the standardized salary rates. Thus, the payment of allowances and compensation such as COLA, amelioration allowance, and ICA, among others, which were already deemed integrated in

---

[1] *Rollo* (G.R. 153266, Vol. I), pp. 47-48.

[2] *Rollo* (G.R. 153266, Vol. IV), p. 3632.

[3] *Rollo* (G.R. 170084, Vol. I), pp. 103-113.

[4] *Rollo* (G.R. 153266, Vol. I), pp. 124-134.

[5] 355 Phil. 584 (1998).

[6] *Rollo* (G.R. 153266, Vol. I), pp. 33-34.

the basic salary were unauthorized. The Court's ruling in subsequent cases involving government-owned or controlled corporations followed the *De Jesus* ruling.

On May 16, 2002 employees of the Office of the Solicitor General filed a petition for *certiorari* and *mandamus* in G.R. 153266, questioning the propriety of integrating their COLA into their standardized salary rates. Employees of other offices of the national government followed suit. In addition, petitioners in G.R. 159007 questioned the disallowance of the allowances and fringe benefits that the COA auditing personnel assigned to the Government Service Insurance System (GSIS) used to get. Petitioners in G.R. 173119 questioned the disallowance of the ICA that used to be paid to the officials and employees of the Insurance Commission.

The Court caused the consolidation of the petitions and treated them as a class suit for all government employees, excluding the employees of government-owned or controlled corporations and government financial institutions.[7]

On October 26, 2005 the DBM issued National Budget Circular 2005-502[8] which provided that all Supreme Court rulings on the integration of allowances, including COLA, of government employees under R.A. 6758 applied only to specific government-owned or controlled corporations since the consolidated cases covering the national government employees are still pending with this Court. Consequently, the payment of allowances and other benefits to them, such as COLA and ICA, remained prohibited until otherwise provided by law or ruled by this Court. The circular further said that all agency heads and other responsible officials and employees found to have authorized the grant of COLA and other allowances and benefits already integrated in the basic salary shall be personally held liable for such payment.

The Issues Presented

The common issues presented in these consolidated cases are:

---

[7] *Rollo* (G.R. 153266, Vol. XI), pp. 11421-11423.

[8] *Rollo* (G.R. 153266, Vol. V), p. 4652.

1. Whether or not the COLA should be deemed integrated into the standardized salary rates of the concerned government employees by virtue of Section 12 of R.A. 6758;

2. Whether or not the ICA may still be paid to officials and employees of the Insurance Commission;

3. Whether or not the GSIS may still pay the allowances and fringe benefits to COA auditing personnel assigned to it;

4. Whether or not the non-publication of NCC 59 dated September 30, 1989 in the Official Gazette or newspaper of general circulation nullifies the integration of the COLA into the standardized salary rates; and

5. Whether or not the grant of COLA to military and police personnel to the exclusion of other government employees violates the equal protection clause.

The Court's Ruling

One. Petitioners espouse the common theory that the DBM needs to promulgate rules and regulations before the COLA that they were getting prior to the passage of R.A. 6758 can be deemed integrated in their standardized salary rates. Respondent DBM counters that R.A. 6758 already specified the allowances and benefits that were not to be integrated in the new salary rates. All other allowances, DBM adds, such as COLA, are deemed integrated into those salary rates.

At the heart of the present controversy is Section 12 of R.A. 6758 which is quoted anew for clarity:

Section 12. *Consolidation of Allowances and Compensation*. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being

received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

As will be noted from the first sentence above, "**all allowances**" were deemed integrated into the standardized salary rates except the following:

(1) representation and transportation allowances;
(2) clothing and laundry allowances;
(3) subsistence allowances of marine officers and crew on board government vessels;
(4) subsistence allowances of hospital personnel;
(5) hazard pay;
(6) allowances of foreign service personnel stationed abroad; and
(7) such other additional compensation not otherwise specified in Section 12 as may be determined by the DBM.

But, while the provision enumerated certain exclusions, it also authorized the DBM to identify such other additional compensation that may be granted over and above the standardized salary rates. In *Philippine Ports Authority Employees Hired After July 1, 1989 v. Commission on Audit*,[9] the Court has ruled that while Section 12 could be considered self-executing in regard to items (1) to (6), it was not so in regard to item (7). The DBM still needed to amplify item (7) since one cannot simply assume what other allowances were excluded from the standardized salary rates. It was only upon the issuance and effectivity of the corresponding implementing rules and regulations that item (7) could be deemed legally completed.

Delegated rule-making is a practical necessity in modern governance because of the increasing complexity and variety of public functions. Congress has endowed administrative agencies like respondent DBM with the power to make rules and regulations to implement a given legislation and effectuate its policies.[10] Such power is, however, necessarily limited to what the law provides. Implementing rules and regulations cannot

---

[9] G.R. No. 160396, September 6, 2005, 469 SCRA 397, 407.

[10] *Department of Agrarian Reform v. Sutton*, G.R. No. 162070, October 19, 2005, 473 SCRA 392, 398.

extend the law or expand its coverage, as the power to amend or repeal a statute belongs to the legislature. Administrative agencies implement the broad policies laid down in a law by "filling in" only its details. The regulations must be germane to the objectives and purposes of the law and must conform to the standards prescribed by law.[11]

In this case, the DBM promulgated NCC 59 [and CCC 10]. But, instead of identifying some of the additional exclusions that Section 12 of R.A. 6758 permits it to make, the DBM made a list of what allowances and benefits are deemed integrated into the standardized salary rates. More specifically, NCC 59 identified the following allowances/ additional compensation that are deemed integrated:

(1) Cost of Living Allowance (COLA);
(2) Inflation connected allowance;
(3) Living Allowance;
(4) Emergency Allowance;
(5) Additional Compensation of Public Health Nurses assigned to public health nursing;
(6) Additional Compensation of Rural Health Physicians;
(7) Additional Compensation of Nurses in Malacañang Clinic;
(8) Nurses Allowance in the Air Transportation Office;
(9) Assignment Allowance of School Superintendents;
(10) Post allowance of Postal Service Office employees;
(11) Honoraria/allowances which are regularly given except the following:
- **a. those for teaching overload;**
- **b. in lieu of overtime pay;**
- **c. for employees on detail with task forces/special projects;**
- **d. researchers, experts and specialists who are acknowledged authorities in their field of specialization;**
- **e. lecturers and resource persons;**
- **f. Municipal Treasurers deputized by the Bureau of Internal Revenue to collect and remit internal revenue collections; and**

[11] *Public Schools District Supervisors Association v. De Jesus*, G.R. No. 157286, June 16, 2006, 491 SCRA 55, 71.

g. Executive positions in State Universities and Colleges filled by designation from among their faculty members.

(12) Subsistence Allowance of employees except those authorized under EO [Executive Order] 346 and uniformed personnel of the Armed Forces of the Philippines and Integrated National Police;

(13) Laundry Allowance of employees except those hospital/ sanitaria personnel who attend directly to patients and who by the nature of their duties are required to wear uniforms, prison guards and uniformed personnel of the Armed Forces of the Philippines and Integrated National Police; and

(14) Incentive allowance/fee/pay except those authorized under the General Appropriations Act and Section 33 of P.D. 807.

The drawing up of the above list is consistent with Section 12 above. R.A. 6758 did not prohibit the DBM from identifying for the purpose of implementation what fell into the class of "all allowances." With respect to what employees' benefits fell outside the term apart from those that the law specified, the DBM, said this Court in a case,[12] needed to promulgate rules and regulations identifying those excluded benefits. This leads to the inevitable conclusion that until and unless the DBM issues such rules and regulations, the enumerated exclusions in items (1) to (6) remain exclusive. Thus so, not being an enumerated exclusion, COLA is deemed already incorporated in the standardized salary rates of government employees under the general rule of integration.

In any event, the Court finds the inclusion of COLA in the standardized salary rates proper. In *National Tobacco Administration v. Commission on Audit*,[13] the Court ruled that the enumerated fringe benefits in items (1) to (6) have one thing in common—they belong to one category of privilege called allowances which are usually granted to officials and employees

---

[12] *Philippine Ports Authority Employees Hired After July 1, 1989 v. Commission on Audit*, *supra* note 9.

[13] 370 Phil. 793, 805 (1999).

of the government to defray or reimburse the expenses incurred in the performance of their official functions. Consequently, if these allowances are consolidated with the standardized salary rates, then the government official or employee will be compelled to spend his personal funds in attending to his duties. On the other hand, item (7) is a "catch-all proviso" for benefits in the nature of allowances similar to those enumerated.[14]

Clearly, COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty.[15] As defined, cost of living refers to "the level of prices relating to a range of everyday items"[16] or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption."[17] Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates.

Two. Petitioning officials and employees of the Insurance Commission question the disallowance of their ICA on the ground that it is a benefit similar to the educational assistance granted by the Court in *National Tobacco Administration*[18] based on the second sentence of Section 12 of R.A. 6758 that reads:

Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

---

[14] *Bureau of Fisheries and Aquatic Resources Employees Union, Regional Office No. VII, Cebu City v. Commission on Audit*, G.R. 169815, August 13, 2008, 562 SCRA 134, 141.

[15] *Id*.

[16] *The New Oxford American Dictionary*, Oxford University Press, 2005 Edition.

[17] *Webster's Third New International Dictionary,* Merriam-Webster Inc., 1993 Edition.

[18] *National Tobacco Administration v. Commission on Audit*, *supra* note 13.

In *National Tobacco Administration*, the Court interpreted this provision as referring to benefits in the nature of financial assistance, or a bonus or other payment made to employees in addition to guaranteed hourly wages, as contradistinguished from the allowance in the first sentence, which cannot, strictly speaking, be treated as a bonus or additional income. In financial assistance, reimbursement is not necessary, while in the case of allowance, reimbursement is required.[19]

To be entitled to the financial assistance under this provision, the following requisites must concur: (1) the recipients were incumbents when R.A. 6758 took effect on July 1, 1989; (2) they were in fact, receiving the same, at the time; and (3) such additional compensation is distinct and separate from the excepted allowances under CCC 10, as it is not integrated into the standardized salary rates.[20]

In this case, ICA, like COLA, falls under the general rule of integration. The DBM specifically identified it as an allowance or additional compensation integrated into the standardized salary rates. By its very nature, ICA is granted due to inflation and upon determination that the current salary of officials and employees of the Insurance Commission is insufficient to address the problem. The DBM determines whether a need for ICA exists and the fund from which it will be taken. The Insurance Commission cannot, on its own, determine what allowances are necessary and then grant them to its officials and employees without the approval of the DBM.

Moreover, ICA does not qualify under the second sentence of Section 12 of R.A. 6758 since the employees failed to show that they were actually receiving it as of June 30, 1989 or immediately prior to the implementation of R.A. 6758. The Commissioner of the Insurance Commission requested for

---

[19] *Philippine International Trading Corporation v. Commission on Audit*, 461 Phil. 737, 747-748 (2003), citing *National Tobacco Administration v. Commission on Audit*, *supra* note 13.

[20] *National Tobacco Administration v. Commission on Audit*, *supra* note 13, at 808-809.

authority to grant ICA from the DBM for the years 1981[21] and 1984[22] only. There is no evidence that the ICA were paid in subsequent years. In the absence of a subsequent authorization granting or restoring ICA to the officials and employees of the Insurance Commission, there can be no valid legal basis for its continued grant from July 1, 1986.

Three. Petitioners COA auditing personnel assigned to the GSIS question the disallowance of their allowances and fringe benefits based on the allowances given to GSIS personnel, namely:

5.6. Payment of other allowances/fringe benefits and all other forms of compensation granted on top of basic salary, whether in cash or in kind, x x x shall be discontinued effective November 1, 1989. Payment made for such allowances/fringe benefits after said date shall be considered as illegal disbursement of public funds.

They alleged that since CCC 10 was declared ineffective, the disallowance should be lifted until the issuance was published on March 16, 1999.

But, although petitioners alleged that the subject benefits were withheld from them on the basis of CCC 10, it is clear that the benefits were actually withheld from them on the basis of Section 18 of R.A. 6758, which reads:

Section 18. *Additional Compensation of Commission on Audit Personnel and of Other Agencies*. - In order to preserve the independence and integrity of the Commission on Audit (COA), its officials and employees are prohibited from receiving salaries, honoraria, bonuses, allowances or other emoluments from any government entity, local government unit, and government-owned and controlled corporations, and government financial institution, except those compensation paid directly by the COA out of its appropriations and contributions.

Government entities, including government-owned or controlled corporations including financial institutions and local government units are hereby prohibited from assessing

---

[21] *Rollo* (G.R. 173119), p. 22.

[22] *Rollo* (G.R. 173119), p. 23.

or billing other government entities, government-owned or controlled corporations including financial institutions or local government units for services rendered by its officials and employees as part of their regular functions for purposes of paying additional compensation to said officials and employees.

As aptly pointed out by the COA, Section 18 of R.A. 6758 was complete in itself and was operative without the aid of any supplementary or enabling legislation.[23] The implementing rules and regulations were necessary only for those provisions, such as item (7) of Section 12, which requires further clarification and interpretation. Thus, notwithstanding the initial non-publication of CCC 10, the disallowance of petitioners' allowances and fringe benefits as COA auditing personnel assigned to the GSIS was valid upon the effectivity of R.A. 6758.

In *Tejada v. Domingo*,[24] this Court explained that COA personnel assigned to auditing units of government-owned or controlled corporations or government financial institutions can receive only such salaries, allowances or fringe benefits paid directly by the COA out of its appropriations and contributions. The contributions referred to are the cost of audit services which did not include the extra emoluments or benefits, such as bank equity pay, longevity pay, amelioration allowance, and meal allowance, which petitioners claim. The COA is further barred from assessing or billing government-owned or controlled corporations and government financial institutions for services rendered by its personnel as part of their regular audit functions for purposes of paying additional compensation to such personnel.

In upholding the disallowance, the Court ruled in *Villareña v. Commission on Audit*[25] that valid reasons exist to treat COA officials differently from other national government officials. The primary function of an auditor is to prevent irregular, unnecessary, excessive or extravagant expenditures of government funds. To be able to properly perform their

---

[23] *Rollo*, (G.R. 159007, Vol. I), p. 365.

[24] G.R. No. 91860, January 13, 1992, 205 SCRA 138, 150.

[25] 455 Phil. 908, 916-917 (2003).

constitutional mandate, COA officials need to be insulated from unwarranted influences, so that they can act with independence and integrity.

Rightly so, the disallowance in this case is valid.

Four. Petitioners argue that since CCC 10 dated October 2, 1989 covering all government-owned or controlled corporations and government financial institutions was ineffective until its re-issuance and publication on March 16, 1999, its counterpart, NCC 59 dated September 30, 1989 covering the offices of the national government, state universities and colleges, and local government units should also be regarded as ineffective until its re-issuance and publication on May 3, 2004. Thus, the COLA should not be deemed integrated into the standardized salary rates from 1989 to 2004. Respondents counter that the fact that NCC 59 was not published should not be considered as an obstacle to the integration of COLA into the standardized salary rates. Accordingly, Budget Circular 2001-03, insofar as it reiterates NCC 59, should not be treated as ineffective since it merely reaffirms the fact of consolidation of COLA into the employees' salary as mandated by Section 12 of R.A. 6758.

It is a settled rule that publication is required as a *condition precedent* to the effectivity of a law to inform the public of its contents before their rights and interests are affected by the same.[26] Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.[27]

Nonetheless, as previously discussed, the integration of COLA into the standardized salary rates is not dependent on the publication of CCC 10 and NCC 59. This benefit is deemed included in the standardized salary rates of government employees since it falls under the general rule of integration—"all allowances."

---

[26] *Philippine International Trading Corporation v. Commission on Audit*, 368 Phil. 478, 491 (1999).

[27] *Tañada v. Tuvera*, 230 Phil. 528, 535 (1986).

More importantly, the integration was not by mere legal fiction since it was factually integrated into the employees' salaries. Records show that the government employees were informed by their respective offices of their new position titles and their corresponding salary grades when they were furnished with the Notices of Position Allocation and Salary Adjustment (NPASA). The NPASA provided the breakdown of the employee's gross monthly salary as of June 30, 1989 and the composition of his standardized pay under R.A. 6758.[28] Notably, the COLA was considered part of the employee's monthly income.

In truth, petitioners never really suffered any diminution in pay as a consequence of the consolidation of COLA into their standardized salary rates. There is thus nothing in these cases which can be the subject of a back pay since the amount corresponding to COLA was never withheld from petitioners in the first place.[29]

Consequently, the non-publication of CCC 10 and NCC 59 in the Official Gazette or newspaper of general circulation does not nullify the integration of COLA into the standardized salary rates upon the effectivity of R.A. 6758. As the Court has said in *Philippine International Trading Corporation v. Commission on Audit*,[30] the validity of R.A. 6758 should not be made to depend on the validity of its implementing rules.

Five. Petitioners contend that the continued grant of COLA to military and police personnel under CCC 10 and NCC 59 to the exclusion of other government employees violates the equal protection clause of the Constitution.

But as respondents pointed out, while it may appear that petitioners are questioning the constitutionality of these issuances, they are in fact attacking the very constitutionality of Section 11 of R.A. 6758. It is actually this provision which allows the

---

[28] *Napocor Employees Consolidated Union v. National Power Corporation*, G.R. No. 157492, March 10, 2006, 484 SCRA 396, 409-410.

[29] *Id.* at 414-415.

[30] *Supra* note 19, at 750.

uniformed personnel to continue receiving their COLA over and above their basic pay, thus:

> **Section 11. *Military and Police Personnel.* — The base pay of uniformed personnel of the Armed Forces of the Philippines and the Integrated National Police shall be as prescribed in the salary schedule for these personnel in R.A. 6638 and R.A. 6648. The longevity pay of these personnel shall be as prescribed under R.A. 6638, and R.A. 1134 as amended by R.A. 3725 and R.A. 6648: Provided, however, That the longevity pay of uniformed personnel of the Integrated National Police shall include those services rendered as uniformed members of the police, jail and fire departments of the local government units prior to the police integration.**
>
> **All existing types of allowances authorized for uniformed personnel of the Armed Forces of the Philippines and Integrated National Police such as cost of living allowance, longevity pay, quarters allowance, subsistence allowance, clothing allowance, hazard pay and other allowances shall continue to be authorized.**

Nothing is more settled than that the constitutionality of a statute cannot be attacked collaterally because constitutionality issues must be pleaded directly and not collaterally.[31]

In any event, the Court is not persuaded that the continued grant of COLA to the uniformed personnel to the exclusion of other national government officials run afoul the equal protection clause of the Constitution. The fundamental right of equal protection of the laws is not absolute, but is subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another. The classification must also be germane to the purpose of the law and must apply to all those belonging to the same class.[32]

To be valid and reasonable, the classification must satisfy the following requirements: (1) it must rest on substantial

---

[31] *Philippine National Bank v. Palma*, G.R. No. 157279, August 9, 2005, 466 SCRA 307, 327.

[32] *Tiu v. Court of Appeals*, 361 Phil. 229, 241 (1999).

distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class.[33]

It is clear from the first paragraph of Section 11 that Congress intended the uniformed personnel to be continually governed by their respective compensation laws. Thus, the military is governed by R.A. 6638,[34] as amended by R.A. 9166[35] while the police is governed by R.A. 6648,[36] as amended by R.A. 6975.[37]

Certainly, there are valid reasons to treat the uniformed personnel differently from other national government officials. Being in charged of the actual defense of the State and the maintenance of internal peace and order, they are expected to be stationed virtually anywhere in the country. They are likely to be assigned to a variety of low, moderate, and high-cost areas. Since their basic pay does not vary based on location, the continued grant of COLA is intended to help them offset the effects of living in higher cost areas.[38]

WHEREFORE, the Court *GRANTS* the petition in G.R. No. 172713 and *DENIES* the petitions in G.R. 153266, 159007, 159029, 170084, 173119, 176477, 177990 and A.M. 06-4-02-SB.

SO ORDERED.

---

[33] *De Guzman, Jr. v. Commission on Elections*, 391 Phil. 70, 79 (2000).

[34] An Act to Establish New Rates of Base Pay of Military and Civilian Personnel of the Department of National Defense and Armed Forces of the Philippines, Appropriating Funds Therefore, Approved on November 26, 1987.

[35] An Act Promoting the Welfare of the Armed Forces of the Philippines by Increasing the Rate of Base Pay and Other Benefits of its Officers and Enlisted Personnel and for Other Purposes, Approved on June 7, 2002.

[36] An Act to Rationalize the Compensation Structure of Members and Civilian Employees of the Integrated National Police in the Active Service, Appropriating Funds Therefor, Approved on December 1, 1987.

[37] An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government, and for Other Purposes, Approved on December 13, 1990.

[38] http://www.military.com/benefits/military-pay/cost-of-living-allowance. Last checked: March 15, 2010.

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

Leonardo-de Castro, JJ., took no part.

Villarama, Jr., J., on official leave.

SECOND DIVISION

[G.R. No. 162079. March 18, 2010]

YKR CORPORATION and HEIRS OF LUIS A. YULO, *petitioners, vs.* **SANDIGANBAYAN and REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ALLOWED NOTWITHSTANDING THE AVAILABILITY OF AN APPEAL IN VIEW OF THE PRESENCE OF SPECIAL CIRCUMSTANCES. — Decisions of the Sandiganbayan are normally brought before this Court under Rule 45, not Rule 65. In this case, the 17 March 2003 and 9 February 2004 Resolutions of the Sandiganbayan Special Fifth Division are interlocutory in character as they did not finally dispose of Civil Case No. 0024 and thus, are not the proper subject of a special civil action for *certiorari*. The rule is that when an adverse interlocutory order is rendered, the remedy is not to resort to *certiorari* but to continue with the case in due course and when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law. It is only where there are special circumstances clearly demonstrating the inadequacy of an appeal that the special action for *certiorari* may be allowed. We find that the issues raised in this case constitute special circumstances that justifies the relaxation of the rules. Further, this Court held that where the case is undeniably ingrained

with immense public interest, public policy and deep historical repercussions, *certiorari* is allowed notwithstanding the existence and availability of the remedy of appeal.

2. POLITICAL LAW; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); THE TWO-COMMISSIONER RULE EMBODIED IN SECTION 3 OF THE PCGG RULES IS NOT APPLICABLE. — The two-commissioner rule took effect after its promulgation on 11 April 1986. In this case, the sequestration order was issued on 2 April 1986 prior to the promulgation of the PCGG Rules. The Court had already settled this issue, thus: The questioned sequestration order was, however, issued on March 19, 1986, *prior* to the promulgation of the PCGG Rules and Regulations. As a consequence, we cannot reasonably expect the Commission to abide by said rules which were nonexistent at the time the subject writ was issued by then Commissioner Mary Concepcion Bautista.

3. ID.; ID.; THE ISSUE OF WHETHER THE PCGG FILED THE APPROPRIATE ACTION WITHIN THE PRESCRIBED PERIOD IS ALREADY RESOLVED IN G.R. NO. 107233. — The issue raised by petitioners in this case, on whether PCGG failed to file the proper judicial action against YKR Corporation within the prescribed six-month period from ratification of the 1987 Constitution, was already resolved in G.R. No. 107233.

4. ID.; ID.; WRIT OF SEQUESTRATION WITH RESPECT TO THE ASSETS OF YKR CORPORATION, LIFTED; REASON, EXPLAINED. — [T]he Court notes that the Summary of Livestock Inventory included in the Inventory Report submitted by the Republic shows that when BAI took over the management of YKR Corporation, it had 5,477 cattle and 115 horses. By 1992 it had 3,137 cattle and 57 horses. As of the inventory for Calendar Year (CY) 2004, there were 2,621 cattle and 69 horses. As for the Accounting Explanation for CY 2005, there were 2,565 cattle and 76 horses. The decrease in the cattle population was not sufficiently explained in the Summary of Livestock Inventory. x x x The Court notes that the Sandiganbayan directed the PCGG and BAI to submit an accounting using as beginning balances the inventory figures of October 1987 for livestock and 30 May 1990 for the supplies, structures, equipment and spare parts. The Summary of Livestock Inventory of CY 2004 indicated the number of cattle and horses when the BAI took over YKR Corporation in 1987.

The inventory of the properties, supplies and equipment only indicated the date and cost of acquisition, the depreciation value ad the net value. Some of the entries only stated the acquisition cost. There was no beginning balance submitted from which the Court can compare the current value and status of the assets of YKR Corporation. However, from the unexplained and undocumented dwindling of the number of livestock, the Court can see that the PCGG and BAI had been remiss in preserving the assets of YKR Corporation. The case has been pending before the Sandiganbayan since 1987. In the meantime, YKR Corporation suffered from mismanagement. It took the PCGG and the BAI nine years just to submit an inventory and accounting of the assests of YKR Corporation. The compliance by the PCGG and BAI painted a bleak picture of the state of the corporation. In order to prevent the wastage of the assets of the YKR Corporation, the Court deems it proper to lift the writ of sequestration pending the final resolution of the main case before the Sandiganbayan.

5. ID.; ID.; SEQUESTRATION; NATURE. — Sequestration is simply a provisional remedy. It is an extraordinary measure intended to prevent the destruction, concealment or dissipation of sequestered properties, and thereby to conserve and preserve them, pending the judicial determination in the appropriate proceeding of whether the property was in truth ill-gotten.

6. ID.; ID.; ID.; EFFECT OF LIFTING THE WRIT OF SEQUESTRATION. — In *Presidential Commission on Good Government v. Sandiganbayan,* the Court clarified: The lifting of the writs of the sequestration will not necessarily be fatal to the main case since the lifting of the subject orders does not *ipso facto* mean that the sequestered property are *not* ill-gotten. The effect of the lifting of the sequestration x x x will merely be the termination of the role of the government as conservator thereof. x x x. Hence, the Republic, while turning over the management and administrative powers back to YKR Corporation, may still prove that the corporation is ill-gotten and belongs to the government.

APPEARANCES OF COUNSEL

Yulo Aliling Pascua & Zuñiga for petitioners.
The Solicitor General for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for *certiorari*[1] assailing the 17 March 2003[2] and 9 February 2004[3] Resolutions of the Sandiganbayan Special Fifth Division in Civil Case No. 0024 entitled *Republic of the Philippines v. Peter Sabido, et al.*[4] The 17 March 2003 Resolution denied the motion to lift the sequestration order against YKR Corporation while the 9 February 2004 Resolution denied the motion for reconsideration filed by YKR Corporation and the Heirs of Luis A. Yulo[5] (petitioners).

The Antecedent Facts

In a Sequestration Order[6] dated 2 April 1986 signed by then Commissioner Mary Concepcion Bautista, YKR Corporation, a ranch operator located in Busuanga, Palawan, was sequestered and placed under the control and possession of the Presidential Commission on Good Government (PCGG).

On 29 July 1987, the Republic of the Philippines (Republic) filed a Complaint[7] for reconveyance, reversion, accounting and

---

[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 36-47. Penned by Associate Justice Francisco H. Villaruz, Jr. with Associate Justices Minita V. Chico-Nazario and Ma. Cristina G. Cortez-Estrada, concurring.

[3] *Id.* at 48-50.

[4] The individual defendants in Civil Case No. 0024 are Peter Sabido, Roberto S. Benedicto, Luis Yulo, Nicolas Dehesa, Ferdinand E. Marcos, Imelda R. Marcos, Jose R. Tengco, Jr., Rafael Sison, Cesar Zalamea and Don M. Ferry while the defendant-corporations are the Liangga Bay Logging Co., Phil. Integrated Meat Corporation, YKR Corporation and Pimeco Marketing Corporation.

[5] The heirs of Luis A. Yulo are Teresa J. Yulo, Ma. Teresa J. Yulo-Gomez, Jose Enrique J. Yulo, Ma. Antonia J. Yulo-Loyzaga, Jose Manuel J. Yulo, Ma. Carmen J. Yulo and Jose Maria J. Yulo.

[6] *Rollo*, p. 51.

[7] Records, Vol. 1, pp. 1-25.

damages, docketed as Civil Case No. 0024, against Peter Sabido (Sabido), *et al.*[8] Among the individual defendants in Civil Case No. 0024 was Luis Yulo (Yulo). In an Amended Complaint[9] dated 2 October 1991, the Republic impleaded YKR Corporation as additional defendant on the ground that it was beneficially owned or controlled by Sabido.[10]

In an unsigned resolution[11] dated 26 March 1996 in G.R. No. 96073[12] and related cases, this Court directed the PCGG and/or its fiscal or authorized agent, the Bureau of Animal Industry (BAI), to submit an inventory and accounting of the assets of the YKR Corporation which had come into their possession and control by virtue of the sequestration order. Pursuant to this Court's order, petitioners filed a Motion to Order Compliance with Supreme Court Order before the Sandiganbayan. In a Resolution[13] promulgated on 29 July 1996, the Sandiganbayan considered that an updated inventory and accounting of the sequestered assets of YKR Corporation was long overdue. The Sandiganbayan also considered that this Court's 26 March 1996 Order was already final and executory. Thus, the Sandiganbayan granted petitioners' motion and ordered

---

[8] The original Complaint impleaded 10 defendants: Peter Sabido, Roberto S. Benedicto, Luis D. Yulo, Nicolas Dehesa, Ferdinand E. Marcos, Imelda R. Marcos, Jose R. Tengco, Jr., Rafael Sison, Cesar C. Zalamea, and Don M. Ferry (Records, Vol. 1, pp. 1-23). In Annex "A" of the Complaint, Yulo King Ranch was listed as Sabido's real property (*id.* at 24). The list of Sabido's personal property included shares of stock in YKR Corporation and 3,900 cattle and 140 horses in Yulo King Ranch (*id.* at 25). In Luis A. Yulo's Answer dated 19 August 1987, he averred that YKR Corporation listed as Sabido's real property is principally public land leased to YKR Corporation, with an occupied and developed area of 7,000 hectares, and some 120 titled hectares acquired from private persons (Records, Vol. 41, p. 260).

[9] *Rollo*, pp. 53-75.

[10] *Id.* at 55.

[11] *Id.* at 85-90.

[12] Entitled *Republic v. Sandiganbayan (First Division), Maria Clara Lobregat, et al.*

[13] *Rollo*, pp. 91-94. Penned by Associate Justice Jose S. Balajadia with Associate Justices Minita V. Chico-Nazario and Roberto M. Lagman.

the PCGG and/or its fiscal or authorized agent, the BAI, to submit, within 90 days from notice, an updated inventory and accounting of the assets of YKR Corporation from the time such assets came under their possession and control by virtue of the PCGG's sequestration order. The Sandiganbayan further directed the PCGG to submit progress reports of the on-going inventory and accounting on the 30th and 60th day from receipt of the Sandiganbayan's resolution.

In a Manifestation/Motion[14] dated 17 October 1996, the PCGG requested the Sandiganbayan for the issuance of a resolution directing the BAI or Director Romeo Alcasid to submit an updated inventory and accounting subject of the 29 July 1996 Resolution. The Manifestation/Motion states:

1. A Resolution dated July 25, 1996[15] (received on September 18, 1996) was issued by this Honorable Court requiring plaintiff and/or its "fiscal agent," Bureau of Animal Industry (BAI), to submit within 90 days from notice an updated inventory and accounting of the assets of the YKR Corporation;

2. It is a matter of record that since 1986, BAI took over and assumed full control of the management and operations of the YKR Corporations pursuant to the directive of then Minister of Agriculture and Food, Ramon V. Mitra, Jr.; a photocopy of the Memorandum/Directive is attached at ANNEX "A" hereof;

3. As early as February 19, 1996, the plaintiff had requested BAI's assistance and cooperation on a forthcoming ocular inspection and inventory of all YKR assets at Coron, Palawan on or before March 1, 1996; [a] photocopy of the letter-request addressed to Dir. Romeo Alcasid is attached as ANNEX "B" hereof;

4. Before plaintiff could actually conduct the ocular inspection and inventory, a letter (in reply to the letter of February 19, 1996, Annex "B") was received by PCGG from the Department of Agriculture, through Asst. Secretary Lino Nazareno, citing Presidential Proclamation 1386 and P.D. 619, Busuanga Breeding and Experimental Station should be excluded from the sequestration case; (a photocopy of the letter dated February 27, 1996 is attached as Annex "C" hereof);

---

[14] *Id.* at 95-97. Signed by PCGG Legal Director Reuben A. Cosuco.

[15] It should be 29 July 1996.

5. By letter dated May 9, 1996, Magtanggol C. Gunigundo, Chairman [of] PCGG, proposed to Sec. S. Escudero III of the Department of Agriculture the creation of a composite term of PCGG-BAI-COA personnel for the purpose of conducting an inventory of all assets of YKR; the said letter was ignored, copy attached as Annex "D" hereof;

6. To expedite the implementation of the Resolution subject hereof, another Resolution should be directed against the Bureau of Animal Industry/Director Romeo Alcasid, Quezon City, ordering it to submit the updated inventory and accounting of YKR assets subject of the Resolution of this Court[.][16]

YKR Corporation filed a Motion to Lift Sequestration[17] dated 31 October 1996. YKR Corporation, citing PCGG's 17 October 1996 Manifestation/Motion, alleged that the PCGG had lost control of the assets and records of the corporation to its own fiscal agent which it could not control. YKR Corporation alleged that PCGG was guilty of gross negligence in insisting on the sequestration despite the fact that it had already lost control of the corporation to its own fiscal agent. YKR Corporation alleged that the PCGG violated the constitutional rights of the corporation and its stockholders because of its continued sequestration without due process of law.

In a Resolution promulgated on 13 May 1997, the Sandiganbayan gave the PCGG and its fiscal or authorized agent, the BAI, another chance to render an updated inventory and accounting of the assets of YKR Corporation which came into their possession and control by virtue of the sequestration order, within 60 days from receipt of the Resolution. The Sandiganbayan further resolved to treat the Motion to Lift Sequestration separately.

In a Resolution[18] promulgated on 19 September 2002, the Sandiganbayan denied the compliance filed by the PCGG. The

---

[16] *Rollo,* pp. 95-96.

[17] *Id*. at 98-101.

[18] *Id*. at 136-140. Penned by Associate Justice Francisco H. Villaruz, Jr. with Associate Justices Minita V. Chico-Nazario and Ma. Cristina G. Cortez-Estrada, concurring.

Sandiganbayan noted that the PCGG only submitted an inventory without any accounting, and it could not be considered compliance with the resolutions of the Supreme Court and the Sandiganbayan. The Sandiganbayan ruled:

> WHEREFORE, the prayer of Plaintiff, PCGG that it be deemed to have complied with the resolution of this Court dated May 7, 1997 as embodied in its "COMPLIANCE" dated July 23, 1997 is hereby DENIED.
>
> Within sixty (60) days from receipt of this Order, the Plaintiff, PCGG and its fiscal or authorized agent, the Bureau of Animal Industry are directed to submit an accounting of the livestock, supplies, structures, equipment and spare parts which have come into its possession using as beginning balances thereof the inventory figures of October 1987 for livestock and May 30, 1990 for the supplies, structures, equipment and spare parts up to and until July 9, 1997.
>
> Failure to comply with this Order shall constrain the court to cite the responsible PCGG and Bureau of Animals officials for contempt and appoint other government and/or private agencies to render the accounting, all at plaintiff's account.
>
> SO ORDERED.[19]

The Ruling of the Sandiganbayan

In its Resolution promulgated on 17 March 2003, the Sandiganbayan ruled on YKR Corporation's Motion to Lift Sequestration as follows:

> WHEREFORE, the Motion to Lift Sequestration Order against YKR Corporation is hereby DENIED. For the last time, the plaintiff PCGG and/or its Fiscal Agent, the Bureau of Animal Industry (BAI), are hereby directed to submit the required accounting adverted to in the Resolution of this Court promulgated on September 19, 2002 for an inextendible period of thirty (30) days upon receipt hereof. Failure to do so shall constrain this Court to hold PCGG and its fiscal agent, the Bureau of Animal Industry in contempt and impose the proper sanction on the officials of said agency.
>
> SO ORDERED.[20]

---

[19] *Id.* at 139-140.

[20] *Id.* at 46.

The Sandiganbayan ruled that the PCGG's determination of *prima facie* evidence against the defendants in Civil Case No. 0024 was clearly spelled out in the allegations of the complaint and the findings of *prima facie* evidence should not be disturbed since the findings of administrative or quasi-judicial agencies like the PCGG are entitled to great respect.

The Sandiganbayan ruled that the basis for the motion to lift sequestration was the alleged mismanagement by the PCGG and its agents. The Sandiganbayan ruled that the records showed that neither the PCGG nor the BAI has complied with the accounting required by both the Supreme Court and the Sandiganbayan. However, the Sandiganbayan ruled that it could not apply its ruling in Civil Case No. 0033 entitled *Republic v. Cojuangco, et al.* and promulgated on 20 April 1998 because in that case, the Sandiganbayan allowed the voting for the shares of stock "on the basis of the immediate danger of dissipation to the San Miguel Corporation." In this case, the Sandiganbayan ruled that the grounds for the motion were mere allegations. The Sandiganbayan again directed the PCGG and BAI to submit the required accounting for an inextendible period of 30 days from receipt of the court's resolution.

Petitioners moved for the reconsideration of the Sandiganbayan's 17 March 2003 Resolution. In its 9 February 2004 Resolution, the Sandiganbayan denied the motion.

The Sandiganbayan ruled that it had already extensively passed upon the issue of the existence of *prima facie* evidence to warrant the issuance of the sequestration order. On the alleged failure of the PCGG to file the appropriate judicial action or proceeding against YKR Corporation within the time frame provided under Section 26, Article XVIII of the 1987 Constitution, the Sandiganbayan cited this Court's ruling in *Republic v. Sandiganbayan*[21] that the fact that the sequestered corporations had not been impleaded as defendants in the original complaints filed did not adversely affect the actuality that judicial actions or proceedings had been brought within the time limit laid down

[21] 310 Phil. 401 (1995).

by the Constitution. The Sandiganbayan further ruled that the two-commissioner rule provided under Section 3 of the PCGG Rules and Regulations Implementing Executive Orders No. 1 and 2 (PCGG Rules) would not apply to the case since the writ of sequestration was issued against YKR Corporation before the effectivity of the PCGG Rules on 11 April 1986. Finally, as regards the alleged dissipation of the assets of YKR Corporation, the Sandiganbayan ordered PCGG and BAI to show cause why they should not be held in contempt for their continued failure to submit an accounting of the assets of YKR Corporation. The dispositive portion of the 9 February 2004 Resolution reads:

> WHEREFORE, finding no sufficient ground to overturn the assailed Resolution, the Motion for Reconsideration filed by Defendants YKR Corporation and Heirs of Luis A. Yulo dated April 8, 2003 is hereby DENIED.
>
> The plaintiff PCGG and its Fiscal Agent, the Bureau of Animal Industry (BAI), are hereby ordered to show cause why they should not be cited for contempt **now** for their failure to comply with the aforementioned resolutions of the Court dated September 19, 2002 and March 17, 2003 within fifteen (15) days upon receipt hereof. (Emphasis supplied)
>
> SO ORDERED.[22]

Hence, the petition before this Court.

The Issues

Petitioners raise the following issues in their Memorandum:

a) Whether the Sandiganbayan acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in not lifting the order of sequestration even if there is sufficient showing of continuous wastage and dissipation of the assets of YKR Corporation by PCGG and BAI;

b) Whether the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction in not lifting the order of sequestration despite the absence of *prima*

---

[22] *Rollo*, p. 50. Emphasis in the original.

facie evidence to warrant the issuance and maintenance of an order or sequestration against YKR Corporation;

c) Whether the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction in not lifting the order of sequestration even if PCGG failed to file the proper judicial action against YKR Corporation within the prescribed 6-month period from ratification of the 1987 Constitution;

d) Whether the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it did not construe in favor [of] YKR Corporation the refusal of PCGG to amend the order of sequestration to conform with the two-commissioner rule; and

e) Whether there is no appeal or any other plain, speedy and adequate remedy available to petitioners in the ordinary course of law.[23]

The Republic raised as additional issue whether petitioners' counsel has the authority to represent petitioners in view of the Sandiganbayan's Resolutions dated 29 February 2004 and 10 September 2004 disqualifying it from further representing petitioners in Civil Case No. 0024.[24]

The Ruling of this Court

On Disqualification of Petitioners' Counsel

The Republic cites the Sandiganbayan's Resolutions promulgated on 29 February 2004[25] and 10 September 2004[26] which disqualified the law firm of Belo Gozon Elma Parel

---

[23] *Id.* at 368-369.

[24] *Id.* at 258.

[25] *Id.* at 313-316. Penned by Associate Justice Ma. Cristina Cortez-Estrada with Associate Justices Minita V. Chico-Nazario, Chairman, and Francisco H. Villaruz, Jr., concurring.

[26] *Id.* at 318-327. Penned by Associate Justice Ma. Cristina G. Cortez-Estrada, Chairman, with Associate Justices Francisco H. Villaruz, Jr. and Teresita V. Diaz-Baldos, concurring.

Asuncion and Lucila from representing petitioners because its senior partner, Atty. Magdangal B. Elma, was PCGG Chairman from 4 November 1998 to 16 February 2001.[27] As such, he had access to confidential records of the case as well as to all the records of the PCGG.

In its 25 April 2005 Resolution,[28] the Court granted the withdrawal of appearance of Attys. Gener E. Asuncion and Eric Vincent A. Estoesta of Belo Gozon Elma Parel Asuncion and Lucila as counsel for petitioners. In the same resolution, the Court noted the appearance of Atty. Jose P.O. Aliling IV of Yulo Aliling Pascua and Zuñiga as counsel for petitioners.

Thus, this issue had been rendered moot.

Propriety of Filing a Petition for Certiorari

The Republic alleges that a special civil action for *certiorari* under Rule 65 may only be availed of if there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the tribunal, body, court or officer exercising judicial or quasi-judicial functions, and there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. The Republic alleges that the issues raised by petitioners involve errors of judgment that cannot be corrected by a special civil action for *certiorari*. Further, the Republic alleges that petitioners failed to convincingly show that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law which they could have availed of.

We do not agree.

Decisions of the Sandiganbayan are normally brought before this Court under Rule 45, not Rule 65.[29] In this case, the 17 March 2003 and 9 February 2004 Resolutions of the Sandiganbayan Special Fifth Division are interlocutory in character as they did not finally dispose of Civil Case No. 0024 and thus, are not the proper subject of a special civil action for *certiorari*. The rule

---

[27] *Id.* at 313.

[28] *Id.* at 356.

[29] *Republic of the Phils. v. Sandiganbayan*, 453 Phil. 1059 (2003).

is that when an adverse interlocutory order is rendered, the remedy is not to resort to *certiorari* but to continue with the case in due course and when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law.[30] It is only where there are special circumstances clearly demonstrating the inadequacy of an appeal that the special action for *certiorari* may be allowed.[31]

We find that the issues raised in this case constitute special circumstances that justifies the relaxation of the rules. Further, this Court held that where the case is undeniably ingrained with immense public interest, public policy and deep historical repercussions, *certiorari* is allowed notwithstanding the existence and availability of the remedy of appeal.[32]

The Two-Commissioner Rule

Petitioners assail the validity of the 2 April 1986 Sequestration Order signed by then Commissioner Mary Concepcion Bautista for violation of the two-commissioner rule. The two-commissioner rule is embodied in Section 3 of the PCGG Rules which states:

> Sec. 3. Who may issue. A writ of sequestration or a freeze or hold order may be issued by the Commission upon the authority of at least two Commissioners, based on the affirmation or complaint of an interested party or *motu proprio* when the Commission has reasonable grounds to believe that the issuance thereof is warranted.

The two-commissioner rule took effect after its promulgation on 11 April 1986. In this case, the sequestration order was issued on 2 April 1986 prior to the promulgation of the PCGG Rules. The Court had already settled this issue, thus:

> The questioned sequestration order was, however, issued on March 19, 1986, *prior* to the promulgation of the PCGG Rules and Regulations. As a consequence, we cannot reasonably expect the Commission to abide by said rules which were nonexistent at the

---

[30] See *Quiñon v. Sandiganbayan*, 338 Phil. 290 (1997).

[31] *Id*.

[32] *Republic of the Phils. v. Sandiganbayan*, *supra* note 29.

time the subject writ was issued by then Commissioner Mary Concepcion Bautista. Basic is the rule that no statute, decree, ordinance, rule or regulation (and even policies) shall be given retrospective effect unless explicitly stated so. We find no provision in said Rules which expressly gives them retroactive effect, or implies the abrogation or previous writs issued not in accordance with the same Rules. Rather, what said Rules provide is that they "shall be effective immediately," which, in legal parlance, is understood as "upon promulgation." Only penal laws are given retroactive effect insofar as they favor the accused.[33]

Hence, we uphold the validity of the 2 April 1986 Sequestration Order signed and issued by then Commissioner Mary Concepcion Bautista against YKR Corporation.

Filing of Appropriate Action within the Prescribed Period

Section 26, Article XVIII of the 1987 Constitution provides:

> Section 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of the Constitution. However, in the national interest as certified by the President, the Congress may extend said period.
>
> A sequestration or freeze order shall be issued only upon showing a *prima facie* case. The order and the list of sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceedings shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceedings shall be commenced within six months from the issuance thereof.
>
> The sequestration or freeze order is deemed automatically lifted if no judicial action or proceedings is commenced as herein provided.

Petitioners allege that the sequestration order against YKR Corporation should be lifted for PCGG's failure to file the appropriate action within the prescribed period. Petitioners allege that the deadline for the PCGG to file the corresponding

---

[33] *Republic of the Phils. v. Sandiganbayan*, 336 Phil. 304, 318-319 (1997).

judicial action against entities it sequestered prior to the ratification of the 1987 Constitution was 2 August 1987. However, PCGG only filed the Amended Complaint which impleaded YKR Corporation on 2 October 1991.

The Republic argues that this Court already settled in *Republic v. Sandiganbayan*[34] that the procedural defect does not contradict or adversely affect the actuality that judicial actions or proceedings had been brought within the time limits laid down by the Constitution.

We agree with the Republic. One of the cases in *Republic v. Sandiganbayan*[35] is G.R. No. 107233 (*Republic v. Sandiganbayan* [*Second Division*], Luis Yulo and YKR Corporation). G.R. No. 107233 also originated from Case No. 0024. The Court traced its origin as follows:

H. *Case No. 0024*

1. *G.R. No. 107233*

Luis D. Yulo, a defendant in this case (No. 0024) filed a motion on October 1, 1991 to lift the sequestration over the YKR Corporation, one of those listed in Annex "A" of the complaint as a "dummy" or "shell" company of the defendants. The Sandiganbayan (Second Division) found merit in the motion and, by Resolution dated November 29, 1991, declared the sequestration of said YKR Corporation to have been automatically lifted pursuant to the 1987 Constitution. The resolution is now subject of a *certiorari* action in this Court, G.R. No. 107233.

The issue raised by petitioners in this case, on whether PCGG failed to file the proper judicial action against YKR Corporation within the prescribed six-month period from ratification of the 1987 Constitution, was already resolved in G.R. No. 107233. The issue in *Republic v. Sandiganbayan*,[36] and its related cases, including G.R. No. 107233, was stated in the Court's Decision as follows:

---

[34] *Supra* note 21.

[35] *Id*.

[36] *Id*. at 502.

DOES INCLUSION IN THE COMPLAINTS FILED BY THE PCGG BEFORE THE SANDIGANBAYAN OF SPECIFIC ALLEGATIONS OF CORPORATIONS BEING "DUMMIES" OR UNDER THE CONTROL OF ONE OR ANOTHER OF THE DEFENDANTS NAMED THEREIN AND USED AS INSTRUMENTS FOR ACQUISITION, OR AS BEING DEPOSITARIES OR PRODUCTS, OF ILL-GOTTEN WEALTH; OR THE ANNEXING TO SAID COMPLAINTS OF A LIST OF SAID FIRMS, BUT WITHOUT ACTUALLY IMPLEADING THEM AS DEFENDANTS, SATISFY THE CONSTITUTIONAL REQUIREMENT THAT IN ORDER TO MAINTAIN A SEIZURE EFFECTED IN ACCORDANCE WITH EXECUTIVE ORDER NO. 1, s. 1986, THE CORRESPONDING "JUDICIAL ACTION OR PROCEEDING" SHOULD BE FILED WITHIN THE SIX-MONTH PERIOD PRESCRIBED IN SECTION 26, ARTICLE XVIII, OF THE (1987) CONSTITUTION?

The Court ruled in those cases:

X. *Purpose of Constitutional Requirement for filing of "Judicial Action or Proceeding" Within Fixed Period Re Orders of Sequestration, Etc.*

The purpose of the constitutional requirement that the corresponding judicial action or proceeding be filed within a definite period as regards orders of sequestration, freezing or provisional takeover, is not difficult to discern. Sequestration, freezing, provisional takeover are fundamentally remedies which are temporary, interim, provisional. In the very nature of things, as emphasized in *BASECO*, they are not meant to bring about a permanent state of affairs. They are severe, radical measures taken against apparent, ostensible owners of property, or parties against whom, at the worst, there are merely *prima facie* indications of having amassed "ill-gotten wealth," indications which must still be shown to lead towards actual facts in accordance with the judicial procedures of the land.

Thus, the rationale for the limitations placed upon the power of sequestration, *etc.* by the Constitution, these being the following:

1. The authority to issue such orders was made "operative for not more than eighteen months after ratification of ** (the) Constitution"; *i.e.*, not beyond 18 months from February 2, 1987, unless extended by the Congress "in the national interest, as certified by the President";

2. Said orders could issue only upon showing of a *prima facie* case;

3. The order and the list of sequestered or frozen properties had to be registered forthwith with the proper court: the Sandiganbayan, according to law;

4. *For orders issued before ratification of the 1987 Constitution*, the corresponding judicial action or proceeding should be filed within six months therefrom (*i.e.*, six months from February 2, 1987); and *for those issued thereafter*, within six months from issuance of the order of sequestration, *etc.*

The issue in all the cases at bar chiefly concerns the fourth limitation pursuant to which the PCGG had to file "the corresponding judicial action or proceeding" within a fixed period of six months. The evident purpose was to preclude the possibility that the PCGG indefinitely maintain its orders of sequestration, *etc.* and to compel it, within a reasonable time, to bring them into the realm of judicial oversight, evaluation and control, to the end that excesses of the officials and agents enforcing and implementing said orders might be prevented and avoided and private rights duly protected and vindicated, while the main business of determining the character of the property as "ill-gotten wealth" or not was being attended to.

XI. *Nature of Contemplated "Judicial Action or Proceeding"*

There is no particular description or specification of the kind and character of the "judicial action or proceeding" contemplated, much less an explicit requirement for the impleading of the corporations sequestered, or of the ostensible owners of property suspected to be ill-gotten. The only modifying or qualifying requirement in the constitution is that the action or proceeding be filed "*for*" — *i.e., with regard or in relation to, in respect of, or in connection with, or concerning — orders of sequestration, freezing, or provisional takeover*. What is apparently contemplated is that the action or proceeding concern or involve the matter of sequestration, freezing or provisional takeover of specific property, corporeal or incorporeal, personal or real; and should have as objective, the demonstration by competent evidence that the property thus sequestered, frozen or taken over is indeed "ill-gotten wealth" over which the government has a legitimate claim for recovery and other relief. Stated otherwise, the action or proceeding contemplated is one for the final substantiation or proof of the *prima facie* showing on the basis of which a particular order of sequestration, freezing or takeover was issued.

XII. *Character of Actions Actually Brought*

Now, there would seem to be no dispute about the fact that in all the cases at bench, an "action or proceeding" was actually filed *with regard or in relation to, in respect of, in connection with*, or concerning the sequestration, freezing or provisional takeover of corporations and other property, and that said "action or proceeding" was filed within the six-month period provided by the Constitution.

As regards the sequestered corporations, the complaints in the actions thus brought all alleged that said entities were either the instruments or conduits for personal aggrandizement or the acquisition of ill-gotten wealth, or were the depositaries, or were *themselves* the fruits, of ill-gotten wealth. In other words, they were organized so that they could be used for improper, illegal and anomalous availment of financial or other advantage; or were formed or being operated or manipulated by public officers *sub rosa*, or by private individuals, with the use of public funds or property or assets otherwise illegally acquired, or in breach of public trust or violation of fiduciary duty; or in the case of existing firms, that their stock had been purchased by or for public officers and their relatives, friends, and associates, with the use of public funds or illegally acquired money, or in violation of law or fiduciary duty, etc. Elsewise stated, following the classic pattern of a money-laundering operation, they were either sham, "shell" "dummy" corporations serving as fraudulent devices or conduits for private gain of public officers and employees; or companies from which stock had been acquired, or firms into which capital had been infused, or shares of stock purchased, with the use of illegally acquired assets, and which therefore constituted the *res*: the thing or object treated of in the action.

x x x x x x x x x

XIII. *Postulated Procedural Error in PCGG Complaints*

It is postulated, however, that the judicial actions instituted by the PCGG in relation to or in connection with its orders of sequestration or seizure against corporations or shares of stock held by supposed dummies, suffered from a grave procedural defect. The sequestered corporations — which, in the above mentioned view of the PCGG had served as tools or instruments for acquisition of ill-gotten wealth, or were the depositaries or fruits thereof — or the natural persons ostensibly owning stock as "dummies," had not been impleaded as defendants in the various complaints.

A. *Error Immaterial to Requirement to File Actions or Proceedings within Constitutional Time Limits*

Such a procedural defect, however, conceding its existence for the nonce, does not contradict or adversely affect the actuality that judicial actions or proceedings had been brought within the time limits laid down by the Constitution "*for*" *them; i.e., with regard or in relation to, in connection with*, or involving or *concerning* the sequestration or seizure by the PCGG of the assets or properties in question.[37]

In addition, the Court ruled in those cases that even if the Republic failed to implead the sequestered corporations as defendants, the error is procedural and is not fatal to the sequestration case, thus:

D. *In any Case, Omission to Implead firms not Fatal, but Curable Error*

Even in those cases where it might reasonably be argued that the failure of the Government to implead the sequestered corporations as defendants is indeed a procedural aberration, as where said firms were allegedly used, and actively cooperated with the defendants, as instruments or conduits for conversion of public funds or property or illicit or fraudulent obtention of favored Government contracts, *etc.*, slight reflection would nevertheless lead to the conclusion that the defect is not fatal, but one correctible under applicable adjective rules — *e.g.*, Section 10, Rule 5 of the Rules of Court [specifying the remedy of amendment during trial to authorize or to conform to the evidence; Section 1, Rule 20 [governing amendments before trial], in relation to the rule respecting the omission of so-called necessary or indispensable parties, set out in Section 11, Rule 3 of the Rules of Court. It is relevant in this context to advert to the old, familiar doctrines that the omission to implead such parties "is a mere technical defect which can be cured at any stage of the proceedings even after judgment"; and that, particularly in the case of indispensable parties, since their presence and participation is essential to the very life of the action, for without them no judgment may be rendered, amendments of the complaint in order to implead them should be freely allowed, even on appeal, in fact even after rendition of judgment by this Court, where it appears that the

[37] *Id.* at 503-509.

complaint otherwise indicates their identity and character as such indispensable parties.

Again, even conceding the adjective imperfection of the omission to implead the sequestered corporations as indispensable or necessary parties, it bears repeating that their sequestration would not thereby be rendered *functus officio*, since, as already pointed out, judicial actions or proceedings have in truth been filed concerning or regarding said sequestration in literal and faithful compliance with Section 26, Article XVIII of the Constitution.[38]

In short, insofar as the filing of the complaint against YKR Corporation within the prescribed period is concerned, it has long been settled that the Republic had faithfully complied with Section 26, Article XVIII of the Constitution.

On Lifting the Order of Sequestration

Petitioners allege that the order of sequestration should be lifted in view of the continuous wastage and dissipation of the assets of YKR Corporation. The Republic counters that petitioners' allegation has no factual basis.

The basis of petitioners' allegation is the failure of PCGG and its fiscal agent, the BAI, to submit an inventory and accounting of the assets of YKR Corporation. According to petitioners, the continued failure of the PCGG and BAI to submit the required accounting and inventory only confirmed the dissipation and loss of YKR Corporation's assets.

As early as March 1996, in G.R. No. 96073,[39] this Court already directed the PCGG and the BAI to submit an inventory and accounting of the assets of YKR Corporation which had come into their possession and control by virtue of the sequestration order. Despite several resolutions by the Sandiganbayan requiring the PCGG and BAI to comply, they still failed to do so until in its 10 September 2004 Resolution,[40]

---

[38] *Id.* at 511-513.

[39] *Rollo*, pp. 85-90.

[40] *Id.* at 318-327.

the Sandiganbayan found the PCGG and the BAI guilty for indirect contempt, thus:

The record of this case will show that as early as March 26, 1996, in the Supreme Court *En Banc's* Resolution in G.R. No. 107233,[41] the High Court directed the PCGG and/or its fiscal or authorized agent, the Bureau of Animal Industry, to submit an inventory and accounting of the assets of the YKR Corporation which have come into their possession and control by virtue of the corresponding sequestration orders issued.

On July 29, 1996, the Second Division of the Sandiganbayan directed the PCGG to comply with the Supreme Court's directive. This was reiterated in another Resolution promulgated on May 13, 1997.

In a Resolution promulgated on March 17, 2003, this Court denied YKR Corporation's Motion to Lift Sequestration. The Court likewise made the observation that while PCGG filed an Inventory on July 23, 1997, the same was considered insufficient compliance pursuant to this Court's Resolution promulgated on September 19, 2002, as the Inventory did not contain the required accounting of the YKR Corporation's Assets. As a consequence thereof, the Court made a pronouncement stating that:

> "(F)or the last time, the plaintiff PCGG and/or its Fiscal Agent, the Bureau of Animal Industry (BAI), are hereby directed to submit the required accounting adverted to in the Resolution of this Court promulgated on September 19, 2002 for an inextendible period of thirty (30) days upon receipt hereof. Failure to do so shall constrain this Court to hold PCGG and its fiscal agent, the Bureau of Animal Industry in contempt and impose the proper sanction on the officials of the said agency." (Underlining supplied).

Thereafter, in a Resolution promulgated on February 9, 2004, which Resolved the Motion for Reconsideration filed by YKR Corporation questioning the Court's denial of their Motion to Lift Sequestration, this Court again reminded PCGG that it has not yet complied with its orders issued on September 19, 2002 and March 17, 2003. In the dispositive portion of the February 9, 2004 Resolution, this Court stated that:

---

[41] As stated earlier, G.R. No. 107233 is one of the companion cases of G.R. No. 96073.

> "The plaintiff and its Fiscal Agent, the Bureau of Animal Industry, are hereby ordered to show cause why they should not be cited in contempt **now** for their failure to comply with the aforementioned resolutions of the Court dated September 19, 2002 and March 17, 2003 within fifteen (15) days upon receipt hereof. (Emphasis supplied)."

The required accounting of YKR Corporation's assets had been required of PCGG since 1996, or for almost eight (8) years now, hence, it is clear that the failure of the PCGG and its fiscal agent BAI, to comply with the Court's various directives up to the present clearly constitutes as wanton and contumacious disobedience of and resistance to a lawful order of the Court. Hence, this Court now invokes its inherent authority to preserve its authority and power and vindicate its dignity by punishing those which disobey its orders and compel obedience thereto.

WHEREFORE, this Court hereby finds PCGG and the BAI liable for indirect contempt and imposes on the said agencies a fine of Php30,000.00 each, payable to this Court within thirty (30) days from receipt of this Resolution.

As this Court had warned the PCGG and the BAI in its Resolution dated September 19, 2002, should PCGG still refuse to render the accounting, the Court will appoint other government agencies and/or private agencies to render the accounting, all at plaintiff's account. Pursuant to this Resolution, the Court hereby mandates the Commission on Audit (COA), at plaintiff's account, to render the required accounting and inventory of YKR Corporation's assets and equipment which have come into the possession of PCGG by virtue of the sequestration of the said corporation, within sixty (60) days from receipt of this Resolution.

SO ORDERED.[42]

The PCGG and the BAI filed a motion for reconsideration of the 10 September 2004 Resolution. In its 14 March 2005 Resolution,[43] the Sandiganbayan ruled:

---

[42] *Rollo*, pp. 325-326. Underscoring and emphasis in the original.

[43] Records, Vol. 32, pp. 319-321. Penned by Associate Justice Ma. Cristina Cortez-Estrada, Chairman, with Associate Justices Francisco H. Villaruz, Jr. and Teresita V. Diaz-Baldos.

WHEREFORE, premises considered, the PCGG and BAI are hereby directed to submit to this Court, within sixty (60) days from receipt of this resolution, an accounting of the livestock, supplies and equipment and spare parts which have come into its possession by virtue of the sequestration of YKR Corporation, using as beginning balances thereof the inventory figures of October 1987 for livestock and May 30, 1990 for the supplies, structures, equipment and spare parts up to and until September, 2004.

Should the PCGG and the BAI fail to comply with this Court's directive, this Court finds no justifiable reason to reconsider the questioned resolution finding them liable for indirect contempt and imposing on them a fine of Php30,000.00 each, which shall be paid within fifteen (15) days counted from the expiry of the sixty-day period granted heretofore. As to the plaintiff's argument that court fines are not included in the budget of government agencies such as the BAI and the PCGG, the same is not a valid excuse for non-payment thereof, considering that while it is indeed not included in the budget of government agencies, the said amount could be taken from their allocation for current operating expenses.

SO ORDERED.[44]

The Republic submitted its Compliance and Manifestation[45] on 17 May 2005, of the "inventories conducted at the Busuanga Breeding Station (BBES) of the Bureau of Animal Industry, x x x without prejudice to plaintiff's repeated claim that the livestock, supplies, structures and equipment found at the BBES in Busuanga, Palawan are owned by the government and not by defendant YKR Corporation."[46] In its 23 September 2005 Resolution,[47] the Sandiganbayan ruled that the Certification on the Audit report lacked the exact reference to the beginning and end of the page numbers of the inventory form which contain the physical inventory, and the signature of Jose Q. Molina,

---

[44] *Id.* at 320-321.

[45] Records, Vol. 33, pp. 191-317.

[46] *Id.* at 192.

[47] Records, Vol. 34, pp. 256-258. Signed by Associate Justice Ma. Cristina Cortez-Estrada, Chairman, with Associate Justices Francisco H. Villaruz, Jr. and Teresita V. Diaz-Baldos.

head of the Inventory Team and Director IV of the BAI, in violation of Section 490 of the Government Accounting and Auditing Manual. The Sandiganbayan ruled:

> As the Court had likewise stated in its March 14, 2005 Resolution, should the PCGG and the BAI fail to comply with this Court's directive, there is no justifiable reason to reconsider the Court's finding holding PCGG and BAI liable for indirect contempt. Hence, the fine of Php30,000.00, each imposed on the said two agencies should now be paid to this Court immediately upon receipt of this notice.
>
> The PCGG and the BAI are likewise ordered to submit to this Court within thirty (30) days from receipt of this Resolution, an Inventory Report duly signed by all the accountable officers for the properties listed in the inventory and an updated proper accounting of the properties of the YKR Corporation which it had sequestered in 1987 up to the present.
>
> SO ORDERED.[48]

The Republic filed a motion for reconsideration[49] dated 13 October 2005 and a Compliance and Manifestation[50] dated 28 October 2005, resubmitting the Inventory Report duly signed by all the accountable officers of BAI. Again, the Republic manifested that the resubmission of the Inventory Report is "without prejudice to its repeated claim that the livestock, supplies, structures and equipment found at the BBES in Busuanga, Palawan are owned by the government through the Bureau of Animal Industry (BAI) and not by defendant YKR Corporation, x x x."[51] The Republic likewise manifested that the inventory for 2005 of all the properties found in BBES was scheduled for November 2005 and the Sandiganbayan would be furnished with a copy as soon as it was finalized.[52]

---

[48] *Id.* at 258.

[49] Records, Vol. 35, pp. 61-65.

[50] *Id.* at 101-257.

[51] *Id.* at 101-A.

[52] *Id.*

In its 12 September 2006 Resolution,[53] the Sandiganbayan accepted the Inventory Report submitted by the Republic. While the Sandiganbayan noted that the Inventory Report was long overdue, it stated that the delay should not hinder the progress of the case. The Sandiganbayan accepted the report as "a true, detailed and complete inventory of the YKR Corporation's assets as of the time indicated in the inventory."[54] The Sandiganbayan directed the Republic to submit an Inventory Report on the BBES conducted in November 2005.

The Republic submitted its Compliance and Manifestation[55] dated 8 November 2006. The Sandiganbayan noted the Compliance and Manifestation on 22 November 2006.[56]

The Court deplores the fact that it took nine years for the PCGG and BAI to submit an inventory and accounting of YKR Corporation's assets. The inventory and accounting was long overdue considering that YKR Corporation was sequestered in 1986. The PCGG should always be mindful of its role as a conservator of the property sequestered, frozen, or provisionally taken over.[57]

Petitioners anchored their allegation of continuous wastage and systematic dissipation of YKR Corporation's assets on an "undisputed 4-page report" dated 18 June 1990 by the YKR Palawan Inventory Team which contained the following "findings:"

V. Allegations by some people of BAI mismanagement of the Busuanga Ranch particularly the systematic dissipation of YKR cattle:

---

[53] Records, Vol. 38, pp. 282-285. Penned by Associate Justice Ma. Cristina G. Cortez-Estrada, Chairman, with Associate Justices Roland B. Jurado and Teresita V. Diaz-Baldos, concurring.

[54] *Id.* at 284.

[55] Records, Vol. 39, pp. 168-362.

[56] *Id.* at 427.

[57] See *Presidential Commission on Good Government v. Sandiganbayan*, 418 Phil. 8 (2001) citing *Bataan Shipyard & Engineering Co., Inc. v. PCGG*, 234 Phil. 180 (1987).

1. Out of more than four thousand cattle-head as per 1987 inventory of PCGG-BAI less than two thousand head remains now.

2. YKR cattle, quarter horses, utility vehicles, lumber and barbed wire have found their place in ranches of DA officials and employees.

3. Superior breeding stocks were mysteriously replaced with cattle of inferior breed on orders of high government officials.

4. Incoming shipments (2 barges) of imported cattle were diverted to some other place on orders of high government officials.

5. BAI cattle dispersal program is being used as a front by a high level cattle rustling syndicate in YKR.

6. Rampant illegal logging within the territories of the ranch goes on unabated up to this time. This is confirmed by a previous DENR report (Annex "D").

7. Livestock inventory reports were never furnished to PCGG by BAI even after repeated requests. Our records confirm this. At the (sic) ranch office, no records of livestock were on file. Records are kept personally by the (sic) ranch manager who visits the (sic) ranch for only a few days each month.

COMMENTS AND RECOMMENDATIONS:

x x x x x x x x x

2. PCGG is apparently being prevented by BAI Director Romeo Alcasid and DA Undersecretary Dante Barbosa to conduct inventory of the cattle, or to know the actual livestock population based on their file records.

3. Allegations of dissipation of YKR cattle, horses, equipment and other assets, and mismanagement of the (sic) ranch by the BAI managers must be investigated by the commission or recommended for investigation to the office of Secretary Bacani.

x x x x x x x x x[58]

Mere allegations, without further proof, could not be considered as findings of facts. Standing alone, the four-page report by the YKR Palawan Inventory Team is not enough to prove the allegation of dissipation of YKR Corporation's assets.

[58] *Rollo*, pp. 370-372. Petitioners' Memorandum.

However, the Court notes that the Summary of Livestock Inventory[59] included in the Inventory Report[60] submitted by the Republic shows that when BAI took over the management of YKR Corporation, it had 5,477 cattle and 115 horses.[61] By 1992, it had 3,137 cattle and 57 horses.[62] As of the inventory for Calendar Year (CY) 2004, there were 2,621 cattle and 69 horses.[63] As for the Accounting Explanation[64] for CY 2005, there were 2,565 cattle and 76 horses.

The decrease in the cattle population was not sufficiently explained in the Summary of Livestock Inventory. It merely stated:

> The decrease in the cattle population is **due perhaps** to the dispersal program of the Department of Agriculture (DA) (**no documentation available**) introduced after the EDSA revolution. Other reason is due to animal mortalities **since there are no records and accounts of the details**.[65] (Emphasis supplied)

The Accounting Explanation for CY 2005 simply explained:

> A comparative summary of livestock inventory conducted in 2004 and 2005 will show the reduction/increase of livestock at the station due to dispersal of animals and animal mortalities.[66]

There was nothing in the Accounting Explanation that would show that the dispersal of animals and animal mortalities were documented or supported by records.

The Court notes that the Sandiganbayan directed the PCGG and BAI to submit an accounting using as beginning balances

---

[59] Records, Vol. 35, pp. 185-194.

[60] *Id.* at 104-257.

[61] *Id.* at 187.

[62] *Id*.

[63] *Id*.

[64] Records, Vol. 39, pp. 171-194.

[65] Records, Vol. 35, pp. 187-188.

[66] Records, Vol. 39, p. 186.

the inventory figures of October 1987 for livestock and 30 May 1990 for the supplies, structures, equipment and spare parts. The Summary of Livestock Inventory of CY 2004 indicated the number of cattle and horses when the BAI took over YKR Corporation in 1987. The inventory of the properties, supplies and equipment only indicated the date and cost of acquisition, the depreciation value[67] and the net value. Some of the entries only stated the acquisition cost. There was no beginning balance submitted from which the Court can compare the current value and status of the assets of YKR Corporation. However, from the unexplained and undocumented dwindling of the number of the livestock, the Court can see that the PCGG and BAI had been remiss in preserving the assets of YKR Corporation.

The case has been pending before the Sandiganbayan since 1987. In the meantime, YKR Corporation suffered from mismanagement. It took the PCGG and the BAI nine years just to submit an inventory and accounting of the assets of YKR Corporation. The compliance by the PCGG and BAI painted a bleak picture of the state of the corporation. In order to prevent the wastage of the assets of the YKR Corporation, the Court deems it proper to lift the writ of sequestration pending the final resolution of the main case before the Sandiganbayan.

Sequestration is simply a provisional remedy.[68] It is an extraordinary measure intended to prevent the destruction, concealment or dissipation of sequestered properties, and thereby to conserve and preserve them, pending the judicial determination in the appropriate proceeding of whether the property was in truth ill-gotten.[69] In *Presidential Commission on Good Government v. Sandiganbayan*,[70] the Court clarified:

The lifting of the writs of sequestration will not necessarily be fatal to the main case since the lifting of the subject orders does

---

[67] Using the Straight Line Method.

[68] *Republic of the Phils. v. Sandiganbayan*, 355 Phil. 181 (1998).

[69] *Id*.

[70] *Supra* note 57.

not *ipso facto* mean that the sequestered property are *not* ill-gotten. The effect of the lifting of the sequestration x x x will merely be the termination of the role of the government as conservator thereof. x x x.[71]

Hence, the Republic, while turning over the management and administrative powers back to YKR Corporation, may still prove that the corporation is ill-gotten and belongs to the government. Thus:

> In brief, sequestration is not the be-all and end-all of the efforts of the government to recover unlawfully amassed wealth. The PCGG may still proceed to prove in the main suit who the real owners of these assets are. Besides, as we reasserted in *Republic v. Sandiganbayan* [G.R. No. 88228, 27 June 1990, 186 SCRA 864], the PCGG may still avail itself of ancillary writs, since "Sandiganbayan's jurisdiction over the sequestration cases demands that it should also have the authority to preserve the subject matter of the cases, the alleged ill-gotten wealth properties x x x."
>
> With the use of proper remedies and upon substantial proof, properties in litigation may, when necessary, be placed *in custodia legis* for the complete determination of the controversy or for the effective enforcement of the judgment. However, x x x the PCGG may no longer exercise dominion and custody over [r]espondent [c]orporation x x x.[72]

WHEREFORE, we *GRANT* the petition. We *LIFT* the writ of sequestration issued against YKR Corporation. We *DIRECT* the Presidential Commission on Good Government and the Bureau of Animal Industry to restore to petitioners all their assets, properties, records and documents subject of the sequestration.

No costs.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

---

[71] *Id.* at 20.

[72] *Republic v. Sandiganbayan, supra* note 68, at 207.

SECOND DIVISION

[G.R. No. 169336. March 18, 2010]

SPOUSES MELCHOR and SATURNINA ALDE, *petitioners, vs.* **RONALD B. BERNAL, OLYMPIA B. BERNAL, JUANITO B. BERNAL, and MYRNA D. BERNAL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; DISMISSAL OF AN APPEAL BASED ON PURELY TECHNICAL GROUNDS IS DISFAVOURED. — The Court of Appeals' dismissal of petitioners' petition on purely technical grounds was unwarranted. We agree with petitioners that the late filing and service of a copy of the petition to the RTC was not a substantial infirmity that should cause the outright dismissal of the petition. Likewise, the verification of a pleading is only a formal, not jurisdictional, requirement. The purpose of requiring a verification is to secure an assurance that the allegations in the petition are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings, and non-compliance therewith does not necessarily render the pleading fatally defective. The dismissal of appeals on purely technical grounds is frowned upon for it is far more better for the courts to excuse a technical lapse and afford the parties a review of the case on the merits to attain the ends of justice.

2. CIVIL LAW; OWNERSHIP; CIRCUMSTANCES NEGATING THE CLAIM OF OWNERSHIP. — We agree with petitioners that respondents failed to present any evidence to show that they owned parts of the property in dispute. First, in the stipulation of facts during the pre-trial conference before the MCTC, respondents admitted that the land was owned by Adriano. While both Juanito and Ronald claimed that Adriano donated to them their respective portions of the property when they got married in 1978 and 1987, respectively, they did not present any deed of donation. x x x Second, the tax declaration offered by respondents as evidence only mentioned

Adriano as the owner of the whole property. While tax declarations are not conclusive evidence of ownership, they constitute proof of claim of ownership. Respondents did not present any credible explanation why the tax declaration was only under the name of Adriano. Third, contrary to Ronald's claim, the June 1994 deed of mortgage did not clearly show that he was the owner of the property and that petitioners recognized him as such. While Ronald's name appeared in the body of the deed, the designation as owner of the property under his name was crossed-out. It was Adriano who signed the deed of mortgage and the designation as owner of the property appeared under his name. Fourth, Ronald was present when the deed of sale was executed on 22 September 1994 and he even signed as one of the witnesses. We find it hard to believe that Ronald and Adriano did not understand the contents of the deed when it was written in their local dialect. Moreover, it took respondents more than seven years to question Adriano's sale of the whole property to petitioners.

3. ID.; ID.; WHEN A PARTY CANNOT CLAIM OWNERSHIP BASED ON A CERTIFICATE OF TITLE. — [R]espondents claim ownership of the property based on OCT No. AO-7236. However, a certificate of title is not equivalent to title. In *Lee Tek Sheng v. Court of Appeals*, we explained: By title, the law refers to ownership which is represented by that document [the Original Certificate of Title or the Transfer Certificate of Title]. Petitioner apparently confuses certificate with title. Placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed. **Ownership is different from a certificate of title**. The TCT is only the best proof of ownership of a piece of land. **Besides, the certificate cannot always be considered as conclusive evidence of ownership**. x x x In this case, respondents cannot claim ownership over the disputed portions of the property absent any showing of how they acquired title over the same.

4. ID.; LAND REGISTRATION; THE COURT CANNOT CANCEL A TORRENS CERTIFICATE OF TITLE WITHOUT A DIRECT ATTACK ON ITS VALIDITY. — [S]ince petitioners did not make a direct attack on the validity of OCT No. AO-7236 and had not asked for the cancellation of the original

certificate of title as required by Section 48 of Presidential Decree No. 1529, this Court cannot cancel OCT No. AO-7236 and order the issuance of a new certificate of title in the name of petitioners. Any direct attack on the validity of a Torrens certificate of title must be instituted with the proper Regional Trial Court.

APPEARANCES OF COUNSEL

Hollis C. Monsanto for petitioners.
Eusebio P. Aquino for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 6 May 2005[2] and 3 August 2005[3] Resolutions of the Court of Appeals in CA G.R. SP No. 00195. In its 6 May 2005 Resolution, the Court of Appeals dismissed the petition for review filed by petitioners Melchor and Saturnina Alde (petitioners) for failure to comply with the Rules of Court. In its 3 August 2005 Resolution, the Court of Appeals denied petitioners' motion for reconsideration.

The Facts

Sometime in 1957, Adriano Bernal (Adriano), father of respondents Ronald, Olympia, Juanito and Myrna, all surnamed Bernal (respondents), entered upon, occupied and cultivated a parcel of land situated in San Antonio West, Don Carlos, Bukidnon. After a survey in 1992, the property was designated as Cadastral Lot No. 1123, Cad 1119-D, Case 8 with an area of 8.5043 hectares.

---

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

[2] *Rollo*, pp. 86-87. Penned by Associate Justice Normandie B. Pizzaro, with Associate Justices Arturo G. Tayag and Rodrigo F. Lim, Jr., concurring.

[3] *Id.* at 98-102.

In January 1994, Adriano secured a loan of ₱5,000 from petitioners and turned over physical possession, occupation and cultivation of 1.5 hectares of the property.[4] In June 1994, Adriano secured another loan of ₱10,000 from petitioners and used another 1.5 hectares as security for its payment.[5] Petitioners then took possession and cultivated another 1.5 hectares of the property.

In September 1994, Adriano informed petitioners that he could no longer pay the loan obligation and that he was selling the whole property to petitioners for ₱80,000. The sale was evidenced by a "Kasabotan sa Palit sa Yuta"[6] dated 22 September 1994, signed by Adriano as owner of the land, Leona Bernal as Adriano's wife, with respondent Ronald Bernal (Ronald), among others, as witness. Petitioners took possession of the whole property and continued the cultivation of the land.

On 18 October 1994, Original Certificate of Title No. AO-7236[7] (OCT No. AO-7236) in the names of Adriano for an area of 3 hectares, Ronald for an area of 3 hectares, and respondent Juanito Bernal (Juanito) for an area of 2.5043 hectares was issued. OCT No. AO-7236 originated from Certificate of Land Ownership Award No. 00073938 (CLOA No. 00073938) issued by the Department of Agrarian Reform pursuant to Republic Act No. 6657.[8]

Then, sometime in April 2002, respondents demanded from petitioners ₱50,000 as additional consideration for the property. Respondents also informed petitioners, for the first time, of

---

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

[5] *Id.* at 30-31. Although in the body of the deed, the name of Ronald appears as the one who mortgaged the property, Ronald only signed as a witness and the words "owner of the property" under his name was crossed-out. Adriano Bernal signed the deed as owner of the property.

[6] *Id.* at 32.

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

[8] "An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanisms For Its Implementation, and Other Purposes," which took effect on 15 June 1988.

the existence of OCT No. AO-7236. Petitioners rejected respondents' request since they already bought the entire property in 1994 and requested that respondents turn-over to them OCT No. AO-7236. Respondents refused.

On 13 June 2002, respondents filed a complaint for recovery of ownership and possession of parcels of land with prayer for the issuance of a preliminary mandatory injunction and damages against petitioners before the Municipal Circuit Trial Court of Don Carlos-Kitaotao-Dangcagan, Don Carlos, Bukidnon (MCTC).[9] Respondents claimed that Adriano erroneously included their shares of the property in the sale. Juanito claimed that Adriano gave him 2.5043 hectares when he got married in 1978. While Ronald claimed that Adriano gave him 3 hectares when he got married in 1987.

In their Answer,[10] petitioners declared that they have been in open, notorious and peaceful occupation, possession and cultivation of the property in the concept of an owner since 1994 when they bought the property from Adriano. Petitioners argued that respondents have no legal right over the property and that CLOA No. 00073938 issued in respondents' name is void. Petitioners also asked that they be declared the absolute and legal owners of the property.

The Ruling of the MCTC

In its 19 November 2003 Decision,[11] the MCTC dismissed respondents' complaint. According to the MCTC, Adriano was the sole owner of the property and that Adriano sold the whole property to petitioners. The MCTC found no evidence of the transfer of ownership of the property from Adriano to Juanito and Ronald.

Respondents appealed to the Regional Trial Court, Malaybalay City, Branch 9 (RTC).

---

[9] *Rollo*, pp. 19-26.

[10] *Id.* at 35-45.

[11] *Id.* at 53-57. Penned by Judge Dante L. Villa.

The Ruling of the RTC

In its 9 August 2004 Decision,[12] the RTC declared that, from the start until the sale to petitioners, the property was owned in common by Adriano, Juanito and Ronald. The dispositive portion of the RTC's 9 August 2004 Decision reads:

> WHEREFORE, the decision of the Lower Court is hereby modified as follows:
>
> 1). Declaring the "Kasabutan Sa Palit Sa Yuta" dated September 22, 1994, to be valid legally and enforceable and must be adjudged to be owned by the defendants-appellees only in so far as the same refers to the portion previously owned by Adriano Bernal.
>
> 2). Declaring the plaintiffs-appellants as still the true and absolute owners of the respective three (3) hectares and 2.5043 hectares as above stated and must be issued separately [sic] a title therefor.
>
> 3). Ordering the defendants-appellees to return and deliver possession of the properties above mentioned to the plaintiffs-appellants.
>
> 4). Directing the Registry of Deeds to issue separate Certificate[s] of Title to the plaintiffs-appellants Ronald Bernal for 3.0000 hectares and Juanito Bernal for 2.5043 hectares and to the defendants-appellees the remaining portion of three hectares.
>
> 5). No award of any damages shall be awarded to any of the parties and with costs *de oficio.*
>
> SO ORDERED.[13]

Petitioners filed a motion for reconsideration. In its 25 October 2004 Order,[14] the RTC denied the motion.

Petitioners filed an appeal before the Court of Appeals.

---

[12] *Id.* at 58-76. Penned by Judge Rolando S. Venadas, Sr.

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

[14] *Id.* at 77-84.

The Ruling of the Court of Appeals

In its 6 May 2005 Resolution, the Court of Appeals dismissed the petition on technical grounds. The 6 May 2005 Resolution of the Court of Appeals declared:

> Upon perusal of the case records, this Court FINDS the following infirmities that warrants the outright dismissal of the instant case, to wit:
>
> 1. The Regional Trial Court was not furnished with a copy of the petition, in violation of Section 1 of Rule 42 of the 1997 Revised Rules of Court;
> 2. There was no proper verification, in violation of Section 4 of Rule 7 of the 1997 Revised Rules of Civil Procedure; and
> 3. The nature of the case should only be Petition for Review and not Petition for Review on *Certiorari* because the latter would fall under Rule 45, an action before the Supreme Court.
>
> Wherefore, premises considered, the instant Petition is hereby DISMISSED.
>
> SO ORDERED.[15]

Petitioners filed a motion for reconsideration. In its 3 August 2005 Resolution, the Court of Appeals denied the motion.

Hence, this petition.

The Issues

Petitioners raise the following issues:

I. THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR REVIEW ON PURELY TECHNICAL GROUNDS DISREGARDING THE MERITS OF THE APPEAL;

II. THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO APPRECIATE THE MERITS OF THE CASE WHICH COULD HAVE REVERSED THE DECISION OF THE LOWER

---

[15] *Id.* at 86-87.

COURT HAD THE PETITION FOR REVIEW BEEN GIVEN DUE COURSE.[16]

The Ruling of the Court

The petition is meritorious.

The Court of Appeals' dismissal of petitioners' petition on purely technical grounds was unwarranted. We agree with petitioners that the late filing and service of a copy of the petition to the RTC was not a substantial infirmity that should cause the outright dismissal of the petition.

Likewise, the verification of a pleading is only a formal, not jurisdictional, requirement.[17] The purpose of requiring a verification is to secure an assurance that the allegations in the petition are true and correct, not merely speculative.[18] This requirement is simply a condition affecting the form of pleadings, and non-compliance therewith does not necessarily render the pleading fatally defective.[19]

The dismissal of appeals on purely technical grounds is frowned upon for it is far more better for the courts to excuse a technical lapse and afford the parties a review of the case on the merits to attain the ends of justice.[20]

Respondents Failed to Prove their Title over the Property

As to the merits of the case, petitioners argue that, contrary to the findings of the RTC, respondents failed to present any evidence to show that they owned parts of the property in dispute. Petitioners insist that the claim of Juanito and Ronald that Adriano donated to them their respective shares in the property

---

[16] *Id.* at 3-4.

[17] *Torres v. Specialized Packing Development Corporation*, G.R. No. 149634, 6 July 2004, 433 SCRA 455.

[18] *Fernandez v. Novero, Jr.*, 441 Phil. 506 (2002).

[19] *Manila International Airport Authority v. Ding Velayo Sports Center, Inc.*, G.R. No. 161718, 20 September 2004.

[20] *Almelor v. Regional Trial Court of Las Piñas City, Br. 254*, G.R. No. 179620, 26 August 2008, 563 SCRA 447.

is not supported by any evidence. Petitioners maintain that Juanito and Ronald's claims are self-serving and merely fabricated.

As to the "Kasabotan sa Palit sa Yuta," petitioners point out that it was prepared in the local dialect of which Adriano and Ronald were conversant. According to petitioners, Adriano and Ronald cannot just deny knowledge of the said document and claim that they just affixed their signatures without reading the document. Petitioners maintain that Adriano was the sole owner of the property and that he had the right to sell, transfer, convey and dispose of the same.

Petitioners aver that they have been in open, public and peaceful possession, occupation and cultivation of the property in the concept of an owner since the sale of the property by Adriano in 1994. Petitioners pray that they be declared the absolute and legal owners of the property. Petitioners also pray that respondents be ordered to turn over CLOA No. 00073938 and OCT No. AO-7236 to them, the real owners of the property.[21]

On the other hand, respondents insist that Adriano could not have sold the entire property because he was no longer the owner thereof on 22 September 1994. Respondents maintain that Adriano verbally donated to them their respective shares in the property way back in 1978 and 1987. Respondents explain that Adriano did not know that he was selling the whole property and not just his assigned 3 hectares to petitioners. Ronald also claims that he did not know the contents of the deed of sale when he signed it as a witness.

We agree with petitioners that respondents failed to present any evidence to show that they owned parts of the property in dispute. First, in the stipulation of facts during the pre-trial conference before the MCTC, respondents admitted that the land was owned by Adriano. While both Juanito and Ronald claimed that Adriano donated to them their respective portions of the property when they got married in 1978 and 1987, respectively, they did not present any deed of donation. As the MCTC stated in its 19 November 2003 Decision, "the transfers

[21] *Rollo,* pp. 3-17.

cannot be by donation because the law requires that for donation to be effective, it must be in a public instrument and in this case there is none."[22]

Second, the tax declaration offered by respondents as evidence only mentioned Adriano as the owner of the whole property.[23] While tax declarations are not conclusive evidence of ownership, they constitute proof of claim of ownership.[24] Respondents did not present any credible explanation why the tax declaration was only under the name of Adriano.

Third, contrary to Ronald's claim, the June 1994 deed of mortgage[25] did not clearly show that he was the owner of the property and that petitioners recognized him as such. While Ronald's name appeared in the body of the deed, the designation as owner of the property under his name was crossed-out. It was Adriano who signed the deed of mortgage and the designation as owner of the property appeared under his name.

Fourth, Ronald was present when the deed of sale was executed on 22 September 1994 and he even signed as one of the witnesses. We find it hard to believe that Ronald and Adriano did not understand the contents of the deed when it was written in their local dialect. Moreover, it took respondents more than seven years to question Adriano's sale of the whole property to petitioners.

Lastly, respondents claim ownership of the property based on OCT No. AO-7236. However, a certificate of title is not equivalent to title.[26] In *Lee Tek Sheng v. Court of Appeals*,[27] we explained:

---

[22] *Id.* at 56.

[23] *Id.* at 27.

[24] *Republic v. T.A.N. Properties, Inc.*, G.R. No. 154953, 26 June 2008, 555 SCRA 477.

[25] *Rollo*, pp. 30-31.

[26] *Pineda v. Court of Appeals*, 456 Phil. 732 (2003).

[27] 354 Phil. 556 (1998).

By title, the law refers to ownership which is represented by that document [the Original Certificate of Title or the Transfer Certificate of Title]. Petitioner apparently confuses certificate with title. Placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed. **Ownership is different from a certificate of title**. The TCT is only the best proof of ownership of a piece of land. **Besides, the certificate cannot always be considered as conclusive evidence of ownership**. Mere issuance of the certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate or that the registrant may only be a trustee or that other parties may have acquired interest subsequent to the issuance of the certificate of title. To repeat, registration is not the equivalent of title, but is only the best evidence thereof. Title as a concept of ownership should not be confused with the certificate of title as evidence of such ownership although both are interchangeable.[28] (Emphasis supplied)

In this case, respondents cannot claim ownership over the disputed portions of the property absent any showing of how they acquired title over the same.

Accordingly, the property must be reconveyed in favor of petitioners, the true and actual owners of the property. An action for reconveyance is a legal and equitable remedy granted to the rightful owner of land which has been wrongfully or erroneously registered in the name of another for the purpose of compelling the latter to transfer or reconvey the land to him.[29]

However, since petitioners did not make a direct attack on the validity of OCT No. AO-7236 and had not asked for the cancellation of the original certificate of title as required by

---

[28] *Id.* at 561-562.

[29] *Heirs of Saludares v. Court of Appeals*, 464 Phil. 958 (2004); *Esconde v. Barlongay*, 236 Phil. 644 (1987).

Section 48[30] of Presidential Decree No. 1529,[31] this Court cannot cancel OCT No. AO-7236 and order the issuance of a new certificate of title in the name of petitioners. Any direct attack on the validity of a Torrens certificate of title must be instituted with the proper Regional Trial Court.[32] This case originated in the Municipal Circuit Trial Court. Even if we consider petitioners' counter-claim as a petition for the cancellation of OCT No. AO-7236 and, thus, a direct attack on the certificate of title, the MCTC still does not have jurisdiction over the cancellation of a Torrens title.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 6 May 2005 and 3 August 2005 Resolutions of the Court of Appeals in CA G.R. SP No. 00195. We *REINSTATE* the 19 November 2003 Decision of the Municipal Circuit Trial Court of Don Carlos-Kitaotao-Dangcagan, Don Carlos, Bukidnon.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

---

[30] Section 48 of the Property Registration Decree provides:

SEC. 48. *Certificate not subject to collateral attack.* - A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

[31] Entitled "Amending and Codifying the Laws Relative to Registration of Property and For Other Purposes." Also known as the "Property Registration Decree."

[32] Section 19(2) of Batas Pambansa Blg. 129, as amended, provides:

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 title to, or possession of, real property, or any interest thereon, 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.

SECOND DIVISION

[G.R. No. 169726. March 18, 2010]

DEPARTMENT OF BUDGET AND MANAGEMENT, represented by Sec. Emilia T. Boncodin, *petitioner, vs.* **OLIVIA D. LEONES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 6758 (COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989); REPRESENTATION AND TRANSPORTATION ALLOWANCE (RATA), DISTINCT FROM SALARY; EXPLAINED. — The DBM correctly characterizes RATA as allowance distinct from salary. Statutory law, as implemented by administrative issuances and interpreted in decisions, has consistently treated RATA as distinct from salary. Unlike salary which is paid for services rendered, RATA belongs to a basket of allowances to defray *expenses* deemed unavoidable in the discharge of office. Hence, RATA is paid only to certain officials who, by the nature of their offices, incur representation and transportation expenses.

2. ID.; ID.; ID.; DENIAL OF RATA MUST BE GROUNDED ON RELEVANT AND SPECIFIC PROVISION OF LAW. — xxx [T]he foregoing does not inexorably lead to the conclusion that *under all circumstances* and *despite lack of legal basis*, RATA is paid only if the RATA-entitled officer actually discharges his office. *First*, it became necessary to distinguish allowances (such as RATA) from salary mainly because under Section 12 of the Compensation and Position Classification Act of 1989 (RA 6758) (applicable to all public sector employees), all forms of "financial assistance" and "allowances" were integrated to the standardized salaries except for certain allowances specified by RA 6758 (such as RATA) and as determined by regulation. *Second*, non-performance of duties may result from compliance with orders devoid of the employee's volition such as suspension, termination resulting in reinstatement, or, as here, reassignment. At any rate, the denial of RATA must be grounded on relevant and specific provision of law.

3. ID.; ID.; ID.; ID.; GENERAL APPROPRIATION ACTS FIND NO APPLICATION TO A LOCAL GOVERNMENT OFFICIAL WHOSE COMPENSATION AND ALLOWANCES ARE FUNDED BY LOCAL APPROPRIATION LAWS. — On the relevance of the GAAs, the Court of Appeals correctly pointed out that they find no application to a *local* government official like respondent whose compensation and allowances are funded by local appropriation laws passed by the *Sangguniang Bayan* of Bacnotan. It is the municipal ordinances of Bacnotan, providing for the annual budget for its operation, which govern respondent's receipt of RATA. Although the records do not contain copies of the relevant Bacnotan budget ordinances, we find significant Fontanilla's referral to the DBM of respondent's April 2002 letter requesting RATA payment. Evidently, Bacnotan's annual budgetary appropriations for 1996 to 2005 contained no provision similar to the provisions in the GAAs the DBM now cites; otherwise, Fontanilla would have readily invoked them to deny respondent's request.

4. ID.; ID.; ID.; ID.; ID.; CONTENTION THAT PAYMENT OF RATA IS SUBJECT TO THE CONDITION OF ACTUAL PERFORMANCE OF DUTIES, NO MERIT; EXPLAINED. — The DBM tries to go around this insuperable obstacle by distinguishing *payment* from the *conditions* for the payment and theorizes that although respondent's salary and allowances were charged against Bacnotan's annual budget, they were subject to the condition contained in the GAAs for 1996-2005 linking the payment of RATA to the actual performance of duties. The Court cannot subscribe to this theory without ignoring the wall dividing the vertical structure of government in this country and a foundational doctrine animating local governance. Although the Philippines is a unitary State, the present Constitution (as in the past) accommodates within the system the operation of local government units with enhanced *administrative* autonomy and autonomous regions with limited *political* autonomy. Subject to the President's power of general supervision and exercising delegated powers, these units and regions operate much like the national government, with their own executive and legislative branches, financed by locally generated and nationally allocated funds disbursed through budgetary ordinances passed by their local legislative councils. The DBM's submission tinkers with this design by making

provisions in national budgetary laws automatically incorporated in local budgetary ordinances, thus reducing local legislative councils — from the provinces down to the *barangays* — and the legislative assembly of the Autonomous Region in Muslim Mindanao, to mere extensions of Congress. Although novel, the theory is anathema to the present vertical structure of Philippine government and to any notion of local autonomy which the Constitution mandates.

5. ID.; ID.; ID.; NATIONAL COMPENSATION CIRCULAR NO. 67 (REPRESENTATION AND TRANSPORTATION ALLOWANCES OF NATIONAL GOVERNMENT); EXCEPTION CLAUSE IN SECTION 3.3.1 THEREOF COVERS RESPONDENT ENTITLING HER TO RATA; ELUCIDATED. — Nor can the DBM anchor its case on Section 3.3.1. The National Compensation Circular No. 67, which the DBM issued, is entitled "Representation and Transportation Allowances of *National* Government Officials and Employees," thus excluding *local* government officials like respondent from its ambit. At any rate, respondent falls under the exception clause in Section 3.3.1, having been reassigned to another unit of the same agency with duties and responsibilities "comparable" to her previous position. Respondent was reassigned to La Union treasurer's office within the same "agency," namely, the Department of Finance, because local treasuries remain under the control of the Secretary of Finance (unlike some offices which were devolved to the local governments). xxx Thus, irrespective of the level of the local government unit involved, no distinction exists in the functions of local treasurers except in the technical supervision by the provincial treasurer over subordinate treasury offices. Logically, the employees in all local treasuries perform comparable functions within the framework of Section 70 (d) and (e). Hence, the DBM's casual claim that "the facts at hand do not reflect that the functions performed by respondent during the period of her reassignment were comparable to those she performed prior to her reassignment" finds no basis in fact or in law. In terms of performing comparative functions, the reassignment here is no different from that of a RATA-entitled officer of the Department of Science and Technology who, as Chief of the Finance and Management Division, was reassigned to the Directors' Office,

Finance and Management Service Office. We considered the officer entitled to RATA despite the reassignment for lack of basis for the non-payment. Indeed, for an employee not to fall under the exception in Section 3.3.1, the functions attached to the new office must be so alien to the functions pertaining to the former office as to make the two absolutely unrelated or non-comparable.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Josephine M. Ducusin for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This resolves the petition for review[1] of the Decision[2] of the Court of Appeals finding respondent Olivia D. Leones entitled to representation and transportation allowance.

The Facts

Before 1996, respondent Olivia D. Leones (respondent) was the Municipal Treasurer of Bacnotan, La Union. In December 1996, respondent was reassigned to the Office of the Provincial Treasurer, La Union, pending resolution of administrative cases filed against her.[3] As Municipal Treasurer, respondent received, on top of her salary, representation and transportation allowance (RATA). The Municipality of Bacnotan stopped paying RATA to respondent upon her reassignment to the Provincial Government.

---

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

[2] Per Associate Justice Mariano C. Del Castillo with Associate Justices Mario L. Guariña III and Magdangal M. De Leon, concurring.

[3] Respondent also alleged that she was reassigned "in line with the tax intensification program of the provincial government." (*Rollo*, p. 135)

After unsuccessfully obtaining administrative relief,[4] respondent filed a *mandamus* suit with the Regional Trial Court of San Fernando City, La Union (trial court) against petitioner Department of Budget and Management (DBM) and then mayor of Bacnotan, Ma. Minda Fontanilla (Fontanilla), to compel payment of RATA. The trial court dismissed the petition for non-exhaustion of administrative remedies. On appeal by respondent,[5] the Court of Appeals affirmed the dismissal. As respondent no longer pursued the case, the trial court's ruling became final on 30 June 2003.

However, respondent again sought an opinion, this time from the DBM Secretary, on her entitlement to RATA. In its reply dated 3 September 2003 (Opinion), the DBM found respondent entitled to RATA only for 1999 under the General Appropriation Act (GAA) for that year which, unlike previous and succeeding years, did not require "actual performance of x x x functions" as condition for receipt of RATA.

Assailing the Opinion, respondent filed a petition for *certiorari* with the Court of Appeals. Respondent contended that her non-receipt of RATA violates the rule on non-dimunition of salary in reassignments.

The Ruling of the Court of Appeals

In its Decision dated 24 May 2005, the Court of Appeals granted respondent's petition and ordered the DBM and Fontanilla to pay respondent RATA for the duration of her reassignment. Sustaining respondent's theory, the Court of Appeals characterized RATA as part of salary, thus subject to the rule on non-dimunition of salary in reassignments.[6] The Court of Appeals found erroneous the DBM's reliance on the GAAs requiring actual performance

---

[4] In April 2002, respondent wrote then Bacnotan Mayor Ma. Minda Fontanilla (Fontanilla) to request continuation of her RATA payments. Fontanilla referred the matter to the DBM's Regional Office, Region I, which denied respondent's request on 25 June 2002.

[5] Docketed as CA-G.R. SP No. 76896.

[6] Section 26(7), Title I-A, Book V, Executive Order No. 292.

of functions as precondition for payment of RATA because respondent's salary was charged against the local budget of Bacnotan and not against the national budget.[7]

---

[7] The relevant portion of the Court of Appeals' ruling reads (*Rollo*, pp. 39-41):

It is undisputed that since March 2, 1994, petitioner is a holder of a permanent position as Municipal Treasurer of Bacnotan, La Union, a position equivalent to a Department Head of a Municipal Government entitled to a commutable RATA. While she may have been detailed or reassigned with the Office of the Provincial Treasurer of the Province of La Union, the same cannot result in the withholding/deprivation of the commutable RATA she is legally entitled to. *It must be pointed out that a commutable RATA forms parts of the compensation and attaches to the position, or as in this case to the position of a Municipal Treasurer.* Consequently, wherever the petitioner may be detailed/assigned in the meantime, she may not be deprived of her commutable RATA as she is still the *de jure* occupant of the position of Municipal Treasurer. This is consistent with Section 26(7), Title A, Book V of the Revised Administrative Code of 1987 which provides that "an employee may be reassigned from one organizational unit to another in the same agency; provided, that such reassignment shall not involve a reduction in rank, status or salary." The term salary, in its generic sense, covers all compensations for services rendered and allowances like Representation and Transportation Allowance (RATA). Petitioner's entitlement to RATA cannot be removed by the simple expedient of detailing/assigning her to an office other than that she had been permanently appointed to.

x x x x x x x x x

The argument of the respondents that in order for petitioner to be entitled to RATA, it is a must that she should be in actual performance of the duties and responsibilities of her permanent position per the Annual General Appropriations Act, does not apply here. *It must be pointed out that the salary and other benefits being paid the petitioner are chargeable against the local allotments under the Annual Appropriations Ordinance being passed and approved by the Sangguniang Bayan of Bacnotan, La Union and not chargeable under the General Appropriations Act. Hence, the restrictions as regards the grant of her salary and other benefits are controlled and guided by the provisions of the Annual Appropriations Ordinance passed by the Sangguniang Bayan of Bacnotan, La Union and not by the General Appropriations Act of Congress.* (Emphasis supplied)

The DBM's motion for reconsideration equally proved unsuccessful.[8]

Hence, this petition.

The DBM argues that RATA is not part of salary and does not attach to the position but is paid based on the actual performance of functions. Hence, respondent, not having been in the actual performance of her functions as treasurer of Bacnotan during her reassignment to the La Union treasurer's office, is not entitled to receive RATA except for 1999 because the GAA for that year did not require actual performance of functions as condition for payment of RATA.

The Issue

The question is whether, after her reassignment to the La Union treasurer's office, respondent, the treasurer of Bacnotan, was entitled to receive RATA.

The Ruling of the Court

We hold that respondent was entitled to receive RATA after her reassignment, not because the allowance forms part of her salary, but because the discontinuance of payment lacks legal basis.

RATA Distinct from Salary

The DBM correctly characterizes RATA as allowance distinct from salary. Statutory law,[9] as implemented by administrative issuances[10] and interpreted in decisions,[11] has consistently treated RATA as distinct from salary. Unlike salary which is paid for services rendered, RATA belongs to a basket of allowances[12] to

---

[8] Denied in the Resolution of September 2005.

[9] *E.g.* Section 12, Republic Act No. 6758 (RA 6758) or the Compensation and Position Classification Act of 1989.

[10] *E.g.* Corporate Compensation Circular No. 10 implementing RA 6758.

[11] *E.g. National Tobacco Administration v. Commission on Audit*, 370 Phil. 793 (1999) and *Philippine International Trading Corporation v. Commission on Audit*, 461 Phil. 737 (2003).

[12] Including allowances for uniform/clothing, living quarters of overseas employees, and night differential for personnel on night duty.

defray *expenses* deemed unavoidable in the discharge of office.[13] Hence, RATA is paid only to certain officials who, by the nature of their offices, incur representation and transportation expenses.

However, the foregoing does not inexorably lead to the conclusion that *under all circumstances* and *despite lack of legal basis*, RATA is paid only if the RATA-entitled officer actually discharges his office. *First*, it became necessary to distinguish allowances (such as RATA) from salary mainly because under Section 12 of the Compensation and Position Classification Act of 1989 (RA 6758)[14] (applicable to all public sector employees), all forms of "financial assistance" and "allowances"[15] were integrated to the standardized salaries except for certain allowances specified by RA 6758 (such as RATA) and as determined by regulation.[16] *Second*, non-performance

---

[13] *National Tobacco Administration v. Commission on Audit*, 370 Phil. 793 (1999). However, some laws do not observe this distinction in computing post-employment benefits (*e.g.* Section 3 of Republic Act No. 910, as amended by Presidential Decree No. 1438, combining RATA and salary for computing gratuity benefits for retired judges).

[14] This provides: "*Consolidation of Allowances and Compensation.* — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized." x x x

[15] The terms "financial assistance" and "allowance" have been distinguished as follows: "For [financial assistance], reimbursement is not necessary while [allowance] for the latter, reimbursement is required. Not only that, [financial assistance] is basically an incentive wage which is defined as 'a bonus or other payment made to employees in addition to guaranteed hourly wages' while [allowance] cannot be reckoned with as a bonus or additional income, strictly speaking." (*National Tobacco Administration v. Commission on Audit*, 370 Phil. 793, 807 [1999] [internal citation omitted]).

[16] Thus, we affirmed on appeal the disallowance upon audit of *financial assistance* for education (*National Tobacco Administration v. Commission on Audit*, 370 Phil. 793 [1999]) and food (*Philippine International Trading*

of duties may result from compliance with orders devoid of the employee's volition such as suspension, termination resulting in reinstatement, or, as here, reassignment. At any rate, the denial of RATA must be grounded on relevant and specific provision of law.

No Law Justifies Denial of RATA for Reassigned Local Government Officials

The DBM concedes that as Municipal Treasurer, respondent was entitled to receive (and did receive) RATA because such position is equivalent to a head of a municipal government department.[17] However, the DBM contends that respondent's reassignment to La Union treasurer's office cut off this entitlement. As bases for this claim, the DBM invokes the GAAs from 1996 to 2005 (except in 1999[18]) uniformly providing (in different sections[19]) thus:

> [T]he following officials and those of equivalent rank as may be determined by the Department of Budget and Management *while in the actual performance of their respective functions* are hereby granted monthly commutable representation and transportation allowances payable from the programmed appropriations provided for their respective offices not exceeding the rates indicated below x x x. (Emphasis supplied)

As secondary basis, the DBM calls the Court's attention to Section 3.3.1 of the National Compensation Circular No. 67 (Section 3.3.1), dated 1 January 1992, which provides:

Corporation v. Commission on Audit, 461 Phil. 737 [2003]) following Section 12 of RA 6758.

[17] *Rollo*, p. 14 citing Local Budget Circular No. 68, 4 June 1998.

[18] The GAA for this year, Republic Act No. 8745, did not impose actual service as condition for receipt of RATA.

[19] Section 35, Republic Act No. 8174 (1996 national budget); Section 39, Republic Act No. 8250 (1997 national budget); Section 41, Republic Act No. 8522 (1998 national budget); Section 41, Republic Act No. 8760 (2000 national budget), reenacted for 2001; Section 39, Republic Act No. 9162 (2002 national budget); Section 40, Republic Act No. 9206 (2003 national budget), reenacted for 2004; and Section 45, Republic Act No. 9336 (2005 national budget), reenacted for 2006.

> 3.3. The officials and employees referred to in Sections 2.1, 2.2 and 2.3 hereof shall *no longer be authorized to continue to collect RATA* in the following instances:
>
> 3.3.1 *When on full-time detail* with another organizational unit of the *same agency*, another agency, or special project for one (1) full calendar month or more, *except when the duties and responsibilities they perform are comparable with those of their regular positions*, in which case, they may be authorized to continue to collect RATA on a reimbursable basis, subject to the availability of funds[.] (Emphasis supplied)

and contends that respondent falls under the general rule thus justifying the cessation of her RATA payment.

None of these rules supports the DBM's case.

On the relevance of the GAAs, the Court of Appeals correctly pointed out that they find no application to a *local* government official like respondent whose compensation and allowances are funded by local appropriation laws passed by the *Sangguniang Bayan* of Bacnotan. It is the municipal ordinances of Bacnotan, providing for the annual budget for its operation, which govern respondent's receipt of RATA. Although the records do not contain copies of the relevant Bacnotan budget ordinances, we find significant Fontanilla's referral to the DBM of respondent's April 2002 letter requesting RATA payment.[20] Evidently, Bacnotan's annual budgetary appropriations for 1996 to 2005 contained no provision similar to the provisions in the GAAs the DBM now cites; otherwise, Fontanilla would have readily invoked them to deny respondent's request.

The DBM tries to go around this insuperable obstacle by distinguishing *payment* from the *conditions* for the payment and theorizes that although respondent's salary and allowances were charged against Bacnotan's annual budget, they were subject to the condition contained in the GAAs for 1996-2005 linking the payment of RATA to the actual performance of duties.[21] The Court cannot subscribe to this theory without ignoring

---

[20] See note 4.

[21] *Rollo*, p. 28.

the wall dividing the vertical structure of government in this country and a foundational doctrine animating local governance.

Although the Philippines is a unitary State, the present Constitution (as in the past) accommodates within the system the operation of local government units with enhanced *administrative* autonomy and autonomous regions with limited *political* autonomy.[22] Subject to the President's power of general supervision[23] and exercising delegated powers, these units and regions operate much like the national government, with their own executive and legislative branches, financed by locally generated and nationally allocated funds disbursed through budgetary ordinances passed by their local legislative councils. The DBM's submission tinkers with this design by making provisions in national budgetary laws automatically incorporated in local budgetary ordinances, thus reducing local legislative councils — from the provinces down to the *barangays* — and the legislative assembly of the Autonomous Region in Muslim Mindanao, to mere extensions of Congress. Although novel, the theory is anathema to the present vertical structure of Philippine government and to any notion of local autonomy which the Constitution mandates.

Nor can the DBM anchor its case on Section 3.3.1. The National Compensation Circular No. 67, which the DBM issued, is entitled "Representation and Transportation Allowances of *National* Government Officials and Employees," thus excluding *local* government officials like respondent from its ambit. At any rate, respondent falls under the exception clause in Section 3.3.1, having been reassigned to another unit of the same agency with duties and responsibilities "comparable" to her previous position.

Respondent was reassigned to La Union treasurer's office within the same "agency,"[24] namely, the Department of Finance,

---

[22] *Cordillera Board Coalition v. Commission on Audit*, G.R. No. 79956, 29 January 1990, 181 SCRA 495, Sections 2, 5 and 20, Article X, Constitution.

[23] Section 4 and Section 16, Article X, Constitution.

[24] Defined in Section 2(4), Introductory Provisions, Administrative Code

because local treasuries remain under the control of the Secretary of Finance[25] (unlike some offices which were devolved to the local governments[26]). Paragraphs (d) and (e) of Section 470 of Republic Act No. 7160 (RA 7160), the Local Government Code of 1991, provide the functions of "*The treasurer*":

(d) *The treasurer* shall take charge of the treasury office, perform the duties provided for under Book II of this Code, and shall:

(1) Advise the *governor or mayor*, as the case may be, the sanggunian, and other local government and national officials concerned regarding disposition of local government funds, and on such other matters relative to public finance;

(2) Take custody of and exercise proper management of the funds of the local government unit concerned;

(3) Take charge of the disbursement of all local government funds and such other funds the custody of which may be entrusted to him by law or other competent authority;

(4) Inspect private commercial and industrial establishments within the jurisdiction of the local government unit concerned in relation to the implementation of tax ordinances, pursuant to the provisions under Book II of this Code;

(5) Maintain and update the tax information system of the local government unit;

(6) In the case of the provincial treasurer, exercise technical supervision over all treasury offices of component cities and municipalities; and

(e) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance. (Emphasis supplied)

---

of 1987, as "any of the various units of the Government, including a **department**, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein." (Emphasis supplied)

[25] Section 470(a) and (b) of Republic Act No. 7160 (RA 7160) respectively provide that (1) the Secretary of Finance appoints the local treasurer as recommended by the governor or mayor and (2) the latter exercises only administrative supervision over the local treasurer.

[26] Under Section 17, RA 7160.

Thus, irrespective of the level of the local government unit involved, no distinction exists in the functions of local treasurers except in the technical supervision by the provincial treasurer over subordinate treasury offices. Logically, the employees in all local treasuries perform comparable functions within the framework of Section 70 (d) and (e). Hence, the DBM's casual claim that "the facts at hand do not reflect that the functions performed by respondent during the period of her reassignment were comparable to those she performed prior to her reassignment"[27] finds no basis in fact or in law. In terms of performing comparative functions, the reassignment here is no different from that of a RATA-entitled officer of the Department of Science and Technology who, as Chief of the Finance and Management Division, was reassigned to the Directors' Office, Finance and Management Service Office. We considered the officer entitled to RATA despite the reassignment for lack of basis for the non-payment.[28] Indeed, for an employee not to fall under the exception in Section 3.3.1, the functions attached to the new office must be so alien to the functions pertaining to the former office as to make the two absolutely unrelated or non-comparable.

Before disposing of this matter, we highlight the element of inequity undergirding the DBM's case. By insisting that, as requisite for her receipt of RATA, respondent must discharge her office as Bacnotan's treasurer while on reassignment at the La Union treasurer's office, the DBM effectively punishes respondent for acceding to her reassignment. Surely, the law could not have intended to place local government officials like respondent in the difficult position of having to choose between disobeying a reassignment order or keeping an allowance. As we observed in a parallel case:

---

[27] *Rollo*, p. 167; Reply, p. 14.

[28] *Padolina v. Fernandez*, 396 Phil. 615, 622 (2000) (The officer refused the reassignment – which we held invalid for lack of fixed duration – and we noted that the "[the officer] was supposed to receive her RATA had she not refused to accept the order of her reassignment." Significantly, the Civil Service Commission ordered the payment of the officer's RATA during reassignment.)

[O]n petitioner's contention that RATA should be allowed only if private respondent is performing the duties of her former office, the CSC correctly explained that private respondent was 'reassigned to another office and thus her inability to perform the functions of her position as Division Chief is beyond her control and not of her own volition.['] x x x[29]

The DBM itself acknowledged the harshness of its position by carving in Section 3.3.1 an exception for national government officials performing comparable duties while on reassignment, cushioning the deleterious financial effects reassignments bring to the employee with due regard to the state of the government's coffers.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 24 May 2005 and the Resolution dated 15 September 2005 of the Court of Appeals.

SO ORDERED.

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

---

[29] *Commissioner of Internal Revenue v. Civil Service Commission,* G.R. No. 94205, 12 February 1992 (Min. res.), pp. 3-4. Until the appropriate case presents itself, we refrain from passing upon the question whether this holds true for employees preventively suspended or terminated but subsequently reinstated.

[*] Designated additional member per Raffle dated 2 December 2009.

SECOND DIVISION

[G.R. No. 169900. March 18, 2010]

MARIO SIOCHI, *petitioner, vs.* **ALFREDO GOZON, WINIFRED GOZON, GIL TABIJE, INTER-DIMENSIONAL REALTY, INC., and ELVIRA GOZON,** *respondents.*

[G.R. No. 169977. March 18, 2010]

INTER-DIMENSIONAL REALTY, INC., *petitioner, vs.* **MARIO SIOCHI, ELVIRA GOZON, ALFREDO GOZON, and WINIFRED GOZON,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; CONJUGAL PARTNERSHIP OF GAINS; WRITTEN CONSENT OF THE OTHER SPOUSE OR AUTHORITY OF THE COURT IS NECESSARY BEFORE THE SPOUSE ADMINISTERING THE CONJUGAL PROPERTY CAN DISPOSE THE PROPERTY; NOT COMPLIED WITH IN CASE AT BAR. — This case involves the conjugal property of Alfredo and Elvira. Since the disposition of the property occurred after the effectivity of the Family Code, the applicable law is the Family Code. Article 124 of the Family Code provides: Art. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to the recourse to the court by the wife for a proper remedy, which must be availed of within five years from the date of the contract implementing such decision. **In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or**

encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. In this case, Alfredo was the sole administrator of the property because Elvira, with whom Alfredo was separated in fact, was unable to participate in the administration of the conjugal property. However, as sole administrator of the property, Alfredo still cannot sell the property without the written consent of Elvira or the authority of the court. Without such consent or authority, the sale is void. The absence of the consent of one of the spouse renders the entire sale void, including the portion of the conjugal property pertaining to the spouse who contracted the sale. Even if the other spouse actively participated in negotiating for the sale of the property, that other spouse's written consent to the sale is still required by law for its validity. The Agreement entered into by Alfredo and Mario was without the written consent of Elvira. Thus, the Agreement is entirely void. As regards Mario's contention that the Agreement is a continuing offer which may be perfected by Elvira's acceptance before the offer is withdrawn, the fact that the property was subsequently donated by Alfredo to Winifred and then sold to IDRI clearly indicates that the offer was already withdrawn.

2. ID.; ID.; LEGAL SEPARATION; DECREE OF LEGAL SEPARATION, EFFECTS OF; IN CASE AT BAR, WHAT IS FORFEITED IN FAVOR OF THE COMMON CHILD IS NOT THE SHARE IN THE CONJUGAL PARTNERSHIP PROPERTY OF THE OFFENDING SPOUSE BUT MERELY IN THE NET PROFITS OF THE CONJUGAL PARTNERSHIP PROPERTY; BASIS. — xxx [The Court disagrees] with the finding of the Court of Appeals that the one-half undivided share of Alfredo in the property was already forfeited in favor of his daughter Winifred, based on the ruling of the Cavite RTC in the legal separation case. The Court of Appeals misconstrued the ruling of the Cavite RTC that Alfredo, being the offending spouse, is deprived of his share in the net profits and the same is awarded to Winifred. The Cavite RTC ruling finds support in the following provisions of the Family Code: Art. 63. The decree of legal separation shall have the following effects: xxx **(2) The absolute community or the**

conjugal partnership shall be dissolved and liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43(2); xxx Art. 43. The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects: x x x (2) The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, **his or her share of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the common children** or, if there are none, the children of the guilty spouse by a previous marriage or, in default of children, the innocent spouse; Thus, among the effects of the decree of legal separation is that the conjugal partnership is dissolved and liquidated and the offending spouse would have no right to any share of the net profits earned by the conjugal partnership. It is only Alfredo's share in the net profits which is forfeited in favor of Winifred. Article 102(4) of the Family Code provides that "[f]or purposes of computing the net profits subject to forfeiture in accordance with Article 43, No. (2) and 63, No. (2), the said profits shall be the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution." Clearly, what is forfeited in favor of Winifred is not Alfredo's share in the conjugal partnership property but merely in the net profits of the conjugal partnership property.

3. ID.; SPECIAL CONTRACTS; SALES; BUYER IN GOOD FAITH; NOT A CASE OF; EXPLAINED. — With regard to IDRI, we agree with the Court of Appeals in holding that IDRI is not a buyer in good faith. As found by the RTC Malabon and the Court of Appeals, IDRI had actual knowledge of facts and circumstances which should impel a reasonably cautious person to make further inquiries about the vendor's title to the property. The representative of IDRI testified that he knew about the existence of the notice of *lis pendens* on TCT No. 5357 and the legal separation case filed before the Cavite RTC. Thus, IDRI could not feign ignorance of the Cavite RTC decision declaring the property as conjugal. Furthermore, if IDRI made further inquiries, it would have known that the cancellation of

the notice of *lis pendens* was highly irregular. Under Section 77 of Presidential Decree No. 1529, the notice of *lis pendens* may be cancelled (a) upon order of the court, or (b) by the Register of Deeds upon verified petition of the party who caused the registration of the *lis pendens*. In this case, the *lis pendens* was cancelled by the Register of Deeds upon the request of Alfredo. There was no court order for the cancellation of the *lis pendens*. Neither did Elvira, the party who caused the registration of the *lis pendens*, file a verified petition for its cancellation. Besides, had IDRI been more prudent before buying the property, it would have discovered that Alfredo's donation of the property to Winifred was without the consent of Elvira. Under Article 125 of the Family Code, a conjugal property cannot be donated by one spouse without the consent of the other spouse. Clearly, IDRI was not a buyer in good faith. Nevertheless, we find it proper to reinstate the order of the Malabon RTC for the reimbursement of the ₱18 million paid by IDRI for the property, which was inadvertently omitted in the dispositive portion of the Court of Appeals' decision.

APPEARANCES OF COUNSEL

Cesar C. Cruz and Partners for Mario Siochi.
Eduardo R. Ceniza for Inter-Dimension Realty, Inc.
Padilla Reyes & Dela Torre for Elvira Gozon.
Grajo T. Albano for Alfredo Gozon and Winfred Gozon.

R E S O L U T I O N

CARPIO, *J.*:

This is a consolidation of two separate petitions for review,[1] assailing the 7 July 2005 Decision[2] and the 30 September 2005 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 74447.

---

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

[2] *Rollo* (G.R. No. 169900), pp. 65-128. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa, concurring.

[3] *Id.* at 153-154.

This case involves a 30,000 sq.m. parcel of land (property) covered by TCT No. 5357.[4] The property is situated in Malabon, Metro Manila and is registered in the name of "Alfredo Gozon (Alfredo), married to Elvira Gozon (Elvira)."

On 23 December 1991, Elvira filed with the Cavite City Regional Trial Court (Cavite RTC) a petition for legal separation against her husband Alfredo. On 2 January 1992, Elvira filed a notice of *lis pendens*, which was then annotated on TCT No. 5357.

On 31 August 1993, while the legal separation case was still pending, Alfredo and Mario Siochi (Mario) entered into an Agreement to Buy and Sell[5] (Agreement) involving the property for the price of ₱18 million. Among the stipulations in the Agreement were that Alfredo would: (1) secure an Affidavit from Elvira that the property is Alfredo's exclusive property and to annotate the Agreement at the back of TCT No. 5357; (2) secure the approval of the Cavite RTC to exclude the property from the legal separation case; and (3) secure the removal of the notice of *lis pendens* pertaining to the said case and annotated on TCT No. 5357. However, despite repeated demands from Mario, Alfredo failed to comply with these stipulations. After paying the ₱5 million earnest money as partial payment of the purchase price, Mario took possession of the property in September 1993. On 6 September 1993, the Agreement was annotated on TCT No. 5357.

Meanwhile, on 29 June 1994, the Cavite RTC rendered a decision[6] in the legal separation case, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered decreeing the legal separation between petitioner and respondent. Accordingly, petitioner Elvira Robles Gozon is entitled to live separately from respondent Alfredo Gozon without dissolution of their marriage bond. The conjugal partnership of gains of the spouses is hereby

---

[4] *Rollo* (G.R. No. 169977), pp. 166-168.

[5] *Rollo* (G.R. No. 169900), pp. 163-168.

[6] *Id.* at 169-176.

declared DISSOLVED and LIQUIDATED. Being the offending spouse, respondent is deprived of his share in the net profits and the same is awarded to their child Winifred R. Gozon whose custody is awarded to petitioner.

Furthermore, said parties are required to mutually support their child Winifred R. Gozon as her needs arises.

SO ORDERED.[7]

As regards the property, the Cavite RTC held that it is deemed conjugal property.

On 22 August 1994, Alfredo executed a Deed of Donation over the property in favor of their daughter, Winifred Gozon (Winifred). The Register of Deeds of Malabon, Gil Tabije, cancelled TCT No. 5357 and issued TCT No. M-10508[8] in the name of Winifred, without annotating the Agreement and the notice of *lis pendens* on TCT No. M-10508.

On 26 October 1994, Alfredo, by virtue of a Special Power of Attorney[9] executed in his favor by Winifred, sold the property to Inter-Dimensional Realty, Inc. (IDRI) for ₱18 million.[10] IDRI paid Alfredo ₱18 million, representing full payment for the property.[11] Subsequently, the Register of Deeds of Malabon cancelled TCT No. M-10508 and issued TCT No. M-10976[12] to IDRI.

Mario then filed with the Malabon Regional Trial Court (Malabon RTC) a complaint for Specific Performance and

---

[7] *Id.* at 175-176.

[8] *Rollo* (G.R. No. 169977), pp. 169-170.

[9] *Id.* at 171-173.

[10] See Deed of Absolute Sale dated 26 October 1994, *rollo* (G.R. No. 169977), pp. 174-177.

[11] See Memorandum for Inter-Dimensional Realty, Inc., *rollo* (G.R. No. 169900), p. 588. In their joint memorandum, Alfredo and Winifred did not deny receipt of full payment from IDRI and in fact prays that IDRI be considered a buyer in good faith and for value, *rollo*, (G.R. No. 169900), pp. 421-440.

[12] *Rollo* (G.R. No. 169977), pp. 178-179.

Damages, Annulment of Donation and Sale, with Preliminary Mandatory and Prohibitory Injunction and/or Temporary Restraining Order.

On 3 April 2001, the Malabon RTC rendered a decision,[13] the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 01. On the preliminary mandatory and prohibitory injunction:
> 1.1 The same is hereby made permanent by:
> 1.1.1 Enjoining defendants Alfredo Gozon, Winifred Gozon, Inter-Dimensional Realty, Inc. and Gil Tabije, their agents, representatives and all persons acting in their behalf from any attempt of commission or continuance of their wrongful acts of further alienating or disposing of the subject property;
> 1.1.2. Enjoining defendant Inter-Dimensional Realty, Inc. from entering and fencing the property;
> 1.1.3. Enjoining defendants Alfredo Gozon, Winifred Gozon, Inter-Dimensional Realty, Inc. to respect plaintiff's possession of the property.
>
> 02. The Agreement to Buy and Sell dated 31 August 1993, between plaintiff and defendant Alfredo Gozon is hereby approved, excluding the property and rights of defendant Elvira Robles-Gozon to the undivided one-half share in the conjugal property subject of this case.
>
> 03. The Deed of Donation dated 22 August 1994, entered into by and between defendants Alfredo Gozon and Winifred Gozon is hereby nullified and voided.
>
> 04. The Deed of Absolute Sale dated 26 October 1994, executed by defendant Winifred Gozon, through defendant Alfredo Gozon, in favor of defendant Inter-Dimensional Realty, Inc. is hereby nullified and voided.
>
> 05. Defendant Inter-Dimensional Realty, Inc. is hereby ordered to deliver its Transfer Certificate of Title No. M-10976 to the Register of Deeds of Malabon, Metro Manila.
>
> 06. The Register of Deeds of Malabon, Metro Manila is hereby ordered to cancel Certificate of Title Nos. 10508 "in the name of Winifred Gozon" and M-10976 "in the name of Inter-Dimensional Realty, Inc.," and to restore Transfer Certificate of Title No. 5357 "in the name of Alfredo Gozon, married to Elvira Robles" with the

[13] *Rollo* (G.R. No. 169900), pp. 221-259.

Agreement to Buy and Sell dated 31 August 1993 fully annotated therein is hereby ordered.

07. Defendant Alfredo Gozon is hereby ordered to deliver a Deed of Absolute Sale in favor of plaintiff over his one-half undivided share in the subject property and to comply with all the requirements for registering such deed.

08. Ordering defendant Elvira Robles-Gozon to sit with plaintiff to agree on the selling price of her undivided one-half share in the subject property, thereafter, to execute and deliver a Deed of Absolute Sale over the same in favor of the plaintiff and to comply with all the requirements for registering such deed, within fifteen (15) days from the receipt of this DECISION.

09. Thereafter, plaintiff is hereby ordered to pay defendant Alfredo Gozon the balance of Four Million Pesos (₱4,000,000.00) in his one-half undivided share in the property to be set off by the award of damages in plaintiff's favor.

10. Plaintiff is hereby ordered to pay the defendant Elvira Robles-Gozon the price they had agreed upon for the sale of her one-half undivided share in the subject property.

11. Defendants Alfredo Gozon, Winifred Gozon and Gil Tabije are hereby ordered to pay the plaintiff, jointly and severally, the following:

11.1 Two Million Pesos (₱2,000,000.00) as actual and compensatory damages;

11.2 One Million Pesos (₱1,000,000.00) as moral damages;

11.3 Five Hundred Thousand Pesos (₱500,000.00) as exemplary damages;

11.4 Four Hundred Thousand Pesos (₱400,000.00) as attorney's fees; and

11.5 One Hundred Thousand Pesos (₱100,000.00) as litigation expenses.

11.6 The above awards are subject to set off of plaintiff's obligation in paragraph 9 hereof.

12. Defendants Alfredo Gozon and Winifred Gozon are hereby ordered to pay Inter-Dimensional Realty, Inc. jointly and severally the following:

12.1 Eighteen Million Pesos (₱18,000,000.00) which constitute the amount the former received from the latter pursuant to their Deed of Absolute Sale dated 26 October 1994, with legal interest therefrom;

12.2 One Million Pesos (₱1,000,000.00) as moral damages;

12.3 Five Hundred Thousand Pesos (₱500,000.00) as exemplary damages; and

12.4 One Hundred Thousand Pesos (₱100,000.00) as attorney's fees.

13. Defendants Alfredo Gozon and Winifred Gozon are hereby ordered to pay costs of suit.

SO ORDERED.[14]

On appeal, the Court of Appeals affirmed the Malabon RTC's decision with modification. The dispositive portion of the Court of Appeals' Decision dated 7 July 2005 reads:

WHEREFORE, premises considered, the assailed decision dated April 3, 2001 of the RTC, Branch 74, Malabon is hereby AFFIRMED with MODIFICATIONS, as follows:

1. The sale of the subject land by defendant Alfredo Gozon to plaintiff-appellant Siochi is declared null and void for the following reasons:

a) The conveyance was done without the consent of defendant-appellee Elvira Gozon;

b) Defendant Alfredo Gozon's one-half (½) undivided share has been forfeited in favor of his daughter, defendant Winifred Gozon, by virtue of the decision in the legal separation case rendered by the RTC, Branch 16, Cavite;

2. Defendant Alfredo Gozon shall return/deliver to plaintiff-appellant Siochi the amount of ₱5 Million which the latter paid as earnest money in consideration for the sale of the subject land;

3. Defendants Alfredo Gozon, Winifred Gozon and Gil Tabije are hereby ordered to pay plaintiff-appellant Siochi jointly and severally, the following:

a) ₱100,000.00 as moral damages;

b) ₱100,000.00 as exemplary damages;

c) ₱50,000.00 as attorney's fees;

d) ₱20,000.00 as litigation expenses; and

e) The awards of actual and compensatory damages are hereby ordered deleted for lack of basis.

4. Defendants Alfredo Gozon and Winifred Gozon are hereby ordered to pay defendant-appellant IDRI jointly and severally the following:

a) ₱100,000.00 as moral damages;

b) ₱100,000.00 as exemplary damages; and

c) ₱50,000.00 as attorney's fees.

---

[14] *Id.* at 257-259.

Defendant Winifred Gozon, whom the undivided one-half share of defendant Alfredo Gozon was awarded, is hereby given the option whether or not to dispose of her undivided share in the subject land.

The rest of the decision not inconsistent with this ruling stands.

SO ORDERED.[15]

Only Mario and IDRI appealed the decision of the Court of Appeals. In his petition, Mario alleges that the Agreement should be treated as a continuing offer which may be perfected by the acceptance of the other spouse before the offer is withdrawn. Since Elvira's conduct signified her acquiescence to the sale, Mario prays for the Court to direct Alfredo and Elvira to execute a Deed of Absolute Sale over the property upon his payment of ₱9 million to Elvira.

On the other hand, IDRI alleges that it is a buyer in good faith and for value. Thus, IDRI prays that the Court should uphold the validity of IDRI's TCT No. M-10976 over the property.

We find the petitions without merit.

This case involves the conjugal property of Alfredo and Elvira. Since the disposition of the property occurred after the effectivity of the Family Code, the applicable law is the Family Code. Article 124 of the Family Code provides:

Art. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to the recourse to the court by the wife for a proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. In the

[15] *Id.* at 126-127.

absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (Emphasis supplied)

In this case, Alfredo was the sole administrator of the property because Elvira, with whom Alfredo was separated in fact, was unable to participate in the administration of the conjugal property. However, as sole administrator of the property, Alfredo still cannot sell the property without the written consent of Elvira or the authority of the court. Without such consent or authority, the sale is void.[16] The absence of the consent of one of the spouse renders the entire sale void, including the portion of the conjugal property pertaining to the spouse who contracted the sale.[17] Even if the other spouse actively participated in negotiating for the sale of the property, that other spouse's written consent to the sale is still required by law for its validity.[18] The Agreement entered into by Alfredo and Mario was without the written consent of Elvira. Thus, the Agreement is entirely void. As regards Mario's contention that the Agreement is a continuing offer which may be perfected by Elvira's acceptance before the offer is withdrawn, the fact that the property was subsequently donated by Alfredo to Winifred and then sold to IDRI clearly indicates that the offer was already withdrawn.

However, we disagree with the finding of the Court of Appeals that the one-half undivided share of Alfredo in the property was already forfeited in favor of his daughter Winifred, based on the ruling of the Cavite RTC in the legal separation case. The Court of Appeals misconstrued the ruling of the Cavite

---

[16] *Spouses Guiang v. CA*, 353 Phil. 578 (1998).

[17] *Alinas v. Alinas*, G.R. No. 158040, 14 April 2008, 551 SCRA 154, citing *Homeowners Savings and Loan Bank v. Dailo*, 493 Phil. 436, 442 (2005).

[18] *Jader-Manalo v. Camaisa*, 425 Phil. 346 (2002).

RTC that Alfredo, being the offending spouse, is deprived of his share in the net profits and the same is awarded to Winifred.

The Cavite RTC ruling finds support in the following provisions of the Family Code:

Art. 63. The decree of legal separation shall have the following effects:

(1) The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;

(2) The absolute community or the conjugal partnership shall be dissolved and liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43(2);

(3) The custody of the minor children shall be awarded to the innocent spouse, subject to the provisions of Article 213 of this Code; and

(4) The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover, provisions in favor of the offending spouse made in the will of the innocent spouse shall be revoked by operation of law.

Art. 43. The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects:

x x x x x x x x x

(2) The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, **his or her share of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the common children** or, if there are none, the children of the guilty spouse by a previous marriage or, in default of children, the innocent spouse; (Emphasis supplied)

Thus, among the effects of the decree of legal separation is that the conjugal partnership is dissolved and liquidated and the offending spouse would have no right to any share of the net profits earned by the conjugal partnership. It is only Alfredo's share in the net profits which is forfeited in favor of Winifred. Article 102(4) of the Family Code provides that "[f]or purposes

of computing the net profits subject to forfeiture in accordance with Article 43, No. (2) and 63, No. (2), the said profits shall be the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution." Clearly, what is forfeited in favor of Winifred is not Alfredo's share in the conjugal partnership property but merely in the net profits of the conjugal partnership property.

With regard to IDRI, we agree with the Court of Appeals in holding that IDRI is not a buyer in good faith. As found by the RTC Malabon and the Court of Appeals, IDRI had actual knowledge of facts and circumstances which should impel a reasonably cautious person to make further inquiries about the vendor's title to the property. The representative of IDRI testified that he knew about the existence of the notice of *lis pendens* on TCT No. 5357 and the legal separation case filed before the Cavite RTC. Thus, IDRI could not feign ignorance of the Cavite RTC decision declaring the property as conjugal.

Furthermore, if IDRI made further inquiries, it would have known that the cancellation of the notice of *lis pendens* was highly irregular. Under Section 77 of Presidential Decree No. 1529,[19] the notice of *lis pendens* may be cancelled (a) upon order of the court, or (b) by the Register of Deeds upon verified petition of the party who caused the registration of the *lis pendens*. In this case, the *lis pendens* was cancelled by the Register of Deeds upon the request of Alfredo. There was no court order for the cancellation of the *lis pendens*. Neither did Elvira, the party who caused the registration of the *lis pendens*, file a verified petition for its cancellation.

Besides, had IDRI been more prudent before buying the property, it would have discovered that Alfredo's donation of

---

[19] SEC. 77. Cancellation of *lis pendens*. – Before final judgment, a notice of *lis pendens* may be cancelled upon order of the court after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be registered. It may also be cancelled by the Register of Deeds upon verified petition of the party who caused the registration thereof.

the property to Winifred was without the consent of Elvira. Under Article 125[20] of the Family Code, a conjugal property cannot be donated by one spouse without the consent of the other spouse. Clearly, IDRI was not a buyer in good faith.

Nevertheless, we find it proper to reinstate the order of the Malabon RTC for the reimbursement of the ₱18 million paid by IDRI for the property, which was inadvertently omitted in the dispositive portion of the Court of Appeals' decision.

WHEREFORE, we *DENY* the petitions. We *AFFIRM* the 7 July 2005 Decision of the Court of Appeals in CA-G.R. CV No. 74447 with the following *MODIFICATIONS:*

(1) We *DELETE* the portions regarding the forfeiture of Alfredo Gozon's one-half undivided share in favor of Winifred Gozon and the grant of option to Winifred Gozon whether or not to dispose of her undivided share in the property; and

(2) We *ORDER* Alfredo Gozon and Winifred Gozon to pay Inter-Dimensional Realty, Inc. jointly and severally the Eighteen Million Pesos (₱18,000,000) which was the amount paid by Inter-Dimensional Realty, Inc. for the property, with legal interest computed from the finality of this Decision.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

---

[20] Art. 125. Neither spouse may donate any conjugal partnership property without the consent of the other. However, either spouse may, without the consent of the other, make moderate donations from the conjugal partnership property for charity or on occasions of family rejoicing or family distress.

SECOND DIVISION

[G.R. No. 169975. March 18, 2010]

PAN PACIFIC SERVICE CONTRACTORS, INC. and RICARDO F. DEL ROSARIO, *petitioners, vs.* **EQUITABLE PCI BANK (formerly THE PHILIPPINE COMMERCIAL INTERNATIONAL BANK),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; BEST EVIDENCE RULE; EXPLAINED.— It is settled that the agreement or the contract between the parties is the formal expression of the parties' rights, duties, and obligations. It is the best evidence of the intention of the parties. Thus, when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; INTERPRETATION OF CONTRACTS; APPLICATION IN CASE AT BAR. — xxx [T]he CA went beyond the intent of the parties by requiring respondent to give its consent to the imposition of interest before petitioners can hold respondent liable for interest at the current bank lending rate. This is erroneous. A review of Section 2.6 of the Agreement and Section 60.10 of the General Conditions shows that the consent of the respondent is not needed for the imposition of interest at the current bank lending rate, which occurs upon any delay in payment. When the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulations governs. In these cases, courts have no authority to alter a contract by construction or to make a new contract for the parties. The Court's duty is confined to the interpretation of the contract which the parties have made for themselves without regard to its wisdom or folly as the court cannot supply material stipulations or read into the contract words which it does not contain. It is only when the contract is vague and ambiguous that courts are permitted

to resort to construction of its terms and determine the intention of the parties. The escalation clause must be read in conjunction with Section 2.5 of the Agreement and Section 60.10 of the General Conditions which pertain to the time of payment. Once the parties agree on the price adjustment after due consultation in compliance with the provisions of the escalation clause, the agreement is in effect an amendment to the original contract, and gives rise to the liability of respondent to pay the adjusted costs. Under Section 60.10 of the General Conditions, the respondent shall pay such liability to the petitioner within 28 days from issuance of the interim certificate. Upon respondent's failure to pay within the time provided (28 days), then it shall be liable to pay the stipulated interest. This is the logical interpretation of the agreement of the parties on the imposition of interest. To provide a contrary interpretation, as one requiring a separate consent for the imposition of the stipulated interest, would render the intentions of the parties nugatory.

3. ID.; SPECIAL CONTRACTS; LOAN; TWO CONDITIONS REQUIRED FOR THE PAYMENT OF INTEREST; CONSENT OF THE OTHER PARTY, NOT NECESSARY. — Article 1956 of the Civil Code, which refers to monetary interest, specifically mandates that no interest shall be due unless it has been expressly stipulated in writing. Therefore, payment of monetary interest is allowed only if: (1) there was an express stipulation for the payment of interest; and (2) the agreement for the payment of interest was reduced in writing. The concurrence of the two conditions is required for the payment of monetary interest. We agree with petitioners' interpretation that in case of default, the consent of the respondent is not needed in order to impose interest at the current bank lending rate.

4. ID.; DAMAGES; PENALTY INTEREST; APPLICABLE INTEREST RATE IN CASE AT BAR. — Under Article 2209 of the Civil Code, the appropriate measure for damages in case of delay in discharging an obligation consisting of the payment of a sum of money is the payment of penalty interest at the rate agreed upon in the contract of the parties. In the absence of a stipulation of a particular rate of penalty interest, payment of additional interest at a rate equal to the regular monetary interest becomes due and payable. Finally, if no regular interest

had been agreed upon by the contracting parties, then the damages payable will consist of payment of legal interest which is 6%, or in the case of loans or forbearances of money, 12% per annum. It is only when the parties to a contract have failed to fix the rate of interest or when such amount is unwarranted that the Court will apply the 12% interest per annum on a loan or forbearance of money. The written agreement entered into between petitioners and respondent provides for an interest at the current bank lending rate in case of delay in payment and the promissory note charged an interest of 18%. To prove petitioners' entitlement to the 18% bank lending rate of interest, petitioners presented the promissory note prepared by respondent bank itself. This promissory note, although declared void by the lower courts because it did not express the real intention of the parties, is substantial proof that the bank lending rate at the time of default was 18% per annum. Absent any evidence of fraud, undue influence or any vice of consent exercised by petitioners against the respondent, the interest rate agreed upon is binding on them.

APPEARANCES OF COUNSEL

Lameyra Law Office for petitioners.
Balane Tamase Alampay Law Office for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Pan Pacific Service Contractors, Inc. and Ricardo F. Del Rosario (petitioners) filed this Petition for Review[1] assailing the Court of Appeals' (CA) Decision[2] dated 30 June 2005 in CA-G.R. CV No. 63966 as well as the Resolution[3] dated 5

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

[2] Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Ruben T. Reyes, and Fernanda Lampas Peralta, concurring.

[3] Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Ruben T. Reyes, and Fernanda Lampas Peralta, concurring.

October 2005 denying the Motion for Reconsideration. In the assailed decision, the CA modified the 12 April 1999 Decision[4] of the Regional Trial Court of Makati City, Branch 59 (RTC) by ordering Equitable PCI Bank[5] (respondent) to pay petitioners ₱1,516,015.07 with interest at the legal rate of 12% per annum starting 6 May 1994 until the amount is fully paid.

The Facts

Pan Pacific Service Contractors, Inc. (Pan Pacific) is engaged in contracting mechanical works on airconditioning system. On 24 November 1989, Pan Pacific, through its President, Ricardo F. Del Rosario (Del Rosario), entered into a contract of mechanical works (Contract) with respondent for ₱20,688,800. Pan Pacific and respondent also agreed on nine change orders for ₱2,622,610.30. Thus, the total consideration for the whole project was ₱23,311,410.30.[6] The Contract stipulated, among others, that Pan Pacific shall be entitled to a price adjustment in case of increase in labor costs and prices of materials under paragraphs 70.1[7] and 70.2[8] of the "General

---

[4] Penned by RTC Judge Lucia Violago Isnani.

[5] Formerly The Philippine Commercial International Bank and now Banco De Oro Universal Bank.

[6] *Rollo*, p. 23.

[7] Changes in Cost and Legislation

70.1 Increase or Decrease of Cost

There shall be added to or deducted from the Contract Price such sums in respect of rise or fall in the cost of labour and/or materials or any other matters affecting the cost of the execution of the Works as may be determined.

[8] 70.2 Subsequent Legislation

If, after the date 28 days prior to the latest date of submission of tenders for the Contract there occur in the country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or by-law which causes additional or reduced cost to the contractor, other than under Sub-Clause 70.1, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Owner and Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Owner.

Conditions for the Construction of PCIB Tower II Extension" (the escalation clause).[9]

Pursuant to the contract, Pan Pacific commenced the mechanical works in the project site, the PCIB Tower II extension building in Makati City. The project was completed in June 1992. Respondent accepted the project on 9 July 1992.[10]

In 1990, labor costs and prices of materials escalated. On 5 April 1991, in accordance with the escalation clause, Pan Pacific claimed a price adjustment of ₱5,165,945.52. Respondent's appointed project engineer, TCGI Engineers, asked for a reduction in the price adjustment. To show goodwill, Pan Pacific reduced the price adjustment to ₱4,858,548.67.[11]

On 28 April 1992, TCGI Engineers recommended to respondent that the price adjustment should be pegged at ₱3,730,957.07. TCGI Engineers based their evaluation of the price adjustment on the following factors:

1. Labor Indices of the Department of Labor and Employment.
2. Price Index of the National Statistics Office.
3. PD 1594 and its Implementing Rules and Regulations as amended, 15 March 1991.
4. Shipping Documents submitted by PPSCI.
5. Sub-clause 70.1 of the General Conditions of the Contract Documents.[12]

Pan Pacific contended that with this recommendation, respondent was already estopped from disclaiming liability of at least ₱3,730,957.07 in accordance with the escalation clause.[13]

Due to the extraordinary increases in the costs of labor and materials, Pan Pacific's operational capital was becoming inadequate for the project. However, respondent withheld the

---

[9] *Rollo*, p. 20.

[10] *Id.* at 21.

[11] *Id.*

[12] Records, Vol. 1, p. 340.

[13] *Rollo*, p. 21.

payment of the price adjustment under the escalation clause despite Pan Pacific's repeated demands.[14] Instead, respondent offered Pan Pacific a loan of ₱1.8 million. Against its will and on the strength of respondent's promise that the price adjustment would be released soon, Pan Pacific, through Del Rosario, was constrained to execute a promissory note in the amount of ₱1.8 million as a requirement for the loan. Pan Pacific also posted a surety bond. The ₱1.8 million was released directly to laborers and suppliers and not a single centavo was given to Pan Pacific.[15]

Pan Pacific made several demands for payment on the price adjustment but respondent merely kept on promising to release the same. Meanwhile, the ₱1.8 million loan matured and respondent demanded payment plus interest and penalty. Pan Pacific refused to pay the loan. Pan Pacific insisted that it would not have incurred the loan if respondent released the price adjustment on time. Pan Pacific alleged that the promissory note did not express the true agreement of the parties. Pan Pacific maintained that the ₱1.8 million was to be considered as an advance payment on the price adjustment. Therefore, there was really no consideration for the promissory note; hence, it is null and void from the beginning.[16]

Respondent stood firm that it would not release any amount of the price adjustment to Pan Pacific but it would offset the price adjustment with Pan Pacific's outstanding balance of ₱3,226,186.01, representing the loan, interests, penalties and collection charges.[17]

Pan Pacific refused the offsetting but agreed to receive the reduced amount of ₱3,730,957.07 as recommended by the TCGI Engineers for the purpose of extrajudicial settlement, less ₱1.8 million and ₱414,942 as advance payments.[18]

---

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.* at 23.

[18] *Id.* at 22.

On 6 May 1994, petitioners filed a complaint for declaration of nullity/annulment of the promissory note, sum of money, and damages against the respondent with the RTC of Makati City, Branch 59. On 12 April 1999, the RTC rendered its decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendant as follows:
>
> 1. Declaring the promissory note (Exhibit "B") null and void;
> 2. Ordering the defendant to pay the plaintiffs the following amounts:
>
> a. ₱1,389,111.10 representing unpaid balance of the adjustment price, with interest thereon at the legal rate of twelve (12%) percent per annum starting May 6, 1994, the date when the complaint was filed, until the amount is fully paid;
>
> b. ₱100,000.00 representing moral damages;
>
> c. ₱50,000.00 representing exemplary damages; and
>
> d. ₱50,000.00 as and for attorney's fees.
>
> 3. Dismissing defendant's counterclaim, for lack of merit; and
> 4. With costs against the defendant.
>
> SO ORDERED.[19]

On 23 May 1999, petitioners partially appealed the RTC Decision to the CA. On 26 May 1999, respondent appealed the entire RTC Decision for being contrary to law and evidence. In sum, the appeals of the parties with the CA are as follows:

1. With respect to the petitioners, whether the RTC erred in deducting the amount of ₱126,903.97 from the balance of the adjusted price and in awarding only 12% annual interest on the amount due, instead of the bank loan rate of 18% compounded annually beginning September 1992.
2. With respect to respondent, whether the RTC erred in declaring the promissory note void and in awarding moral

[19] *Id.* at 52.

and exemplary damages and attorney's fees in favor of petitioners and in dismissing its counterclaim.

In its decision dated 30 June 2005, the CA modified the RTC decision, with respect to the principal amount due to petitioners. The CA removed the deduction of ₱126,903.97 because it represented the final payment on the basic contract price. Hence, the CA ordered respondent to pay ₱1,516,015.07 to petitioners, with interest at the legal rate of 12% per annum starting 6 May 1994.[20]

On 26 July 2005, petitioners filed a Motion for Partial Reconsideration seeking a reconsideration of the CA's Decision imposing the legal rate of 12%. Petitioners claimed that the interest rate applicable should be the 18% bank lending rate. Respondent likewise filed a Motion for Reconsideration of the CA's decision. In a Resolution dated 5 October 2005, the CA denied both motions.

Aggrieved by the CA's Decision, petitioners elevated the case before this Court.

The Issue

Petitioners submit this sole issue for our consideration: Whether the CA, in awarding the unpaid balance of the price adjustment, erred in fixing the interest rate at 12% instead of the 18% bank lending rate.

Ruling of the Court

We grant the petition.

This Court notes that respondent did not appeal the decision of the CA. Hence, there is no longer any issue as to the principal amount of the unpaid balance on the price adjustment, which the CA correctly computed at ₱1,516,015.07. The only remaining issue is the interest rate applicable for respondent's delay in the payment of the balance of the price adjustment.

---

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

The CA denied petitioners' claim for the application of the bank lending rate of 18% compounded annually reasoning, to wit:

> Anent the 18% interest rate compounded annually, while it is true that the contract provides for an interest at the current bank lending rate in case of delay in payment by the Owner, and the promissory note charged an interest of 18%, the said proviso does not authorize plaintiffs to unilaterally raise the interest rate without the other party's consent. Unlike their request for price adjustment on the basic contract price, plaintiffs never informed nor sought the approval of defendant for the imposition of 18% interest on the adjusted price. To unilaterally increase the interest rate of the adjusted price would be violative of the principle of mutuality of contracts. Thus, the Court maintains the legal rate of twelve percent per annum starting from the date of judicial demand. Although the contract provides for the period when the recommendation of the TCGI Engineers as to the price adjustment would be binding on the parties, it was established, however, that part of the adjusted price demanded by plaintiffs was already disbursed as early as 28 February 1992 by defendant bank to their suppliers and laborers for their account.[21]

In this appeal, petitioners allege that the contract between the parties consists of two parts, the Agreement[22] and the General Conditions,[23] both of which provide for interest at the bank lending rate on any unpaid amount due under the contract. Petitioners further claim that there is nothing in the contract which requires the consent of the respondent to be given in order that petitioners can charge the bank lending rate.[24] Specifically, petitioners invoke Section 2.5 of the Agreement and Section 60.10 of the General Conditions as follows:

---

[21] *Id.* at 33.

[22] Records, Vol. 1, pp. 41-56. Agreement for the Construction of PCIB Tower II Extension (Mechanical Works).

[23] *Id.* at 57-114. General Conditions for the Construction of PCIB Tower II Extension.

[24] *Rollo*, p. 10.

Agreement

2.5 **If any payment is delayed, the CONTRACTOR may charge interest thereon at the current bank lending rates**, without prejudice to OWNER'S recourse to any other remedy available under existing law.[25]

General Conditions

60.10 Time for payment

The amount due to the Contractor under any interim certificate issued by the Engineer pursuant to this Clause, or to any term of the Contract, shall, subject to clause 47, be paid by the Owner to the Contractor within 28 days after such interim certificate has been delivered to the Owner, or, in the case of the Final Certificate referred to in Sub-Clause 60.8, within 56 days, after such Final Certificate has been delivered to the Owner. In the event of the failure of the Owner to make payment within the times stated, the Owner shall pay to the Contractor interest at the rate based on banking loan rates prevailing at the time of the signing of the contract upon all sums unpaid from the date by which the same should have been paid. The provisions of this Sub-Clause are without prejudice to the Contractor's entitlement under Clause 69.[26] (Emphasis supplied)

Petitioners thus submit that it is automatically entitled to the bank lending rate of interest from the time an amount is determined to be due thereto, which respondent should have paid. Therefore, as petitioners have already proven their entitlement to the price adjustment, it necessarily follows that the bank lending interest rate of 18% shall be applied.[27]

On the other hand, respondent insists that under the provisions of 70.1 and 70.2 of the General Conditions, it is stipulated that any additional cost shall be determined by the Engineer and shall be added to the contract price after due consultation with the Owner, herein respondent. Hence, there being no prior consultation with the respondent regarding the additional cost to the basic contract price, it naturally follows that respondent

---

[25] Records, Vol. 1, p. 47.

[26] *Id.* at 101.

[27] *Rollo,* p. 11.

was never consulted or informed of the imposition of 18% interest rate compounded annually on the adjusted price.[28]

A perusal of the assailed decision shows that the CA made a distinction between the consent given by the owner of the project for the liability for the price adjustments, and the consent for the imposition of the bank lending rate. Thus, while the CA held that petitioners consulted respondent for price adjustment on the basic contract price, petitioners, nonetheless, are not entitled to the imposition of 18% interest on the adjusted price, as petitioners never informed or sought the approval of respondent for such imposition.[29]

We disagree.

It is settled that the agreement or the contract between the parties is the formal expression of the parties' rights, duties, and obligations. It is the best evidence of the intention of the parties. Thus, when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.[30]

The escalation clause of the contract provides:

CHANGES IN COST AND LEGISLATION

70.1 Increase or Decrease of Cost

There shall be added to or deducted from the Contract Price such sums in respect of rise or fall in the cost of labor and/or materials or any other matters affecting the cost of the execution of the Works as may be determined.

70.2 Subsequent Legislation

If, after the date 28 days prior to the latest date of submission of tenders for the Contract there occur in the country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or bye-law (sic) of

---

[28] *Id.* at 66-67.

[29] *Id.* at 33.

[30] Section 9, Rule 130, Rules of Court.

any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or bye-law (sic) which causes additional or reduced cost to the contractor, other than under Sub-Clause 70.1, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Owner and Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Owner.[31]

In this case, the CA already settled that petitioners consulted respondent on the imposition of the price adjustment, and held respondent liable for the balance of ₱1,516,015.07. Respondent did not appeal from the decision of the CA; hence, respondent is estopped from contesting such fact.

However, the CA went beyond the intent of the parties by requiring respondent to give its consent to the imposition of interest before petitioners can hold respondent liable for interest at the current bank lending rate. This is erroneous. A review of Section 2.6 of the Agreement and Section 60.10 of the General Conditions shows that the consent of the respondent is not needed for the imposition of interest at the current bank lending rate, which occurs upon any delay in payment.

When the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulations governs. In these cases, courts have no authority to alter a contract by construction or to make a new contract for the parties. The Court's duty is confined to the interpretation of the contract which the parties have made for themselves without regard to its wisdom or folly as the court cannot supply material stipulations or read into the contract words which it does not contain. It is only when the contract is vague and ambiguous that courts are permitted to resort to construction of its terms and determine the intention of the parties.[32]

The escalation clause must be read in conjunction with Section 2.5 of the Agreement and Section 60.10 of the General

---

[31] Records, Vol. 1, p. 113.

[32] *Spouses Barrera v. Spouses Lorenzo*, 438 Phil. 42, 49-50 (2002).

Conditions which pertain to the time of payment. Once the parties agree on the price adjustment after due consultation in compliance with the provisions of the escalation clause, the agreement is in effect an amendment to the original contract, and gives rise to the liability of respondent to pay the adjusted costs. Under Section 60.10 of the General Conditions, the respondent shall pay such liability to the petitioner within 28 days from issuance of the interim certificate. Upon respondent's failure to pay within the time provided (28 days), then it shall be liable to pay the stipulated interest.

This is the logical interpretation of the agreement of the parties on the imposition of interest. To provide a contrary interpretation, as one requiring a separate consent for the imposition of the stipulated interest, would render the intentions of the parties nugatory.

Article 1956 of the Civil Code, which refers to monetary interest, specifically mandates that no interest shall be due unless it has been expressly stipulated in writing. Therefore, payment of monetary interest is allowed only if:

(1) there was an express stipulation for the payment of interest; and

(2) the agreement for the payment of interest was reduced in writing. The concurrence of the two conditions is required for the payment of monetary interest.[33]

We agree with petitioners' interpretation that in case of default, the consent of the respondent is not needed in order to impose interest at the current bank lending rate.

Applicable Interest Rate

Under Article 2209 of the Civil Code, the appropriate measure for damages in case of delay in discharging an obligation consisting of the payment of a sum of money is the payment of penalty interest at the rate agreed upon in the contract of the

---

[33] *Siga-an v. Villanueva*, G.R. No. 173227, 20 January 2009, 576 SCRA 696, 704-705.

parties. In the absence of a stipulation of a particular rate of penalty interest, payment of additional interest at a rate equal to the regular monetary interest becomes due and payable. Finally, if no regular interest had been agreed upon by the contracting parties, then the damages payable will consist of payment of legal interest which is 6%, or in the case of loans or forbearances of money, 12% per annum.[34] It is only when the parties to a contract have failed to fix the rate of interest or when such amount is unwarranted that the Court will apply the 12% interest per annum on a loan or forbearance of money.[35]

The written agreement entered into between petitioners and respondent provides for an interest at the current bank lending rate in case of delay in payment and the promissory note charged an interest of 18%.

To prove petitioners' entitlement to the 18% bank lending rate of interest, petitioners presented the promissory note[36] prepared by respondent bank itself. This promissory note, although declared void by the lower courts because it did not express the real intention of the parties, is substantial proof that the bank lending rate at the time of default was 18% per annum. Absent any evidence of fraud, undue influence or any vice of consent exercised by petitioners against the respondent, the interest rate agreed upon is binding on them.[37]

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 63966. We *ORDER* respondent to pay petitioners ₱1,516,015.07 with interest at the bank lending rate of 18% per annum starting 6 May 1994 until the amount is fully paid.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

---

[34] *Castelo v. Court of Appeals*, 314 Phil. 1, 20 (1995).

[35] *Gobonseng v. Unibancard Corporation*, G.R. No. 160026, 10 December 2007, 539 SCRA 564, 569-570.

[36] Records, Vol. 1, pp. 329-332.

[37] *Spouses Pascual v. Ramos*, 433 Phil. 449, 461 (2002).

THIRD DIVISION

[G.R. No. 178989. March 18, 2010]

EAGLE RIDGE GOLF & COUNTRY CLUB, *petitioner, vs.* **COURT OF APPEALS and EAGLE RIDGE EMPLOYEES UNION (EREU),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* CERTIFICATION AGAINST NON-FORUM SHOPPING; TO BE SIGNED UNDER OATH BY THE PETITIONER, NOT THE COUNSEL; NOT COMPLIED WITH IN CASE AT BAR. — *Certiorari* is an extraordinary, prerogative remedy and is never issued as a matter of right. Accordingly, the party who seeks to avail of it must strictly observe the rules laid down by law. Petitions for *certiorari* under Rule 65 of the Rules of Court require a "sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46." Sec. 3, paragraphs 4 and 6 of Rule 46 pertinently provides: SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements*. — x x x The **petitioner** shall also submit together with the petition a **sworn certification that he has not theretofore commenced any action involving the same issues** in the Supreme Court, the Court of Appeals x x x, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same x x x. x x x The **failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition**. Evidently, the Rules requires the petitioner, not his counsel, to sign under oath the requisite certification against non-forum shopping. Such certification is a peculiar personal representation on the part of the principal party, an assurance to the court that there are no other pending cases involving basically the same parties, issues, and cause of action. In the instant case, the sworn verification and certification of non-forum shopping in the petition for *certiorari* of Eagle Ridge filed before the CA carried the signature of its counsel without the requisite authority.

2. ID.; ID.; ID.; ID.; ID.; SUBMISSION OF BOARD SECRETARY'S CERTIFICATE AUTHORIZING THE COUNSEL MAY BE CONSIDERED A SUBSTANTIAL COMPLIANCE WITH THE RULES IF PASSED WITHIN THE REGLEMENTARY PERIOD; NOT OBTAINING IN CASE AT BAR. — Eagle Ridge tried to address its *faux pas* by submitting its board secretary's Certificate dated May 15, 2007, attesting to the issuance on May 10, 2007 of Board Resolution No. ERGCCI 07/III-01 that authorized its counsel of record, Atty. Luna C. Piezas, to represent it before the appellate court. The CA, however, rejected Eagle Ridge's virtual plea for the relaxation of the rules on the signing of the verification and certification against forum shopping, observing that the board resolution adverted to was approved after Atty. Piezas has signed and filed for Eagle Ridge the petition for *certiorari.* The appellate court's assailed action is in no way tainted with grave abuse of discretion, as Eagle Ridge would have this Court believed. Indeed, a certification of non-forum shopping signed by counsel without the proper authorization is defective and constitutes a valid cause for dismissal of the petition. The submission of the board secretary's certificate through a motion for reconsideration of the CA's decision dismissing the petition for *certiorari* may be considered a substantial compliance with the Rules of Court. Yet, this rule presupposes that the authorizing board resolution, the approval of which is certified to by the secretary's certification, was passed within the reglementary period for filing the petition. This particular situation does not, however, obtain under the premises. The records yield the following material dates and incidents: Eagle Ridge received the May 7, 2007 resolution of the BLR Director on March 9, 2007, thus giving it 60 days or up to May 8, 2007 to file a petition for *certiorari*, as it in fact filed its petition on April 18, 2007 before the CA. The authorization for its counsel, however, was only issued in a meeting of its board on May 10, 2007 or a couple of days beyond the 60-day reglementary period referred to in filing a *certiorari* action. Thus, there was no substantial compliance with the Rules.

3. ID.; ID.; ID.; ID.; ID.; ID.; ID.; RELAXATION OF PROCEDURAL RULES, NOT PROPER IN CASE AT BAR; EXPLAINED. — As with most rules of procedure, xxx,

exceptions are invariably recognized and the relaxation of procedural rules on review has been effected to obviate jeopardizing substantial justice. This liberality stresses the importance of review in our judicial grievance structure to accord every party litigant the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities. But concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules. To us, Eagle Ridge has not satisfactorily explained its failure to comply. It may be true, as Eagle Ridge urges, that its counsel's authority to represent the corporation was never questioned before the DOLE regional office and agency. But EREU's misstep could hardly lend Eagle Ridge comfort. And obviously, Eagle Ridge and its counsel erred in equating the latter's representation as legal counsel with the authority to sign the verification and the certificate of non-forum shopping in the former's behalf. We note that the authority to represent a client before a court or quasi-judicial agency does not require an authorizing board resolution, as the counsel-client relationship is presumed by the counsel's representation by the filing of a pleading on behalf of the client. In filing a pleading, the counsel affixes his signature on it, but it is the client who must sign the verification and the certification against forum shopping, save when a board resolution authorizes the former to sign so.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR ORGANIZATION; CANCELLATION OF UNION REGISTRATION; MISREPRESENTATION, FALSE STATEMENTS OR FRAUD, ABSENT IN CASE AT BAR. — Before their amendment by Republic Act No. 9481 on June 15, 2007, the then governing Art. 234 (on the requirements of registration of a labor union) and Art. 239 (on the grounds for cancellation of union registration) of the Labor Code respectively provided as follows: ART. 234. *REQUIREMENTS OF REGISTRATION*. — Any **applicant labor organization**, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements: (a) Fifty pesos (₱50.00) registration fee; (b)

The names of its officers, their addresses, the principal address of the labor organization, the **minutes of the organizational meetings and the list of workers who participated in such meetings**; (c) The **names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate**; x x x (e) Four copies (4) of the constitution and by-laws of the applicant union, **minutes of its adoption or ratification** and the **list of the members who participated in it**. x x x ART. 239. *GROUNDS FOR CANCELLATION OF UNION REGISTRATION*. — The following shall constitute grounds for cancellation of union registration: (a) **Misrepresentation, false statements or fraud in connection with the adoption or ratification of the constitution and by-laws** or amendments thereto, the **minutes of ratification**, **and the list of members who took part in the ratification**; x x x (c) **Misrepresentation, false statements or fraud in connection with the election of officers**, **minutes of the election of officers**, the **list of voters**, or failure to submit these documents together with the list of the newly elected/appointed officers and their postal addresses within thirty (30) days from election. A scrutiny of the records fails to show any misrepresentation, false statement, or fraud committed by EREU to merit cancellation of its registration.

5. ID.; ID.; IMPLEMENTING RULES; AFFIRMATION OF TESTIMONIAL EVIDENCE; AFFIDAVITS OF RECANTATION, INADMISSIBLE; EXPLAINED. — xxx In the more meaty issue of the affidavits of retraction executed by six union members, we hold that the probative value of these affidavits cannot overcome those of the supporting affidavits of 12 union members and their counsel as to the proceedings and the conduct of the organizational meeting on December 6, 2005. The DOLE Regional Director and the BLR OIC Director obviously erred in giving credence to the affidavits of retraction, but not according the same treatment to the supporting affidavits. The six affiants of the affidavits of retraction were not presented in a hearing before the Hearing Officer (DOLE Regional Director), as required under the Rules Implementing Book V of the Labor Code covering Labor Relations. Said Rules is embodied in Department Order No. (DO) 40-03 which was issued on February 17, 2003 and took effect on March 15, 2003 to replace DO 9 of 1997. Sec. 11, Rule XI of DO 40-03

specifically requires: Section 11. **Affirmation of testimonial evidence**. – **Any affidavit submitted** by a party to prove his/her claims or defenses **shall be re-affirmed by the presentation of the affiant before the** Med-Arbiter or **Hearing Officer**, as the case may be. **Any affidavit submitted without the re-affirmation of the affiant during a scheduled hearing shall not be admitted in evidence**, except when the party against whom the affidavit is being offered admits all allegations therein and waives the examination of the affiant. It is settled that affidavits partake the nature of hearsay evidence, since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant's statement, which may thus be either omitted or misunderstood by the one writing them. The above rule affirms the general requirement in adversarial proceedings for the examination of the affiant by the party against whom the affidavit is offered. In the instant case, it is required for affiants to re-affirm the contents of their affidavits during the hearing of the instant case for them to be examined by the opposing party, *i.e.*, the Union. For their non-presentation and consonant to the above-quoted rule, the six affidavits of retraction are inadmissible as evidence against the Union in the instant case. Moreover, the affidavit and joint-affidavits presented by the Union before the DOLE Regional Director were duly re-affirmed in the hearing of March 20, 2006 by the affiants. Thus, a reversible error was committed by the DOLE Regional Director and the BLR OIC Director in giving credence to the inadmissible affidavits of retraction presented by Eagle Ridge while not giving credence to the duly re-affirmed affidavits presented by the Union. Evidently, the allegations in the six affidavits of retraction have no probative value and at the very least cannot outweigh the rebutting attestations of the duly re-affirmed affidavits presented by the Union.

6. ID.; ID.; LABOR ORGANIZATION; CANCELLATION OF UNION REGISTRATION; GROUNDS INVOKED TO CANCEL SHOULD NOT BE USED TO BAR THE CERTIFICATION ELECTION; CERTIFICATION ELECTION, ESSENCE. — xxx [W]here the company seeks the cancellation of a union's registration during the pendency of a petition for certification election, the same grounds invoked to cancel should not be used to bar the certification election. A certification election is the most expeditious and fairest

mode of ascertaining the will of a collective bargaining unit as to its choice of its exclusive representative. It is the fairest and most effective way of determining which labor organization can truly represent the working force. It is a fundamental postulate that the will of the majority, if given expression in an honest election with freedom on the part of the voters to make their choice, is controlling.

7. ID.; ID.; ID.; UNION MEMBERSHIP; EFFECT OF WITHDRAWAL THEREFROM RIGHT BEFORE OR AFTER FILING OF A PETITION FOR CERTIFICATION OF ELECTION. — The Court ends this disposition by reproducing the following apt excerpts from its holding in *S.S. Ventures International, Inc. v. S.S. Ventures Labor Union (SSVLU)* on the effect of the withdrawal from union membership right before or after the filing of a petition for certification election: We are not persuaded. As aptly noted by both the BLR and CA, these mostly undated written statements submitted by Ventures on March 20, 2001, or seven months after it filed its petition for cancellation of registration, partake of the nature of withdrawal of union membership executed after the Union's filing of a petition for certification election on March 21, 2000. **We have in precedent cases said that the employees' withdrawal from a labor union made before the filing of the petition for certification election is presumed voluntary, while withdrawal after the filing of such petition is considered to be involuntary and does not affect the same**. Now then, if a **withdrawal from union membership done after a petition for certification election has been filed does not vitiate such petition, is it not but logical to assume that such withdrawal cannot work to nullify the registration of the union**? Upon this light, the Court is inclined to agree with the CA that the BLR did not abuse its discretion nor gravely err when it concluded that the affidavits of retraction of the 82 members had no evidentiary weight.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.

Domingo T. Anoñuevo for private respondent.

D E C I S I O N

VELASCO, JR., *J.*:

In this petition for *certiorari* under Rule 65, Eagle Ridge Golf & Country Club (Eagle Ridge) assails and seeks to nullify the Resolutions of the Court of Appeals (CA) dated April 27, 2007[1] and June 6, 2007,[2] issued in CA-G.R. SP No. 98624, denying a similar recourse petitioner earlier interposed to set aside the December 21, 2006 Decision[3] of the Bureau of Labor Relations (BLR), as reiterated in a Resolution[4] of March 7, 2007.

Petitioner Eagle Ridge is a corporation engaged in the business of maintaining golf courses. It had, at the end of CY 2005, around 112 rank-and-file employees. The instant case is an off-shot of the desire of a number of these employees to organize themselves as a legitimate labor union and their employer's opposition to their aspiration.

The Facts

On December 6, 2005, at least 20% of Eagle Ridge's rank-and-file employees—the percentage threshold required under Article 234(c) of the Labor Code for union registration—had a meeting where they organized themselves into an independent labor union, named "Eagle Ridge Employees Union" (EREU or Union),[5] elected a set of officers,[6] and ratified[7] their constitution and by-laws.[8]

---

[1] *Rollo*, pp. 282-283. Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Mariano C. del Castillo (now a member of the Court) and Arcangelita M. Romilla-Lontok.

[2] *Id.* at 297-300.

[3] *Id.* at 232-235. Penned by Director Rebecca C. Chato.

[4] *Id.* at 242-244.

[5] *Id.* at 54-55.

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

[7] *Id.* at 60-61.

[8] *Id.* at 63-72.

On December 19, 2005, EREU formally applied for registration[9] and filed BLR Reg. Form No. I-LO, s. 1998[10] before the Department of Labor and Employment (DOLE) Regional Office IV (RO IV). In time, DOLE RO IV granted the application and issued EREU Registration Certificate (Reg. Cert.) No. RO400-200512-UR-003.

The EREU then filed a petition for certification election in Eagle Ridge Golf & Country Club, docketed as Case No. RO400-0601-RU-002. Eagle Ridge opposed this petition,[11] followed by its filing of a petition for the cancellation[12] of Reg. Cert. No. RO400-200512-UR-003. Docketed as RO400-0602-AU-003, Eagle Ridge's petition ascribed misrepresentation, false statement, or fraud to EREU in connection with the adoption of its constitution and by-laws, the numerical composition of the Union, and the election of its officers.

Going into specifics, Eagle Ridge alleged that the EREU declared in its application for registration having 30 members, when the minutes of its December 6, 2005 organizational meeting showed it only had 26 members. The misrepresentation was exacerbated by the discrepancy between the certification issued by the Union secretary and president that 25 members actually ratified the constitution and by-laws on December 6, 2005 and the fact that 26 members affixed their signatures on the documents, making one signature a forgery.

Finally, Eagle Ridge contended that five employees who attended the organizational meeting had manifested the desire to withdraw from the union. The five executed individual affidavits or *Sinumpaang Salaysay*[13] on February 15, 2006,

---

[9] *Id.* at 50-53, dated December 13, 2005.

[10] *Id.* at 79-80, dated December 14, 2005.

[11] Through a position paper; *id.* at 98-104, dated February 10, 2006.

[12] *Id.* at 43-49, dated February 23, 2006, entitled "In Re: Petition to Cancel the Registration Certificate of Eagle Ridge Employees Union (EREU); *Eagle Ridge Golf & Country Club, petitioner vs. Eagle Ridge Employees Union, respondent.*"

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

attesting that they arrived late at said meeting which they claimed to be drinking spree; that they did not know that the documents they signed on that occasion pertained to the organization of a union; and that they now wanted to be excluded from the Union. The withdrawal of the five, Eagle Ridge maintained, effectively reduced the union membership to 20 or 21, either of which is below the mandatory minimum 20% membership requirement under Art. 234(c) of the Labor Code. Reckoned from 112 rank-and-file employees of Eagle Ridge, the required number would be 22 or 23 employees.

As a counterpoint, EREU, in its Comment,[14] argued in gist:

1) the petition for cancellation was procedurally deficient as it does not contain a certification against forum shopping and that the same was verified by one not duly authorized by Eagle Ridge's board;

2) the alleged discrepancies are not real for before filing of its application on December 19, 2005, four additional employees joined the union on December 8, 2005, thus raising the union membership to 30 members as of December 19, 2005;

3) the understatement by one member who ratified the constitution and by-laws was a typographical error, which does not make it either grave or malicious warranting the cancellation of the union's registration;

4) the retraction of 5 union members should not be given any credence for the reasons that: (a) the sworn statements of the five retracting union members sans other affirmative evidence presented hardly qualify as clear and credible evidence considering the joint affidavits of the other members attesting to the orderly conduct of the organizational meeting; (b) the retracting members did not deny signing the union documents; (c) following, *Belyca Corporation v. Ferrer-Calleja*[15] and *Oriental Tin Can Labor Union v. Secretary of Labor and Employment*,[16] it can be presumed that "duress, coercion or valuable consideration" was brought to bear on the retracting members; and (d) citing *La Suerte Cigar and Cigarette Factory v.*

---

[14] *Id.* at 86-97, dated March 20, 2006.

[15] No. 77395, November 29, 1988, 168 SCRA 184.

[16] G.R. No. 116779, August 28, 1998, 294 SCRA 640.

Director of Bureau of Labor Relations,[17] *Belyca Corporation* and *Oriental Tin Can Labor Union*, where the Court ruled that "once the required percentage requirement has been reached, the employees' withdrawal from union membership taking place after the filing of the petition for certification election will not affect the petition," it asserted the applicability of said ruling as the petition for certification election was filed on January 10, 2006 or long before February 15, 2006 when the affidavits of retraction were executed by the five union members, thus contending that the retractions do not affect nor be deemed compelling enough to cancel its certificate of registration.

The Union presented the duly accomplished union membership forms[18] dated December 8, 2005 of four additional members. And to rebut the allegations in the affidavits of retraction of the five union members, it presented the *Sama-Samang Sinumpaang Salaysay*[19] dated March 20, 2006 of eight union members; another *Sama-Samang Sinumpaang Salaysay*,[20] also bearing date March 20, 2006, of four other union members; and the Sworn Statement[21] dated March 16, 2006 of the Union's legal counsel, Atty. Domingo T. Añonuevo. These affidavits attested to the orderly and proper proceedings of the organizational meeting on December 6, 2005.

In its Reply,[22] Eagle Ridge reiterated the grounds it raised in its petition for cancellation and asserted further that the four additional members were fraudulently admitted into the Union. As Eagle Ridge claimed, the applications of the four neither complied with the requirements under Section 2, Art. IV of the union's constitution and by-laws nor were they shown to have been duly received, issued receipts for admission fees, processed with recommendation for approval, and approved by the union president.

---

[17] G.R. No. 55674, July 25, 1983, 123 SCRA 679.

[18] *Rollo*, pp. 105-108.

[19] *Id.* at 109-111.

[20] *Id.* at 112-113.

[21] *Id.* at 114-115.

[22] *Id.* at 116-126, dated March 25, 2006.

Moreover, Eagle Ridge presented another *Sinumpaang Salaysay*[23] of retraction dated March 15, 2006 of another union member. The membership of EREU had thus been further reduced to only 19 or 20. This same member was listed in the first *Sama-Samang Sinumpaang Salaysay*[24] presented by the Union but did not sign it.

The Ruling of the DOLE Regional Director

After due proceedings, the DOLE Regional Director, Region IV-A, focusing on the question of misrepresentation, issued on April 28, 2006 an Order[25] finding for Eagle Ridge, its petition to cancel Reg. Cert. No. RO400-200512-UR-003 being granted and EREU being delisted from the roster of legitimate labor organizations.

Aggrieved, the Union appealed to the BLR, the recourse docketed as BLR A-C-30-5-31-06 (Case No. RO400-0602-AU-003).

The Ruling of the BLR

Initially, the BLR, then headed by an Officer-in-Charge (OIC), affirmed[26] the appealed order of the DOLE Regional Director.

Undeterred by successive set backs, EREU interposed a motion for reconsideration, contending that:

1) Contrary to the ruling of the BLR OIC Director, a certificate of non-forum shopping is mandatory requirement, under Department Order No. (DO) 40-03 and the Rules of Court, non-compliance with which is a ground to dismiss a petition for cancellation of a certificate of registration;

2) It was erroneous for both the Regional Director and the BLR OIC Director to give credence to the retraction statements of union members which were not presented for reaffirmation during any of the hearings of the case, contrary to the requirement for the admission of such evidence under Sec. 11, Rule XI of DO 40-03.

---

[23] *Id.* at 138.

[24] *Id.* at 109-111.

[25] *Id.* at 139-148. Penned by Regional Director Atty. Maximo B. Lim.

[26] *Id.* at 206, per Resolution of July 28, 2006.

In a Decision dated December 21, 2006, the BLR, now headed by Director Rebecca C. Chato, set aside the July 28, 2006 order of the BLR OIC Director, disposing as follows:

> WHEREFORE, the motion for reconsideration is hereby GRANTED and our Resolution dated 28 July 2006 is hereby VACATED. Accordingly, the Eagle Ridge Employees Union (EREU) shall remain in the roster of legitimate organizations.

In finding for the Union, the BLR Director eschewed procedural technicalities. Nonetheless, she found as without basis allegations of misrepresentation or fraud as ground for cancellation of EREU's registration.

In turn aggrieved, Eagle Ridge sought but was denied reconsideration per the BLR's Resolution dated March 7, 2007.

Eagle Ridge thereupon went to the CA on a petition for *certiorari*.

The Ruling of the CA

On April 27, 2007, the appellate court, in a terse two-page Resolution,[27] dismissed Eagle Ridge's petition for being deficient, as:

1. the questioned [BLR] Decision dated December 21, 2006 and the Resolution dated March 7, 2007 Resolution [appended to the petition] are mere machine copies; and
2. the verification and certification of non-forum shopping was subscribed to by Luna C. Piezas on her representation as the legal counsel of the petitioner, but sans [the requisite] Secretary's Certificate or Board Resolution authorizing her to execute and sign the same.

The CA later denied, in its second assailed resolution, Eagle Ridge's motion for reconsideration, albeit the latter had submitted a certificate to show that its legal counsel has been authorized, per a board resolution, to represent the corporation.

---

[27] *Id.* at 283.

The Issues

Eagle Ridge is now before us via this petition for *certiorari* on the submissions that:

I.

[THE CA] COMMITTED SERIOUS ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE COMPANY'S PETITION FOR *CERTIORARI* AND DENYING ITS MOTION FOR RECONSIDERATION CONSIDERING THAT THE COMPANY'S PREVIOUS COUNSEL WAS AUTHORIZED TO REPRESENT THE COMPANY IN THE PETITION FOR *CERTIORARI* FILED BEFORE THE [CA];

II.

IN ORDER NOT TO FURTHER PREJUDICE THE COMPANY, IT IS RESPECTFULLY SUBMITTED THAT THIS HONORABLE COURT COULD TAKE COGNIZANCE OF THE MERITS OF THIS CASE AND RESOLVE THAT BASED ON THE EVIDENCE ON RECORD, THERE WAS FRAUD, MISREPRESENTATION AND/OR FALSE STATEMENT WHICH WARRANT THE CANCELLATION OF CERTIFICATE OF REGISTRATION OF EREU.[28]

The Court's Ruling

We dismiss the petition.

Procedural Issue: Lack of Authority

Certiorari is an extraordinary, prerogative remedy and is never issued as a matter of right.[29] Accordingly, the party who seeks to avail of it must strictly observe the rules laid down by law.[30]

---

[28] *Id.* at 24.

[29] *Nisce v. Equitable PCI Bank, Inc.*, G.R. No. 167434, February 19, 2007, 516 SCRA 231, 251; *Cervantes v. Court of Appeals*, G.R. No. 166755, November 18, 2005, 475 SCRA 562.

[30] *University of Immaculate Concepcion v. Secretary of Labor and Employment*, G.R. No. 143557, June 25, 2004, 432 SCRA 601.

Petitions for *certiorari* under Rule 65 of the Rules of Court require a "sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46."[31] Sec. 3, paragraphs 4 and 6 of Rule 46 pertinently provides:

> SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements*. — x x x
>
> x x x x x x x x x
>
> x x x x x x x x x
>
> The **petitioner** shall also submit together with the petition a **sworn certification that he has not theretofore commenced any action involving the same issues** in the Supreme Court, the Court of Appeals x x x, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same x x x.
>
> x x x x x x x x x
>
> The **failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition**. (Emphasis supplied.)

Evidently, the Rules requires the petitioner, not his counsel, to sign under oath the requisite certification against non-forum shopping. Such certification is a peculiar personal representation on the part of the principal party, an assurance to the court that there are no other pending cases involving basically the same parties, issues, and cause of action.[32]

In the instant case, the sworn verification and certification of non-forum shopping in the petition for *certiorari* of Eagle Ridge filed before the CA carried the signature of its counsel without the requisite authority.

Eagle Ridge tried to address its *faux pas* by submitting its board secretary's Certificate[33] dated May 15, 2007, attesting

---

[31] Last sentence of Secs. 1, 2, and 3 of Rule 65.

[32] *United Residents of Dominican Hill, Inc. v. Commission on the Settlement of Land Problems*, G.R. No. 135945, 7 March 2001, 353 SCRA 782.

[33] *Rollo*, p. 288, issued by Eagle Ridge Corporate Secretary Mariza Santos-Tan.

to the issuance on May 10, 2007 of Board Resolution No. ERGCCI 07/III-01 that authorized its counsel of record, Atty. Luna C. Piezas, to represent it before the appellate court.

The CA, however, rejected Eagle Ridge's virtual plea for the relaxation of the rules on the signing of the verification and certification against forum shopping, observing that the board resolution adverted to was approved after Atty. Piezas has signed and filed for Eagle Ridge the petition for *certiorari.*

The appellate court's assailed action is in no way tainted with grave abuse of discretion, as Eagle Ridge would have this Court believed. Indeed, a certification of non-forum shopping signed by counsel without the proper authorization is defective and constitutes a valid cause for dismissal of the petition.[34]

The submission of the board secretary's certificate through a motion for reconsideration of the CA's decision dismissing the petition for *certiorari* may be considered a substantial compliance with the Rules of Court.[35] Yet, this rule presupposes that the authorizing board resolution, the approval of which is certified to by the secretary's certification, was passed within the reglementary period for filing the petition. This particular situation does not, however, obtain under the premises. The records yield the following material dates and incidents: Eagle Ridge received the May 7, 2007 resolution of the BLR Director on March 9, 2007, thus giving it 60 days or up to May 8, 2007 to file a petition for *certiorari,* as it in fact filed its petition on April 18, 2007 before the CA. The authorization for its counsel, however, was only issued in a meeting of its board on May 10, 2007 or a couple of days beyond the 60-day reglementary period referred to in filing a *certiorari* action. Thus, there was no substantial compliance with the Rules.

As with most rules of procedure, however, exceptions are invariably recognized and the relaxation of procedural rules on

---

[34] *Sapitan v. JB Line Bicol Express, Inc.*, G.R. No. 163775, October 19, 2007, 537 SCRA 230, 241.

[35] *Varorient Shipping Co., Inc. v. National Labor Relations Commission*, G.R. No. 164940, November 28, 2007, 539 SCRA 131, 138.

review has been effected to obviate jeopardizing substantial justice.[36] This liberality stresses the importance of review in our judicial grievance structure to accord every party litigant the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities.[37] But concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.[38]

To us, Eagle Ridge has not satisfactorily explained its failure to comply. It may be true, as Eagle Ridge urges, that its counsel's authority to represent the corporation was never questioned before the DOLE regional office and agency. But EREU's misstep could hardly lend Eagle Ridge comfort. And obviously, Eagle Ridge and its counsel erred in equating the latter's representation as legal counsel with the authority to sign the verification and the certificate of non-forum shopping in the former's behalf. We note that the authority to represent a client before a court or quasi-judicial agency does not require an authorizing board resolution, as the counsel-client relationship is presumed by the counsel's representation by the filing of a pleading on behalf of the client. In filing a pleading, the counsel affixes his signature on it, but it is the client who must sign the verification and the certification against forum shopping, save when a board resolution authorizes the former to sign so.

It is entirely a different matter for the counsel to sign the verification and the certificate of non-forum shopping. The attestation or certification in either verification or certification of non-forum shopping requires the act of the principal party.

---

[36] *Far Corporation v. Magdaluyo*, G.R. No. 148739, November 19, 2004, 443 SCRA 218; *Go v. Tong*, G.R. No. 151942, November 27 2003, 416 SCRA 557, 567; *Fajardo v. Cas*, G.R. No. 140356, March 20, 2001, 354 SCRA 736; *Ginete v. Court of Appeals*, G.R. No. 127596, September 24, 1998, 296 SCRA 38.

[37] *Yambao v. Court of Appeals*, G.R. No. 140894, November 27, 2000, 346 SCRA 141, 146.

[38] *Enriquez v. Enriquez*, G.R. No. 139303, August 25, 2005, 468 SCRA 77, 86.

As earlier indicated, Sec. 3 of Rule 46 exacts this requirement; so does the first paragraph of Sec. 5 of Rule 7 pertinently reading:

> SEC. 5. *Certification against forum shopping*. — The **plaintiff or principal party** shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed. (Emphasis added.)

It is, thus, clear that the counsel is not the proper person to sign the certification against forum shopping. If, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized.[39]

In addition, Eagle Ridge maintains that the submitted board resolution, albeit passed after the filing of the petition was filed, should be treated as a ratificatory medium of the counsel's act of signing the sworn certification of non-forum shopping.

We are not inclined to grant the desired liberality owing to Eagle Ridge's failure to sufficiently explain its failure to follow the clear rules.

If for the foregoing considerations alone, the Court could very well dismiss the instant petition. Nevertheless, the Court will explore the merits of the instant case to obviate the inequity that might result from the outright denial of the petition.

Substantive Issue: No Fraud in the Application

Eagle Ridge cites the grounds provided under Art. 239(a) and (c) of the Labor Code for its petition for cancellation of the

---

[39] *Sapitan v. JB Line Bicol Express, Inc.*, *supra* note 34; citing *Fuentebella and Rolling Hills Memorial Park, Inc. v. Castro*, G.R. No. 150865, June 30, 2006, 494 SCRA 183, 190.

EREU's registration. On the other hand, the Union asserts *bona fide* compliance with the registration requirements under Art. 234 of the Code, explaining the seeming discrepancies between the number of employees who participated in the organizational meeting and the total number of union members at the time it filed its registration, as well as the typographical error in its certification which understated by one the number of union members who ratified the union's constitution and by-laws.

Before their amendment by Republic Act No. 9481[40] on June 15, 2007, the then governing Art. 234 (on the requirements of registration of a labor union) and Art. 239 (on the grounds for cancellation of union registration) of the Labor Code respectively provided as follows:

ART. 234. *REQUIREMENTS OF REGISTRATION*. –– Any **applicant labor organization**, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

(a) Fifty pesos (₱50.00) registration fee;

(b) The names of its officers, their addresses, the principal address of the labor organization, the **minutes of the organizational meetings and the list of workers who participated in such meetings**;

(c) The **names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate**;

x x x x x x x x x

(e) Four copies (4) of the constitution and by-laws of the applicant union, **minutes of its adoption or ratification** and the **list of the members who participated in it**.[41]

---

[40] "An Act Strengthening the Workers' Constitutional Right to Self-Organization," took effect on June 15, 2007 after due publication.

[41] As amended by RA 9481, Art. 234 now reads:

ART. 234. *REQUIREMENTS OF REGISTRATION*. — A federation,

x x x x x x x x x

ART. 239. *GROUNDS FOR CANCELLATION OF UNION REGISTRATION*. –– The following shall constitute grounds for cancellation of union registration:

(a) **Misrepresentation, false statements or fraud in connection with the adoption or ratification of the constitution and by-laws** or amendments thereto, the **minutes of ratification**, **and the list of members who took part in the ratification**;

x x x x x x x x x

(c) **Misrepresentation, false statements or fraud in connection with the election of officers**, **minutes of the election of officers**, the **list of voters**, or failure to submit these documents together with the list of the newly elected/appointed officers and their postal addresses within thirty (30) days from election.[42] (Emphasis supplied.)

---

national union or industry or trade union center or an independent union shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

(a) Fifty pesos (₱50.00) registration fee;

(b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of workers who participated in such meetings;

(c) In case the applicant is an independent union, the names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate;

(d) If the applicant union has been in existence for one or more years, copies of its annual financial statements; and

(e) Four copies of the constitution and by-laws of the applicant union, minutes of its adoption or ratification, and the list of the members who participated in it.

[42] As amended by RA 9481, the grounds for cancellation of registration has been reduced to three; thus, Art. 239 now reads:

ART. 239. *GROUNDS FOR CANCELLATION OF UNION REGISTRATION*. — The following may 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,

A scrutiny of the records fails to show any misrepresentation, false statement, or fraud committed by EREU to merit cancellation of its registration.

First. The Union submitted the required documents attesting to the facts of the organizational meeting on December 6, 2005, the election of its officers, and the adoption of the Union's constitution and by-laws. It submitted before the DOLE Regional Office with its Application for Registration and the duly filled out BLR Reg. Form No. I-LO, s. 1998, the following documents, to wit:

(a) the minutes of its organizational meeting[43] held on December 6, 2005 showing 26 founding members who elected its union officers by secret ballot;

(b) the list of rank-and-file employees[44] of Eagle Ridge who attended the organizational meeting and the election of officers with their individual signatures;

(c) the list of rank-and-file employees[45] who ratified the union's constitution and by-laws showing the very same list as those who attended the organizational meeting and the election of officers with their individual signatures except the addition of four employees without their signatures, *i.e.*, Cherry Labajo, Grace Pollo, Annalyn Poniente and Rowel Dolendo;

(d) the union's constitution and by-laws[46] as approved on December 6, 2005;

(e) the list of officers[47] and their addresses;

---

the minutes of ratification, and the list of members who took part in the ratification;

(b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;

(c) Voluntary dissolution by the members.

[43] *Rollo*, pp. 54-55.

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

[45] *Id.* at 60-61.

[46] *Id.* at 63-72.

[47] *Id.* at 73-74.

(f) the list of union members[48] showing a total of 30 members; and

(g) the Sworn Statement[49] of the union's elected president and secretary. All the foregoing documents except the sworn statement of the president and the secretary were accompanied by Certifications[50] by the union secretary duly attested to by the union president.

Second. The members of the EREU totaled 30 employees when it applied on December 19, 2005 for registration. The Union thereby complied with the mandatory minimum 20% membership requirement under Art. 234(c). Of note is the undisputed number of 112 rank-and-file employees in Eagle Ridge, as shown in the Sworn Statement of the Union president and secretary and confirmed by Eagle Ridge in its petition for cancellation.

Third. The Union has sufficiently explained the discrepancy between the number of those who attended the organizational meeting showing 26 employees and the list of union members showing 30. The difference is due to the additional four members admitted two days after the organizational meeting as attested to by their duly accomplished Union Membership forms. Consequently, the total number of union members, as of December 8, 2005, was 30, which was truthfully indicated in its application for registration on December 19, 2005.

As aptly found by the BLR Director, the Union already had 30 members when it applied for registration, for the admission of new members is neither prohibited by law nor was it concealed in its application for registration. Eagle Ridge's contention is flawed when it equated the requirements under Art. 234(b) and (c) of the Labor Code. Par. (b) clearly required the submission of the minutes of the organizational meetings and the list of workers who participated in the meetings, while par. (c) merely

---

[48] *Id.* at 77.

[49] *Id.* at 76.

[50] *Id.* at 56, 59, 62, 73, 75 and 78.

required the list of names of all the union members comprising at least 20% of the bargaining unit. The fact that EREU had 30 members when it applied for registration on December 19, 2005 while only 26 actually participated in the organizational meeting is borne by the records.

Fourth. In its futile attempt to clutch at straws, Eagle Ridge assails the inclusion of the additional four members allegedly for not complying with what it termed as "the *sine qua non* requirements" for union member applications under the Union's constitution and by-laws, specifically Sec. 2 of Art. IV. We are not persuaded. Any seeming infirmity in the application and admission of union membership, most especially in cases of independent labor unions, must be viewed in favor of valid membership.

The right of employees to self-organization and membership in a union must not be trammeled by undue difficulties. In this case, when the Union said that the four employee-applicants had been admitted as union members, it is enough to establish the fact of admission of the four that they had duly signified such desire by accomplishing the membership form. The fact, as pointed out by Eagle Ridge, that the Union, owing to its scant membership, had not yet fully organized its different committees evidently shows the direct and valid acceptance of the four employee applicants rather than deter their admission—as erroneously asserted by Eagle Ridge.

Fifth. The difference between the number of 26 members, who ratified the Union's constitution and by-laws, and the 25 members shown in the certification of the Union secretary as having ratified it, is, as shown by the factual antecedents, a typographical error. It was an insignificant mistake committed without malice or prevarication. The list of those who attended the organizational meeting shows 26 members, as evidenced by the signatures beside their handwritten names. Thus, the certification's understatement by one member, while not factual, was clearly an error, but neither a misleading one nor a misrepresentation of what had actually happened.

Sixth. In the more meaty issue of the affidavits of retraction executed by six union members, we hold that the probative value of these affidavits cannot overcome those of the supporting affidavits of 12 union members and their counsel as to the proceedings and the conduct of the organizational meeting on December 6, 2005. The DOLE Regional Director and the BLR OIC Director obviously erred in giving credence to the affidavits of retraction, but not according the same treatment to the supporting affidavits.

The six affiants of the affidavits of retraction were not presented in a hearing before the Hearing Officer (DOLE Regional Director), as required under the Rules Implementing Book V of the Labor Code covering Labor Relations. Said Rules is embodied in Department Order No. (DO) 40-03 which was issued on February 17, 2003 and took effect on March 15, 2003 to replace DO 9 of 1997. Sec. 11, Rule XI of DO 40-03 specifically requires:

> Section 11. **Affirmation of testimonial evidence**. – **Any affidavit submitted** by a party to prove his/her claims or defenses **shall be re-affirmed by the presentation of the affiant before the** Med-Arbiter or **Hearing Officer**, as the case may be. **Any affidavit submitted without the re-affirmation of the affiant during a scheduled hearing shall not be admitted in evidence**, except when the party against whom the affidavit is being offered admits all allegations therein and waives the examination of the affiant.

It is settled that affidavits partake the nature of hearsay evidence, since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant's statement, which may thus be either omitted or misunderstood by the one writing them.[51] The above rule affirms the general requirement in adversarial proceedings for the examination of the affiant by the party against whom the affidavit is offered. In the instant case, it is required for affiants to re-affirm the contents of their affidavits during the hearing of the instant case for them to be examined by the opposing party, *i.e.*, the Union.

---

[51] *Tating v. Marcella*, G.R. No. 155208, March 27, 2007, 519 SCRA 79, 88 [citations omitted].

For their non-presentation and consonant to the above-quoted rule, the six affidavits of retraction are inadmissible as evidence against the Union in the instant case. Moreover, the affidavit and joint-affidavits presented by the Union before the DOLE Regional Director were duly re-affirmed in the hearing of March 20, 2006 by the affiants. Thus, a reversible error was committed by the DOLE Regional Director and the BLR OIC Director in giving credence to the inadmissible affidavits of retraction presented by Eagle Ridge while not giving credence to the duly re-affirmed affidavits presented by the Union.

Evidently, the allegations in the six affidavits of retraction have no probative value and at the very least cannot outweigh the rebutting attestations of the duly re-affirmed affidavits presented by the Union.

Seventh. The fact that six union members, indeed, expressed the desire to withdraw their membership through their affidavits of retraction will not cause the cancellation of registration on the ground of violation of Art. 234(c) of the Labor Code requiring the mandatory minimum 20% membership of rank-and-file employees in the employees' union.

The six retracting union members clearly severed and withdrew their union membership. The query is whether such separation from the Union can detrimentally affect the registration of the Union.

We answer in the negative.

Twenty percent (20%) of 112 rank-and-file employees in Eagle Ridge would require a union membership of at least 22 employees (112 x 205 = 22.4). When the EREU filed its application for registration on December 19, 2005, there were clearly 30 union members. Thus, when the certificate of registration was granted, there is no dispute that the Union complied with the mandatory 20% membership requirement.

Besides, it cannot be argued that the six affidavits of retraction retroact to the time of the application of registration or even way back to the organizational meeting. Prior to their withdrawal, the six employees in question were *bona fide* union members.

More so, they never disputed affixing their signatures beside their handwritten names during the organizational meetings. While they alleged that they did not know what they were signing, it bears stressing that their affidavits of retraction were not re-affirmed during the hearings of the instant case rendering them of little, if any, evidentiary value.

With the withdrawal of six union members, there is still compliance with the mandatory membership requirement under Art. 234(c), for the remaining 24 union members constitute more than the 20% membership requirement of 22 employees.

Eagle Ridge further argues that the list of union members includes a supervisory employee. This is a factual issue which had not been raised at the first instance before the DOLE Regional Director and cannot be appreciated in this proceeding. To be sure, Eagle Ridge knows well who among its personnel belongs or does not belong to the supervisory group. Obviously, its attempt to raise the issue referred to is no more than an afterthought and ought to be rejected.

Eighth. Finally, it may not be amiss to note, given the factual antecedents of the instant case, that Eagle Ridge has apparently resorted to filing the instant case for cancellation of the Union's certificate of registration to bar the holding of a certification election. This can be gleaned from the fact that the grounds it raised in its opposition to the petition for certification election are basically the same grounds it resorted to in the instant case for cancellation of EREU's certificate of registration. This amounts to a clear circumvention of the law and cannot be countenanced.

For clarity, we reiterate the following undisputed antecedent facts:

(1) On December 6, 2005, the Union was organized, with 26 employees of Eagle Ridge attending;

(2) On December 19, 2005, the Union filed its formal application for registration indicating a total of 30 union members with the inclusion of four additional members on December 8,

2005 (Reg. Cert. No. RO400-200512-UR-003 was eventually issued by the DOLE RO IV-A);

(3) On January 10, 2006, the Union filed before the DOLE RO IV-A its petition for certification election in Eagle Ridge;

(4) On February 13, 2006, Eagle Ridge filed its Position Paper opposing the petition for certification election on essentially the same grounds it raised in the instant case; and

(5) On February 24, 2006, Eagle Ridge filed the instant case for cancellation of the Union's certificate of registration on essentially the same grounds it raised in its opposition to the Union's petition for certification election.

Evidently, as the Union persuasively argues, the withdrawal of six member-employees from the Union will affect neither the Union's registration nor its petition for certification election, as their affidavits of retraction were executed after the Union's petition for certification election had been filed. The initial five affidavits of retraction were executed on February 15, 2006; the sixth, on March 15, 2006. Indisputably, all six were executed way after the filing of the petition for certification election on January 10, 2006.

In *Eastland Manufacturing Company, Inc. v. Noriel*,[52] the Court emphasized, and reiterated its earlier rulings,[53] that "even if there were less than 30% [the required percentage of minimum membership then] of the employees asking for a certification election, that of itself would not be a bar to respondent Director ordering such an election provided, of course, there is no grave abuse of discretion."[54] Citing *Philippine Association of Free*

---

[52] No. L-45528, February 10, 1982, 111 SCRA 674.

[53] *Scout Ramon Albano Memorial College v. Noriel*, No. L-48347, October 3, 1978, 85 SCRA 494; *National Mines and Allied Workers Union v. Luna*, No. L-46722, June 15, 1978, 83 SCRA 607; *Monark International, Inc. v. Noriel*, Nos. L-47570-71, May 11, 1978, 83 SCRA 114; *Kapisanan ng mga Manggagawa sa La Suerte v. Noriel*, No. L-45475, June 20, 1977, 77 SCRA 414.

[54] *Eastland Manufacturing Company, Inc. v. Noriel*, *supra* note 52, at 675-676.

Labor Unions v. Bureau of Labor Relations,[55] the Court emphasized that a certification election is the most appropriate procedure for the desired goal of ascertaining which of the competing organizations should represent the employees for the purpose of collective bargaining.[56]

Indeed, where the company seeks the cancellation of a union's registration during the pendency of a petition for certification election, the same grounds invoked to cancel should not be used to bar the certification election. A certification election is the most expeditious and fairest mode of ascertaining the will of a collective bargaining unit as to its choice of its exclusive representative.[57] It is the fairest and most effective way of determining which labor organization can truly represent the working force. It is a fundamental postulate that the will of the majority, if given expression in an honest election with freedom on the part of the voters to make their choice, is controlling.[58]

The Court ends this disposition by reproducing the following apt excerpts from its holding in *S.S. Ventures International, Inc. v. S.S. Ventures Labor Union (SSVLU)* on the effect of the withdrawal from union membership right before or after the filing of a petition for certification election:

> We are not persuaded. As aptly noted by both the BLR and CA, these mostly undated written statements submitted by Ventures on March 20, 2001, or seven months after it filed its petition for cancellation of registration, partake of the nature of withdrawal of union membership executed after the Union's filing of a petition for certification election on March 21, 2000. **We have in precedent cases said that the employees' withdrawal from a labor union made before the filing of the petition for certification election is presumed voluntary, while withdrawal after the filing of such**

---

[55] No. L-42115, January 27, 1976, 69 SCRA 132.

[56] *Eastland Manufacturing Company, Inc. v. Noriel*, *supra* note 52, at 676.

[57] *Consolidated Farms, Inc. II v. Noriel*, No. L-47752, July 31, 1978, 84 SCRA 469, 472.

[58] *Philippine Association of Free Labor Unions v. Bureau of Labor Relations*, *supra* note 55, at 139.

petition is considered to be involuntary and does not affect the same. Now then, if a **withdrawal from union membership done after a petition for certification election has been filed does not vitiate such petition, is it not but logical to assume that such withdrawal cannot work to nullify the registration of the union**? Upon this light, the Court is inclined to agree with the CA that the BLR did not abuse its discretion nor gravely err when it concluded that the affidavits of retraction of the 82 members had no evidentiary weight.[59] (Emphasis supplied.)

WHEREFORE, premises considered, we *DISMISS* the instant petition for lack of merit.

Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 181258. March 18, 2010]

BEN-HUR NEPOMUCENO, *petitioner, vs.* **ARHBENCEL ANN LOPEZ, represented by her mother ARACELI LOPEZ,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; SUPPORT; WHEN BASED ON CLAIM OF FILIATION, ENTITLEMENT TO SUPPORT IS DEPENDENT ON THE DETERMINATION OF ONE'S FILIATION; CASE AT BAR. — The relevant provisions of the Family Code that treat of the right to support are Articles 194 to 196, thus: Article 194. Support compromises everything

---

[59] G.R. No. 161690, July 23, 2008, 559 SCRA 435, 443-444.

indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family. The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work. **Article 195**. Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article: 1. The spouses; 2. Legitimate ascendants and descendants; 3. Parents and their legitimate children and the legitimate and illegitimate children of the latter; 4. Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and 5. Legitimate brothers and sisters, whether of the full or half-blood. Article 196. Brothers and sisters not legitimately related, whether of the full or half-blood, are likewise bound to support each other to the full extent set forth in Article 194, except only when the need for support of the brother or sister, being of age, is due to a cause imputable to the claimant's fault or negligence. Arhbencel's demand for support, being based on her claim of filiation to petitioner as his illegitimate daughter, falls under Article 195(4). As such, her entitlement to support from petitioner is dependent on the determination of her filiation.

2. ID.; ID.; PATERNITY AND FILIATION; LAWS, RULES AND JURISPRUDENCE ESTABLISHING FILIATION. — *Herrera v. Alba* summarizes the laws, rules, and jurisprudence on establishing filiation, discoursing in relevant part as follows: *Laws, Rules, and Jurisprudence Establishing Filiation.* The relevant provisions of the Family Code provide as follows: ART. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children. x x x ART. 172. The filiation of legitimate children is established by any of the following: (1) The record of birth appearing in the civil register or a final judgment; or (2) **An admission of legitimate filiation in** a public document or **a private handwritten instrument and signed by the parent** concerned. In the absence of the foregoing evidence, the legitimate filiation shall be proved by: (1) The open and continuous possession of the status of a legitimate child; or

(2) Any other means allowed by the Rules of Court and special laws. The Rules on Evidence include provisions on pedigree. The relevant sections of Rule 130 provide: SEC. 39. Act or declaration about pedigree. — The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree. SEC. 40. Family reputation or tradition regarding pedigree. — The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in family bibles or other family books or charts, engraving on rings, family portraits and the like, may be received as evidence of pedigree. This Court's rulings further specify what incriminating acts are acceptable as evidence to establish filiation. In *Pe Lim v. CA,* a case petitioner often cites, we stated that the issue of paternity still has to be resolved by such **conventional evidence as the relevant incriminating verbal and written acts by the putative father**. Under Article 278 of the New Civil Code, voluntary recognition by a parent shall be made in the record of birth, a will, a statement before a court of record, or in any authentic writing. To be effective, the claim of filiation must be made by the putative father himself and the writing must be the writing of the putative father. **A notarial agreement to support a child whose filiation is admitted by the putative father was considered acceptable evidence**. Letters to the mother vowing to be a good father to the child and pictures of the putative father cuddling the child on various occasions, together with the certificate of live birth, proved filiation. However, a student permanent record, a written consent to a father's operation, or a marriage contract where the putative father gave consent, cannot be taken as authentic writing. Standing alone, neither a certificate of baptism nor family pictures are sufficient to establish filiation.

3. ID.; ID.; ID.; ID.; CLAIM OF PATERNITY AND FILIATION, NOT ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE; EXPLAINED. — In the present case, Arhbencel relies, in the main, on the handwritten note executed by petitioner which reads: Manila, Aug. 7, 1999 I, Ben-Hur C. Nepomuceno, hereby undertake to give and provide financial support in the amount of ₱1,500.00 every fifteen and thirtieth day of each month for a total of ₱3,000.00 a month starting Aug. 15, 1999, to Ahrbencel Ann Lopez, presently in the custody of her mother Araceli Lopez without the necessity of demand, subject to adjustment later depending on the needs of the child and my income. The abovequoted note does not contain any statement whatsoever about Arhbencel's filiation to petitioner. It is, therefore, not within the ambit of Article 172(2) *vis-à-vis* Article 175 of the Family Code which admits as competent evidence of illegitimate filiation an admission of filiation in a private handwritten instrument signed by the parent concerned. The note cannot also be accorded the same weight as the notarial agreement to support the child referred to in *Herrera.* For it is not even notarized. And *Herrera* instructs that the notarial agreement must be accompanied by the putative father's admission of filiation to be an acceptable evidence of filiation. Here, however, not only has petitioner not admitted filiation through contemporaneous actions. He has consistently denied it. The only other documentary evidence submitted by Arhbencel, a copy of her Certificate of Birth, has no probative value to establish filiation to petitioner, the latter not having signed the same. At bottom, all that Arhbencel really has is petitioner's handwritten undertaking to provide financial support to her which, without more, fails to establish her claim of filiation. The Court is mindful that the best interests of the child in cases involving paternity and filiation should be advanced. It is, however, just as mindful of the disturbance that unfounded paternity suits cause to the privacy and peace of the putative father's legitimate family.

APPEARANCES OF COUNSEL

Julieta C. Santos for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondent Arhbencel Ann Lopez (Arhbencel), represented by her mother Araceli Lopez (Araceli), filed a Complaint[1] with the Regional Trial Court (RTC) of Caloocan City for recognition and support against Ben-Hur Nepomuceno (petitioner).

Born on June 8, 1999, Arhbencel claimed to have been begotten out of an extramarital affair of petitioner with Araceli; that petitioner refused to affix his signature on her Certificate of Birth; and that, by a handwritten note dated August 7, 1999, petitioner nevertheless obligated himself to give her financial support in the amount of ₱1,500 on the 15th and 30th days of each month beginning August 15, 1999.

Arguing that her filiation to petitioner was established by the handwritten note, Arhbencel prayed that petitioner be ordered to: (1) recognize her as his child, (2) give her support *pendente lite* in the increased amount of ₱8,000 a month, and (3) give her adequate monthly financial support until she reaches the age of majority.

Petitioner countered that Araceli had not proven that he was the father of Arhbencel; and that he was only forced to execute the handwritten note on account of threats coming from the National People's Army.[2]

By Order of July 4, 2001,[3] Branch 130 of the Caloocan RTC, on the basis of petitioner's handwritten note which it treated as "contractual support" since the issue of Arhbencel's filiation had yet to be determined during the hearing on the merits, granted Arhbencel's prayer for support *pendente lite* in the amount of ₱3,000 a month.

---

[1] *Rollo*, pp. 117-120.

[2] *Id*. at 29, 87.

[3] *Id*. at 86-90.

After Arhbencel rested her case, petitioner filed a demurrer to evidence which the trial court granted by Order dated June 7, 2006,[4] whereupon the case was dismissed for insufficiency of evidence.

The trial court held that, among other things, Arhbencel's Certificate of Birth was not *prima facie* evidence of her filiation to petitioner as it did not bear petitioner's signature; that petitioner's handwritten undertaking to provide support did not contain a categorical acknowledgment that Arhbencel is his child; and that there was no showing that petitioner performed any overt act of acknowledgment of Arhbencel as his illegitimate child after the execution of the note.

On appeal by Arhbencel, the Court of Appeals, by Decision of July 20, 2007,[5] *reversed* the trial court's decision, declared Arhbencel to be petitioner's illegitimate daughter and accordingly ordered petitioner to give Arhbencel financial support in the increased amount of ₱4,000 every 15th and 30th days of the month, or a total of ₱8,000 a month.

The appellate court found that from petitioner's payment of Araceli's hospital bills when she gave birth to Arhbencel and his subsequent commitment to provide monthly financial support, the only logical conclusion to be drawn was that he was Arhbencel's father; that petitioner merely acted in bad faith in omitting a statement of paternity in his handwritten undertaking to provide financial support; and that the amount of ₱8,000 a month was reasonable for Arhbencel's subsistence and not burdensome for petitioner in view of his income.

His Motion for Reconsideration having been denied by Resolution dated January 3, 2008,[6] petitioner comes before this Court through the present Petition for Review on *Certiorari*.[7]

---

[4] *Id*. at 109-116.

[5] Penned by Associate Justice Conrado M. Vasquez, Jr., with the concurrence of Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa; *id*. at 53-65.

[6] *Id*. at 50-51.

[7] *Id*. at 25-48.

Petitioner contends that nowhere in the documentary evidence presented by Araceli is an explicit statement made by him that he is the father of Arhbencel; that absent recognition or acknowledgment, illegitimate children are not entitled to support from the putative parent; that the supposed payment made by him of Araceli's hospital bills was neither alleged in the complaint nor proven during the trial; and that Arhbencel's claim of paternity and filiation was not established by clear and convincing evidence.

Arhbencel avers in her Comment that petitioner raises questions of fact which the appellate court had already addressed, along with the issues raised in the present petition.[8]

The petition is impressed with merit.

The relevant provisions of the Family Code[9] that treat of the right to support are Articles 194 to 196, thus:

Article 194. Support compromises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work.

Article 195. Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:

1. The spouses;

2. Legitimate ascendants and descendants;

3. Parents and their legitimate children and the legitimate and illegitimate children of the latter;

4. Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and

5. Legitimate brothers and sisters, whether of the full or half-blood.

---

[8] *Id*. at 127-130.

[9] Executive Order No. 209 as amended.

Article 196. Brothers and sisters not legitimately related, whether of the full or half-blood, are likewise bound to support each other to the full extent set forth in Article 194, except only when the need for support of the brother or sister, being of age, is due to a cause imputable to the claimant's fault or negligence. (emphasis and underscoring supplied)

Arhbencel's demand for support, being based on her claim of filiation to petitioner as his illegitimate daughter, falls under Article 195(4). As such, her entitlement to support from petitioner is dependent on the determination of her filiation.

Herrera v. Alba[10] summarizes the laws, rules, and jurisprudence on establishing filiation, discoursing in relevant part as follows:

Laws, Rules, and Jurisprudence
Establishing Filiation

The relevant provisions of the Family Code provide as follows:

ART. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

x x x x x x x x x

ART. 172. The filiation of legitimate children is established by any of the following:

(1) The record of birth appearing in the civil register or a final judgment; or

(2) **An admission of legitimate filiation in** a public document or **a private handwritten instrument and signed by the parent** concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:
(1) The open and continuous possession of the status of a legitimate child; or
(2) Any other means allowed by the Rules of Court and special laws.

---

[10] G.R. No. 148220, June 15, 2005, 460 SCRA 197, 206-208.

The Rules on Evidence include provisions on pedigree. The relevant sections of Rule 130 provide:

SEC. 39. Act or declaration about pedigree. — The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree.

SEC. 40. Family reputation or tradition regarding pedigree. — The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in family bibles or other family books or charts, engraving on rings, family portraits and the like, may be received as evidence of pedigree.

This Court's rulings further specify what incriminating acts are acceptable as evidence to establish filiation. In *Pe Lim v. CA,* a case petitioner often cites, we stated that the issue of paternity still has to be resolved by such **conventional evidence as the relevant incriminating verbal and written acts by the putative father**. Under Article 278 of the New Civil Code, voluntary recognition by a parent shall be made in the record of birth, a will, a statement before a court of record, or in any authentic writing. To be effective, the claim of filiation must be made by the putative father himself and the writing must be the writing of the putative father. **A notarial agreement to support a child whose filiation is admitted by the putative father was considered acceptable evidence**. Letters to the mother vowing to be a good father to the child and pictures of the putative father cuddling the child on various occasions, together with the certificate of live birth, proved filiation. However, a student permanent record, a written consent to a father's operation, or a marriage contract where the putative father gave consent, cannot be taken as authentic writing. Standing alone, neither a certificate of baptism nor family pictures are sufficient to establish filiation. (emphasis and underscoring supplied)

In the present case, Arhbencel relies, in the main, on the handwritten note executed by petitioner which reads:

> Manila, Aug. 7, 1999
>
> I, Ben-Hur C. Nepomuceno, hereby undertake to give and provide financial support in the amount of ₱1,500.00 every fifteen and thirtieth day of each month for a total of ₱3,000.00 a month starting Aug. 15, 1999, to Ahrbencel Ann Lopez, presently in the custody of her mother Araceli Lopez without the necessity of demand, subject to adjustment later depending on the needs of the child and my income.

The abovequoted note does not contain any statement whatsoever about Arhbencel's filiation to petitioner. It is, therefore, not within the ambit of Article 172(2) *vis-à-vis* Article 175 of the Family Code which admits as competent evidence of illegitimate filiation an admission of filiation in a private handwritten instrument signed by the parent concerned.

The note cannot also be accorded the same weight as the notarial agreement to support the child referred to in *Herrera.* For it is not even notarized. And *Herrera* instructs that the notarial agreement must be accompanied by the putative father's admission of filiation to be an acceptable evidence of filiation. Here, however, not only has petitioner not admitted filiation through contemporaneous actions. He has consistently denied it.

The only other documentary evidence submitted by Arhbencel, a copy of her Certificate of Birth,[11] has no probative value to establish filiation to petitioner, the latter not having signed the same.

At bottom, all that Arhbencel really has is petitioner's handwritten undertaking to provide financial support to her which, without more, fails to establish her claim of filiation. The Court is mindful that the best interests of the child in cases involving paternity and filiation should be advanced. It is, however, just as mindful of the disturbance that unfounded paternity suits cause to the privacy and peace of the putative father's legitimate family.

---

[11] *Rollo,* p. 121.

WHEREFORE, the petition is *GRANTED*. The Court of Appeals Decision of July 20, 2007 is *SET ASIDE*. The Order dated June 7, 2006 of Branch 130 of the Caloocan City RTC dismissing the complaint for insufficiency of evidence is *REINSTATED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 181866. March 18, 2010]

EMMANUEL S. HUGO, LOURENTE V. CRUZ, DIOSDADO S. DOLORES, RAMON B. DE LOS REYES, ORLANDO B. FLORES, ROGELIO R. MARTIN, JOSE ROBERTO A. PAMINTUAN, MELVIN R. GOMEZ, REYNALDO P. SOLISA, EMMANUEL A. PALADO, JR., ANSELMO V. TALAGTAG, JR., ANTHONY C. RONQUILLO, ARTHUR G. CONCEPCION, ORLANDO MALAYBA, LEANDRO C. PAGURAYAN III, MARVIN L. GABRIEL, FERNANDO V. DIAZ, ALFREDO CHAN, JUAN G. OBIAS, JR., EMIL P. BELCHEZ, RODELIO H. LASTIMA, and AUGUSTO LAGOS, *petitioners, vs.* **LIGHT RAIL TRANSIT AUTHORITY,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION; JURISDICTION OF LABOR ARBITERS; LIGHT RAIL TRANSIT AUTHORITY (LRTA), A GOVERNMENT-

OWNED OR CONTROLLED CORPORATION CREATED BY AN ORIGINAL CHARTER, DOES NOT FALL WITHIN THE LABOR ARBITER'S JURISDICTION; EXPLAINED. — The Labor Arbiter and the NLRC **do not have jurisdiction over LRTA**. Petitioners themselves admitted in their complaint that LRTA "is a government agency organized and existing pursuant to an original charter (Executive Order No. 603)," and that they are employees of METRO. *Light Rail Transit Authority v. Venus, Jr.*, which has a similar factual backdrop, holds that LRTA, being a government-owned or controlled corporation created by an original charter, is beyond the reach of the Department of Labor and Employment which has jurisdiction over workers in the private sector, *viz*: . . . [E]mployees of petitioner METRO cannot be considered as employees of petitioner LRTA. The employees hired by METRO are covered by the Labor Code and are under the jurisdiction of the Department of Labor and Employment, whereas **the employees of petitioner LRTA, a government-owned and controlled corporation with original charter, are covered by civil service rules**. Herein private respondent workers cannot have the best of two worlds, *e.g.*, be considered government employees of petitioner LRTA, yet allowed to strike as private employees under our labor laws. x x x. x x x . . . [I]t is inappropriate to pierce the corporate veil of petitioner METRO. x x x. In the instant case, petitioner METRO, formerly Meralco Transit Organization, Inc., was originally owned by the Manila Electric Company and registered with the Securities and Exchange Commission more than a decade before the labor dispute. It then entered into a ten-year agreement with petitioner LRTA in 1984. And, even if petitioner LRTA eventually purchased METRO in 1989, both parties maintained their separate and distinct juridical personality and allowed the agreement to proceed. In 1990, this Court, in *Light Rail Transit Authority v. Commission on Audit* (G.R. No. 88365, January 9, 1990), even upheld the validity of the said agreement. Consequently, the agreement was extended beyond its ten-year period. In 1995, METRO's separate juridical identity was again recognized when it entered into a collective bargaining agreement with the workers' union. All these years, METRO's distinct corporate personality continued quiescently, separate and apart from the juridical personality of petitioner LRTA. The labor dispute only

arose in 2000, after a deadlock occurred during the collective bargaining between petitioner METRO and the workers' union. This alone is not a justification to pierce the corporate veil of petitioner METRO and make petitioner LRTA liable to private respondent workers. There are no badges of fraud or any wrongdoing to pierce the corporate veil of petitioner METRO. x x x In sum, **petitioner LRTA cannot be held liable to the employees of petitioner METRO**. IN FINE, the Labor Arbiter's decision against LRTA was rendered without jurisdiction, hence, it is void, thus rendering it improper for the remand of the case to the NLRC, as ordered by the appellate court, for it (NLRC) to give due course to LRTA's appeal.

APPEARANCES OF COUNSEL

LIBRA Law for petitioners.
Bernardo V. Cabal for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondent Light Rail Transit Authority (LRTA), a government-owned and controlled corporation, constructed a light rail transit system which traverses from Baclaran in Parañaque City to Monumento in Kalookan City, Metro Manila pursuant to its mandate under its charter, Executive Order No. 603, Series of 1980, as amended.[1]

To effectively carry out its mandate, LRTA entered into a ten-year Agreement for the Management and Operation of the Metro Manila Light Rail Transit System (the Agreement) from June 8, 1984 until June 8, 1994 with Metro Transit Organization, Inc. (METRO).[2] One of the stipulations in the Agreement was

METRO shall be free to employ such employees and officers as it shall deem necessary in order to carry out the requirements

---

[1] Petition, *rollo*, p. 13.

[2] *Ibid.*

of the Agreement. Such employees and officers shall be the employees of METRO and not of LRTA. METRO shall prepare a compensation schedule for the salaries and fringe benefits of its personnel (Article 3, par. 3.05).[3] (emphasis and underscoring supplied)

METRO thus hired its own employees including herein petitioners-members of the *Pinag-isang Lakas ng Manggagawa sa* METRO, Inc.-National Federation of Labor, otherwise known as PIGLAS-METRO, INC.-NFL-KMU (the Union), the certified exclusive collective bargaining representative of METRO's rank-and-file employees.

LRTA later purchased the shares of stocks of METRO via Deed of Sale of June 9, 1989. The two entities, however, continued with their distinct and separate juridical personalities such that when the ten-year Agreement expired on June 8, 1994, they renewed the same.[4]

On July 25, 2000, on account of a deadlock in the negotiation for the forging of a new collective bargaining agreement between METRO and the Union, petitioners filed a Notice of Strike before the National Conciliation and Mediation Board, National Capital Region (NCR). On even date, the Union went on strike, completely paralyzing the operations of the light rail transit system.

Then Secretary of Labor Bienvenido E. Laguesma assumed jurisdiction over the conflict and directed the striking employees including herein petitioners to immediately return to work and METRO to accept them back under the same terms and conditions of employment prevailing prior to the strike.

By LRTA's claim, the striking employees including petitioners defied the return-to-work order. Contradicting such claim, petitioners alleged that upon learning of the order, they attempted to comply with it but the security guards of METRO barred them from entering their workplace for security reasons, the latter being

---

[3] *Id.* at 160-161.

[4] Cf. *Light Rail Transit Authority v. Venus, Jr.*, G.R. Nos. 163782 & 163881, March 24, 2006, 485 SCRA 361, 364-365.

afraid that they (the striking employees) might sabotage the vital machineries and equipment of the light rail transit system.[5]

When the Agreement expired on July 31, 2000, LRTA did not renew it. It instead took over the management and operations of the light rail transit system, hiring new personnel for the purpose. METRO thus considered the employment of all its personnel terminated effective September 30, 2000.

On February 28, 2002, petitioners filed a complaint[6] for illegal dismissal and unfair labor practice with prayer for reinstatement and damages against METRO and LRTA before the NCR Arbitration Branch, National Labor Relations Commission (NLRC), docketed as NLRC Case No. NCR-30-02-01191-02.

In impleading LRTA in their complaint, petitioners alleged that the "non-renewal of the [Agreement] is but an ingenious, albeit unlawful, scheme carried out by the respondents to get rid of personnel they perceived as activists and troublemakers, thus, terminating the complainants without any just or lawful cause."[7]

LRTA filed a motion to dismiss[8] the complaint on the ground that the Labor Arbiter and the NLRC have no jurisdiction over it, for, by petitioners' own admission, there was no employer-employee relationship between it and petitioners.

By Order[9] of December 17, 2002, Labor Arbiter Felipe P. Pati granted the motion of LRTA and accordingly dismissed petitioners' complaint for lack of jurisdiction.

On appeal by petitioners, the NLRC, by Resolution[10] of July 31, 2003, reversed the Labor Arbiter's dismissal of petitioners'

---

[5] Paragraphs 9-10 of petitioners' Complaint, *rollo*, p. 78.

[6] *Id.* at 76-85.

[7] *Id.* at 81.

[8] *Id.* at 129-130.

[9] *Id.* at 131-136.

[10] Penned by Commissioner Victoriano R. Calaycay, with the concurrence of Commissioners Raul T. Aquino and Angelita A. Gacutan, *id.* at 137-150.

complaint and rendered a new one "declaring that the Labor Arbiter and this Commission can exercise jurisdiction over the person of Respondent LRTA," LRTA being considered an "indirect employer" on account of the Agreement; and that LRTA is a "necessary party" which ought to be joined as party for a complete determination of petitioners' claims that the non-renewal of the Agreement by LRTA and the cessation of business by METRO were carried out with the intent to cover up the illegal dismissal of petitioners. The NLRC thus ordered the remand of the records of the case to the Labor Arbiter for further proceedings.[11]

After the conclusion of the proceedings before his office, Labor Arbiter Pati found for petitioners, by Decision of August 18, 2004.

LRTA appealed the decision to the NLRC and filed a motion for leave to post a property bond in lieu of cash or surety bond.

By Resolution[12] of April 28, 2005, the NLRC dismissed LRTA's appeal due to its failure to perfect the same, no cash or surety bond having been posted.

Its motion for reconsideration[13] having been denied by Resolution of August 31, 2005, LRTA filed a Petition for *Certiorari* before the Court of Appeals which, by the challenged Decision[14] of February 20, 2008, it granted and accordingly reversed the assailed issuances of the NLRC.

The appellate court, holding that "(t)he property bond offered by LRTA should be deemed substantial compliance with the rules,"[15] directed the NLRC to give due course to LRTA's appeal upon filing of the appeal bond within such reasonable period of time it may set.

---

[11] *Id.* 149-150.

[12] Penned by Commissioner Victoriano R. Calaycay, with the concurrence of Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, *id.* at 222-227.

[13] *Id.* at 227-232.

[14] Penned by Associate Justice Lucenito N. Tagle and concurred in by Associate Justices Amelita G. Tolentino and Agustin S. Dizon; *id.* at 60-74.

[15] *Id.* at 73.

Hence, petitioners' present Petition for Review on *Certiorari* alleging that, *inter alia*, LRTA's failure to perfect its appeal by posting a cash or surety bond "renders the [Labor Arbiter's] judgment final and executory and the appeal ineffective and invalid."[16]

The Labor Arbiter and the NLRC **do not have jurisdiction over LRTA**. Petitioners themselves admitted in their complaint that LRTA "is a government agency organized and existing pursuant to an original charter (Executive Order No. 603)," and that they are employees of METRO.

Light Rail Transit Authority v. Venus, Jr.,[17] which has a similar factual backdrop, holds that LRTA, being a government-owned or controlled corporation created by an original charter, is beyond the reach of the Department of Labor and Employment which has jurisdiction over workers in the private sector, *viz*:

> . . . [E]mployees of petitioner METRO cannot be considered as employees of petitioner LRTA. The employees hired by METRO are covered by the Labor Code and are under the jurisdiction of the Department of Labor and Employment, whereas **the employees of petitioner LRTA, a government-owned and controlled corporation with original charter, are covered by civil service rules**. Herein private respondent workers cannot have the best of two worlds, *e.g.*, be considered government employees of petitioner LRTA, yet allowed to strike as private employees under our labor laws. x x x.
>
> x x x x x x x x x
>
> . . . [I]t is inappropriate to pierce the corporate veil of petitioner METRO. x x x.
>
> In the instant case, petitioner METRO, formerly Meralco Transit Organization, Inc., was originally owned by the Manila Electric Company and registered with the Securities and Exchange Commission more than a decade before the labor dispute. It then entered into a ten-year agreement with petitioner LRTA in 1984. And, even if petitioner LRTA eventually purchased METRO in 1989, both parties

[16] *Id.* at 30.

[17] Supra note 4.

maintained their separate and distinct juridical personality and allowed the agreement to proceed. In 1990, this Court, in *Light Rail Transit Authority v. Commission on Audit* (G.R. No. 88365, January 9, 1990), even upheld the validity of the said agreement. Consequently, the agreement was extended beyond its ten-year period. In 1995, METRO's separate juridical identity was again recognized when it entered into a collective bargaining agreement with the workers' union. All these years, METRO's distinct corporate personality continued quiescently, separate and apart from the juridical personality of petitioner LRTA.

The labor dispute only arose in 2000, after a deadlock occurred during the collective bargaining between petitioner METRO and the workers' union. This alone is not a justification to pierce the corporate veil of petitioner METRO and make petitioner LRTA liable to private respondent workers. There are no badges of fraud or any wrongdoing to pierce the corporate veil of petitioner METRO.

x x x x x x x x x

In sum, **petitioner LRTA cannot be held liable to the employees of petitioner METRO**.[18] (emphasis and underscoring supplied)

IN FINE, the Labor Arbiter's decision against LRTA was rendered without jurisdiction, hence, it is void, thus rendering it improper for the remand of the case to the NLRC, as ordered by the appellate court, for it (NLRC) to give due course to LRTA's appeal.

A final word. It bears emphasis that this Court's present Decision treats only with respect to the Labor Arbiter's decision against respondent LRTA.

WHEREFORE, the assailed Decision of the Court of the Appeals is *REVERSED* and *SET ASIDE*. Petitioners' complaint in NLRC Case No. NCR-30-02-01191-02, insofar as herein respondent Light Rail Transit Authority is concerned, is *DISMISSED*.

SO ORDERED.

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

---

[18] *Id.* at 370-374.

SECOND DIVISION

[G.R. No. 185277. March 18, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODOLFO GALLO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACTS OF A TRIAL COURT DESERVE RESPECT BY AN APPELLATE COURT. — Well-settled is the rule that the issue of credibility is the domain of the trial court which had the opportunity to observe the deportment and manner of the witnesses as they testified. The findings of facts of a trial court, arrived at only after a hearing and evaluation of the testimonies of witnesses, certainly deserve respect by an appellate court. Unless it plainly overlooked certain facts of substance and value which, if considered, may affect the result of the case, appellate courts will not disturb the findings of the trial court on the issue of credibility of witnesses, it being in a better position to decide the question, having heard and observed the witnesses themselves. We find no exceptional circumstances in this case that would justify a deviation from the general rule. The trial court's findings and conclusions are duly supported by the evidence on record; thus, there is no reason to disturb them.

2. ID.; ID.; ID.; POSITIVE AND CATEGORICAL DECLARATIONS DESERVE FULL FAITH AND CREDIT ABSENT SHOWING OF ILL MOTIVE. — x x x [T]here is no showing that the private complainants were impelled by any ill motive that could have affected their credibility. Where there is nothing to show that the witnesses for the prosecution were actuated by improper motive, their positive and categorical declarations on the witness stand, under the solemnity of an oath, deserve full faith and credence.

3. CRIMINAL LAW; REVISED PENAL CODE; CRIMES AGAINST PROPERTY; ***ESTAFA*** **UNDER ARTICLE 315 (2) (A); WAYS TO COMMIT. —** As with the Regional Trial

Court and the Court of Appeals, this Court is likewise convinced that the prosecution was able to prove, beyond reasonable doubt, appellant's guilt for *estafa* under Article 315 (2)(a) of the Revised Penal Code, which provides: Article 315. Swindling (estafa). x x x 1. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud: (a)By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits. Under the above-quoted provision, there are three (3) ways of committing *estafa*: (1) by using a fictitious name; (2) by falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; and (3) by means of other similar deceits. To convict for this type of crime, it is essential that the false statement or fraudulent representation constitutes the very cause or the only motive which induces the complainant to part with the thing of value.

4. ID.; ID.; ID.; ID.; ID.; ELEMENTS OF DECEIT AND DAMAGE, PRESENT; CONVICTION, PROPER. — In the case before us, appellant and Martir led the private complainants to believe that they possessed the power, qualifications and means to provide work in Korea. During the trial of these cases, it was clearly shown that, together with Martir, appellant discussed with private complainants the fact of their being deployed abroad for a job if they pay the processing fee, and that he actually received payments from private complainants. Thus, it was proven beyond reasonable doubt that the three private complainants were deceived into believing that there were jobs waiting for them in a factory in Korea when in fact there were none. Because of the assurances of appellant, each of the private complainants parted with their money and suffered damages as a result of their being unable to leave for Korea. The elements of *estafa* — deceit and damage — are thus indisputably present, making the conviction for *estafa* appropriate.

5. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 8042 (MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS; ESTABLISHED IN CASE AT BAR. — x x x [The Court finds] that the trial court and the

Court of Appeals correctly found appellant guilty of the crime of illegal recruitment in large scale under Republic Act No. 8042, x x x. To constitute illegal recruitment in large scale, three elements must concur: (a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; (b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the same Code (now Section 6 of Republic Act No. 8042); and, (c) the offender committed the same against three (3) or more persons, individually or as a group. x x x We are persuaded that all three elements of illegal recruitment in large scale were proven in this case. First, appellant had no valid license or authorityto engage in the recruitment and placement of workers. This is established by the *Karagdagang Salaysay* executed by Pacardo on 8 March 2002, paragraph 6 of which states that while MPM applied for a license, it was never issued one, for which reason, it changed its name to New Filipino Manpower Development and Services, Inc. Second, despite not having such authority, appellant nevertheless engaged in recruitment activities, offering and promising jobs to private complainants and collecting from them various amounts as placement fees. This is substantiated by the respective testimonies of the three private complainants. Fernandez narrated that it was appellant who assured him that if he pays ₱45,000.00, he would be able to leave for Korea within two to three months. Both Fernandez and Panlilio affrimed that they gave the money to appellant who issued a receipt therefore. Filomeno testified that when she went to the office of Martir, the latter and appellant were in the process of accepting applicants for work overseas. They told her that as a factory worker in Korea, she would have a monthly salary of US$500.00 with overtime pay. Relying on their misrepresentations, she paid the placement fee to appellant and Martir.

6. ID.; LABOR STANDARDS; RECRUITMENT AND PLACEMENT, DEFINED; ILLEGAL RECRUITMENT, DEFINED. — Article 13(b) of the Labor Code defines recruitment and placement as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers; and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for

profit or not." In the simplest terms, illegal recruitment is committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENT ANY EVIDENCE OF IMPROPER MOTIVES, TRIAL COURT'S ASSESSMENT OF THE CREDIBILITY OF WITNESSES SHALL NOT BE INTERFERED WITH BY THE SUPREME COURT.— x x x [T]he mere denials of appellant cannot stand against the clear, positive and straightforward testimonies of private complainants who positively identified appellant as one of two persons who undertook to recruit them for a supposed employment in Korea. As already previously mentioned, absent any evidence that the prosecution witnesses were motivated by improper motives, the trial court's assessment of the credibility of the witnesses shall not be interfered with by this Court.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

This is an appeal from the Decision[1] dated 31 January 2008 of the Court of Appeals, affirming, with modification, the Judgment[2] of conviction for the crimes of illegal recruitment and *estafa* rendered by the Regional Trial Court of Manila, Branch 34.

Appellant Rodolfo Gallo (Gallo), together with Pilar Manta (Manta) and Fides Pacardo (Pacardo), was originally charged with illegal recruitment in large scale and thirty four (34) counts

---

[1] Penned by Associate Justice Regalado E. Maambong with Associate Justices Celia C. Librea-Leagogo and Sixto C. Marella, Jr. concurring. *Rollo*, pp. 4-44.

[2] Penned by Judge Romulo A. Lopez. CA *rollo,* pp. 26-51.

of *estafa* in thirty five (35) separate informations[3] filed before the Regional Trial Court of Manila, Branch 34.

When arraigned, all three accused pleaded not guilty to the charges.[4]

In the course of the trial of the cases, some of the private complainants, one after another, moved for the withdrawal of their respective complaints[5] while others failed to appear during the scheduled hearings despite due notice.[6] Hence, the public prosecutor moved for the provisional dismissal[7] of their cases until only three private complainants remained.

The remaining private complainants, Reynaldo Panlilio (Panlilio), Ian Fernandez (Fernandez) and Zenaida Filomeno (Filomeno), testified for the prosecution.

Fernandez narrated that at around 9:00 a.m. on 5 June 2001, he was at the MPM International Recruitment Agency (MPM) with his friend Reynaldo Panlilio applying for a job overseas.[8] He recounted that he was able to talk first with accused Gallo, then with the owner of MPM, Mardeolyn Martir (Martir).[9] Gallo informed him that if he pays ₱45,000.00, he would be able to leave for Korea in two to three months' time.[10] Thus, he returned the following day with ₱45,000.00 and gave the amount to Martir.[11] Gallo issued a receipt covering the amount but this was later on replaced with a promissory note.[12]

---

[3] Records, Vol. II.

[4] Records, Vol. I, p. 190.

[5] *Id.* at 216-217 and 275-276.

[6] *Id.* at 246, 266, 275 and 291.

[7] *Id.* at 216-217, 246, 266, 275 and 291.

[8] TSN, 10 July 2002, pp. 20-21.

[9] *Id.* at 21.

[10] *Id.* at 23.

[11] *Id.* at 24.

[12] *Id.*

Panlilio narrated that on 5 June 2001, he went to the offices of MPM in Ermita, Manila, to apply for a job as a factory worker in Korea.[13] He testified that he talked to Martir who told him to come back the next day with ₱45,000.00 for the processing of his application.[14] Upon arriving the following day (6 June 2001), he was met by accused Gallo and upon the instruction of Martir, Panlilio gave the money to Gallo.[15] Unable to leave for Korea despite the lapse of several months, Panlilio demanded the return of his money.[16] The agency, however, requested a month within which to refund the money[17] and the receipt issued for the ₱45,000.00 he paid was replaced with a promissory note.[18]

While in the province, he learned that the agency had closed, so he went back to Manila to verify this information.[19] He found out that the agency had transferred its offices to the Prudential Bank Building in Sta. Cruz, Manila.[20] There, he and about 30 to 40 other victims of the agency arrested the three accused by virtue of a citizen's arrest.[21] The accused were first brought to the Sta. Cruz Police Station, then to the National Bureau of Investigation (NBI), where a formal complaint was filed against them.[22]

Private complainant Filomeno testified that she learned from a friend that MPM is accepting applicants for work in Korea.[23]

---

[13] *Id.* at 4-5.

[14] *Id.* at 5 and 7.

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

[16] *Id.* at 11.

[17] *Id.* at 11-12.

[18] *Id.* at 11.

[19] *Id.* at 12.

[20] *Id.*

[21] *Id.* at 13.

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

[23] TSN, 7 October 2002, p. 2.

She went to the agency sometime in May 2001 and was initially met by accused Manta who instructed her to talk to Martir.[24] Inside the latter's office, she found Gallo and Martir accepting applicants for overseas employment.[25] She narrated that she initially paid ₱15,000.00 as processing fee to Gallo and Martir who both counted the money in front of her.[26] She later on paid another ₱5,000.00, both of which amounts were covered by a receipt.[27] Gallo and Martir told her that in September 2001, she would be able to leave for Korea where she would be working as a factory worker with a monthly salary of US$500.00 plus overtime pay.[28] Because she failed to leave as promised, she called the agency on at least four occasions to follow up her application, but she was unable to talk to either accused Gallo or Martir.[29] When she went to the agency to personally inquire about the status of her application, she found out that the accused had been arrested so she proceeded to the NBI to file a complaint.[30]

The prosecution likewise presented documentary evidence consisting of the promissory notes and official receipts issued by the agency to the private complainants.[31] Also presented was a certification dated 23 August 2002, issued by the Philippine Overseas Employment Agency, stating that according to its records, the New Filipino Manpower Development and Services, Inc. had an expired license and that its application for the re-issuance of a new license was denied.[32] It appears that MPM had earlier applied for a license but its application was not

---

[24] *Id.* at 2-3.

[25] *Id.* at 3.

[26] *Id.*

[27] *Id.* at 5.

[28] *Id.* at 4.

[29] *Id.*

[30] *Id.* at 5.

[31] Exhibits "A" to "D-1", Folder of Exhibits.

[32] Exhibit "E", Folder of Exhibits.

granted; hence, it changed its name to New Filipino Manpower Development and Services, Inc.[33]

For his defense, appellant Gallo alleged that he was not an employee of MPM but was himself an applicant for overseas work.[34] According to him, someone from their province informed him that MPM was recruiting applicants to be employed as factory workers in Korea, so he applied sometime in November 2000.[35] He further testified that he paid ₱20,000.00 for the processing of his visa but was not issued a receipt; his payment was merely recorded in the agency's logbook.[36] When his visa was issued, the agency asked for an additional payment of ₱40,000.00 for his plane fare, but he was unable to produce the amount, so another person was sent abroad in his stead.[37] He was advised by Martir to wait because the visa issued to him earlier will be replaced by a trainee visa.[38] As a result, he was often seen at the office of Martir because he would often go there to follow up his application.[39] He denied having received money from or having issued any receipt to private complainants.[40]

Appellant, however, admitted having executed a *Kontra Salaysay* and a Rejoinder Affidavit wherein it was stated that he is merely a utility worker of New Filipino Manpower Development and Services, Inc., and, as such, his only duties therein consist of repair, janitorial and messengerial jobs.[41] He explained the conflict in his statements by claiming that the aforesaid documents were prepared by a lawyer from the NBI

---

[33] *Karagdagang Salaysay*, Paragraph 6, Fides Pacardo, Records, Vol. I, p. 153.

[34] TSN, 6 February 2003, p. 4.

[35] *Id.* at 3-4.

[36] *Id.* at 5.

[37] *Id.* at 6.

[38] *Id.*

[39] *Id.* at 7.

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

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

and he signed them without reading their contents.[42] He, nevertheless, disclosed during his testimony that the personal circumstances stated in the documents were gathered by the NBI from him.[43]

Finding that the evidence for the prosecution sufficiently established the criminal liability of appellant, the trial court rendered a decision on 10 April 2003 convicting him of the crimes charged. Accused Manta and Pacardo were acquitted for insufficiency of the evidence presented against them.[44] The dispositive portion of the decision, in part, reads:

In Criminal Case No. 02-200788:

Finding Rodolfo Gallo to have participated in illegally recruiting the three complainants, Ian Fernandez, Reynaldo Panlilio and Zenaida Filomeno, he is hereby found GUILTY of the crime of Illegal Recruitment without any mitigating nor aggravating circumstance attendant to its commission and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

In Criminal Case No. 02-200803:

Finding Rodolfo Gallo having conspired and confederated with another person not charged in this Information in defrauding Ian Fernandez, he is hereby found Guilty of the crime of *Estafa* without any mitigating nor aggravating circumstance attendant to its commission, granting him the benefit of the Indeterminate Sentence Law he is hereby sentenced to suffer an indeterminate prison term ranging from four (4) years two (2) months of *prision correccional* to ten (10) years of *prision mayor*. He is hereby ordered to indemnify Ian Fernandez the sum of ₱45,000.00 representing the amount embezzled.

In Criminal Case No. 02-200810:

Finding Rodolfo Gallo having conspired and confederated with another person not charged in this Information in defrauding Zenaida Filomeno, he is hereby found Guilty of the crime of *Estafa* without any mitigating nor aggravating circumstance attendant to its commission, granting the accused the benefit of the Indeterminate

---

[42] *Id.* at 10.

[43] *Id.* at 13.

[44] CA *rollo*, p. 49.

Sentence Law, he is hereby sentenced to suffer an indeterminate prison term of ranging from four (4) years two (2) months of *prision correccional* to eight (8) years of *prision mayor*. He is hereby ordered to indemnify the victim Zenaida Filomeno the sum of ₱20,000.00 representing the amount embezzled.

In Criminal Case No. 02-200812:

Finding Rodolfo Gallo having conspired and confederated with another person not charged in this Information in defrauding Reynaldo Panlilio he is hereby found Guilty of the crime of *Estafa* without any mitigating nor aggravating circumstance attendant to its commission, granting him the benefit of the Indeterminate Sentence Law he is hereby sentenced to suffer an indeterminate prison term ranging from four (4) years two (2) months of *prision correccional* to ten (10) years of *prision mayor*. He is hereby ordered to indemnify Reynaldo Panlilio the sum of ₱45,000.00 representing the amount of money embezzled.[45]

In view of the penalty imposed, the case was elevated to this Court on automatic review. In accordance with our ruling in *People v. Mateo*,[46] the Court resolved to transfer the cases to the Court of Appeals for intermediate review.

On 31 January 2008, the Court of Appeals rendered the Decision now subject of this review. The dispositive portion of which provides:

WHEREFORE, judgment is hereby rendered as follows:

I. The judgment of the trial court in Criminal Case No. 02-200788 finding the accused-appellant Rodolfo Gallo guilty of Illegal Recruitment in Large Scale and sentencing him to life imprisonment, as well as to pay a fine of Five Hundred Thousand Pesos is AFFIRMED.

The judgments in Criminal Cases Nos. 02-200803 and 02-200812 sentencing the accused-appellant to suffer an indeterminate prison term of four (4) years, two (2) months of *prision correccional* to ten (10) years of *prision mayor* is AFFIRMED with the following MODIFICATION:

---

[45] *Id.* at 49-51.

[46] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

In additional to the ₱45,000.00 each to be paid by the accused-appellant to Ian Fernandez and Reynaldo Panlilio as actual damages; the accussed-appellant is also ordered to pay legal interest on the said amount of ₱45,000.00 from the time of the filing of the Information until fully paid.

II. The judgment in Criminal Case No. 02-200810 finding the accused-appellant guilty of estafa is MODIFIED, and the accused-appellant is hereby sentenced to an indeterminate penalty ranging from one (1) year, eight (8) months and twenty-one (21) days of *prision correccional* minimum to five (5) years, five (5) months and [eleven] (11) days of *prision correccional* maximum. The accused-appellant shall pay Zenaida Filomeno ₱20,000.00 by way of actual damages. In addition, the accused-appellant shall also pay legal interest on the said amount of ₱20,000.00 from the time of filing of the Information until fully paid.

In all four cases, the accused-appellant Rodolfo Gallo shall be credited with the full extent of his preventive imprisonment pursuant to Article 29 of the Revised Penal Code. Costs against accused-appellant.[47]

Hence, the instant petition.

On 21 January 2009, the Court resolved to require the parties to file their respective supplemental briefs, if they so desire, within thirty (30) days from notice.[48] Appellant filed a Manifestation dated 18 March 2009 stating that he will no longer file a supplemental brief and is adopting his Appellant's Brief as his Supplemental Brief.[49] The Office of the Solicitor General likewise manifested that it would no longer file a supplemental brief.[50]

In his Brief, appellant assigns the following as errors committed by the trial court:

I

THE COURT A *QUO* ERRED IN GIVING MUCH WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

---

[47] *Rollo*, pp. 42-23.

[48] *Id.* at 50.

[49] *Id.* at 52.

[50] *Id.* at 57.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THREE COUNTS OF ESTAFA NOTWITHSTANDING THE PATENT ABSENCE OF CRIMINAL INTENT ON THE PART OF THE LATTER.

III

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF ILLEGAL RECRUITMENT NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE ALL THE ESSENTIAL ELEMENTS OF THE CRIME CHARGED.[51]

Appellant, in essence, claims that the prosecution failed to establish his guilt beyond reasonable doubt.

The appeal must fail. We find no valid grounds to reverse the decision of the Court of Appeals affirming the lower court's judgment of conviction.

Well-settled is the rule that the issue of credibility is the domain of the trial court which had the opportunity to observe the deportment and manner of the witnesses as they testified.[52] The findings of facts of a trial court, arrived at only after a hearing and evaluation of the testimonies of witnesses, certainly deserve respect by an appellate court.[53] Unless it plainly overlooked certain facts of substance and value which, if considered, may affect the result of the case, appellate courts will not disturb the findings of the trial court on the issue of credibility of witnesses, it being in a better position to decide the question, having heard and observed the witnesses themselves.[54]

---

[51] CA *rollo*, pp. 67-68.

[52] *People v. Meris*, 385 Phil. 667, 683 (2000).

[53] *Id.*, citing *People v. Jumao-as*, G.R. No. 101334, 14 February 1994, 230 SCRA 70, 77.

[54] *Lapasaran v. People*, G.R. No. 179907, 12 February 2009, 578 SCRA 658, 662, citing *People v. Alvarez*, 436 Phil. 255, 271 (2002).

We find no exceptional circumstances in this case that would justify a deviation from the general rule. The trial court's findings and conclusions are duly supported by the evidence on record; thus, there is no reason to disturb them.

Moreover, there is no showing that the private complainants were impelled by any ill motive that could have affected their credibility. Where there is nothing to show that the witnesses for the prosecution were actuated by improper motive, their positive and categorical declarations on the witness stand, under the solemnity of an oath, deserve full faith and credence.[55]

Appellant professes lack of criminal intent to escape liability for *estafa*. He maintains that, like the private complainants, he is also an applicant trying his luck at finding work overseas; that he would usually help out in office work on occasions that he would visit the agency as an applicant which explains why complainants could have indeed seen and conversed with him about their applications.

These implausible arguments fail to persuade us.

As with the Regional Trial Court and the Court of Appeals, this Court is likewise convinced that the prosecution was able to prove, beyond reasonable doubt, appellant's guilt for *estafa* under Article 315 (2)(a) of the Revised Penal Code, which provides:

Article 315. Swindling (estafa). x x x

x x x x x x x x x

1. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

Under the above-quoted provision, there are three (3) ways of committing *estafa*: (1) by using a fictitious name; (2) by

---

[55] *People v. Nogra*, G.R. No. 170834, 29 August 2008, 563 SCRA 723, 735.

falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; and (3) by means of other similar deceits.[56] To convict for this type of crime, it is essential that the false statement or fraudulent representation constitutes the very cause or the only motive which induces the complainant to part with the thing of value.[57]

In the case before us, appellant and Martir led the private complainants to believe that they possessed the power, qualifications and means to provide work in Korea. During the trial of these cases, it was clearly shown that, together with Martir, appellant discussed with private complainants the fact of their being deployed abroad for a job if they pay the processing fee, and that he actually received payments from private complainants. Thus, it was proven beyond reasonable doubt that the three private complainants were deceived into believing that there were jobs waiting for them in a factory in Korea when in fact there were none. Because of the assurances of appellant, each of the private complainants parted with their money and suffered damages as a result of their being unable to leave for Korea. The elements of *estafa* — deceit and damage — are thus indisputably present, making the conviction for *estafa* appropriate.

Appellant's defense that he is also an applicant is unavailing given the complete absence of any attempt on his part to seek a refund of the money he allegedly paid to the agency when the job promised him failed to materialize. He did not complain at all, at the very least, but, instead, even "helped out" at the office whenever he went there to follow up his application. As aptly put by the Court of Appeals, "[s]uch a story is highly improbable, incompatible with human behavior and contrary to ordinary experience."[58]

Likewise, we find that the trial court and the Court of Appeals correctly found appellant guilty of the crime of illegal recruitment

---

[56] *People v. Lo*, G.R. No. 175229, 29 January 2009, 577 SCRA 116, 132.

[57] *Id.* at 133.

[58] *Rollo*, p. 36.

in large scale under Republic Act No. 8042,[59] the pertinent provision of which provides:

> Sec. 6. Definition. – For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. x x x.
>
> x x x x x x x x x
>
> Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group. x x x.

To constitute illegal recruitment in large scale, three elements must concur: (a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; (b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the same Code (now Section 6 of Republic Act No. 8042); and, (c) the offender committed the same against three (3) or more persons, individually or as a group.[60]

Article 13(b) of the Labor Code defines recruitment and placement as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers; and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not." In

---

[59] *The Migrant Workers and Overseas Filipinos Act of 1995.*

[60] *People v. Gamboa*, 395 Phil. 675, 684 (2000), citing *People v. Enriquez*, 366 Phil. 417, 425 (1999).

the simplest terms, illegal recruitment is committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes.[61]

We are persuaded that all three elements of illegal recruitment in large scale were proven in this case.

First, appellant had no valid license or authority to engage in the recruitment and placement of workers. This is established by the *Karagdagang Salaysay* executed by Pacardo on 8 March 2002, paragraph 6 of which states that while MPM applied for a license, it was never issued one, for which reason, it changed its name to New Filipino Manpower Development and Services, Inc.[62]

Second, despite not having such authority, appellant nevertheless engaged in recruitment activities, offering and promising jobs to private complainants and collecting from them various amounts as placement fees. This is substantiated by the respective testimonies of the three private complainants.

Fernandez narrated that it was appellant who assured him that if he pays ₱45,000.00, he would be able to leave for Korea within two to three months. Both Fernandez and Panlilio affirmed that they gave the money to appellant who issued a receipt therefore. Filomeno testified that when she went to the office of Martir, the latter and appellant were in the process of accepting applicants for work overseas. They told her that as a factory worker in Korea, she would have a monthly salary of US$500.00 with overtime pay. Relying on their misrepresentations, she paid the placement fee to appellant and Martir.

Thus, the mere denials of appellant cannot stand against the clear, positive and straightforward testimonies of private complainants who positively identified appellant as one of two persons who undertook to recruit them for a supposed employment in Korea. As already previously mentioned, absent

---

[61] *People v. Ganigan*, G.R. No. 178204, 20 August 2008, 562 SCRA 741, 748, citing *People v. Alvarez*, 436 Phil. 255, 265 (2002).

[62] Records, Vol. I, p. 153.

any evidence that the prosecution witnesses were motivated by improper motives, the trial court's assessment of the credibility of the witnesses shall not be interfered with by this Court.

WHEREFORE, the decision of the Court of Appeals dated 31 January 2008 in CA–G.R. CR H.C. No. 01663, affirming with modification the Judgment of the Regional Trial Court of Manila, Branch 34, finding appellant Rodolfo Gallo guilty of illegal recruitment in large scale and three (3) counts of *estafa* is *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Abad, JJ.*, concur.

THIRD DIVISION

[A.M. No. P-07-2355. March 19, 2010]
(Formerly A.M. OCA IPI No. 01-7-208-MTCC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ATTY. MARY ANN PADUGANAN-PEÑARANDA, Office of the Clerk of Court, Municipal Trial Court in Cities (MTCC), Cagayan de Oro, Misamis Oriental; and Ms. JOCELYN MEDIANTE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURTS AND CASH CLERKS WHO ARE TASKED WITH COLLECTIONS OF COURT FUNDS ARE MANDATED BY LAW TO IMMEDIATELY DEPOSIT WITH AUTHORIZED GOVERNMENT DEPOSITORIES VARIOUS FUNDS THEY HAVE COLLECTED; VIOLATED IN CASE AT BAR. — Time and again, we have reminded court

personnel tasked with collections of court funds, such as Clerks of Courts and cash clerks, to deposit immediately with authorized government depositories the various funds they have collected, because they are not authorized to keep funds in their custody. In this case, respondents violated Supreme Court (SC) Circular No. 50-95, which commands that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depositary bank. Section B (4) of SC Circular No. 50-95, on the collection and deposit of court fiduciary funds, mandates that: (4) All collections from bail bonds, rental deposits, and other fiduciary funds shall be deposited within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof with the Land Bank of the Philippines. Along the same vein, SC Circular Nos. 13-92 and 5-93 provide the guidelines for the proper administration of court funds. SC Circular No. 13-92 commands that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depositary bank." Per SC Circular No. 5-93, the LBP is designated as the authorized government depositary.

2. ID.; ID.; ID.; ID.; ID.; ID.; ADMINISTRATIVE SANCTION IS WARRANTED DESPITE FULL PAYMENT OR OVER-REMITTANCE; CASE AT BAR. — Failure to fulfill these responsibilities deserves administrative sanction, and not even the full payment or over-remittance, as in this case, will exempt the accountable officers from liability. The Court has to enforce what is mandated by the law, and to impose a reasonable punishment for violations thereof. Aside from being the custodian of the court's funds and revenues, property and premises, a clerk of court is also entrusted with the primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds. Safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. While Peñaranda was not the custodian of the court's collection and she, instead, delegated said function to Mediante, still, the expectation that she would perform all the duties and responsibilities of a Clerk of Court is not diminished. Indeed, the fact that Mediante was

the one tasked to deposit the court collections does not absolve Peñaranda from liability, since the duty to remit court collections remains with her as the clerk of court, albeit, in this case, she was supposed to monitor that the same was being carried out. Jointly, Peñaranda and Mediante are accountable officers entrusted with the great responsibility of collecting money belonging to the funds of the court. Both have been remiss in their duty to remit the collections within a prescribed period and are liable for keeping funds in their custody – Peñaranda as the one responsible for monitoring the court's financial transactions and Mediante as the one in whom such functions are reposed. Undoubtedly, Peñaranda and Mediante violated the trust reposed in them as disbursement officers of the judiciary. Thus, they should be held liable for the shortages mentioned above. We must emphasize that it is the duty of clerks of court to perform their responsibilities faithfully, so that they can fully comply with the circulars on deposits of collections. They are reminded to deposit immediately, with authorized government depositaries, the various funds they have collected, because they are not authorized to keep those funds in their custody. The unwarranted failure to fulfill these responsibilities deserves administrative sanction and, we reiterate, not even the full payment of the collection shortages will exempt the accountable officer from liability.

3. ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY; PENALTY; CASE AT BAR. — Delay in the remittances of collections constitutes neglect of duty. Further, we have held that the failure to remit judiciary collections on time deprives the court of the interest that may be earned if the amounts are deposited in a bank. Under the Civil Service Rules and the Omnibus Rules implementing it, simple neglect of duty is a less grave offense penalized with suspension for one month and one day to six months for the first offense, and dismissal for the second offense. However, in the interest of justice and equity, considering that a portion of the ₱72,745.00 was accounted for and deposited in May 2001 as evidenced by the deposit slips submitted by Peñaranda and Mediante, and that a subsequent restitution of the whole amount of ₱72,745.00 was made on October 4, 2007 despite Peñaranda's having accounted for a portion thereof in May 2001, it is only fair that what was restituted beyond what was required should be returned to Peñaranda and Mediante.

D E C I S I O N

PERALTA, *J.*:

This administrative matter stemmed from the partial financial audit of the books of accounts of the Municipal Trial Court in Cities of Cagayan de Oro City, Misamis Oriental (MTCC-Cagayan de Oro City), conducted by the Audit Team of the Court Management Office (team) on May 21, 2001. The audit covered the accountability period of Atty. Mary Ann Paduganan-Peñaranda (Peñaranda), Clerk of Court, Office of the Clerk of Court, MTCC, Cagayan de Oro City, from June 1990 as to the Judiciary Development Fund; from April 1996 as to the General Fund and from April 1996 as to the Fiduciary Fund. Jocelyn Y. Mediante (Mediante), Cashier I of the same court, however, was included as respondent for being one of the accountable officers.

In the partial audit report submitted by the team, it appeared that upon initial cash count conducted on the first day of the audit, the cashbook showed a total cash on hand of Sixty-Nine Thousand One Hundred Fifty-Five Pesos (₱69,155.00) representing collections for the Judiciary Development Fund, General Fund, Fiduciary Fund and Legal Research Fund. However, the cash on hand presented to the audit team was only Sixty-Four Thousand Three Hundred Fifty-Six and 15/100 (₱64,356.15). When questioned about the discrepancy, they claimed that the shortage was due to the failure of Ms. Celedonia Suarez, Cash Clerk, to turn over the collections when she went on leave. To cover the shortage, Peñaranda immediately restituted the missing fund.

In a nutshell, the following findings on the books of account of the MTCC-Cagayan de Oro City were established: (a) a shortage was incurred in the Judiciary Development Fund amounting to ₱49,589.14; and (b) there was an over-remittance of ₱269.50 to the General Fund. With regard to the accountabilities pertaining to the Fiduciary Fund, the team instructed Peñaranda to submit the bank statements/passbooks issued by the Land Bank of the Philippines (LBP) in order to determine the exact cash accountabilities for the said fund.

Thus, in a Resolution dated August 20, 2001, the Court resolved to:

(1) REQUIRE [a] Atty. Peñaranda and Ms. Jocelyn Mediante, Court Cashier, to EXPLAIN within ten (10) days from notice why no administrative sanction shall be imposed upon them for their failure to remit the collections of the Court in the sum of ₱49,589.14 for the Judiciary Development Fund; [b] Atty. Peñaranda to RESTITUTE immediately the said shortage and to SUBMIT to the Court, through the Office of the Court Administrator, copy of the deposit slip of said payment, all within ten (10) days from notice hereof;

(2) IMMEDIATELY RELIEVE Atty. Peñaranda and Ms. Mediante of their duties as collecting officers; and

(3) DIRECT the Executive Judge, MTCC of Misamis Oriental, to appoint an officer-in-charge pending the outcome of the audit.

In compliance with the Court's directive, Judge Dan R. Calderon, then Executive Judge, MTCC, Cagayan de Oro City, issued a Memorandum dated September 26, 2001, relieving Peñaranda and Mediante as collecting officers. In lieu thereof, Ms. Evelyn Subido, Administrative Officer I, and Ms. Isabel Umas-as, Clerk III, were designated to assume the said functions of Peñaranda and Mediante, as collecting officers.

Meanwhile, on September 28, 2001, Peñaranda restituted the amount of ₱49,589.14 to the Judiciary Development Fund as evidenced by the LBP deposit slip dated September 28, 2001 and Official Receipt No. 8444062.

In her Comment dated March 1, 2002, Mediante explained that when she assumed her duty as cashier in December 1997, her predecessors were not maintaining any cashbook. She claimed that only the cash on hand were accounted for *vis-a-vis* the amount of receipts issued. She also admitted that her functions were to receive cash, issue receipts and deposit the same with the LBP. She, however, clarified that Ms. Gwendolyn J. Pontipedra (Pontipedra), a city employee detailed with the Clerk of Court's Office, was the one tasked to prepare the monthly report of collections and the posting in the cashbooks. Mediante believed that due to this set-up, it became difficult to reconcile the

cashbooks/monthly report and the actual cash deposits with the LBP. She further added that they only depended on the Commission on Audit (COA) representatives to audit their books when they visited from time to time. Mediante maintained that all court transactions were duly receipted for and the monthly reports truly reflected the same. Finally, Mediante insisted that, while the full amount of the court collections had been left unremitted at the time the audit was conducted, the shortage was not due to bad faith, but was a result of the loose tracking of accounts, mismanagement, lack of information on the proper accounting system, and/or negligence.

For her part, Peñaranda, in her Letter-Explanation dated February 28, 2002, narrated that at the time she took over as clerk of court, there was no actual and physical turn-over of either property or cash accountability. She added that she merely assumed that since her predecessor was cleared from all liabilities, it followed that the books of accounting were done properly. Peñaranda claimed that she had no prior briefing, no seminar or training when she assumed her position. There was only a designated cashier who made their own record book, logbook and ledger. There was no bookkeeper, because there was no book to account then.

Peñaranda claimed that it was only sometime in 1996, after being advised by an audit team from the Supreme Court, that they obtained an official book of account from the Supreme Court, since the team was surprised to find out that there was no accounting system at all; no records, no ledger, no bookkeeping, but merely a record book self-made by the designated cashier. She likewise manifested that when a permanent cashier was appointed, *i.e.*, Mediante, she had no way of counter-checking anymore the handling of court collections. Thus, she designated a posting clerk, Pontipedra, to receive the receipts and deposit slips for recording in the books and to check the receipts *vis-à-vis* the deposit slips.

Moreover, Peñaranda stressed that she was not aware of the shortage, since she did not have any actual possession of court collections. The only instance that she could hold cash was

when the cashier was on leave and she had to do the cashiering, but she, nevertheless, turned over the same to the cashier and signed the last receipt she issued to show the cut-off of her issuances. She claimed that she signs the deposit slips every day, but whether or not all collections were actually deposited, she was unaware. Peñaranda maintained that assuming there was a fault on her part, it was merely the fact that she gave her staff full confidence and trust.

In a Resolution dated July 24, 2002, the Court resolved to refer the instant administrative matter to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

The team, after further evaluation of all the documents subsequently presented, found a shortage amounting to Seventy-Two Thousand Seven Hundred Forty-Five Pesos (₱72,745.00), which pertained to the Fiduciary Fund. However, the monthly reports of collections, deposits, and withdrawals were found to be in order. The team, likewise, observed that the total collections for certain months were not deposited in full; thus, said collections did not tally with the corresponding deposits for that particular month.

In sum, the accountabilities/cash shortages found by the audit team were as follows:

Balance per bank as of 4/30/01			₱ 8,859,524.46
Add: Deposit in transit			8,000.00
Total			₱ 8,867,524.46
Less: Interest earned for the period			
6/96-4/30/01	₱ 503,556.49		
Interest withdrawn as of 4/30/01	₱ 447,664.26	55,892.23	
Outstanding checks		1,000.00	
Staled checks		6,500.00	
Erroneous deposit of JDF collections		355.00	63,747.23
Adjusted bank balance as of 4/30/01			**₱ 8,803,777.23**
Collections for the period 4/96-4/30/01			₱ 18,516,584.73
Less: Withdrawals for the same period			₱ 9,640,062.50
Unwithdrawn Fiduciary Fund as of 4/30/01			**₱ 8,876,522.23**

Unwithdrawn Fiduciary Fund as of 4/30/01	₱ 8,876,522.23
Less: Adjusted bank balance as of 4/30/01	₱ 8,803,777.23
Balance of Accountabilities/Shortage	**₱ 72,745.00**

On the basis of the foregoing findings, the OCA recommended, on January 9, 2007, among others, that Peñaranda be directed to restitute the amount of Seventy-Two Thousand Seven Hundred Forty-Five Pesos (₱72,745.00) representing her shortage in the Fiduciary Fund; and that the instant administrative matter be redocketed as a regular administrative complaint against Peñaranda and Mediante.

In a Resolution dated August 1, 2007, the Court resolved to (a) redocket the administrative matter as a regular administrative complaint; (b) direct Peñaranda to restitute the amount of ₱72,745.00 representing her shortage in the Fiduciary Fund; (c) authorize Peñaranda to assume her regular functions as Clerk of Court upon restitution of the shortages; and (d) direct Mediante to assume regular functions as Cashier I upon restitution of the shortages and Judge Eleuteria Badoles-Algodon to monitor the strict compliance with and implementation of the proper handling of the judiciary collection.

In compliance, on October 4, 2007, Mediante restituted the amount of ₱72,745.00 as per Land Bank Official Receipt No. 0025477 and deposit slips all dated October 4, 2007.

However, in her Manifestation dated October 11, 2007, Mediante clarified the fact that there was no shortage of funds in the amount of ₱72,745.00. Mediante explained that for the month of May 2001, there was over-remittance. She claimed that the total court collections for May 2001 was only ₱93,950.00; however, a total of ₱152,300.00, or an excess of ₱58,350.00 was deposited to the LBP. Mediante also added that the cost of the checkbooks in the amount of ₱5,185.00, plus another ₱210.00 as bank charges, was not listed as expenses in the record, thus, adding to the alleged shortage. Mediante attached the deposit slips representing the bank deposits to the LBP for May 2001, which included the court collections for April 2001, to wit:

May 2, 2001	-	₱ 8,000.00	
May 4, 2001	-	₱ 10,000.00	
May 8, 2001	-	₱ 10,000.00	
May 9, 2001	-	₱ 10,850.00	
May 10, 2001	-	₱ 19,500.00	(₱58,350.00)
May 11, 2001	-	₱ 15,000.00	
May 16, 2001	-	₱ 8,950.00	
May 17, 2001	-	₱ 13,000.00	
May 18, 2001	-	₱ 5,000.00	
May 21, 2001	-	₱ 52,000.00	
		₱ 152,300.00	

Likewise, in a Manifestation dated October 10, 2007, Peñaranda, likewise, corroborated Mediante's manifestation that there was no shortage in the court's funds, but merely a delay in the remittances and erroneous withdrawals of cash bond. Peñaranda added that, other than the over-remittance in the month of May 2001, there was also an erroneous withdrawal of a cash bond from the LBP in the amount of ₱17,000.00, which should have been withdrawn from the City Treasurer's Office.

Peñaranda explained that the deposit in transit as of May 2, 2001 was only ₱8,000.00 when it was supposed to be ₱58,350.00 which was the unremitted court collection for April 2001. Corollary to this, for May 2001, the total court collection was only ₱93,950.00, but instead, the collection deposited to LBP was ₱152,300.00. Thus, there was an over-deposit in the amount of ₱58,350.00. Peñaranda clarified that this over-deposit was the same amount that was supposed to be deposited on May 2, 2001 in the amount of ₱58,350.00, but only ₱8,000.00 was actually deposited. The total deposit of the said amount was only completed on May 10, 2001.

Peñaranda further stated that while the April 2001 court collection of ₱58,350.00 was deposited in May 2001, the same was not included in the report for April 2001, but was instead included in the report for the month of May. Finally, Peñaranda insisted that she was not aware of the fact that the remaining April 2001 court collections were not deposited the next working day, because she was of the belief that the deposit slip that she

signed covered all the collections for that period. Peñaranda reiterated that, given the above-mentioned circumstances, her only fault was giving her staff full trust and confidence.

RULING

We are in accord with the findings of the OCA with certain modifications on the penalty to be imposed on Peñaranda and Mediante.

Time and again, we have reminded court personnel tasked with collections of court funds, such as Clerks of Courts and cash clerks, to deposit immediately with authorized government depositories the various funds they have collected, because they are not authorized to keep funds in their custody.[1]

In this case, respondents violated Supreme Court (SC) Circular No. 50-95, which commands that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depositary bank. Section B (4) of SC Circular No. 50-95, on the collection and deposit of court fiduciary funds, mandates that:

> (4) All collections from bail bonds, rental deposits, and other fiduciary funds shall be deposited within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof with the Land Bank of the Philippines.

Along the same vein, SC Circular Nos. 13-92 and 5-93 provide the guidelines for the proper administration of court funds. SC Circular No. 13-92 commands that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depositary bank." Per SC Circular No. 5-93, the LBP is designated as the authorized government depositary.[2]

---

[1] *Soria v. Oliveros*, 497 Phil. 709, 725 (2005).

[2] See *Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City*, A.M. No. P-06-2140, June 26, 2006, 492 SCRA 469, 481; *Judge Cabato-Cortes v. Atty. Agtarap*, 445 Phil. 66, 74 (2003).

Failure to fulfill these responsibilities deserves administrative sanction, and not even the full payment or over-remittance, as in this case, will exempt the accountable officers from liability.[3] The Court has to enforce what is mandated by the law, and to impose a reasonable punishment for violations thereof. Aside from being the custodian of the court's funds and revenues, property and premises, a clerk of court is also entrusted with the primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds. Safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds.[4]

While Peñaranda was not the custodian of the court's collection and she, instead, delegated said function to Mediante, still, the expectation that she would perform all the duties and responsibilities of a Clerk of Court is not diminished. Indeed, the fact that Mediante was the one tasked to deposit the court collections does not absolve Peñaranda from liability, since the duty to remit court collections remains with her as the clerk of court, albeit, in this case, she was supposed to monitor that the same was being carried out.

Jointly, Peñaranda and Mediante are accountable officers entrusted with the great responsibility of collecting money belonging to the funds of the court. Both have been remiss in their duty to remit the collections within a prescribed period and are liable for keeping funds in their custody – Peñaranda as the one responsible for monitoring the court's financial transactions and Mediante as the one in whom such functions are reposed.[5] Undoubtedly, Peñaranda and Mediante violated

---

[3] *In-House Financial Audit, Conducted on the Books of Accounts of Khalil B. Dipatuan, RTC-Malabang, Lanao Del Sur*, A.M. No. P-06-2121, June 26, 2008, 555 SCRA 417, 423.

[4] *Office of the Court Administrator v. Bernardino*, 490 Phil. 500, 524 (2005).

[5] *Report on the Status of the Financial Audit Conducted in the RTC-Tarlac City*, A.M. No. P-06-2124, December 19, 2006, 511 SCRA 191, 198.

the trust reposed in them as disbursement officers of the judiciary. Thus, they should be held liable for the shortages mentioned above.

We must emphasize that it is the duty of clerks of court to perform their responsibilities faithfully, so that they can fully comply with the circulars on deposits of collections. They are reminded to deposit immediately, with authorized government depositaries, the various funds they have collected, because they are not authorized to keep those funds in their custody. The unwarranted failure to fulfill these responsibilities deserves administrative sanction and, we reiterate, not even the full payment of the collection shortages will exempt the accountable officer from liability.

Delay in the remittances of collections constitutes neglect of duty.[6] Further, we have held that the failure to remit judiciary collections on time deprives the court of the interest that may be earned if the amounts are deposited in a bank. Under the Civil Service Rules and the Omnibus Rules implementing it, simple neglect of duty is a less grave offense penalized with suspension for one month and one day to six months for the first offense, and dismissal for the second offense.[7]

However, in the interest of justice and equity, considering that a portion of the ₱72,745.00 was accounted for and deposited in May 2001 as evidenced by the deposit slips submitted by Peñaranda and Mediante, and that a subsequent restitution of the whole amount of ₱72,745.00 was made on October 4, 2007 despite Peñaranda's having accounted for a portion thereof in May 2001, it is only fair that what was restituted beyond what was required should be returned to Peñaranda and Mediante.

WHEREFORE, the Court finds respondents Atty. Mary Ann Paduganan-Peñaranda and Ms. Jocelyn Mediante *GUILTY* of *SIMPLE NEGLECT OF DUTY***.** They are ordered *SUSPENDED* from office for two (2) months effective immediately upon their

---

[6] *In-House Financial Audit Conducted on the Books of Account of Khalil B. Dipatuan, RTC-Malabang, Lanao Del Sur, supra* note 3.

[7] *Id*.

receipt of this decision. They are likewise *STERNLY WARNED* that a repetition of the same or similar offense shall be dealt with more severely.

The Fiscal Management and Budget Office is *DIRECTED* to compute the amount deposited in excess of ₱72,745.00 and reimburse the same to Peñaranda and Mediante.

The Court further *REMINDS* Judge Eleuteria Badoles-Algodon to exercise effective supervision over the personnel of her court, especially those charged with the collection of the Fiduciary Fund and other trust funds.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-08-2559. March 19, 2010]
(Formerly OCA IPI No. 08-2940-P)

RYAN S. PLAZA, Clerk of Court, Municipal Trial Court, Argao, Cebu, *complainant, vs.* **ATTY. MARCELINA R. AMAMIO, Clerk of Court, GENOVEVA R. VASQUEZ, Legal Researcher and FLORAMAY PATALINGHUG, Court Stenographer, all of the Regional Trial Court, Branch 26, Argao, Cebu,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; WITHDRAWAL OF THE ADMINISTRATIVE COMPLAINT BY THE COMPLAINANT DOES NOT HAVE THE LEGAL

EFFECT OF EXONERATING RESPONDENT FROM ANY ADMINISTRATIVE DISCIPLINARY SANCTION; WHETHER TO CONTINUE WITH THE PROCEEDINGS RESTS EXCLUSIVELY WITH THE SUPREME COURT. — As a preliminary matter, we note that on May 22, 2008, complainant Plaza manifested before the Court his intention to desist from pursuing the case. He wrote thus: x x x At this point in time, I am respectfully informing your office that it is now my intention not to pursue the matter any more for the reason that the attention of the respective respondents has also been called x x x by the Executive Judge and besides, the incident has already been heard before the said judge and I was already satisfied with the outcome/resolution of the said proceedings. x x x At this point, we remind herein complainant that the discretion whether to continue with the proceedings rests exclusively with the Court, notwithstanding the complainant's intention to desist. Our ruling in *Guray v. Judge Baustista* is instructive: This Court looks with disfavor at affidavits of desistance filed by complainants, especially if done as an afterthought. Contrary to what the parties might have believed, withdrawal of the complaint does not have the legal effect of exonerating respondent from any administrative disciplinary sanction. It does not operate to divest this Court of jurisdiction to determine the truth behind the matter stated in the complaint. The Court's disciplinary authority cannot be dependent on or frustrated by private arrangements between parties. An administrative complaint against an official or employee of the judiciary cannot simply be withdrawn by a complainant who suddenly claims a change of mind. Otherwise, the prompt and fair administration of justice, as well as the discipline of court personnel, would be undermined. x x x

2. ID.; ID.; ID.; ID.; THAT THE ADMINISTRATIVE CASE HAS BEEN HEARD BY THE INVESTIGATING JUDGE DOES NOT MEAN THAT HE MAY ORDER ITS TERMINATION; CASE AT BAR. — xxx [T]hat the case has been heard by the Investigating Judge does not mean that he may order its termination. As clearly stated in the Indorsement of the OCA dated July 27, 2007, Judge Perez was only directed to conduct an investigation and to submit his report thereon to the OCA, for further evaluation by the latter. Likewise, it is immaterial and irrelevant whether complainant was satisfied with the outcome of the case.

3. ID.; ID.; ID.; ID.; ADMINISTRATIVE CIRCULAR NO. 3-92; HALLS OF JUSTICE ARE TO BE USED ONLY FOR COURT PURPOSES AND FOR NO OTHER PURPOSE; VIOLATED IN CASE AT BAR. — Indeed, the holding of a raffle draw at the Argao Hall of Justice by the staff of Sara Lee degraded the honor and dignity of the court and exposed the premises, as well as the judicial records to danger of loss or damage. In Administrative Circular No. 3-92, we have already reminded all judges and court personnel that "the Halls of Justice may be used only for purposes directly related to the functioning and operation of the courts of justice, and may not be devoted to any other use x x x." As correctly observed by the OCA: A careful reading of the paragraph shows the Court's categorical statement that the Halls of Justice are to be used only for court purposes and for no other purpose, despite the use of the word "may," which the respondents and the investigating judge argue as permissive and not mandatory. The mention of residential and commercial purposes are used as concrete examples since such instances actually happened x x x and were in fact the subject of administrative cases, and are thus enumerated, not to exclude other acts (as clearly indicated by the word "least of all" prior to the enumeration) but rather to illustrate the general prohibition. Thus, the argument that the raffle draw event was not residential nor commercial (despite the erudite distinction made by the respondents as to what is commercial and what is not) deserves scant consideration. In fact, this reminder in Administrative Circular No. 3-92 was reiterated in Administrative Circular No. 1-99 where we described courts as "temples of justice" and as such, "their dignity and sanctity must, at all times, be preserved and enhanced." The Court thus exhorted its officials and employees to strive to inspire public respect for the justice system by, among others, not using "their offices as a residence or for any other purpose than for court or judicial functions."

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE FACT THAT ARGAO HALL OF JUSTICE IN CASE AT BAR HAD BEEN USED FOR SIMILAR ACTIVITIES DOES NOT JUSTIFY THE HOLDING OF RAFFLE DRAW THEREAT; EXPLAINED. — xxx [The Court agrees] with the OCA that the fact the Argao Hall of Justice had been used for similar activities does not justify the holding of the raffle draw thereat. Thus: x x x The

Argao Hall of Justice is not meant to be used for festivities, and in fact should remain closed to the public during such occasions. The contention that there was no danger to the building and the records since the raffle draw was merely held at the ground floor lobby and that those who attended the raffle draw were decent people, majority of whom are women, is untenable. Time and again, the Court has always stressed in pertinent issuances and decisions that courts are temples of justice, the honor and dignity of which must be upheld and that their use shall not expose judicial records to danger of loss or damage. So strict is the Court about this that it has declared that the prohibition against the use of Halls of Justice for purposes other than that for which they have been built extends to their immediate vicinity including their grounds. If the building housing the Argao Hall of Justice is such an important historical landmark, all the more reason why activities, such as Sara Lee raffle draw, should not be held within. At most, the said Hall of Justice could have been made part of a regular local tour, to be viewed at designated hours, which viewing shall be confined to certain areas not intrusive to court operations and records.

D E C I S I O N

DEL CASTILLO, *J.*:

The court and its premises shall be used exclusively for court or judicial functions and not for any other purpose. As temples of justice, their dignity and sanctity must be preserved at all times.

Factual Antecedents

On July 25, 2007, Ryan S. Plaza (Plaza), Clerk of Court II of the Municipal Trial Court of Argao, Cebu, filed a complaint[1] against Atty. Marcelina R. Amamio (Amamio), Clerk of Court; Genoveva R. Vasquez (Vasquez), Legal Researcher, and Floramay Patalinghug (Patalinghug), Court Stenographer, all of the Regional Trial Court (RTC) of Argao, Cebu, Branch 26, for intentional

[1] *Rollo,* pp. 8-11.

violation of Administrative Circular No. 3-92,[2] when they allowed Sara Lee, a private company selling beauty and fashion products, to hold a party and raffle draw inside the Argao Hall of Justice on July 14, 2007.

The facts as summarized by the Office of the Court Administrator (OCA) are as follows:

> The complainant alleges that sometime in the first week of July 2007, he heard that some of the personnel of RTC (Branch 26) were planning to hold a Sara Lee party in the Argao Hall of Justice and that upon learning of the plan, he informed the personnel of the said court about Administrative Circular No. 3-92 prohibiting the use of the Halls of Justice for residential or commercial purposes.
>
> The complainant claims that in the morning of July 14, 2007, a Saturday, the security guard on duty, Mr. Roger O. Jimenez, telephoned him with the information that there were persons from Sara Lee who wanted to enter the Argao Hall of Justice to put up the decorations, sound system and catering equipment for the Sara Lee party. The complainant states that he directed Mr. Jimenez not to allow the persons to enter the premises. He then called up Atty. Amamio to inform her of the situation and of the infraction that would be committed should the Sara Lee party push through. The complainant alleges that Atty. Amamio insisted that she had authorized the Sara Lee party and raffle draw.
>
> The complainant then recounts the events that transpired as recorded in the security logbook of the Argao Hall of Justice x x x. In the logbook, Mr. Jimenez wrote that at around 11:05 in the morning of July 14, 2007, he received a telephone call from Ms. Vasquez approving the use of the entrance lobby for the raffle draw which she claimed was authorized by Atty. Amamio. According to the entries in the logbook, the raffle draw started at around 2:00 p.m. and ended at 5:00 p.m., with fifty-one (51) participants attending the event.
>
> The complainant adds that even the security guards on duty who recorded the Sara Lee event in the logbook were later subjected to x x x harassment by the respondents who questioned the guards [as to] why the said event was recorded in the logbook. He claims that

---

[2] Prohibition Against Use of Halls of Justice for Residential or Commercial Purposes.

Atty. Amamio even reprimanded the guards x x x, castigating the latter for also jotting down in the logbook court personnel who were not in uniform.

The complainant stresses that holding the party and raffle draw inside the Argao Hall of Justice was a clear violation of Administrative Circular 3-92 and had exposed the properties and records contained within it to risk of damage and loss.

The joint comment (denominated as Compliance) dated August 21, 2007 of respondents Amamio, Vasquez and Patalinghug "vehemently and strongly RESIST the charges against them for utter lack of both legal and factual bases x x x."

The respondents do not deny that they allowed the holding of the Sara Lee raffle draw on July 14, 2007 at the ground floor lobby of the Argao Hall of Justice, but only after respondents Amamio and Vasquez had fully discussed the matter upon receipt of the letter dated June 4, 2007 of Mrs. Virginia C. Tecson, business manager of the Fuller Life Direct Selling and Personal Collection, requesting permission to hold the raffle draw of Sara Lee at the Argao Hall of Justice.

The respondents argue that similar activities had been held before at the Argao Hall of Justice. They said that during the fiesta of Argao in September 2006, a stage for beauty pageant was put up right at the entrance of the Argao Hall of Justice. The contestants and other participants used the ground floor lobby, the stairs and the second floor lobby of the said building. On January 28, 2007, the Municipality of Argao held a Sinulog parade which culminated in the town plaza. Since the Argao Hall of Justice fronts the town plaza, some spectators entered the building and went up the second floor to watch the performance in the plaza. They add that on the ground floor lobby, several persons, including the barangay tanods, were taking alcoholic beverages.

The respondents also claim that at the Cebu City Hall of Justice, raffle draws were being conducted regularly and that the latest, which was held on March 30, 2007, was sponsored by the very same people from Sara Lee. The respondents contend that the prizes to this raffle draw, which included a multicab, were displayed on the ground floor lobby of the building for one week.

According to the respondents, these were all taken into consideration when they decided to grant the request of Mrs. Tecson.

They insist that the proposed raffle draw was a relatively minor event compared to the abovementioned activities.

The respondents added that since the building which houses the Argao Hall of Justice has been declared a cultural heritage and is the centerpiece of the said municipality, then the activity planned by Sara Lee was appropriate in promoting the town of Argao. Respondents Amamio and Vasquez maintain that it was their honest belief that the building was not to be used exclusively for court purposes, but also to be shown to visitors who wanted to visit and see the historical building.

Thus, in her letter dated June 11, 2007, respondent Amamio formally granted the request of Mrs. Tecson with the specific instructions to use only the ground floor lobby of the building, to conduct their activity peacefully and orderly, to refrain from causing any damage to the building and its premises and to clean the premises after the raffle draw.

Since respondent Vasquez could not attend the raffle draw, respondent Amamio claims that she requested respondent Patalinghug to be at the Argao Hall of Justice on the day of the raffle draw to make sure that her (Amamio's) instructions would be strictly observed.

Respondent Amamio denies the complainant's allegation that the latter informed the former about violating Administrative Circular No. 3-92. The said respondent declares that she need not be informed about the issuance [of said circular] since she had practically read and studied carefully all circulars that had been issued by the Supreme Court "not only as a dutiful Clerk of Court of the Regional Trial Court, but as a lawyer herself."

The respondents deny that a party was held, saying that only a raffle draw was conducted and that only softdrinks and finger foods were served to the participants. They also claim that there was no danger to the building and the records since the raffle draw was merely held at the ground floor lobby and that those who attended the raffle draw were decent people, majority of them being women. Neither was there any commercial activity or transaction which involved the buying and selling of goods for profit. According to the respondents, Mrs. Tecson's primary reason for requesting the use of the ground floor lobby of the Argao Hall of Justice was for her staff to experience and to imbibe Argao's rich historical past.

The respondents also deny that they harassed and intimidated the security guards who recorded the raffle draw in the logbook. Respondents Vasquez and Patalinghug only inspected the logbook to find out who attended the raffle draw and respondent Amamio merely called the attention of the guards as to why "even the trivial non-wearing of the office uniform of some employees were entered when Circular No. 49-2007 dated May 15, 2007 directed the optional wearing of uniforms."

Finally, the three respondents maintain that they had performed their duties to the best of their abilities, acted with absolute good faith devoid of malice, and had no intention to prejudice the interests of the Court. They insist that they have never violated any rule, regulation, or law in the execution of their assigned tasks.[3]

On July 27, 2007, the matter was indorsed to Judge Maximo A. Perez, RTC of Argao, Cebu, Branch 26, for appropriate action and investigation.[4]

Report and Recommendation of the Investigating Judge

In his Report[5] dated August 30, 2007, Judge Perez recommended the dismissal of the complaint for lack of substantial evidence to substantiate the charge. He found that respondents did not violate A.M No. 01-9-09-SC[6] which clarified Administrative Circular No. 3-92, for lack of showing that respondents have used the Argao Hall of Justice for residential, dwelling or sleeping purposes; for lack of proof that respondents have utilized the Argao Hall of Justice for commercial purposes because there was no buying and selling of goods for profit on July 14, 2007; and neither was there selling of tickets. Nonetheless, Judge Perez recommended that the respondents be sternly warned to be more circumspect in complying with the guidelines for the use of the Hall of Justice.

---

[3] *Rollo,* pp. 1-4.

[4] *Id.* at 22.

[5] *Id.* at 37-41.

[6] Guidelines on the Occupancy, Use, Operation and Maintenance of Halls of Justice. Resolution dated October 23, 2001.

Report and Recommendation of the OCA

In its Report and Recommendation,[7] the OCA did not agree with the findings of Judge Perez. On the contrary, the OCA found that respondents violated Administrative Circular No. 3-92 by allowing the holding of a raffle draw in the lobby of the Argao Hall of Justice. Accordingly, the OCA recommended that-

x x x x x x x x x

2. Atty. Marcelina R. Amamio, Clerk of Court, Regional Trial Court (Branch 26), Argao, Cebu be SUSPENDED for one month and one day for simple misconduct with a STERN WARNING that a repetition of the same or similar act shall be dealt with more severely.

3. Ms. Genoveva R. Vasquez, Legal Researcher and Ms. Floramay Patalinghug, Court Stenographer, both of the Regional Trial Court (Branch 26), Argao, Cebu be REPRIMANDED for violation of office rules and regulations with a STERN WARNING that a repetition of the same or similar act shall be dealt with more severely.

Our Ruling

We adopt the findings and recommendations of the OCA.

As a preliminary matter, we note that on May 22, 2008, complainant Plaza manifested before the Court his intention to desist from pursuing the case. He wrote thus:

x x x x x x x x x

At this point in time, I am respectfully informing your office that it is now my intention not to pursue the matter any more for the reason that the attention of the respective respondents has also been called x x x by the Executive Judge and besides, the incident has already been heard before the said judge and I was already satisfied with the outcome/resolution of the said proceedings.

x x x x x x x x x[8]

---

[7] *Rollo*, pp. 1-7.

[8] *Id.* at 84.

At this point, we remind herein complainant that the discretion whether to continue with the proceedings rests exclusively with the Court, notwithstanding the complainant's intention to desist. Our ruling in *Guray v. Judge Baustista*[9] is instructive:

> This Court looks with disfavor at affidavits of desistance filed by complainants, especially if done as an afterthought. Contrary to what the parties might have believed, withdrawal of the complaint does not have the legal effect of exonerating respondent from any administrative disciplinary sanction. It does not operate to divest this Court of jurisdiction to determine the truth behind the matter stated in the complaint. The Court's disciplinary authority cannot be dependent on or frustrated by private arrangements between parties.
>
> An administrative complaint against an official or employee of the judiciary cannot simply be withdrawn by a complainant who suddenly claims a change of mind. Otherwise, the prompt and fair administration of justice, as well as the discipline of court personnel, would be undermined. x x x[10]

Moreover, that the case has been heard by the Investigating Judge does not mean that he may order its termination. As clearly stated in the Indorsement[11] of the OCA dated July 27, 2007, Judge Perez was only directed to conduct an investigation and to submit his report thereon to the OCA, for further evaluation by the latter. Likewise, it is immaterial and irrelevant whether complainant was satisfied with the outcome of the case.

It is undisputed that on July 14, 2007, Sara Lee held a raffle draw at the ground floor lobby of the Argao Hall of Justice. Ms. Virginia C. Tecson, Sara Lee's Business Manager, wrote a letter addressed to the Executive Judge of the RTC, Branch 26, Argao, Cebu, requesting permission for the holding of a raffle draw at the Argao Hall of Justice. In their Compliance,[12] respondents Amamio and Vasquez admitted that

---

[9] 413 Phil. 1 (2001).

[10] *Id.* at 11-12.

[11] *Rollo*, p. 22.

[12] *Rollo*, pp. 43-50.

they discussed the said request between themselves,[13] notwithstanding the fact that the said request was addressed to the Executive Judge. In a letter[14] dated June 11, 2007, respondent Amamio granted the request of Sara Lee. As correctly noted by the OCA, respondent Amamio exceeded her authority in taking it upon herself to grant the request of Sara Lee's representative, instead of referring the letter to the Executive Judge to whom it was addressed anyway.[15]

Indeed, the holding of a raffle draw at the Argao Hall of Justice by the staff of Sara Lee degraded the honor and dignity of the court and exposed the premises, as well as the judicial records to danger of loss or damage. In Administrative Circular No. 3-92, we have already reminded all judges and court personnel that "the Halls of Justice may be used only for purposes directly related to the functioning and operation of the courts of justice, and may not be devoted to any other use x x x."

As correctly observed by the OCA:

> A careful reading of the paragraph shows the Court's categorical statement that the Halls of Justice are to be used only for court purposes and for no other purpose, despite the use of the word "may," which the respondents and the investigating judge argue as permissive and not mandatory. The mention of residential and commercial purposes are used as concrete examples since such instances actually happened x x x and were in fact the subject of administrative cases, and are thus enumerated, not to exclude other acts (as clearly indicated by the word "least of all" prior to the enumeration) but rather to illustrate the general prohibition. Thus, the argument that the raffle draw event was not residential nor commercial (despite the erudite distinction made by the respondents as to what is commercial and what is not) deserves scant consideration.[16]

---

[13] *Id.* at 43.

[14] *Id.* at 52.

[15] *Id.* at 6.

[16] *Id.* at 5.

In fact, this reminder in Administrative Circular No. 3-92 was reiterated in Administrative Circular No. 1-99[17] where we described courts as "temples of justice" and as such, "their dignity and sanctity must, at all times, be preserved and enhanced." The Court thus exhorted its officials and employees to strive to inspire public respect for the justice system by, among others, not using "their offices as a residence or for any other purpose than for court or judicial functions."

On October 23, 2001, the Court also issued A.M. No. 01-9-09-SC, Section 3, Part I of which provides –

SEC. 3. USE OF HOJ.

SEC. 3.1 The HOJ **shall** be for the exclusive use of Judges, Prosecutors, Public Attorneys, Probation and Parole Officers and, in the proper cases, the Registries of Deeds, including their support personnel.

SEC. 3.2 The HOJ **shall** be used only for court and office purposes and shall not be used for residential, *i.e.*, dwelling or sleeping, or commercial purposes.

SEC. 3.3 Cooking, except for boiling water for coffee or similar beverage, **shall** not be allowed in the HOJ.

Finally, we agree with the OCA that the fact the Argao Hall of Justice had been used for similar activities does not justify the holding of the raffle draw thereat. Thus:

x x x The Argao Hall of Justice is not meant to be used for festivities, and in fact should remain closed to the public during such occasions. The contention that there was no danger to the building and the records since the raffle draw was merely held at the ground floor lobby and that those who attended the raffle draw were decent people, majority of whom are women, is untenable. Time and again, the Court has always stressed in pertinent issuances and decisions that courts are temples of justice, the honor and dignity of which must be upheld and that their use shall not expose judicial records to danger of loss or damage. So strict is the Court about this that

---

[17] Enhancing the Dignity of Courts as Temples of Justice and Promoting Respect for their Officials and Employees.

it has declared that the prohibition against the use of Halls of Justice for purposes other than that for which they have been built extends to their immediate vicinity including their grounds.

If the building housing the Argao Hall of Justice is such an important historical landmark, all the more reason why activities, such as Sara Lee raffle draw, should not be held within. At most, the said Hall of Justice could have been made part of a regular local tour, to be viewed at designated hours, which viewing shall be confined to certain areas not intrusive to court operations and records.[18]

ACCORDINGLY, we *ADOPT* the findings and recommendations of the Office of the Court Administrator. Atty. Marcelina R. Amamio, Clerk of Court, Regional Trial Court of Argao, Cebu, Branch 26, is hereby found *GUILTY* of simple misconduct and is ordered *SUSPENDED* for one month and one day with a *STERN WARNING* that a repetition of the same or similar act shall be dealt with more severely. Ms. Genoveva R. Vasquez, Legal Researcher and Ms. Floramay Patalinghug, Court Stenographer, both of the Regional Trial Court of Argao, Cebu, Branch 26, are hereby found *GUILTY* of violation of office rules and regulations and are *REPRIMANDED* with a *STERN WARNING* that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

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

---

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

[*] In lieu of Justice Jose P. Perez, per raffle dated January 6, 2010.

SECOND DIVISION

[G.R. No. 172357. March 19, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARCELO BUSTAMANTE *y* ZAPANTA, NEIL BALUYOT *y* TABISORA, RICHARD DELOS TRINO *y* SARCILLA, HERMINIO JOSE *y* MONSON, EDWIN SORIANO *y* DELA CRUZ and ELMER SALVADOR *y* JAVALE,** *appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE UNCORROBORATED TESTIMONY OF A SINGLE WITNESS, IF CREDIBLE, IS ENOUGH TO WARRANT CONVICTION; CASE AT BAR. — We find that the CA did not err in affirming the Decision of the trial court convicting the appellants of murder based on the testimony of Gabornes, the lone eyewitness. It is settled jurisprudence that the testimony of a single witness, if credible, is enough to warrant conviction. Both the trial court and the CA found Gabornes to be credible and whose testimony is entitled to full faith. We find no cogent reason to depart from said findings. As borne out by the records, Gabornes positively identified and categorically pointed to appellants as the ones who conspired with one another to kill Romeleo on June 1, 1997. He narrated the incident in a clear and convincing manner. He testified on the degree of participation of each of the accused with regard to the killing of Romeleo inside the IID-NAIA detention cell in such a manner that only an unbiased eyewitness could narrate. Gabornes was not shown to have had any ill motives to testify falsely against the appellants. As correctly observed by both the trial court and the CA, the fact that Gabornes was previously arrested for being an unauthorized porter is not enough reason for him to falsely accuse appellants of a very grave offense.

2. ID.; ID.; ID.; AFFIDAVIT OF RECANTATION, CORRECTLY DISREGARDED BY THE COURT OF APPEALS; EXPLAINED. — We also hold that the CA correctly disregarded the affidavit of recantation of Gabornes dated

February 21, 2005. In the said affidavit, Gabornes denied that he was inside the detention cell of the NAIA on June 1, 1997. Instead, he claimed that he was under the fly-over near the NAIA playing a card game. Consequently, he averred that there is no truth to his testimony given before the trial court pointing to the appellants as the perpetrators of the crime. We are not persuaded. Our ruling in *People v. Ballabare* is instructive: It is absurd to disregard a testimony that has undergone trial and scrutiny by the court and the parties simply because an affidavit withdrawing the testimony is subsequently presented by the defense. In the first place, any recantation must be tested in a public trial with sufficient opportunity given to the party adversely affected by it to cross-examine the recanting witness. x x x In the second place, to accept the new evidence uncritically would be to make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. For even assuming that Tessie Asenita had made a retraction, this circumstance alone does not require the court to disregard her original testimony. A retraction does not necessarily negate an earlier declaration. For this reason, courts look with disfavor upon retractions because they can easily be obtained from witnesses usually through intimidation or for monetary considerations. Hence, when confronted with a situation where a witness recants his testimony, courts must not automatically exclude the original testimony solely on the basis of the recantation. They should determine which testimony should be given credence through a comparison of the original testimony and the new testimony, applying the general rules of evidence. x x x As we have already discussed, Gabornes' testimony given before the National Bureau of Investigation (NBI) and the trial court was replete with details that only a person who witnessed such gruesome crime could narrate. Even during cross-examination, he remained steadfast in his account that the appellants were the ones who killed Romeleo. Also, both the trial court and the appellate court had several opportunities of taking a hard look at the records of the case considering the motions for reconsideration filed by the appellants. Both the CA and the RTC found beyond reasonable doubt that the appellants were indeed the authors of the crime.

3. CRIMINAL LAW; CONSPIRACY; ESTABLISHED IN CASE AT BAR. — We are not persuaded by the contention of the appellants that there was no conspiracy considering that they were in different areas of the NAIA premises when the crime took place. As correctly held by the CA: At bar, appellants claimed that they were either at the NAIA parking lot or were at the adjacent IID-NAIA office when the crime took place. These places, however, are but a short distance away from the scene of the crime and one could travel to and from these points in a little over a few seconds or minutes of leisure walking, as readily admitted by appellants in their own version of the event. Verily, the possibility of appellants to be at the scene of the crime at the time of its commission, is thus not farfetched. Besides, it is not required for conspiracy to exist that there be an agreement for an appreciable period prior to the occurrence. It is sufficient that at the time of the commission of the offense, the accused had the same purpose and were united in its execution. Direct proof of such agreement is not necessary. It may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused which point to a joint purpose and design, concerted action and community of interest. This community of design is present among the appellants as deduced from their individual acts. The RTC observed thus: The act of the accused Elmer Salvador, Neil Baluyot *y* Tabisora, and Richard Delos Trino *y* Sarcilla of boxing the victim on the stomach and the act of accused Herminio Jose who said '*tapusin na natin ito*' together with the act of accused Neil Baluyot of handing a 'tale' or cord to Elmer Salvador who thereafter twisted the cord which was around the neck of the victim with a piece of wood with the help of accused Mutalib Abdulajid who up to the present remained at large, all acts of which were done in the presence of all the accused namely: Neil Baluyot *y* Tabisora, Richard Delos Trino *y* Sarcilla, Herminio Jose *y* Mozon, Edwin Soriano *y* dela Cruz, Marcelo Bustamante *y* Zapanta, Carlito Lingat *y* Damaso and Elmer Salvador (including the accused who is at large) clearly show that all accused conspired, confederated and helped one another in murdering the victim with abuse of superior strength by strangling and hanging the victim Romeleo Quintos causing him to die of asphyxia. In conspiracy, the act of one is the act of all. x x x Likewise, the

act of accused Carlito Lingat *y* Damaso and Edwin Soriano *y* Dela Cruz of not coming to the hospital to give the medical clerk the name and circumstances of the victim including the facts surrounding the victim's death is very suspicious indeed and is contrary to the SOP of officers who bring victims to the hospital. Also the failure of all the accused to immediately report to the police investigator of Pasay City is quite unusual. In the same manner the acts of accused Neil Baluyot *y* Tabisora, Herminio Jose y Mozon and Richard Delos Trino *y* Sarcilla of leaving the IID office and cell which is the scene of the crime and then going to Biñan and to Atty. Augusto Jimenez is quite unusual for persons who professed innocence. Moreover, the doctrine is well settled that conspiracy need not be proved by direct evidence but may be proven through the series of acts done by each of the accused in pursuance of their common unlawful purpose. For collective responsibility among the accused to be established, it is sufficient that at the time of the aggression, all of them acted in concert, each doing his part to fulfill their common design to kill the victim. The CA correctly observed that: *A fortiori*, appellants should be held liable for the death of Romeleo Quintos. Their sequential attack, one after another, revealed their unlawful intent to kill the victim. Herminio Jose's utterances of "*tapusin na natin ito*" only strengthens the link that binds the acts of the appellants in their coordinated effort to kill Romeleo. x x x

4. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; QUALIFIED THE KILLING TO MURDER; A CASE OF. — There is likewise no merit to appellants' contention that they should only be held liable for homicide, and not for murder, because the qualifying circumstance of abuse of superior strength was not specifically alleged in the Information. Contrary to the assertion of the appellants, the Information specifically alleged that the appellants were – x x x conspiring and confederating with one another, with intent to kill and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously tie a plastic nylon cord around the neck of one Romeleo A. Quintos, and hang him at the end portion of the detention cell, which caused the instantaneous death of said Romeleo A. Quintos to the damage and prejudice of the heirs of said victim. It has

been satisfactorily established that Baluyot, Delos Trino, Jose, Soriano, Bustamante, and Lingat, were all members of the PNP assigned with the IID-NAIA, while Salvador and Mutalib were security guards of the Lanting Security Agency assigned at NAIA. The eight of them acted in concert and definitely took advantage of their superior strength in subduing and killing their lone victim who was unarmed. Thus, all the appellants must be held liable for the crime of murder.

5. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, ESPECIALLY IF AFFIRMED BY THE COURT OF APPEALS, WILL NOT BE DISTURBED BY THE SUPREME COURT. — xxx [A]ppellants miserably failed to show convincing reasons to overturn the Decision of both the trial court and the CA. In this case, the CA ascertained the factual findings of the trial court to be supported by proof beyond reasonable doubt which led to the conclusion that appellants acted in unison in killing Romeleo. It is worthy to stress that findings of fact of the CA, especially if they affirm factual findings of the trial court, will not be disturbed by this Court, unless these findings are not supported by evidence.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; JURISDICTION OVER THE PERSON OF ACCUSED; NOT ACQUIRED ABSENT THE ACCUSED'S ARRAIGNMENT. — It has not escaped our notice that Abdulajid was not arraigned and remains at large up to this time. However, in the Decision of the trial court which was affirmed by the CA, Abdulajid was likewise found guilty as charged. This is erroneous considering that without his having been arraigned, the trial court did not acquire jurisdiction over his person.

7. CRIMINAL LAW; EXTINCTION OF CRIMINAL LIABILITY; DEATH OF THE ACCUSED PENDING APPEAL AND BEFORE FINALITY OF CONVICTION EXTINGUISHES HIS CRIMINAL AS WELL AS HIS CIVIL LIABILITIES. — As regards Lingat, his death pending appeal and prior to the finality of conviction extinguished his criminal and civil liabilities. Moreover, the death of Lingat would result in the dismissal of the criminal case against him.

8. CIVIL LAW; DAMAGES AWARDED IN CASE AT BAR; DISCUSSED. — We note that both the trial court and the CA awarded the heirs of the victim only the amount of ₱50,000.00 as civil indemnity. In line with prevailing jurisprudence, we also award the amount of ₱50,000.00 as moral damages. Further, we also award the amount of ₱25,000.00 as exemplary damages pursuant to our ruling in *People v. Angeles* where we held that "under Article 2230 of the Civil Code, exemplary damages may be awarded in criminal cases when the crime was committed with one or more aggravating circumstances, (in this case, abuse of superior strength). This is intended to serve as deterrent to serious wrongdoings and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct. The imposition of exemplary damages is also justified under Article 2229 of the Civil Code in order to set an example for the public good." In addition, and in lieu of actual damages, we also award temperate damages in the amount of ₱25,000.00.

9. ID.; ID.; LOSS OF EARNING CAPACITY; PROPER IN CASE AT BAR. — xxx [The Court Notes] that both the trial court and the CA overlooked the fact that during the testimony of Clementina Quintos, the mother of the victim, sufficient evidence was presented to show that the victim before his untimely death, was gainfully employed in a private company with a monthly salary of ₱15,000.00. xxx [T]he testimony of the victim's mother that Romeleo was earning ₱15,000.00 per month is sufficient basis for an award of damages for loss of earning capacity. It is well settled that the factors that should be taken into account in determining the compensable amount of lost earnings are: (1) the number of years for which the victim would otherwise have lived; (2) the rate of loss sustained by the heirs of the deceased. The unearned income of Romeleo is computed as follows: Unearned Income = 2/3 (80 – 30) [(₱15,000.00 x 12) – ½ (₱15,000.00 x 12)] = 2/3 (50) (₱180,000.00 – ₱90,000.00) = 2/3 (50) (₱90,000.00) = 9,000,000.00/3 = ₱ 3,000,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for Elmer Salvador.
Augusto S. Jimenez for N. Baluyot, R. Delos Trino, H. Jose, E. Soriano and E. Salvador.
Vicente D. Millora for M.Z. Bustamante.

D E C I S I O N

DEL CASTILLO, *J.*:

The police authorities are the ones tasked to promote and maintain peace and order in our country. Thus, it becomes doubly deplorable when they themselves commit the criminal act. In this case, appellants insist on their innocence; they deny that they killed the victim Romeleo Quintos on June 1, 1997 inside the detention cell of the Ninoy Aquino International Airport (NAIA). But we are not persuaded. We took a second hard look at the evidence presented and we hold that both the trial court and the appellate court correctly found that the prosecution proved beyond reasonable doubt that the appellants are guilty of murder.

This is an appeal from the July 19, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00665 which affirmed *in toto* the March 17, 2000 Decision[2] of the Regional Trial Court (RTC) of Pasay City, Branch 109, finding the appellants guilty beyond reasonable doubt of the crime of murder. Also assailed is the March 6, 2006 Resolution[3] of the CA denying the separate motions for reconsideration filed by the appellants.

---

[1] CA *rollo*, pp. 786-803; penned by then Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Rebecca De Guia-Salvador and Aurora Santiago Lagman.

[2] *Id.* at 128-179; penned by Judge Lilia C. Lopez.

[3] *Id.* at 854-855.

Factual Antecedents

On May 22, 1998, two Informations were filed against the herein appellants, together with Carlito Lingat and Mutalib Abdulajid, charging them with the crimes of Murder and Arbitrary Detention. The Informations read:

Crim. Case No. 98-0547 (for Murder):

The undersigned Ombudsman Investigator, Office of the Deputy Ombudsman for the Military, hereby accuses NEIL BALUYOT, RICHARD DELOS TRINO, HERMINIO JOSE, EDWIN SORIANO, MARCELO BUSTAMANTE, CARLITO LINGAT, MUTALIB ABDULAJID, AND ELMER SALVADOR of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code, committed as follows:

That in the early morning of June 01, 1997, between 2:00 to 3:00 o'clock [in the morning], or sometime prior or subsequent thereto, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the accused NEIL BALUYOT, RICHARD DELOS TRINO, HERMINIO JOSE, EDWIN SORIANO, MARCELO BUSTAMANTE, and CARLITO LINGAT, all public officers, being then members of the Philippine National Police (PNP) Force, assigned [at] the Ninoy Aquino International Airport (NAIA), and accused ELMER SALVADOR and MUTALIB ABDULAJID, security guards, also assigned at the NAIA, conspiring and confederating with one another, with intent to kill and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously tie a plastic nylon cord around the neck of one Romeleo A. Quintos, and hang him at the end portion of the detention cell, which caused the instantaneous death of said Romeleo A. Quintos to the damage and prejudice of the heirs of said victim.

CONTRARY TO LAW.[4]

Criminal Case No. 98-0548 (for Arbitrary Detention)

The undersigned Ombudsman Investigator, Office of the Ombudsman for the Military, hereby accuses EDWIN D. SORIANO, MARCELO Z. BUSTAMANTE, HERMINIO M. JOSE, CARLITO D. LINGAT and NEIL T. BALUYOT of the crime of ARBITRARY

---

[4] *Id.* at 85-86.

DETENTION, defined and penalized under Article 124 of the Revised Penal Code, committed as follows:

That on or about June 01, 1997, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, all public officers, being then members of the Philippine National Police Force assigned at the Ninoy Aquino International Airport, conspiring and confederating with each other, committing the offense in relation to their office, and without any legal ground, did then and there willfully, unlawfully, and feloniously detain and restrain Romeleo A. Quintos of his personal liberty, without his consent and against his will since midnight of May 31, 1997 until around 3:15 a.m. of June 01, 1997 when said Romeleo A. Quintos was found dead inside the detention cell.

CONTRARY TO LAW.[5]

Neil Baluyot (Baluyot), Richard Delos Trino (Delos Trino), Herminio Jose (Jose), Edwin Soriano (Soriano), Marcelo Bustamante (Bustamante), Carlito Lingat (Lingat) and Elmer Salvador (Salvador), were arraigned on July 14, 1998 where they all entered a plea of not guilty.[6] Mutalib Abdulajid (Abdulajid) remains at large.

The records show that at around midnight of May 31, 1997, Romeleo Quintos (Romeleo) and his friend, Ancirell Sales (Ancirell), went to the NAIA to fetch Rolando Quintos (Rolando), brother of Romeleo, who was arriving from the United States. At the arrival extension area of the NAIA, Ancirell alighted from the car driven by Romeleo to check whether Rolando had already arrived. Upon his return, he was surprised to see Romeleo arguing with a man in uniform later identified as Soriano who arrested Romeleo for expired license.

Romeleo vehemently denied the charge causing a heated altercation. Outraged, Romeleo challenged Soriano to a gun duel. Thinking that Romeleo was a military man, Soriano called for reinforcement. In a few minutes, Lingat and Bustamante arrived followed by Jose. They asked Romeleo to hand over

---

[5] *Id.* at 87.

[6] Records, pp. 110-116.

his license but the request went unheeded. Thus, Jose seized the ignition key of the vehicle and ordered Romeleo to alight from the vehicle but the latter refused. Thereupon, Soriano, Lingat, Bustamante and Jose pulled Romeleo out of the vehicle and brought him to the Intelligence and Investigation Division of the NAIA (IID-NAIA) supposedly for questioning. At the IID-NAIA, it was decided that Romeleo be brought to the Pasay General Hospital for examination where he was found positive for alcoholic breath. Thereafter, Romeleo was brought back to the IID-NAIA for further investigation.

Romeleo was shoved into a cell already occupied by prosecution witness Noel Gabornes (Gabornes), who had earlier been arrested for being an unauthorized porter. Professing his innocence, Romeleo cursed and shouted at Baluyot, Delos Trino, Jose, Soriano, Bustamante, Lingat, Salvador and Abdulajid to release him as he was only at the airport to fetch his brother. Jose ordered him to stop but Romeleo persisted. Infuriated, Jose entered the cell and kicked the victim hard on the stomach. Salvador also entered the cell followed by Baluyot while Delos Trino stayed near the door. Romeleo was still reeling from the blow delivered by Jose when Baluyot boxed him in the abdomen. Salvador also punched him at the solar plexus causing the victim to writhe in pain at a corner of the cubicle. To avoid being hit, Gabornes went outside the cell.

Gasping for breath, Romeleo sought succor from Gabornes but the latter declined, afraid to get involved. After a while, Gabornes asked Jose if he could go home but the latter did not answer. Instead, Jose directed Salvador to transfer Gabornes to an adjacent cell. Thereafter, Gabornes overheard Jose saying "*tapusin na natin ito*." Intrigued, Gabornes peered through the iron grill to see what was happening. From his vantage point, he saw Baluyot handing a piece of grayish plastic cord to Salvador. Thereafter, he heard Romeleo coughing and gasping for breath as if he was being strangled. Peering closely, the witness saw Salvador and Abdulajid twisting the cord with a piece of wood, "*garrote*" style. Romeleo's hand could be seen trying to reach for the piece of wood in a backward angle in a vain effort to stop the twisting. After a couple of minutes,

Gabornes saw a body being carried out of the cell. Delos Trino then approached Gabornes and said: "*Kung anong nakita mo, nakita mo lang. Kung anong narinig mo, narinig mo lang. Sana huwag mo ng ikalat ito.*" Fearing for his life, Gabornes promised not to tell anybody about the incident. Thereafter, he was released.

At about that time, the victim's brother, Rolando, had already arrived from the United States. Informed by Ancirell of the detention of his brother Romeleo, Rolando set out for home to deposit his luggage but immediately went back to the airport with Ancirell and a cousin, Rabadon Gavino (Gavino), to check on Romeleo. At around 3:00 a.m. of the same day, they arrived at the IID-NAIA office and were met in the hallway by Bustamante who told them that Romeleo was in the detention cell. Asking for directions, the group was ushered towards a dark cell. When the lights were turned on, they were horrified to see the lifeless body of Romeleo hanging with a cord around his neck with the other end tied around the iron grills of the cell window.

Rolando, Ancirell and Gavino, along with Soriano and Lingat, immediately brought the victim to the San Juan De Dios Hospital aboard a police car. Rolando and his companions carried the victim to the emergency room. Soriano and Lingat remained in the vehicle but returned to the NAIA after a while. Romeleo was declared dead on arrival by the attending physician. Gabornes later learned of the victim's identity through the newspapers.

Baluyot, Delos Trino, Jose, Soriano, Bustamante, and Lingat, were all members of the Philippine National Police (PNP) assigned with the IID-NAIA, while Salvador and Abdulajid were security guards of the Lanting Security Agency assigned at NAIA.

Ruling of the Regional Trial Court

After due proceedings, the trial court promulgated its Decision dated March 17, 2000, the decretal portion reads:

In view of all the foregoing, the Court finds the accused Neil Baluyot *y* Tabisora, Richard delos Trino *y* Sarcilla, Herminio Jose

y Mozon, Edwin Soriano *y* dela Cruz, Marcelo Bustamante *y* Zapanta, Carlito Lingat *y* Salvador, Elmer Salvador *y* Javale, and Mutalib Abdulajid guilty beyond reasonable doubt of MURDER in Criminal Case No. 98-0457. It appearing on evidence that the accused voluntarily surrendered at the Criminal Investigation and Detection Group as evidenced by Exh. 21, the Court credits them with the mitigating circumstances of voluntary surrender and hereby sentences each of them to *RECLUSION PERPETUA* and for each accused to pay the heirs of the victim indemnity in the amount of ₱50,000.00.

In Criminal Case No. 98-0548 for Arbitrary Detention, it appearing from the evidence that the victim Romeleo Quintos was detained at the IID for three (3) hours and fifteen (15) minutes, the same is punished or penalized under Art. 124, paragraph 1 of the Revised Penal Code which is herein below reproduced:

> ART. 124. Arbitrary Detention. – Any public officer or employee who, without legal grounds, detains a person, shall suffer:
>
> 1. The penalty of *arresto mayor* in its maximum period to *prision correctional* (sic) in its minimum period if the detention has not exceeded three days;
>
> x x x x x x x x x

hence the case is not within the jurisdiction of this Court.

The OIC of this Court is hereby ordered to transmit the records of Criminal Case No. 98-0548 for Arbitrary detention to the Metropolitan Trial Court.

The Petition for Bail filed by all the accused is hereby considered moot and academic.

Let an *Alias* Warrant of arrest be issued in so far as accused Mutalib Abdulajid is concerned who remains at large.

SO ORDERED.[7]

Ruling of the Court of Appeals

The CA affirmed the Decision of the RTC in a Decision dated July 19, 2005, thus:

---

[7] CA *rollo,* pp. 178-179.

IN VIEW OF ALL THE FOREGOING, the appealed decision is hereby **AFFIRMED *in toto.*** Costs *de oficio.*

SO ORDERED.[8]

Aggrieved, appellants filed their respective Motions for Reconsideration. In the meantime, Lingat died. On March 6, 2006, the CA denied the motions for reconsideration.[9]

All the appellants, except Bustamante, filed notices of appeal. Bustamante filed an Urgent Motion for Leave to Admit Second Motion for Reconsideration[10] but it was denied by the CA in its Resolution[11] dated April 28, 2006. Thereafter, Bustamante filed a Petition for Review on *Certiorari* but the same was treated as an appeal in the Resolution[12] dated January 15, 2007.

Issues

The issues raised are: (1) whether the uncorroborated testimony of the lone eyewitness, Gabornes, is sufficient to produce a judgment of conviction; (2) whether conspiracy was proven beyond reasonable doubt; and (3) whether appellants should be held liable only for homicide, and not for murder.

Our Ruling

Upon careful consideration of the evidence presented by both the prosecution and the defense, we are unable to consider the appellants' appeal with favor.

The uncorroborated testimony of a single witness, if credible, is enough to warrant conviction.

We find that the CA did not err in affirming the Decision of the trial court convicting the appellants of murder based on

---

[8] *Id.* at 802.

[9] *Id.* at 854-855.

[10] *Id.* at 858-867.

[11] *Id.* at 871.

[12] *Rollo,* p. 167.

the testimony of Gabornes, the lone eyewitness. It is settled jurisprudence that the testimony of a single witness, if credible, is enough to warrant conviction. Both the trial court and the CA found Gabornes to be credible and whose testimony is entitled to full faith. We find no cogent reason to depart from said findings.

As borne out by the records, Gabornes positively identified and categorically pointed to appellants as the ones who conspired with one another to kill Romeleo on June 1, 1997. He narrated the incident in a clear and convincing manner. He testified on the degree of participation of each of the accused with regard to the killing of Romeleo inside the IID-NAIA detention cell in such a manner that only an unbiased eyewitness could narrate. Gabornes was not shown to have had any ill motives to testify falsely against the appellants. As correctly observed by both the trial court and the CA, the fact that Gabornes was previously arrested for being an unauthorized porter is not enough reason for him to falsely accuse appellants of a very grave offense.

We also hold that the CA correctly disregarded the affidavit of recantation of Gabornes dated February 21, 2005. In the said affidavit, Gabornes denied that he was inside the detention cell of the NAIA on June 1, 1997. Instead, he claimed that he was under the fly-over near the NAIA playing a card game. Consequently, he averred that there is no truth to his testimony given before the trial court pointing to the appellants as the perpetrators of the crime. We are not persuaded.

Our ruling in *People v. Ballabare*[13] is instructive:

> It is absurd to disregard a testimony that has undergone trial and scrutiny by the court and the parties simply because an affidavit withdrawing the testimony is subsequently presented by the defense. In the first place, any recantation must be tested in a public trial with sufficient opportunity given to the party adversely affected by it to cross-examine the recanting witness. x x x
>
> In the second place, to accept the new evidence uncritically would be to make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. For even assuming that Tessie

[13] 332 Phil. 384 (1996).

Asenita had made a retraction, this circumstance alone does not require the court to disregard her original testimony. A retraction does not necessarily negate an earlier declaration. For this reason, courts look with disfavor upon retractions because they can easily be obtained from witnesses usually through intimidation or for monetary considerations. Hence, when confronted with a situation where a witness recants his testimony, courts must not automatically exclude the original testimony solely on the basis of the recantation. They should determine which testimony should be given credence through a comparison of the original testimony and the new testimony, applying the general rules of evidence. x x x[14]

As we have already discussed, Gabornes' testimony given before the National Bureau of Investigation (NBI) and the trial court was replete with details that only a person who witnessed such gruesome crime could narrate. Even during cross-examination, he remained steadfast in his account that the appellants were the ones who killed Romeleo. Also, both the trial court and the appellate court had several opportunities of taking a hard look at the records of the case considering the motions for reconsideration filed by the appellants. Both the CA and the RTC found beyond reasonable doubt that the appellants were indeed the authors of the crime.

The prosecution satisfactorily established that appellants conspired with each other in killing Romeleo.

We are not persuaded by the contention of the appellants that there was no conspiracy considering that they were in different areas of the NAIA premises when the crime took place. As correctly held by the CA:

At bar, appellants claimed that they were either at the NAIA parking lot or were at the adjacent IID-NAIA office when the crime took place. These places, however, are but a short distance away from the scene of the crime and one could travel to and from these points in a little over a few seconds or minutes of leisure walking, as readily admitted by appellants in their own version of the event. Verily, the

---

[14] *Id.* at 396-397.

possibility of appellants to be at the scene of the crime at the time of its commission, is thus not farfetched.[15]

Besides, it is not required for conspiracy to exist that there be an agreement for an appreciable period prior to the occurrence. It is sufficient that at the time of the commission of the offense, the accused had the same purpose and were united in its execution. Direct proof of such agreement is not necessary. It may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused which point to a joint purpose and design, concerted action and community of interest.[16]

This community of design is present among the appellants as deduced from their individual acts. The RTC observed thus:

> The act of the accused Elmer Salvador, Neil Baluyot *y* Tabisora, and Richard Delos Trino *y* Sarcilla of boxing the victim on the stomach and the act of accused Herminio Jose who said '*tapusin na natin ito*' together with the act of accused Neil Baluyot of handing a '*tale*' or cord to Elmer Salvador who thereafter twisted the cord which was around the neck of the victim with a piece of wood with the help of accused Mutalib Abdulajid who up to the present remained at large, all acts of which were done in the presence of all the accused namely: Neil Baluyot *y* Tabisora, Richard Delos Trino *y* Sarcilla, Herminio Jose *y* Mozon, Edwin Soriano *y* dela Cruz, Marcelo Bustamante *y* Zapanta, Carlito Lingat *y* Damaso and Elmer Salvador (including the accused who is at large) clearly show that all accused conspired, confederated and helped one another in murdering the victim with abuse of superior strength by strangling and hanging the victim Romeleo Quintos causing him to die of asphyxia. In conspiracy, the act of one is the act of all.
>
> x x x x x x x x x

Likewise, the act of accused Carlito Lingat *y* Damaso and Edwin Soriano *y* Dela Cruz of not coming to the hospital to give the medical clerk the name and circumstances of the victim including the facts surrounding the victim's death is very suspicious indeed and is

---

[15] CA *rollo*, p. 801

[16] *People v. Ricafranca*, 380 Phil. 631, 642-643 (2000).

contrary to the SOP of officers who bring victims to the hospital. Also the failure of all the accused to immediately report to the police investigator of Pasay City is quite unusual. In the same manner the acts of accused Neil Baluyot *y* Tabisora, Herminio Jose *y* Mozon and Richard Delos Trino *y* Sarcilla of leaving the IID office and cell which is the scene of the crime and then going to Biñan and to Atty. Augusto Jimenez is quite unusual for persons who professed innocence.[17]

Moreover, the doctrine is well settled that conspiracy need not be proved by direct evidence but may be proven through the series of acts done by each of the accused in pursuance of their common unlawful purpose. For collective responsibility among the accused to be established, it is sufficient that at the time of the aggression, all of them acted in concert, each doing his part to fulfill their common design to kill the victim.[18]

The CA correctly observed that:

A fortiori, appellants should be held liable for the death of Romeleo Quintos. Their sequential attack, one after another, revealed their unlawful intent to kill the victim. Herminio Jose's utterances of "*tapusin na natin ito*" only strengthens the link that binds the acts of the appellants in their coordinated effort to kill Romeleo. x x x[19]

The circumstance of abuse of superior strength qualified the killing to murder.

There is likewise no merit to appellants' contention that they should only be held liable for homicide, and not for murder, because the qualifying circumstance of abuse of superior strength was not specifically alleged in the Information.

Contrary to the assertion of the appellants, the Information specifically alleged that the appellants were –

---

[17] CA *rollo*, pp. 177-178.

[18] *People v. Magalang*, G.R. No. 84274, January 27, 1993, 217 SCRA 571, 574.

[19] CA *rollo*, p. 800.

x x x conspiring and confederating with one another, with intent to kill and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously tie a plastic nylon cord around the neck of one Romeleo A. Quintos, and hang him at the end portion of the detention cell, which caused the instantaneous death of said Romeleo A. Quintos to the damage and prejudice of the heirs of said victim.

It has been satisfactorily established that Baluyot, Delos Trino, Jose, Soriano, Bustamante, and Lingat, were all members of the PNP assigned with the IID-NAIA, while Salvador and Mutalib were security guards of the Lanting Security Agency assigned at NAIA. The eight of them acted in concert and definitely took advantage of their superior strength in subduing and killing their lone victim who was unarmed. Thus, all the appellants must be held liable for the crime of murder.

All told, appellants miserably failed to show convincing reasons to overturn the Decision of both the trial court and the CA. In this case, the CA ascertained the factual findings of the trial court to be supported by proof beyond reasonable doubt which led to the conclusion that appellants acted in unison in killing Romeleo. It is worthy to stress that findings of fact of the CA, especially if they affirm factual findings of the trial court, will not be disturbed by this Court, unless these findings are not supported by evidence.[20]

The liabilities of Carlito Lingat and Mutalib Abdulajid

It has not escaped our notice that Abdulajid was not arraigned and remains at large up to this time. However, in the Decision of the trial court which was affirmed by the CA, Abdulajid was likewise found guilty as charged. This is erroneous considering that without his having been arraigned, the trial court did not acquire jurisdiction over his person.

As regards Lingat, his death pending appeal and prior to the finality of conviction extinguished his criminal and civil

---

[20] *Bañas, Jr. v. Court of Appeals*, 382 Phil. 144, 154 (2000).

liabilities.[21] Moreover, the death of Lingat would result in the dismissal of the criminal case against him.[22]

Damages

We note that both the trial court and the CA awarded the heirs of the victim only the amount of ₱50,000.00 as civil indemnity. In line with prevailing jurisprudence,[23] we also award the amount of ₱50,000.00 as moral damages. Further, we also award the amount of ₱25,000.00 as exemplary damages pursuant to our ruling in *People v. Angeles*[24] where we held that "under Article 2230 of the Civil Code, exemplary damages may be awarded in criminal cases when the crime was committed with one or more aggravating circumstances, (in this case, abuse of superior strength). This is intended to serve as deterrent to serious wrongdoings and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct. The imposition of exemplary damages is also justified under Article 2229 of the Civil Code in order to set an example for the public good." In addition, and in lieu of actual damages, we also award temperate damages in the amount of ₱25,000.00.[25]

Likewise, we note that both the trial court and the CA overlooked the fact that during the testimony of Clementina Quintos, the mother of the victim, sufficient evidence was presented to show that the victim before his untimely death, was gainfully employed in a private company with a monthly salary of ₱15,000.00.

Fiscal Barrera:

Q – Would you describe Romeleo Quintos prior to his death?
A – He was gainfully employed. He is an executive at IPC (International product Corporation), Makati as operation officer.

x x x x x x x x x

---

[21] *People v. Abungan,* 395 Phil. 456, 458 (2000).

[22] *Id.* at 462.

[23] *People v. Badriago,* G.R. 183566, May 8, 2009.

[24] G.R. No. 177134, August 14, 2009.

[25] *People v. Diaz,* G.R. No. 185841, August 4, 2009.

Q – How much was your son Romeleo Quintos receiving as operation officer at IPC?
A – ₱15,000.00, sir, monthly.

Q – Do you have any evidence to show that he earn Five Thousand pesos [sic] (₱15,000.00) a month as project engineer?
A – Yes, sir.

Fiscal Barrera:

May I request that the Certification dated January 22, 1999 issued by IPC be marked as Exh. "EEE"; the name appearing thereat that Romeleo Quintos has been an employee of IPC from January 8, 1997 up to June 1, 1997 with the position of operation officer with monthly salary of ₱15,000.00 x x x be marked as Exh. "EEE-1" and the signature of a person who issued the certification be marked as Exh. "EEE-2".[26]

The formula[27] for unearned income is as follows:

Life Expectancy x [Gross Annual Income (GAI) less Living Expenses (50% GAI)]
Where Life Expectancy = 2/3 x (80 – age of the deceased)

Article 2206 of the Civil Code provides:

Art. 2206. That 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 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 accused, had no earning capacity at the time of his death;

x x x x x x x x x

Hence, the testimony of the victim's mother that Romeleo was earning ₱15,000.00 per month is sufficient basis for an award of damages for loss of earning capacity.

---

[26] TSN, February 25, 1999, pp. 4-5.

[27] *People v. Jabiniao, Jr.*, G.R. No. 179499, 30 April 2008, 553 SCRA 769, 787.

It is well settled that the factors that should be taken into account in determining the compensable amount of lost earnings are: (1) the number of years for which the victim would otherwise have lived; (2) the rate of loss sustained by the heirs of the deceased.

The unearned income of Romeleo is computed as follows:

Unearned Income = 2/3 (80 – 30[28]) [(₱15,000.00 x 12) – ½ (₱15,000.00 x 12)]
= 2/3 (50) (₱180,000.00 – ₱90,000.00)
= 2/3 (50) (₱90,000.00)
= 9,000,000.00/3
= ₱ 3,000,000.00

WHEREFORE, the July 19, 2005 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00665 is *MODIFIED*. Appellants Neil Baluyot, Richard Delos Trino, Herminio Jose, Edwin Soriano, Marcelo Bustamante, and Elmer Salvador, are hereby found *GUILTY* beyond reasonable doubt of the crime of Murder and are sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of Romeleo Quintos the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, ₱25,000.00 as exemplary damages, and ₱3,000,000.00 as lost income. In view of the death of Carlito Lingat pending appeal and prior to the finality of his conviction, Criminal Case No. 98-0547 is *DISMISSED* and the appealed Decision is *SET ASIDE* insofar as Carlito Lingat is concerned. Insofar as Mutalib Abdulajid is concerned, the March 17, 2000 Decision of the Regional Trial Court of Pasay City, Branch 109 in Criminal Case No. 98-0547 is *NULLIFIED* for failure of the trial court to acquire jurisdiction over his person. Consequently, the appealed July 19, 2005 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00665 is likewise *SET ASIDE* insofar as Mutalib Abdulajid is concerned.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

---

[28] Romeleo was 30 years old at the time of his death on June 1, 1997.

SECOND DIVISION

[G.R. No. 172873. March 19, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROLDAN MORALES** *y* **MIDARASA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; NATURE OF APPEAL IN A CRIMINAL CASE. — At the outset, we draw attention to the unique nature of an appeal in a criminal case: the appeal throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned. On the basis of such review, we find the present appeal meritorious.

2. ID.; APPEALS; FINDINGS OF FACT OF TRIAL COURT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ENTITLED TO GREAT WEIGHT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTIONS; A CASE OF. — Prevailing jurisprudence uniformly hold that the trial court's findings of fact, especially when affirmed by the CA, are, as a general rule, entitled to great weight and will not be disturbed on appeal. However, this rule admits of exceptions and does not apply where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied. After due consideration of the records of this case, evidence presented and relevant law and jurisprudence, we hold that this case falls under the exception.

3. ID.; CRIMINAL PROCEDURE; PROSECUTION OF ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS TO BE ESTABLISHED. — In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.

4. ID.; ID.; PROSECUTION OF ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. — xxx [I]n prosecutions for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165; PROCEDURE FOR THE CUSTODY AND DISPOSITION OF CONFISCATED DANGEROUS DRUGS. — With respect to *corpus delicti*, Section 21 of Republic Act (RA) No. 9165 provides: Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources or dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment so confiscated, seized and or surrendered, for proper disposition in the following manner: (1) **The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the persons/s from whom such items were confiscated and/or seized, or his/ her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof**; x x x

6. ID.; ID.; ID.; NOT OBSERVED IN CASE AT BAR. — In the instant case, it is indisputable that the procedures for the custody and disposition of confiscated dangerous drugs, as mandated in Section 21 of RA 9165, were not observed. The records utterly failed to show that the buy-bust team complied with these procedures despite their mandatory nature as indicated by the use of "shall" in the directives of the law. The procedural lapse is plainly evident from the testimonies of the two police officers presented by the prosecution, namely:

PO1 Roy and PO3 Rivera. PO1 Roy, in his testimony, failed to concretely identify the items seized from the appellant. Moreover, he confirmed that they did not make a list of the items seized. The patent lack of adherence to the procedural mandate of RA 9165 is manifest in his testimony xxx.The testimony of the other arresting officer, PO3 Rivera further confirms the failure of the buy-bust team to observe the procedure mandated under Section 21 of RA 9165 xxx. Other than PO1 Roy and PO3 Rivera, the prosecution did not present any other witnesses. Hence, the investigator, referred to by PO1 Roy in his testimony as the one who took delivery of the seized items, was not identified nor was he presented in court. More importantly, the testifying police officers did not state that they marked the seized drugs immediately after they arrested the appellant and in the latter's presence. Neither did they make an inventory and take a photograph of the confiscated items in the presence of the appellant. There was likewise no mention of any representative from the media and the Department of Justice, or any elected public official who participated in the operation and who were supposed to sign an inventory of seized items and be given copies thereof. None of these statutory safeguards were observed. Even PO1 Roy, the poseur-buyer, was not certain as to the identity of the confiscated *shabu* xxx. The procedural lapses in the handling and identification of the seized items collectively raise doubts as to whether the items presented in court were the exact same items that were confiscated from appellant when he was apprehended.

7. ID.; ID.; IMPLEMENTING RULES AND REGULATIONS; NON-COMPLIANCE WITH THE PROCEDURE UNDER JUSTIFIABLE GROUNDS IS NOT FATAL AS LONG AS THE INTEGRITY AND THE EVIDENTIARY VALUE OF SEIZED ITEMS ARE PROPERLY PRESERVED; NOT MET IN CASE AT BAR. — While this Court recognizes that non-compliance by the buy-bust team with Section 21 of RA 9165 is not fatal as long as there is a justifiable ground therefor, for and as long as the integrity and the evidentiary value of the siezed items are properly preserved by the apprehending team, these conditions were not met in the case at bar. No explanation was offered by the testifying police officers for their failure to observe the rule. In this respect, we cannot fault the apprehending policemen either, as PO1 Roy admitted that he

was not a PDEA operative and the other witness, PO3 Rivera, testified that he was not aware of the procedure involved in the conduct of anti-drug operations by the PNP. In fine, there is serious doubt whether the drug presented in court was the same drug recovered from the appellant. Consequently, the prosecution failed to prove beyond reasonable doubt the identity of the *corpus delicti*.

8. ID.; ID.; *CORPUS DELICTI*; IDENTITY THEREOF NOT PROVEN BEYOND REASONABLE DOUBT; ACQUITTAL OF ACCUSED, WARRANTED. — In fine, the identity of the *corpus delicti* in this case was not proven beyond reasonable doubt. There was likewise a break in the chain of custody which proves fatal to the prosecution's case. Thus, since the prosecution has failed to establish the element of *corpus delicti* with the prescribed degree of proof required for successful prosecution of both possession and sale of prohibited drugs, we resolve to **ACQUIT** Roldan Morales *y* Midarasa.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt.[1] Due process commands that no man shall lose his liberty unless the Government has borne the burden of convincing the factfinder of his guilt. To

[1] *In the Matter of Samuel Winship*, 397 U.S. 358, 90 S.Ct. 1068 (1970).

this end, the reasonable-doubt standard is indispensable, for it 'impresses on the trier of fact the necessity of reaching certitude of the facts in issue.[2]

Moreover, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of criminal law. It is critical that the moral force of criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs has confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.[3]

Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.[4]

On appeal is the Decision[5] of the Court of Appeals (CA) promulgated on April 24, 2006 affirming *in toto* the Decision[6] of the Regional Trial Court (RTC) of Quezon City, Branch 103 finding appellant Roldan Morales *y* Midarasa guilty of the crimes of possession and sale of dangerous drugs.

Factual Antecedents

Appellant was charged in two separate Informations before the RTC with possession and sale of methylamphetamine hydrochloride (*shabu*), to wit:

---

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Rollo*, pp. 3-11; penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Edgardo P. Cruz and Rosanlinda Asuncion-Vicente.

[6] Records, pp. 63-66; penned by Presiding Judge Jaime N. Salazar, Jr.

Criminal Case No. Q-03-114256

That on or about the 2nd day of January, 2003 in Quezon City, Philippines, the said accused not being authorized by law to possess or use any dangerous drug, did then and there, willfully, unlawfully and knowingly have in her/his/their possession and control, zero point zero three (0.03) grams of methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[7]

Criminal Case No. Q-03-114257

That on or about the 2nd day of January, 2003, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero three (0.03) gram of methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[8]

Upon arraignment, appellant, assisted by counsel, pleaded not guilty to both charges read in Filipino, a language known and understood by him.[9] On motion of the City Prosecutor, the cases were consolidated for joint trial.[10] Trial on the merits ensued thereafter.

The testimonies of PO1 Eduardo Roy (PO1 Roy) and PO3 Armando Rivera (PO3 Rivera) were presented by the prosecution:

PO1 Roy testified that on January 2, 2003, at about 2:00 p.m., he was on duty at Police Station 9 where he made a pre-operation report on the buy-bust operation to be conducted on the herein appellant that same afternoon.[11] He then proceeded to Brgy. San Vicente, Quezon City with PO3 Rivera for the

---

[7] *Id* at 2-3.

[8] *Id* at 4-5.

[9] *Id.* at 15.

[10] *Id.* at 16.

[11] TSN, March 20, 2003, pp. 3-4.

operation.[12] At a point near Jollibee, they met the informant who, upon seeing the subject appellant, went with him to meet PO1 Roy.[13] After being introduced to the appellant as a buyer of "*piso*" worth of "*shabu*", appellant immediately produced a sachet containing the alleged drug. When appellant received the marked money amounting to ₱100.00,[14] PO1 Roy raised his left hand, at which point his back-up officer, PO3 Rivera appeared and immediately arrested the appellant.[15] The appellant was immediately brought to the Police Station for investigation, while the two sachets of "*shabu*" and aluminum foil discovered on the said appellant were brought to the Crime Laboratory for examination.[16]

PO3 Rivera testified that he was the back-up officer of PO1 Roy, the poseur-buyer in the buy-bust operation conducted against the appellant in the afternoon of January 2, 2003.[17] In preparation for the said operation, he conducted a short briefing and recorded the particulars of the operation they were about to carry out: the place of the operation which is at the parking lot of Jollibee Philcoa; the identification of the suspect as the appellant; and the preparation of the buy-bust money to be used.[18] With respect to the buy-bust money, he prepared one ₱50.00 bill, two ₱20.00 bills and one ₱10.00 bill, by making the appropriate marking on the top portion of each bill and recording their respective serial numbers.[19] Later that afternoon, police officers proceeded to the meeting place. PO3 Rivera positioned himself in a parked vehicle[20] about 20 meters from the situs of the transaction.[21]

---

[12] *Id.* at 4.

[13] *Id.*

[14] *Id.* at 5.

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

[16] *Id* at 6.

[17] *Id* at 12-13.

[18] *Id.*

[19] *Id.*

[20] *Id* at 13.

[21] *Id* at 16.

He thus had a clear view of the appellant with the informant and PO1 Roy.[22] Shortly thereafter, he saw PO1 Roy make the pre-arranged signal at which point he approached the appellant to arrest him.[23] He recovered the marked money from the appellant and proceeded to frisk the latter.[24] Upon conducting the body search, he found another sachet which he suspected to be "*shabu*" and two aluminum foils. Appellant was brought to the Police Station for detention, while the items seized from him were brought to the Crime Laboratory for examination.[25] The two sachets tested positive for Methylamphetamine Hydrochloride (*shabu*) while the aluminum foil sheets tested negative of the aforementioned substance.[26]

Both PO1 Roy and PO3 Rivera identified a Joint Affidavit dated January 3, 2003 during their respective testimonies, which they acknowledged to have executed subsequent to the buy-bust operation.[27]

The defense presented the testimonies of Joaquin Artemio Marfori, Arsenia Morales and the appellant:

Appellant denied the charges against him.[28] He testified that he is a resident of Dolores, Quezon where he worked in a fertilizer store.[29] He was in Manila at that time to bring money for his parents who live at *Cruz na Ligas*.[30] As his mother did not give him enough money for his fare back to Quezon, he sidelined as a parking attendant at Philcoa in order to earn the balance of his bus fare.[31] However, sometime that afternoon, two male

[22] *Id.* at 13.

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

[24] *Id.* at 14.

[25] *Id.*

[26] *Id.* at 14-15.

[27] *Id.* at 8 and 15, respectively.

[28] TSN, June 19, 2003, pp. 3-5.

[29] *Id.* at 3 and 8.

[30] *Id.* at 9.

[31] *Id.* at 3 and 8.

persons in civilian clothes suddenly approached him and his co-attendant, identified themselves as policemen and poked their guns at them.[32] The said policemen handcuffed them and proceeded to frisk them.[33] He averred that nothing was found on him and yet the policemen still brought him to the police station.[34] He denied the allegation made against him that he sold, much less possessed, the "*shabu*" subject of this action.[35] He further testified that in the tricycle on the way to the police station, PO1 Roy took out a plastic of "*shabu*" from his (PO1 Roy's) pocket and once at the station, the said policeman showed it to the desk officer and claimed that the plastic sachet was found on the appellant.[36]

He likewise denied having received the buy-bust money and claimed that the ₱50.00 bill and the two ₱20.00 bills, totaling ₱90.00, were given to him by his mother for his bus fare to Quezon.[37] He disclaimed any knowledge of the ₱10.00 bill.[38] He further testified that he personally knew PO3 Rivera prior to the arrest, since his first cousin and PO3 Rivera had a quarrel which he had no involvement whatsoever.[39] He noted the fact that it was PO3 Rivera who arrested him.[40]

Witness Joaquin Artemio Marfori testified that he is the employer of the appellant in his agricultural and poultry supply store in Babayan, Calamba, Laguna.[41] He further stated that he allowed the appellant to go on vacation on December 12, 2003

---

[32] *Id.*

[33] *Id.*

[34] *Id.* at 4.

[35] *Id.*

[36] *Id.* at 4-5.

[37] *Id.* at 5.

[38] *Id.*

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

[40] *Id.*

[41] TSN, August 5, 2003, pp. 3-4.

to celebrate the New Year with his family in Manila.[42] However, the appellant failed to report back for work at the start of the New Year.[43]

Finally, witness Arsenia Morales (Arsenia) corroborated the testimony of her son that she gave him ₱90.00, consisting of one ₱50.00 bill and two ₱20.00 bills as bus fare back to Laguna where he worked.[44] Thinking that her son was already on his way home, she was surprised to receive a call from her daughter informing her that her son, the appellant, was arrested for possession and sale of "*shabu*."[45]

Ruling of the Regional Trial Court

On April 29, 2004, the trial court rendered a Decision finding the appellant guilty beyond reasonable doubt of illegal possession and illegal sale of dangerous drugs. The dispositive portion of the said Decision reads:

> WHEREFORE, in view of the foregoing disquisition, judgment is hereby rendered finding the accused ROLDAN MORALES *y* Midarasa, GUILTY beyond reasonable doubt in Criminal Case No. Q-03-114257 for violation of Section 5, Article II, R.A. [No.] 9165 for drug pushing [of] zero point zero three (0.03) gram of white crystalline substance containing Methylamphetamine hydrochloride and is hereby sentenced to suffer Life Imprisonment and to pay a fine of Five Hundred Thousand (₱500,000.00) pesos.
>
> The Court likewise finds the accused ROLDAN MORALES *y* Midarasa GUILTY beyond reasonable doubt in Criminal Case No. Q-03-114256 for violation of Section 11, Article II, R.A. [No.] 9165 for drug possession x x x of zero point zero three (0.03) gram of white crystalline substance containing Methylamphetamine hydrochloride and is hereby sentenced to suffer an imprisonment term of Twelve (12) Years and One (1) Month to Thirteen (13) Years and to pay a fine of Three Hundred Fifty Thousand (₱350,000.00) Pesos.

---

[42] *Id.* at 4.

[43] *Id.* at 5.

[44] TSN, November 6, 2003, pp. 3-4.

[45] *Id.*

The sachets of *shabu* subject of these cases are ordered transmitted to the PDEA thru Dangerous Drugs Board for proper disposition after this decision becomes final.

SO ORDERED.[46]

The trial court held that the prosecution witnesses positively identified the appellant as the person who possessed and sold to the poseur-buyer the "*shabu*" subject of this case, during the buy-bust operation conducted in the afternoon of January 2, 2003.[47] The trial court found that from the evidence presented, the prosecution was able to sufficiently establish the following: (1) the fact of the buy-bust operation conducted in the afternoon of January 2, 2003 at the parking lot of Jollibee Philcoa which led to the arrest of the appellant; and (2) the *corpus delicti,* through the presentation in court of the two sachets of white substance which was confirmed by the Chemistry Report to be methylamphetamine hydrochloride ("*shabu*"), found in the possession of and sold by the appellant.[48]

Ruling of the Court of Appeals

The CA affirmed the Decision of the trial court *in toto*. It found that contrary to the allegations of the appellant, there was no instigation that took place.[49] Rather, a buy-bust operation was employed by the police officers to apprehend the appellant while in the act of unlawfully selling drugs.[50] The appellate court further held that what is material in a prosecution for illegal sale of prohibited drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*.[51] Stripped of non-essentials, the CA summarized the antecedent facts of the case as follows:

---

[46] Records, p. 66.

[47] *Id.* at 65.

[48] *Id.*

[49] CA *rollo,* pp. 92-93.

[50] *Id.* at 93.

[51] *Id.* at 95.

PO1 Eduardo Roy prepared a pre-arranged report on the buy-bust operation to be conducted against appellant at Barangay San Vicente, Quezon City upon an informant's tip that appellant was selling "*shabu*" in the said area. On the other hand, PO3 Armando Ragundiaz Rivera recorded the briefing, summary, identification of appellant and the buy-bust money to be used in the operation consisting of one (1) fifty peso bill, two (2) twenty peso bill[s] and one (1) ten peso bill. PO1 Roy who acted as the poseur-buyer and PO3 Rivera as his back-up proceeded to University Avenue corner Commonwealth Avenue, Barangay San Vicente, Quezon City together with the informant.

PO1 Roy and the informant met appellant at the parking lot of Jollibee restaurant while PO3 Rivera positioned himself at the side of a parked car where he can easily have a clear view of the three. After PO1 Roy was introduced by the informant to the appellant as a buyer of "*shabu*," the latter immediately produced a sachet containing the said prohibited drugs and handed the same to him. PO1 Roy raised his left hand as the pre-arranged signal that the transaction was consummated. Thereafter, PO3 Rivera went to the area, introduced himself as a police officer and frisked appellant from whom he recovered the marked money and a matchbox, where the suspected "*shabu*" was placed, and two (2) aluminum foils. They informed appellant of his constitutional rights and brought him to the police station while the two (2) small transparent heat sealed sachets containing the suspected prohibited drugs and paraphernalia were turned over to the crime laboratory for examination, and which [was] later, found to be positive for methylamphetamine hydrochloride (commonly known as "*shabu*").[52]

Thence, the CA rendered judgment to wit:

WHEREFORE, premises considered, the assailed decision of the Regional Trial Court of Quezon City, Branch 103 dated April 29, 2004 is hereby AFFIRMED *IN TOTO*.

SO ORDERED.[53]

Appellant elevated the case to this Court *via* Notice of Appeal.[54] In our Resolution dated July 12, 2006, we resolved to accept

---

[52] *Id.* at 88-89.

[53] *Id.* at 95.

[54] *Id.* at 101.

the case and required the parties to submit their respective supplemental briefs simultaneously, if they so desire, within 30 days from notice.[55] Both parties adopted their respective appellant's and appellee's briefs, instead of filing supplemental briefs.[56]

Our Ruling

Appellant claims that he should not be convicted of the offenses charged since his guilt has not been proven by the prosecution beyond reasonable doubt.[57] In support of his contention, appellant alleges that the arresting officers did not even place the proper markings on the alleged *shabu* and paraphernalia at the time and place of the alleged buy-bust operation.[58] Appellant hence posits that this created serious doubt as to the items and actual quantity of *shabu* recovered, if at all.[59]

The Office of the Solicitor General, on the other hand, insists that the direct testimony of the two arresting officers sufficiently established the elements of illegal sale and possession of *shabu*.[60]

At the outset, we draw attention to the unique nature of an appeal in a criminal case: the appeal throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned.[61] On the basis of such review, we find the present appeal meritorious.

Prevailing jurisprudence uniformly hold that the trial court's findings of fact, especially when affirmed by the CA, are, as a general rule, entitled to great weight and will not be disturbed

---

[55] *Rollo*, p. 12.

[56] *Id.* at 22-23; 25-26.

[57] CA *rollo*, pp. 40, 45.

[58] *Id.* at 48.

[59] *Id.* at 49.

[60] *Id.* at 63, 76-78.

[61] *People v. Kamad*, G.R. No. 174198, January 19, 2010, citing *People v. Balagat*, G.R. No. 177163, April 24, 2009.

on appeal.[62] However, this rule admits of exceptions and does not apply where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied.[63] After due consideration of the records of this case, evidence presented and relevant law and jurisprudence, we hold that this case falls under the exception.

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.[64]

On the other hand, in prosecutions for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.[65] Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.[66]

With respect to *corpus delicti*, Section 21 of Republic Act (RA) No. 9165 provides:

> Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources or dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and or surrendered, for proper disposition in the following manner:

---

[62] *People v. Milan*, 370 Phil. 493, 499 (1999).

[63] *People v. Robles*, G.R. No. 177220, April 24, 2009.

[64] *People v. Darisan*, G.R. No. 176151, January 30, 2009, 577 SCRA 486, 490.

[65] *Id*.

[66] *People v. Partoza*, G.R. No. 182418, May 8, 2009.

(1) **The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the persons/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof**; x x x (Emphasis supplied)

In *People v. Partoza*,[67] we held that the identity of the *corpus delicti* was not proven beyond reasonable doubt. In the said case, the apprehending policeman did not mark the seized drugs after he arrested the appellant in the latter's presence. Neither did he make an inventory and take a photograph of the confiscated items in the presence of the appellant. There was no representative from the media and the Department of Justice, or any elected public official who participated in the operation and who were supposed to sign an inventory of seized items and be given copies thereof. Hence, we held in the afore-cited case that there was no compliance with the statutory safeguards. In addition, while the apprehending policeman admitted to have in his possession the *shabu* from the time the appellant was apprehended at the crime scene to the police station, records are bereft of proof on how the seized items were handled from the time they left the hands of the said police officer.

We declared in *People v. Orteza*,[68] that the failure to comply with Paragraph 1, Section 21, Article II of RA 9165 implied a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*:

In *People v. Laxa*, where the buy-bust team failed to mark the confiscated marijuana immediately after the apprehension of the accused, the Court held that the deviation from the standard procedure in anti-narcotics operations produced doubts as to the origins of the marijuana. Consequently, the Court concluded that the prosecution failed to establish the identity of the *corpus delicti*.

---

[67] *Id.*

[68] G.R. No. 173051, July 31, 2007, 528 SCRA 750, 758-759.

The Court made a similar ruling in *People v. Kimura*, where the Narcom operatives failed to place markings on the seized marijuana at the time the accused was arrested and to observe the procedure and take custody of the drug.

More recently, in *Zarraga v. People*, the Court held that the material inconsistencies with regard to when and where the markings on the *shabu* were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the *corpus delicti*. The Court thus acquitted the accused due to the prosecution's failure to indubitably show the identity of the *shabu*.

Likewise, in *People v. Obmiranis*,[69] we acquitted the appellant due to flaws in the conduct of the post-seizure custody of the dangerous drug allegedly recovered from the appellant, together with the failure of the key persons who handled the same to testify on the whereabouts of the exhibit before it was offered in evidence in court.

In the instant case, it is indisputable that the procedures for the custody and disposition of confiscated dangerous drugs, as mandated in Section 21 of RA 9165, were not observed. The records utterly failed to show that the buy-bust team complied with these procedures despite their mandatory nature as indicated by the use of "shall" in the directives of the law. The procedural lapse is plainly evident from the testimonies of the two police officers presented by the prosecution, namely: PO1 Roy and PO3 Rivera.

PO1 Roy, in his testimony, failed to concretely identify the items seized from the appellant. Moreover, he confirmed that they did not make a list of the items seized. The patent lack of adherence to the procedural mandate of RA 9165 is manifest in his testimony, to wit:

FISCAL JURADO
x x x You mentioned that you gave the pre-arranged signal, what is that?

WITNESS
A- Raising my left hand.

---

[69] G.R. No. 181492, December 16, 2008, 574 SCRA 140, 158.

Q- And what happened next?
A- My back up PO3 Rivera came.

Q- What [did] your back up do when you raised your hand?
A- He arrested Morales.

Q- What were you doing when he arrested Morales?
A- I put the informant away from the scene.

Q- And what happened next after that?
A- We brought him to the police station.

Q- How about the *shabu*, what did you do with it?
A- We brought it to the crime lab.

Q- How did you send it to crime lab?
A- *Shabu* and paraphernalia recovered by my companion from the suspect.

Q- How many items were sent to the crime lab?
A- 2 *shabu* and paraphernalia.

Q- What are the paraphernalia?
A- Foil, sir.

Q- How many foil?
A- I cannot recall.

Q- What happened to the accused in the police station?
A- He was investigated.

Q- Do you know the accused?
A- Yes, sir.

Q- What is his name?
A- Roldan Morales.

x x x x x x x x x

FISCAL JURADO
Q- If the said sachet and paraphernalia will be shown to you, how would you be able to identify the said items?

WITNESS
A- I could not recall *"pare-pareho yung shabu."*

ATTY. MOSING
I will object because that would be leading on the part of the prosecution because he could not identify on what *shabu.*

COURT
That question is overruled.

FISCAL JURADO
I am showing to you an item, would you be able to identify?

COURT
Fiscal showing several *shabu*.

WITNESS
A- This one.

FISCAL JURADO
Q- There is another plastic sachet?

WITNESS
A- Recovered.

Q- How about these two?
A- I was not the one who confiscated that.

Q- What happened to the said item submitted to the crime lab?
A- Positive, sir.

x x x x x x x x x

FISCAL JURADO

x x x x x x x x x
Q- How about the specimen forwarded to the crime lab?

WITNESS
A- My companion brought that.

Q- What was your participation in the case?
A- Poseur buyer.

x x x x x x x x x

ATTY. MOSING

x x x x x x x x x

Q- After the arrest you brought the suspect and the items to the station?
A- Yes, sir.

Q- Did you not make a list of items you have confiscated in this case?
A- No, we turned it over to the investigator.

Q- You have presented the buy bust money a while ago, was that buy bust money suppose to be turned over to the investigator?
A- No, inquest. Upon request, I was the one who received it.[70] (Emphasis supplied)

The testimony of the other arresting officer, PO3 Rivera further confirms the failure of the buy-bust team to observe the procedure mandated under Section 21 of RA 9165:

COURT
Q- Where did you position yourself?

WITNESS
A- Parked vehicle.

FISCAL JURADO
Q- What did you notice?

WITNESS
A- The confidential informant introduced our poseur buyer to the suspect and after a few conversation I waited and I saw the pre-arranged signal. And when he raised his left hand that is the signal that the transaction is consummated.

Q- After he made that signal, what did you do?
A- I rushed to the area and arrest[ed] the suspect.

Q- Who was the person you took x x x custody [of]?
A- Roldan Morales

Q- And what did you do with him?
A- Because he ha[d] a marked money I got hold of it and arrest[ed] him.

Q- And what did you do with him?
A- I frisked him.

Q- And what was the result of your frisking?
A- A box of match which I was able to recover [containing] another suspected *shabu.*

Q- Where did you find that on his body?
A- Front [pocket of] pants.

---

[70] TSN, March 20, 2003, pp. 5-11.

Q- How about the match?
A- The same.

Q- What else did you find?
A- Aluminum foil.

Q- And after you recovered that evidence, what did you do with the accused?
A- We informed him of his constitutional rights and brought him to the station.

Q- How about the items you recovered?
A- Delivered it to the crime lab for examination.

Q- What else did you deliver [to] the crime lab?
A- Request, sir.[71] (Emphasis supplied)

Other than PO1 Roy and PO3 Rivera, the prosecution did not present any other witnesses. Hence, the investigator, referred to by PO1 Roy in his testimony as the one who took delivery of the seized items, was not identified nor was he presented in court. More importantly, the testifying police officers did not state that they marked the seized drugs immediately after they arrested the appellant and in the latter's presence. Neither did they make an inventory and take a photograph of the confiscated items in the presence of the appellant. There was likewise no mention of any representative from the media and the Department of Justice, or any elected public official who participated in the operation and who were supposed to sign an inventory of seized items and be given copies thereof. None of these statutory safeguards were observed.

Even PO1 Roy, the poseur-buyer, was not certain as to the identity of the confiscated *shabu*, to wit:

FISCAL JURADO:
Q- If the said sachet and paraphernalia will be shown to you, how would you be able to identify the said items?

WITNESS
A- I could not recall "*pare-pareho yung shabu*."[72]

---

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

[72] *Id.* at 7.

The procedural lapses in the handling and identification of the seized items collectively raise doubts as to whether the items presented in court were the exact same items that were confiscated from appellant when he was apprehended.

While this Court recognizes that non-compliance by the buy-bust team with Section 21 of RA 9165 is not fatal as long as there is a justifiable ground therefor, for and as long as the integrity and the evidentiary value of the siezed items are properly preserved by the apprehending team,[73] these conditions were not met in the case at bar. No explanation was offered by the testifying police officers for their failure to observe the rule. In this respect, we cannot fault the apprehending policemen either, as PO1 Roy admitted that he was not a PDEA operative[74] and the other witness, PO3 Rivera, testified that he was not aware

---

[73] Section 21(a) of the Implementing Rules and Regulations of RA 9165 provides:

SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;** x x x (Emphasis supplied)

[74] TSN, March 20, 2003, pp. 8-9.

of the procedure involved in the conduct of anti-drug operations by the PNP.[75] In fine, there is serious doubt whether the drug presented in court was the same drug recovered from the appellant. Consequently, the prosecution failed to prove beyond reasonable doubt the identity of the *corpus delicti*.

Furthermore, the evidence presented by the prosecution failed to reveal the identity of the person who had custody and safekeeping of the drugs after its examination and pending presentation in court. Thus, the prosecution likewise failed to establish the chain of custody which is fatal to its cause.

In fine, the identity of the *corpus delicti* in this case was not proven beyond reasonable doubt. There was likewise a break in the chain of custody which proves fatal to the prosecution's case. Thus, since the prosecution has failed to establish the element of *corpus delicti* with the prescribed degree of proof required for successful prosecution of both possession and sale of prohibited drugs, we resolve to **ACQUIT** Roldan Morales *y* Midarasa.

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals dated April 24, 2006 in CA-G.R. CR-H.C. No. 00037 affirming the judgment of conviction of the Regional Trial Court of Quezon City, Branch 103 dated April 29, 2004 is hereby *REVERSED* and *SET ASIDE*. Appellant Roldan Morales *y* Midarasa is *ACQUITTED* based on reasonable doubt, and is ordered to be immediately *RELEASED* from detention, unless he is confined for any other lawful cause.

The Director of the Bureau of Corrections is *DIRECTED* to *IMPLEMENT* this Decision and to report to this Court the action taken hereon within five days from receipt.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.*, concur.

---

[75] *Id.* at 16.

SECOND DIVISION

[G.R. No. 181247. March 19, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RICHARD NAPALIT *y* DE GUZMAN,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; QUALIFYING CIRCUMSTANCES; TREACHERY; DEFINED. — There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

2. ID.; ID.; ID.; ID.; ESSENCE; CASE AT BAR. — The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving him of any real chance to defend himself. Even when the victim was forewarned of the danger to his person, treachery may still be appreciated since what is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. In the instant case, there is no doubt that the victim was surprised by the attack coming from the appellant. The victim was merely walking along the street unsuspecting of any harm that would befall his person. That appellant shouted "*ano, gusto n'yo, away?*" immediately before stabbing the victim could not be deemed as sufficient warning to the latter of the impending attack on his person. Records show that after challenging the unsuspecting victim to a fight, appellant immediately lunged at him and stabbed him at the back. Under the circumstances, the victim was indisputably caught off guard by the sudden and deliberate attack coming from the appellant, leaving him with no opportunity to raise any defense against the attack. The mode of the attack adopted by the appellant rendered the victim unable and unprepared to defend himself.

3. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES, WHEN MAY BE AWARDED; PROPER IN CASE AT BAR. — xxx

> [W]e also award the amount of ₱25,000.00 as exemplary damages pursuant to our ruling in *People v. Angeles* where we held that "under Article 2230 of the Civil Code, exemplary damages may be awarded in criminal cases when the crime was committed with one or more aggravating circumstances, in this case, treachery. This is intended to serve as deterrent to serious wrongdoings and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct. The imposition of exemplary damages is also justified under Article 2229 of the Civil Code in order to set an example for the public good."

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

Under paragraph 16, Article 14 of the Revised Penal Code, the qualifying circumstance of treachery is present when the offender employs means, methods, or forms in the execution of the crime which tend directly and especially to insure its execution without risk to himself arising from any defensive or retaliatory act which the victim might make.[1] What is decisive is that the execution of the attack, without the slightest provocation from a victim who is unarmed, made it impossible for the victim to defend himself or to retaliate.[2]

In this case, appellant Richard Napalit *y* De Guzman assails the August 15, 2007 Decision[3] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01137 which affirmed with modification

---

[1] *People v. Tan*, 373 Phil. 190, 200-201 (1999).

[2] *Id.* at 201.

[3] *Rollo*, pp. 2-12; penned by Associate Justice Regalado E. Maambong and concurred in by Associate Justices Celia C. Librea-Leagogo and Sixto C. Marella, Jr.

the April 10, 2005 Decision[4] of the Regional Trial Court (RTC) of Malabon City, Branch 170, finding him guilty beyond reasonable doubt of murder.

Factual Antecedents

On October 26, 2001, an Information[5] was filed charging appellant Richard Napalit *y* De Guzman, together with two John Does who are still at large, with the crime of murder. The accusatory portion of the Information reads:

> That on or about the 16th day of October, 2001 in the City of Malabon, Philippines and within the jurisdiction of this Honorable court, the above-named accused, conspiring, confederating and helping one another, while armed with a bladed weapon, with intent to kill, treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and stab one JOSEPH GENETE, hitting him on the nape and back of the body, thereby [inflicting] injuries which caused his death.
>
> CONTRARY TO LAW.

Appellant pleaded not guilty to the charge when arraigned on November 27, 2001.[6]

The prosecution presented Glen Guanzon (Guanzon), Marivic G. Duavis (Duavis), and Dr. Bienvenido G. Torres (Dr. Torres), as witnesses.

Based on their testimonies, the prosecution established that at around 2:00 o'clock in the morning of October 16, 2001, the victim, Joseph Genete (Genete), together with Guanzon and three other companions were walking along Langaray Street, Malabon, after a drinking spree. When they passed by the group of the appellant, the latter shouted "*ano, gusto n'yo, away?*" and then stabbed Genete with an ice pick at the back. Guanzon attempted to help Genete but the former was also stabbed by a companion of the appellant known only as *alias Paksiw*. Genete, Guanzon

---

[4] Records, pp. 126-129; penned by Judge Benjamin T. Antonio.

[5] *Id.* at 1.

[6] *Id.* at 14.

and their companions attempted to flee but they were pursued by the group of the appellant. At a distance of about 10 meters, Genete fell to the ground. The appellant and his companions then fled from the crime scene.

Guanzon and Genete were brought to the hospital but Genete died the following day. Guanzon survived and identified the appellant as the perpetrator of the crime.

Dr. Torres testified that the cause of death of the victim was hypovolimia or extensive loss of fluid and blood due to stab wound.[7] Duavis testified on the expenses incurred as a result of the incident.

The defense presented appellant as its sole witness. Appellant denied knowing Guanzon or Genete or participating in the killing of the latter. He also claimed that he was asleep in his house located at Block 14-B, Lot 40, Phase II, Area 3, Dagat-Dagatan, Malabon, when the crime was committed.

Ruling of the Regional Trial Court

The trial court found the version of the prosecution more credible. It noted that the series of events as narrated by Guanzon, who claimed to have personally witnessed the crime, and who was also stabbed by appellant's companion, led to no other conclusion than that it was the appellant who fatally stabbed the victim. Moreover, the trial court found Guanzon's testimony to be credible, straightforward, and without any sign of a coached or rehearsed account. No ill motive was likewise imputed on Guanzon for testifying against the appellant.

The trial court also found the qualifying circumstance of treachery to have attended the commission of the crime. Thus:

> The killing of the victim was attended by the qualifying circumstance of treachery. The victim was not warned of the danger to his person as the assault was so sudden and unexpected making it impossible for the victim to defend himself or to retaliate. The essence of treachery is the swift and unexpected attack by an aggressor

---

[7] TSN, July 25, 2002, pp. 111-112.

on an unarmed and unsuspecting victim [without the] slightest provocation, depriving the latter of any real chance to defend himself.[8]

The dispositive portion of the Decision reads:

WHEREFORE, in the light of the foregoing, the Court finds accused RICHARD NAPALIT *y* DE GUZMAN guilty beyond reasonable doubt of the crime charged and x x x sentence[s him to] *reclusion perpetua* and to pay the heirs of the victim the amount of ₱52,849.00 as actual damages and ₱50,000.00 as civil indemnity, together with costs of suit.

Let the accused be credited with whatever preventive imprisonment he has undergone by reason of this case.

SO ORDERED.[9]

Ruling of the Court of Appeals

Appellant appealed to the CA raising the following as errors:

I. THE COURT *A QUO* ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II. ASSUMING *ARGUENDO* THAT THE ACCUSED IS GUILTY THE TRIAL COURT ERRED IN CONVICTING HIM FOR MURDER INSTEAD OF HOMICIDE CONSIDERING THAT NEITHER THE QUALIFYING CIRCUMSTANCE OF TREACHERY NOR PREMEDITATION WAS DULY ESTABLISHED.[10]

The defense argued that there was no treachery because the victim was forewarned of the attack when the appellant shouted "*ano, gusto n'yo, away?*" It also claimed that the prosecution failed to prove that appellant consciously adopted the mode of attack as to insure its commission without risk to himself.[11]

---

[8] Records, p. 128.

[9] *Id.* at 129.

[10] CA *rollo*, p. 20.

[11] *Id.* at 25.

The Office of the Solicitor General (OSG), on the other hand, insisted that the trial court properly disregarded appellant's defenses of denial and alibi in view of Guanzon's positive identification that appellant was the one who assaulted and fatally stabbed the victim.[12] The OSG asserted that Guanzon's testimony is entitled to full faith and credit because it was not shown that he had ill motive to testify against the appellant.[13]

The OSG further averred that the trial court properly appreciated the qualifying circumstance of treachery because the victim was surprised by the attack and had no opportunity to raise any defense. There was also no evidence of any prior altercation between the parties or that the victim provoked the attack. The OSG likewise opined that the infliction of the wound at the back of the victim showed that appellant consciously adopted the mode of the attack to avoid any risk to himself.[14]

On August 15, 2007, the CA rendered the herein assailed Decision which affirmed the factual findings of the trial court that it was appellant who fatally stabbed Genete.[15] At the same time, the CA adopted the findings of the trial court that treachery attended the commission of the crime.[16] Anent the award of actual damages, the CA found that only the amount of ₱33,693.55 out of the ₱52,849.00 awarded by the trial court, was duly supported by receipts.[17]

The dispositive portion of the Decision of the CA reads:

WHEREFORE, the decision of the Regional Trial Court of Malabon, Branch 170 is hereby AFFIRMED with MODIFICATION. Accused-appellant RICHARD NAPALIT *y* DE GUZMAN is found GUILTY beyond reasonable doubt of MURDER as defined in

---

[12] *Id.* at 47.

[13] *Id.* at 49.

[14] *Id.* at 51.

[15] *Rollo,* p. 7.

[16] *Id.* at 9.

[17] *Id.* at 10.

Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, qualified with treachery and is sentenced to suffer the penalty of *Reclusion Perpetua*. RICHARD NAPALIT *y* DE GUZMAN is ordered to pay the heirs of the deceased the amount of ₱50,000.00 as civil indemnity and as modified, the reduced amount of ₱33,693.55 as actual damages.

SO ORDERED.[18]

Hence, this appeal.

On March 5, 2008, we directed the parties to file their respective supplemental briefs.[19] On May 8, 2008, appellant manifested that he will no longer file a supplemental brief because the issues have already been thoroughly discussed in his appellant's brief.[20] On even date, appellee likewise manifested that it will no longer file a supplemental brief and that it is adopting *in toto* the arguments presented in its appellee's brief.[21]

Our Ruling

The appeal lacks merit.

In his brief filed before the CA, appellant did not anymore contest the findings of the trial court that he was the one who fatally stabbed the victim. Appellant presented no argument to rebut the finding that he was the perpetrator of the crime other than the general declaration that an accused must be presumed innocent unless proven otherwise by proof beyond reasonable doubt. At any rate, we reviewed the records of the case and we find no cogent reason not to adopt the findings of the court *a quo* which was affirmed by the CA that, indeed, it was appellant who killed the victim. Moreover, we note that the findings of the trial court as affirmed by the appellate court are duly supported by the records of the case.

---

[18] *Id.* at 11.

[19] *Id.* at 17.

[20] *Id.* at 18.

[21] *Id.* at 21-22.

The only issue before us is whether the killing was attended by the qualifying circumstance of treachery, which both the trial court and the CA found in the affirmative.

There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[22]

The eyewitness account of Guanzon undoubtedly showed that the killing was treacherous. Thus:

Q. Mr. Witness, do you remember where you were on October 16, 2001 at around 2:00 o'clock in the morning?
A. Yes, sir.

Q. Where were you then?
A. I was walking together with Joseph Genete, sir.

Q. Where?
A. In Langaray, Malabon City, sir.

Q. What happened while you were walking with Joseph Genete on that particular date and time?
A. We were suddenly attacked and stabbed, sir.

Q. Do you know who were [the] persons who suddenly attacked and stabbed you?
A. Yes, sir, I know.

Q. Will you please tell us the x x x [persons] who stabbed you and Joseph Genete?
A. Napalit, sir.

Q. Do you know the complete name of this Mr. Napalit?
A. Richard Napalit, sir.

Q. Mr. Witness, if Mr. Richard Napalit is present, will you please look around and tell us if Richard Napalit is present in this courtroom now?
A. Yes, sir, he is here.

---

[22] REVISED PENAL CODE, Art. 14, par. 16.

Q. Will you please rise and point to Mr. Napalit?
A. He is there, sir. x x x

Q. Why do you know Mr. Napalit, the accused in this case?
A. Because when he stabbed my companion, I saw him in front of me, sir.

Q. At what direction did Mr. Napalit come from when he stabbed your friend Joseph Genete?
A. He came from my side passing in front of me and then suddenly stabbed Genete, sir.

Q. What did you do when you saw the accused Richard Napalit suddenly stab the victim Joseph Genete?
A. I ran towards Joseph, sir.

Q. What is the reason why you ran towards Joseph?
A. To help him, sir.

Q. Were you able to assist or help Mr. Genete?
A. No, sir.

Q. Why?
A. Because when I stepped forward, his companion also stabbed me, sir.

Q. What part of your body was stabbed at that time?
A. At my back, sir.

Q. Do you know who stabbed you?
A. Yes, sir.

Q. What is his name?
A. *Alias* Paksiw, sir.

Q. What part of the body of Mr. Joseph Genete was stabbed by the accused in this case?
A. At the back, sir.[23]

During his cross-examination, Guanzon testified that:

Q. Now, before Richard Napalit stabbed Joseph Genete, did Richard Napalit utter anything?
A. Yes, sir.

---

[23] TSN, April 11, 2002, pp. 2-3.

Q. What did he say before he stabbed Joseph Genete?
A. He said, "*ano gusto nyo away?*", then he suddenly stabbed us, sir.

Q. When he said those words, did you say anything?
A. None, sir.

Q. How about Joseph Genete?
A. None also, sir.

Q. How about your three (3) companions, Otek, Rexel and Rodel?
A. None, sir.

Q. Do you mean to say, without any aggression on your part, you were suddenly attacked?
A. Yes, sir.[24]

The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving him of any real chance to defend himself. Even when the victim was forewarned of the danger to his person, treachery may still be appreciated since what is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.[25] In the instant case, there is no doubt that the victim was surprised by the attack coming from the appellant. The victim was merely walking along the street unsuspecting of any harm that would befall his person. That appellant shouted "*ano, gusto n'yo, away?*" immediately before stabbing the victim could not be deemed as sufficient warning to the latter of the impending attack on his person. Records show that after challenging the unsuspecting victim to a fight, appellant immediately lunged at him and stabbed him at the back. Under the circumstances, the victim was indisputably caught off guard by the sudden and deliberate attack coming from the appellant, leaving him with no opportunity to raise any defense against the attack. The mode of the attack adopted by the appellant rendered the victim unable and unprepared to defend himself.

---

[24] *Id.* at 7.

[25] *People v. Angeles,* G.R. No. 177134, August 14, 2009.

Anent the award of damages, we note that the appellate court awarded only the amounts of ₱50,000.00 as civil indemnity and ₱33,693.55 as actual damages. In line with prevailing jurisprudence,[26] we also award the amount of ₱50,000.00 as moral damages. Further, we also award the amount of ₱25,000.00 as exemplary damages pursuant to our ruling in *People v. Angeles*[27] where we held that "under Article 2230 of the Civil Code, exemplary damages may be awarded in criminal cases when the crime was committed with one or more aggravating circumstances, in this case, treachery. This is intended to serve as deterrent to serious wrongdoings and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct. The imposition of exemplary damages is also justified under Article 2229 of the Civil Code in order to set an example for the public good."

WHEREFORE, the August 15, 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01137 which found appellant Richard Napalit *y* De Guzman guilty beyond reasonable doubt of murder and sentenced him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the victim the amounts of ₱50,000.00 as civil indemnity and ₱33,693.55 as actual damages is *AFFIRMED* with *MODIFICATIONS* that appellant is further ordered to pay ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

---

[26] *People v. Badriago,* G.R. No. 183566, May 8, 2009.

[27] *Supra*.

EN BANC

[A.M. No. P-04-1819. March 22, 2010]
(Formerly A.M. No. 04-6-133-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MACARIO C. VILLANUEVA, Clerk of Court, Municipal Trial Court, Bongabon, Nueva Ecija,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; DUTY-BOUND TO PRESERVE AND PROMOTE THE INTEGRITY OF THE JUDICIARY; RELEVANT RULING, CITED. — The Court's authority — possessed of neither purse nor sword — ultimately rests on sustained public confidence in its moral sanction. The judiciary is intended be the source for secular moral authority in our Republic. That is why all court personnel have the duty to preserve and promote the integrity of the judiciary. As we declared in *Judge de la Peña v. Sia*: Persons involved in the administration of justice ought to live up to the strictest standard of honesty and integrity in the public service. The conduct of every personnel connected with the courts should, at all times, be circumspect to preserve the integrity and dignity of our courts of justice. As forerunners in the administration of justice, they ought to live up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public.

2. ID.; ID.; ID.; ID.; CLERKS OF COURT; DUTIES. — Clerks of court, in particular, are the chief administrative officers of their respective courts. They must show competence, honesty and probity, having been charged with safeguarding the integrity of the court and its proceedings. Furthermore, they are judicial officers entrusted with the role of performing delicate functions with regard to the collection of legal fees, and are expected to correctly and effectively implement regulations. Hence, as custodians of court funds and revenues,

they have always been reminded of their duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody.

3. ID.; ID.; ID.; ID.; ID.; PRIMARILY ACCOUNTABLE FOR ALL FUNDS THAT ARE COLLECTED FOR THE COURT; CASE AT BAR. — The clerk of court is primarily accountable for all funds that are collected for the court, whether personally received by him or by a duly appointed cashier who is under his supervision and control. As the custodian of court funds, revenues, records, properties and premises, he is liable for any loss, shortage, destruction or impairment of said funds and properties. **A clerk of court found short of money accountabilities may be dismissed from the service**.

4. ID.; ID.; ID.; ID.; ID.; ID.; FAILURE TO REMIT COURT FUNDS AND GIVE A SATISFACTORY EXPLANATION FOR SUCH FAILURE CONSTITUTES GRAVE MISCONDUCT, DISHONESTY AND EVEN MALVERSATION; PENALTY. — In this case, the financial audit conducted in the MTC of Bongabon, Nueva Ecija showed that respondent incurred cash shortages. While he was able to reduce his accountability by producing the required documents, he could not account for the balance. This indicated two things: (1) respondent's gross negligence and very poor management of the records of collected fees and (2) his failure to account for the remainder which gave rise to the presumption that he misappropriated the same for his personal use. He failed to fully account for the funds despite the ample time he was given to do so. His continued failure to remit court funds and to give a satisfactory explanation for such failure constitutes grave misconduct, dishonesty and even malversation. These, as well as his gross negligence, are **all grave offenses that merit the supreme penalty of dismissal even for the first offense**.

R E S O L U T I O N

***PER CURIAM*:**

In a memorandum dated May 20, 2004,[1] the Office of the Court Administrator (OCA) reported the result of the financial audit conducted at the Municipal Trial Court (MTC) of Bongabon, Nueva Ecija in November 2003. In particular, the audit showed that respondent Macario C. Villanueva, clerk of court of MTC Bongabon, incurred cash shortages.[2]

The Court resolved to treat the findings of the audit team as an administrative complaint against respondent and directed the following:

(a) restitution and deposit to the respective accounts of the following amounts and, thereafter, submission to the OCA of the validated deposit slips as proof of payment:

FUND	SHORTAGES
I. Fiduciary Trust Fund	₱35,249.70
II. Judiciary Development Fund	32,119.56
III. General Fund	4,680.60
IV. VCF & LRF	875.00
TOTAL	₱72,924.86

(b) withdrawal from the Judiciary Fund of the amounts of ₱807.02 and ₱4,000, representing the interest earned and confiscated cash bond, respectively, to be deposited to the JDF with the submission of validated deposit slips to the OCA;

(c) withdrawal from the Fiduciary Fund of the amount of ₱27,750, representing the amount erroneously transferred to the court, remittance of the same to the municipal

---

[1] *Rollo*, pp. 2-3.

[2] *Id.*

treasurer's office (MTO) and submission to the OCA of the acknowledgment receipt from the MTO;

(d) submission of acknowledgment receipts of the following refunded cash bonds:

LITIGANT	O.R. NUMBER	CASE NUMBER	AMOUNT
—	—	2667	₱1,000
—	—	2676	2,000
Arthur Sincon	MTC-6474215	2867	6,000
Carlito Marcelo	4643042	3039	10,000
TOTAL			₱19,000

(e) accounting for 10 missing official receipt booklets with serial numbers 678501 to 679000 and

(f) explanation by respondent why no administrative sanction should be imposed on him for the above infractions.[3]

Furthermore, respondent was placed under suspension pending the resolution of this administrative matter.[4]

By way of explanation respondent submitted a letter[5] dated July 15, 2004 praying that the salaries and other emoluments withheld from him be applied to his cash accountabilities.

Acting on respondent's prayer, the OCA informed the Court via memorandum dated September 22, 2004[6] that an examination of additional documents pertaining to the accountabilities of respondent showed that he actually incurred a cash shortage amounting to ₱159,424.86 broken down as follows:

---

[3] *Id.*

[4] *Id.*

[5] *Id.*, pp. 22-23.

[6] *Id.*, pp. 32-38.

FUND	SHORTAGES
1. Judiciary Development Fund	₱32,119.56
2. General Fund	4,680.60
3. Victim Compensation Fund	205.00
4. Legal Research Fund	670.00
5. Fiduciary Fund	121,749.70
TOTAL	₱159,424.86

The OCA recommended that respondent be made to pay the said amounts and deposit these to their respective accounts and, thereafter, to submit validated deposit slips as proofs of payment. It also proposed that respondent be made to submit the following: the corresponding court orders and acknowledgment receipts pertaining to unwithdrawn cash bonds amounting to ₱221,700 as proof that they were duly refunded to the bondsmen; the corresponding court orders on withdrawn cash bonds totaling ₱31,000 and the acknowledgment receipts on withdrawn cash bonds amounting to ₱164,000.[7]

The Court approved the recommendations of the OCA.[8]

By way of compliance, respondent submitted a list of cases with the cash bonds and the status of the bail bonds, whether withdrawn or unwithdrawn, together with the certification of the MTO, affidavits, court orders and acknowledgment receipts.[9] He then requested that his suspension be lifted and reiterated his prayer that the salaries and other emoluments withheld from him be applied to his cash accountabilities.[10]

Despite respondent's compliance, the OCA stated in a memorandum dated May 4, 2006 that respondent still had a cash shortage of ₱46,674.86, broken down as follows:[11]

---

[7] *Id.*

[8] Resolution dated October 19, 2004. *Id.*, pp. 39-42.

[9] Letter dated January 3, 2005 with attachments. *Id.*, pp. 50-128.

[10] *Id.*

[11] *Id.*, pp. 145-156. In a manifestation dated May 26, 2009, respondent

FUND	SHORTAGES
1. Judiciary Development Fund	₱27,293.56
2. General Fund	2,286.60
3. VCF & LRF	650.00
4. Fiduciary Fund	8,999.70
5. Discrepancies on the Filing Fees Collected	7,445.00
TOTAL	₱46,674.86

The OCA reported that the said cash shortage could be fully covered by the money value of respondent's total terminal leave benefits of ₱417,693.13.[12]

In the same memorandum, the OCA informed the Court that it received an affidavit of a certain Evelyn O. Mercado alleging that, when certain criminal cases[13] pending in the MTC of Bongabon were dismissed due to amicable settlement, the cash bonds posted by the accused (which were supposed to be remitted to the complainants to satisfy the respective obligations of the accused) were applied by respondent as payment for outstanding filing fees without issuing any receipt therefor.[14]

Accordingly, the OCA recommended that respondent be directed to comment on the affidavit of Mercado and to submit

---

informed the Court that he deposited a total amount of ₱17,934 to satisfy his accountabilities. The amount represented the following ₱1,500 for the Fiduciary Fund (under Land Bank of the Philippines [LBP] Cabanatuan Branch Savings Account No. 0021333310, ₱14,414 for the Judiciary Development Fund (under LBP Cabanatuan Branch Savings Account No. 0591011634) and ₱2,020 for the Special Allowance for the Judiciary Fund (under LBP Cabanatuan Branch Savings Account No. 0591174428). This further reduced respondent's cash shortage to ₱28,740.86. *Id.*, pp. 356-361.

[12] This was based on a computation made by the Office of Administrative Services-OCA and Financial Management Office-OCA. *Id.*

[13] Particularly, Criminal Case Nos. 3159, 3161 and 3162 (*People v. Lena Lachica* for estafa); Criminal Case Nos. 3147-3150 (*People v. Fernandez* for estafa); Criminal Case No. 3168 (*People v. Resma Reguyal* for estafa) and *People v. Annie Binuya* (docket number was not specified). *Id.*

[14] *Id.*

the corresponding acknowledgment receipts relating to cash bonds to prove that these had been duly refunded to the bondsmen.[15] While the OCA also recommended the denial of respondent's request for the lifting of his suspension, it proposed that his request for the release of salaries and other emoluments withheld from him prior to his suspension be granted.[16]

In a resolution dated June 20, 2006,[17] the Court approved the recommendations of the OCA.

In his comment,[18] respondent denied the allegations contained in the affidavit of Mercado. He also presented an affidavit dated July 28, 2006 of purportedly the "real" Evelyn Mercado denying that she had accused respondent of failing to issue receipts for filing fees.[19]

Due to the nature of respondent's allegations in his comment, the Court resolved to refer to Judge Corazon D. Soluren, executive judge of the Regional Trial Court (RTC) of Palayan City, the matter of the "conflicting affidavits" of Mercado.[20]

In her investigation report dated March 20, 2007,[21] Judge Soluren stated that the affidavits dated November 12, 2003 and July 26, 2006 were executed by the same person. She noted that the affiant Mercado appeared during the hearing and admitted that respondent was actually her *kumpadre*. The 2006 affidavit was executed three years after the execution of the first affidavit in 2003. Respondent himself secured the 2006 affidavit.

After evaluating the investigation report of Judge Soluren, the OCA submitted its report and recommendation.[22] The OCA

---

[15] *Id*.

[16] *Id*.

[17] *Id.*, pp. 182-184.

[18] Dated July 29, 2006. *Id.*, pp. 203-224.

[19] *Id.*, pp. 206-224.

[20] Resolution dated December 5, 2006. *Id.*, pp. 232-233.

[21] *Id.*, pp. 253-258.

[22] Memorandum dated July 11, 2008. *Id.*, pp. 349-353.

adopted Judge Soluren's finding that the 2003 and 2006 affidavits had been executed by one and the same person. The OCA concluded that respondent himself secured the 2006 affidavit as a desperate attempt to insulate himself from the additional charge of not issuing receipts, a matter alleged in the 2003 affidavit.

The 2003 affidavit showed that Mercado intended to file an administrative complaint against respondent but respondent persuaded her to recant the same. Respondent even tried to fabricate a scenario wherein the 2003 affidavit was supposedly executed by a fictitious person to confuse the Court. Notwithstanding the fact that the author of the two affidavits was identified, however, the charge of not issuing receipts was not proven.

Nonetheless, respondent is not entirely without any liability as there still remains the matter of the shortages he incurred.

The OCA proposed that respondent be held liable for incurring various cash shortages. That respondent was able to pay a portion of his shortages does not absolve him from the consequences of his wrongdoing. The fact remains that he incurred cash shortage as a result of misappropriation of court funds. Such misappropriation constituted dishonesty, gross neglect of duty and grave misconduct which are grave offenses punishable by dismissal for the first offense.[23]

Thus, the OCA recommended the following:

(a) dismissal of respondent from the service, with forfeiture of his retirement benefits, excluding accrued leave credits, and perpetual disqualification from reemployment in the government or in any government-owned or controlled corporation;

(b) computation by the Financial Management Office-OCA of the final money value of all the respondent's accrued

---

[23] Section 52, Rule IV, Uniform Rules on Administrative Cases in the Civil Service (Resolution No. 99-1936 which took effect on September 27, 1999).

leave credits, dispensing with the usual documentary requirements, and to apply the same to the shortage incurred by the respondent, observing the following order of preference: Fiduciary Fund, Special Allowance for the Judiciary and Clerk of Court Fund and

(c) restitution by respondent of the portion of the shortage not covered by the money value of his accrued leave credits.

We agree with the findings and recommendations of the OCA.

The Court's authority — possessed of neither purse nor sword — ultimately rests on sustained public confidence in its moral sanction.[24] The judiciary is intended be the source for secular moral authority in our Republic. That is why all court personnel have the duty to preserve and promote the integrity of the judiciary. As we declared in *Judge de la Peña v. Sia*:[25]

> Persons involved in the administration of justice ought to live up to the strictest standard of honesty and integrity in the public service. The conduct of every personnel connected with the courts should, at all times, be circumspect to preserve the integrity and dignity of our courts of justice. As forerunners in the administration of justice, they ought to live up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public.

Clerks of court, in particular, are the chief administrative officers of their respective courts. They must show competence, honesty and probity, having been charged with safeguarding the integrity of the court and its proceedings.[26] Furthermore, they are judicial officers entrusted with the role of performing delicate functions with regard to the collection of legal fees, and are expected to correctly and effectively implement regulations. Hence, as custodians of court funds and revenues, they have always been reminded of their duty to immediately

---

[24] *Baker v. Carr*, 369 U.S. 186, 267 (1962), Frankfurter, *J.*, dissenting.

[25] A.M. No. P-06-2167, 27 June 2006, 493 SCRA 8.

[26] *Id.*

deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody.[27]

The clerk of court is primarily accountable for all funds that are collected for the court, whether personally received by him or by a duly appointed cashier who is under his supervision and control.[28] As the custodian of court funds, revenues, records, properties and premises, he is liable for any loss, shortage, destruction or impairment of said funds and properties. **A clerk of court found short of money accountabilities may be dismissed from the service**.[29]

In this case, the financial audit conducted in the MTC of Bongabon, Nueva Ecija showed that respondent incurred cash shortages. While he was able to reduce his accountability by producing the required documents, he could not account for the balance. This indicated two things: (1) respondent's gross negligence and very poor management of the records of collected fees and (2) his failure to account for the remainder which gave rise to the presumption that he misappropriated the same for his personal use. He failed to fully account for the funds despite the ample time he was given to do so.

His continued failure to remit court funds and to give a satisfactory explanation for such failure constitutes grave misconduct, dishonesty and even malversation.[30] These, as well as his gross negligence, are **all grave offenses that merit the supreme penalty of dismissal even for the first offense**.

As every court employee is a cog in the judicial machinery and plays a vital role in the administration of justice, no breakdown in any part may be allowed if the judicial machinery is to function

---

[27] *Id*.

[28] *OCA v. Atty. Dureza-Aldevera*, A.M. No. P-01-1499, 26 September 2006, 503 SCRA 18.

[29] *Id*.

[30] *Judge De La Cruz v. Atty. Luna*, A.M. No. P-04-1821, 02 August 2007, 529 SCRA 34.

effectively and efficiently. The same principle holds true for the integrity of all the employees and officers of the judiciary. Grave misconduct and dishonesty have no place in the judicial system if its ethos, its integrity as an institution, which is the foundation of the judiciary's moral authority, is to be preserved.

WHEREFORE, the respondent Macario C. Villanueva is hereby found *GUILTY* of dishonesty, gross neglect of duty and grave misconduct. He is *DISMISSED* from the service, his retirement benefits (excluding accrued leave credits) are *FORFEITED* and he is *PERPETUALLY DISQUALIFIED* from reemployment in the government or in any government-owned or controlled corporation.

The Financial Management Office of the Office of the Court Administrator is directed to *COMPUTE* the final monetary value of all the respondent's accrued leave credits, dispensing with the usual documentary requirements, and to *APPLY* the same to the shortage incurred by the respondent, observing the following order of preference: Fiduciary Fund, Special Allowance for the Judiciary and Clerk of Court Fund.

Finally, respondent is ordered to *RESTITUTE* the portion of the shortage not covered by the money value of his accrued leave credits, if any. If he fails to do so within a non-extendible period of one (1) month from receipt of the resolution, the OCA is hereby directed to commence criminal and civil proceedings against respondent for the recovery of the amounts due.

SO ORDERED.

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

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

Villarama, Jr., J., on official leave.

SECOND DIVISION

[A.M. No. P-08-2458. March 22, 2010]
(Formerly OCA IPI No. 08-2755-P)

CRISOSTOMO M. PLOPINIO, *complainant, vs.* **ATTY. LIZA ZABALA-CARIÑO, Clerk of Court, Regional Trial Court, Branch 29, Libmanan, Camarines Sur,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; DISHONESTY; DEFINED. — Respondent Atty. Cariño is charged with dishonesty for allegedly falsifying her PDS. Dishonesty is defined as "intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion." It is also understood to imply a "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."

2. ID.; ID.; ID.; ID.; ID.; ID.; NOT SIMPLY BAD JUDGMENT OR NEGLIGENCE BUT A QUESTION OF INTENTION. — [D]ishonesty, like bad faith, is not simply bad judgment or negligence. Dishonesty is a question of intention. In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances which gave rise to the act committed by the petitioner, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.

3. ID.; ID.; ID.; ID.; ID.; ID.; ID.; INTENTION TO FALSIFY OR MISREPRESENT, ABSENT ON PART OF RESPONDENT; EXPLAINED. — The intention to falsify or misrepresent, as found by the Investigating Judge, is absent on the part of respondent Atty. Cariño when she answered the

question "Have you ever been formally charged*?*" When she filled-up her PDS, she had in mind the Uniform Rules on Administrative Cases in the Civil Service, xxx. Respondent Atty. Cariño's non-disclosure of her pending Ombudsman cases was by reason of her interpretation of what a formal charge meant as distinguished from a complaint. She banked on the distinction of these terms as defined under the Uniform Rules on Administrative Cases in the Civil Service. She correctly argued that the term "formal charge" in the PDS must find its meaning in the Uniform Rules on Administrative Cases in the Civil Service. For after all, both the Uniform Rules on Administrative Cases in the Civil Service and the CS Form 212 (Revised 2005), otherwise known as the "Personal Data Sheet," had been promulgated and revised by the Civil Service Commission itself. It is not correct to say that this is a simple case of misconstruction of the term "formally charge" and that as a lawyer, respondent Atty. Cariño is expected to understand the essence of such question. For in reality, the question is subject to varied interpretations. In criminal cases, the determination of whether a person is considered formally charged is found in Rule 112 of the Revised Rules of Criminal Procedure, xxx. If we but look at the attachments to the complaint itself, it is evident that at the time respondent Atty. Cariño was applying for the position of Clerk of Court, she had not yet been "formally charged" administratively or criminally. In the Orders dated 10 February 2006 in OMB-L-A-06-0072-A and OMB-L-C-06-0110-A, the Deputy Ombudsman for Luzon directed respondent Atty. Cariño and her Regional Election Director, Atty. Zacarias C. Zaragosa, Jr., to submit their counter-affidavit/s, affidavit/s of their witnesses, if any, and such other controverting evidence, with proof of service of copies upon the complainant within ten (10) days from receipt of the orders. The orders further state that "[T]hereafter, the case will be considered submitted for final disposition or taking of further action as may warranted x x x." Clearly, there were no final dispositions of the cases yet. In fact, the complainant even stated in his Complaint that those cases were not yet resolved by the Ombudsman. Thus, it is only after the issuance of the resolution finding probable cause and filing of the information in court that she can be considered formally charged. In fact, the reckoning point is the filing of the information with the written authority or

> approval of the Ombudsman. xxx To summarize, a person shall be considered formally charged: (1) In administrative proceedings – (a) upon the filing of a complaint at the instance of the disciplining authority; or (b) upon the finding of the existence of a *prima facie* case by the disciplining authority, in case of a complaint filed by a private person. (2) In criminal proceedings – (a) upon the finding of the existence of probable cause by the investigating prosecutor and the consequent filing of an information in court with the required prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy; (b) upon the finding of the existence of probable cause by the public prosecutor or by the judge in cases not requiring a preliminary investigation nor covered by the Rule on Summary Procedure; or (c) upon the finding of cause or ground to hold the accused for trial pursuant to Section 13 of the Revised Rule on Summary Procedure.

D E C I S I O N

PEREZ, *J.*:

The instant administrative case stemmed from a Letter[1] dated 20 January 2007 of Crisostomo M. Plopinio (complainant), informing the Court that he had charged Atty. Liza D. Zabala-Cariño (respondent Atty. Cariño), Clerk of Court, Regional Trial Court (RTC), Branch 29, Libmanan, Camarines Sur, criminally and administratively before the Office of the Ombudsman, for violation of Section 4(c), Republic Act No. 6713 and Section 3(e), Republic Act No. 3019 on 10 February 2006 and 22 March 2006. These were docketed as OMB-L-A-06-0072-A and OMB-L-C-06-0110-A, and OMB-L-C-02-98-C and OMB-L-A-06-0212-C, respectively.

Complainant stated that respondent Atty. Cariño may not have disclosed to the Supreme Court, in the course of her application as Clerk of Court, her pending administrative and criminal cases before the Ombudsman.

---

[1] *Rollo*, p. 3.

In an Indorsement[2] dated 8 May 2007, the Office of the Court Administrator (OCA) directed respondent Atty. Cariño to give her comment on the letter.

In her Comment[3] dated 24 May 2007, respondent Atty. Cariño vehemently denied the allegations against her. She claimed that she was just being truthful when she answered "No" to item number 37(a) of her Personal Data Sheet (PDS) which states: "Have you ever been formally charged?" She admitted that she was aware of the two (2) complaints filed against her and her former Regional Election Director before the Ombudsman. She, however, pointed out that these cases are still in the preliminary investigation and pre-charge stages, since probable cause has yet to be determined by the investigating officers and as such, should not be considered as formal charges yet.

Acting on the recommendation of the OCA, the Court issued a resolution[4] re-docketing the complaint as a regular administrative matter against respondent Atty. Cariño and referred the matter to the Executive Judge of RTC, Libmanan, Camarines Sur, for investigation, report and recommendation within sixty (60) days from receipt of the record.

On 4 February 2009, the Court issued a Resolution[5] noting the undated letter of complainant stating that Judge-Designate Lore V. Bagalacsa is respondent Atty. Cariño's godmother at her wedding and in one of complainant's cases, SP Civil Action No. L-03-06, Judge Bagalacsa "exhibited ill-feelings" against him when he questioned why she was still hearing his cases. The Court referred the matter to Executive Judge Jaime E. Contreras, RTC, Naga City, for investigation, report and recommendation.

In his Report and Recommendation[6] dated 29 June 2009, Investigating Judge Contreras stated that the complaint warrants

---

[2] *Id.* at 25.

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

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

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

[6] *Id.* at 100-104.

disciplinary action against respondent Atty. Cariño. The Investigating Judge found respondent liable for her failure to properly understand the import of the question "Have you ever been formally charged?" He contends that as a lawyer, respondent Atty. Cariño should have known that such kind of query was intended to dig into her personal background; whether administrative or criminal cases were filed against her regardless of whatever stages these may be.

Finding no deliberate intent on the part of respondent Atty. Cariño to withhold information about her pending Ombudsman cases, the Investigating Judge recommended that she be admonished to be more circumspect and prudent in answering her PDS, with a stern warning that a repetition of the same or similar act shall be dealt with more severely. The Investigating Judge further recommended that the question in the PDS, which reads: "Have you ever been formally charged?" be modified, in order to avoid any erroneous interpretation, to read as follows: "Have you ever been charged criminally or administrative (sic) in any forum? What is the stage now?"

The OCA adopted the findings and conclusions of the Investigating Judge but recommended that respondent Atty. Cariño be suspended for a period of one (1) month without pay, with a stern warning that a repetition of the same offense or commission of a similar offense in the future, shall be dealt with more severely.[7] It concluded that it was not a simple case of misconstruction of the term "formally charged" that could justify the non-disclosure of the Ombudsman cases filed against her. As a lawyer, she is expected to understand the essence of the question. Moreover, the OCA noted that respondent Atty. Cariño has been in the government service for a period of eighteen (18) years, hence, she is presumed to have gained familiarity with the questions in the PDS.

We disagree with the findings and recommendation of the OCA.

---

[7] *Id.* at 128-133.

Respondent Atty. Cariño is charged with dishonesty for allegedly falsifying her PDS. Dishonesty is defined as "intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion." It is also understood to imply a "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[8]

Thus, dishonesty, like bad faith, is not simply bad judgment or negligence. Dishonesty is a question of intention. In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances which gave rise to the act committed by the petitioner, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.[9]

The intention to falsify or misrepresent, as found by the Investigating Judge, is absent on the part of respondent Atty. Cariño when she answered the question "Have you ever been formally charged?" When she filled-up her PDS, she had in mind the Uniform Rules on Administrative Cases in the Civil Service, which states, among others:

> Section 8. *Complaint*. – A complaint against a civil service official or employee shall not be given due course unless it is in writing and subscribed and sworn to by the complainant. However, in cases initiated by the proper disciplining authority, the complaint need not be under oath.
>
> x x x x x x x x x

[8] *Wooden v. Civil Service Commission*, G.R. No. 152884, 30 September 2005, 471 SCRA 512, 526.

[9] *Millena v. Court of Appeals*, 381 Phil. 132, 142-143 (2000).

The complaint should be written in a clear, simple and concise language and in a systematic manner as to apprise the civil servant concerned of the nature and cause of the accusation against him and to enable him to intelligently prepare his defense or answer.

The complaint shall contain the following:

a. full name and address of the complainant;
b. full name and address of the person complained of as well as his position and office of employment;
c. a narration of the relevant and material facts which shows the acts or omissions allegedly committed by the civil servant;
d. certified true copies of documentary evidence and affidavits of his witnesses, if any; and
e. certification or statement of non-forum shopping.

In the absence of any one of the aforementioned requirements, the complaint shall be dismissed.

x x x x x x x x x

Section 16. *Formal Charge*. – After a finding of a *prima facie* case, the disciplining authority shall formally charge the person complained of. The formal charge shall contain a specification of charge(s), a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge(s) in writing under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his answer whether or not he elects a formal investigation of the charge(s), and a notice that he is entitled to be assisted by a counsel of his choice.

If the respondent has submitted his comment and counter-affidavits during the preliminary investigation, he shall be given the opportunity to submit additional evidence.

The disciplining authority shall not entertain requests for clarification, bills of particulars or motions to dismiss which are obviously designed to delay the administrative proceedings. If any of these pleadings are interposed by the respondent, the same shall be considered as an answer and shall be evaluated as such.

x x x x x x x x x

Section 34. *Effect of the Pendency of an Administrative Case*.– Pendency of an administrative case shall not disqualify respondent from promotion or from claiming maternity/paternity benefits.

For this purpose, a pending administrative case shall be construed as follows:

a. When the disciplining authority has issued a formal charge; or

b. In case of a complaint filed by a private person, a *prima facie* case is found to exist by the disciplining authority.

Respondent Atty. Cariño's non-disclosure of her pending Ombudsman cases was by reason of her interpretation of what a formal charge meant as distinguished from a complaint. She banked on the distinction of these terms as defined under the Uniform Rules on Administrative Cases in the Civil Service. She correctly argued that the term "formal charge" in the PDS must find its meaning in the Uniform Rules on Administrative Cases in the Civil Service. For after all, both the Uniform Rules on Administrative Cases in the Civil Service and the CS Form 212 (Revised 2005), otherwise known as the "Personal Data Sheet," had been promulgated and revised by the Civil Service Commission itself.

It is not correct to say that this is a simple case of misconstruction of the term "formally charge" and that as a lawyer, respondent Atty. Cariño is expected to understand the essence of such question. For in reality, the question is subject to varied interpretations.

In criminal cases, the determination of whether a person is considered formally charged is found in Rule 112 of the Revised Rules of Criminal Procedure, to wit:

Section 4. *Resolution of investigating prosecutor and its review*.– If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is

probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If we but look at the attachments to the complaint itself, it is evident that at the time respondent Atty. Cariño was applying for the position of Clerk of Court, she had not yet been "formally charged" administratively or criminally.

In the Orders[10] dated 10 February 2006 in OMB-L-A-06-0072-A and OMB-L-C-06-0110-A, the Deputy Ombudsman for Luzon directed respondent Atty. Cariño and her Regional Election Director, Atty. Zacarias C. Zaragosa, Jr., to submit their counter-affidavit/s, affidavit/s of their witnesses, if any, and such other controverting evidence, with proof of service of copies upon the complainant within ten (10) days from receipt of the orders. The orders further state that "[T]hereafter, the case will be considered submitted for final disposition or taking of further action as may warranted x x x."

---

[10] *Rollo,* pp. 16–17.

Clearly, there were no final dispositions of the cases yet. In fact, the complainant even stated in his Complaint[11] that those cases were not yet resolved by the Ombudsman.

Thus, it is only after the issuance of the resolution finding probable cause and filing of the information in court that she can be considered formally charged. In fact, the reckoning point is the filing of the information with the written authority or approval of the Ombudsman.

To rule otherwise would subject herein respondent, or any civil servant for that matter, to extreme hardships considering that a government official or employee formally charged is deprived of some rights/privileges, *i.e.*, obtaining loans from the Government Service Insurance System or other government-lending institutions, delay in the release of retirement benefits, disqualification from being nominated or appointed to any judicial post[12] and, in some instances, prohibition to travel.

To summarize, a person shall be considered formally charged:

(1) In administrative proceedings – (a) upon the filing of a complaint at the instance of the disciplining authority; or (b) upon the finding of the existence of a *prima facie* case by the disciplining authority, in case of a complaint filed by a private person.

(2) In criminal proceedings – (a) upon the finding of the existence of probable cause by the investigating prosecutor and the consequent filing of an information in court with the required prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy; (b) upon the finding of the existence of probable cause by the public prosecutor or by the judge in cases not requiring a preliminary investigation nor covered by the Rule on Summary Procedure;[13] or (c) upon the finding of cause or ground

---

[11] *Id.* at 3.

[12] Rule 4, Section 5, The Rules of the Judicial and Bar Council.

[13] Rule 112, Section 8, The Revised Rules of Criminal Procedure.

to hold the accused for trial pursuant to Section 13 of the Revised Rule on Summary Procedure.[14]

WHEREFORE, in the light of foregoing, the instant administrative complaint against Atty. Liza D. Zabala-Cariño, Clerk of Court, RTC, Branch 29, Libmanan, Camarines Sur is hereby *DISMISSED* for lack of merit.

The Office of the Court Administrator is *DIRECTED* to cause the dissemination of the guidelines set forth herein.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Abad, JJ.*, concur.

EN BANC

[A.M. No. RTJ-10-2226. March 22, 2010]
(Formerly A.M. No. 10-1-24-RTC)

RE: CASES SUBMITTED FOR DECISION BEFORE HON. MELITON G. EMUSLAN, FORMER JUDGE, REGIONAL TRIAL COURT, BRANCH 47, URDANETA CITY, PANGASINAN.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; PERIOD WITHIN WHICH TO DECIDE CASES; FAILURE TO DECIDE CASES WITHIN THE 90-

---

[14] The Revised Rule on Summary Procedure provides:

SEC. 13. Arraignment and trial. — Should the court, upon a consideration of the complaint or information and the affidavits submitted by both parties, find no cause or ground to hold the accused for trial, it shall order the dismissal of the case, otherwise, the court shall set the case for arraignment and trial.

DAY REGLEMENTARY PERIOD MAY WARRANT IMPOSITION OF ADMINISTRATIVE SANCTIONS ON ERRING JUDGE. — Section 15, Article VIII of the 1987 Constitution mandates lower courts to decide or resolve cases or matters for decision or final resolution within three (3) months from date of submission. Failure to decide cases within the 90-day reglementary period may warrant imposition of administrative sanctions on the erring judge.

2. LEGAL ETHICS; JUDGES; CODE OF JUDICIAL CONDUCT; ENJOINS JUDGES TO DECIDE CASES WITHIN THE REQUIRED PERIOD. — Canon 3, Rule 3.05 of the Code of Judicial Conduct enjoins judges to dispose of their business promptly and to decide cases within the required period. Thus, all cases or matters must be decided or resolved by all lower courts within a period of three (3) months from submission.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CIRCULAR NO. 3-99; REQUIRES ALL JUDGES TO SCRUPULOUSLY OBSERVE THE PERIODS PRESCRIBED IN THE CONSTITUTION FOR DECIDING CASES; EFFECT OF FAILURE TO COMPLY THEREWITH. — xxx [T]he Court, in Administrative Circular No. 3-99 dated January 15, 1999, requires all judges to scrupulously observe the periods prescribed in the Constitution for deciding cases, because failure to comply therewith violates the constitutional right of the parties to speedy disposition of their cases.

4. ID.; ID.; ADMINISTRATIVE CIRCULAR NO. 28; LACK OF TRANSCRIPT OF STENOGRAPHIC NOTES, NOT A VALID REASON TO INTERRUPT OR SUSPEND THE PERIOD FOR DECIDING A CASE. — xxx [A]dministrative Circular No. 28, dated July 3, 1989, expressly provides that: (3) x x x Lack of transcript of stenographic notes shall not be a valid reason to interrupt or suspend the period for deciding the case x x x.

5. LEGAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING A DECISION CONSTITUTES A LESS SERIOUS CHARGE; PENALTY; CASE AT BAR. — Under Section 9(1), Rule 140, Revised Rules of Court, undue delay in rendering a decision constitutes a less serious charge punishable under Section 11(b) of the same Rule by either suspension from office without

> salary and other benefits for not less than one (1) month but not more than three (3) months, or a fine of more than Ten Thousand Pesos (₱10,000.00) but not exceeding Twenty Thousand Pesos (₱20,000.00). Because Judge Emuslan could not proffer any valid excuse, his failure to decide the 43 cases translates to gross inefficiency in the performance of his duties. He should be held administratively liable. xxx Members of the judiciary have the sworn duty to administer justice without undue delay. Thus, failure to decide cases within the periods fixed by law warrants the imposition of administrative sanctions. Considering the number of cases left undecided and the lack of any plausible explanation for such delay, the imposition of a fine of FIFTY THOUSAND PESOS (₱50,000.00) for the 43 cases that Judge Esmulan failed to decide at the time of his retirement is proper. The said amount should be deducted from his retirement/gratuity benefits.

R E S O L U T I O N

NACHURA, *J.*:

Judge Meliton G. Emuslan, Regional Trial Court (RTC) Judge, Branch 47, Urdaneta, Pangasinan, applied for Compulsory Retirement Benefits under Republic Act No. 910, as amended, effective October 23, 2009. In the process of completing his Certificate of Clearance, however, his Branch Clerk of Court, Atty. Concepcion A. Macabitas, issued a certification that Judge Emuslan had forty-three (43) cases already submitted for decision that had remained undecided beyond the reglementary period. The judge did not indicate any reason for not acting on the forty-three (43) cases, except in Criminal Case No. U-9757, entitled "*People v. Amor Pader*," for Illegal Possession of Prohibited Drugs, wherein he attributed the delay to lack of transcript of stenographic notes.

Because of this, the Office of the Court Administrator (OCA), in a Memorandum dated January 11, 2010, withheld the Payment of Judge Emuslan's retirement/gratuity benefits.

In its report, the OCA found respondent liable for gross inefficiency, and recommended that he be fined ₱50,000.00, to be deducted from his retirement/gratuity benefits.

Under the circumstances, we find the OCA's recommendation in order.

Section 15, Article VIII of the 1987 Constitution mandates lower courts to decide or resolve cases or matters for decision or final resolution within three (3) months from date of submission. Failure to decide cases within the 90-day reglementary period may warrant imposition of administrative sanctions on the erring judge.

Canon 3, Rule 3.05 of the Code of Judicial Conduct enjoins judges to dispose of their business promptly and to decide cases within the required period. Thus, all cases or matters must be decided or resolved by all lower courts within a period of three (3) months from submission.

Furthermore, the Court, in Administrative Circular No. 3-99 dated January 15, 1999, requires all judges to scrupulously observe the periods prescribed in the Constitution for deciding cases, because failure to comply therewith violates the constitutional right of the parties to speedy disposition of their cases.

Likewise, Administrative Circular No. 28, dated July 3, 1989, expressly provides that:

> (3) x x x Lack of transcript of stenographic notes shall not be a valid reason to interrupt or suspend the period for deciding the case x x x.

Under Section 9(1), Rule 140, Revised Rules of Court, undue delay in rendering a decision constitutes a less serious charge punishable under Section 11(b) of the same Rule by either suspension from office without salary and other benefits for not less than one (1) month but not more than three (3) months, or a fine of more than Ten Thousand Pesos (₱10,000.00) but not exceeding Twenty Thousand Pesos (₱20,000.00).

Because Judge Emuslan could not proffer any valid excuse, his failure to decide the 43 cases translates to gross inefficiency in the performance of his duties. He should be held administratively liable.

The Court, in its Resolution dated November 19, 2008 in A.M. No. RTJ-08-2155 *(The Office of the Court Administrator v. Judge Rosario B. Torrecampo, Regional Trial Court, Branch 33, Pili, Camarines Sur),* imposed a fine of Fifty Thousand Pesos (₱50,000.00) on Judge Torrecampo for gross inefficiency due to her failure to decide seventeen (17) cases and pending incidents before she retired on April 1, 2008. All cases and incidents had been submitted for decision or resolution, and the reglementary period to decide or resolve the cases or incidents had already lapsed on the date of her retirement.

In A.M. No. 09-4-175-RTC *(Re: Cases Submitted for Decision Before Hon. Bayani Isamu Y. Ilano, Former Judge, Regional Trial Court, Branch 71, Antipolo City),* the Court imposed a fine of Fifty Thousand Pesos (₱50,000.00) on Judge Ilano for his failure to decide within the reglementary period thirty-four (34) cases submitted for decision prior to his date of retirement.

Again, in A.M. No. 09-11-477-RTC *(Re: Cases Submitted for Decision Before Hon. Guillermo R. Andaya, Former Judge, Regional Trial Court, Branch 53, Lucena City),* the Court imposed a fine of Fifty Thousand Pesos (₱50,000.00) on Judge Andaya for his failure to decide forty-five (45) cases submitted for decision within the reglementary period.

Members of the judiciary have the sworn duty to administer justice without undue delay. Thus, failure to decide cases within the periods fixed by law warrants the imposition of administrative sanctions. Considering the number of cases left undecided and the lack of any plausible explanation for such delay, the imposition of a fine of FIFTY THOUSAND PESOS (₱50,000.00) for the 43 cases that Judge Emuslan failed to decide at the time of his retirement is proper. The said amount should be deducted from his retirement/gratuity benefits.

WHEREFORE, the Court finds Judge Meliton G. Emuslan, Regional Trial Court, Branch 47, Urdaneta City, Pangasinan, *GUILTY* of Gross Inefficiency for failure to decide the forty-three (43) cases submitted for decision within the reglementary period, and hereby imposes a fine of ₱50,000.00, the amount to be deducted from his retirement/gratuity benefits.

SO ORDERED.

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

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

Villarama, Jr., J., on official leave.

THIRD DIVISION

[G.R. No. 161074. March 22, 2010]

MANUEL T. DE GUIA, for himself and as Attorney-in-Fact of FE DAVIS MARAMBA, RENATO DAVIS, FLORDELIZA D. YEH, JOCELYN D. QUEBLATIN and BETTY DAVIS, *petitioners, vs.* **HON. PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 12, MALOLOS, BULACAN; SPOUSES TEOFILO R. MORTE, ANGELINA C. VILLARICO; SPOUSES RUPERTO and MILAGROS VILLARICO; AND DEPUTY SHERIFF BENJAMIN C. HAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY

QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS; ABSENT IN CASE AT BAR. — In petitions 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 when the same is unsupported by the evidence on record, which we found not obtaining in this case.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; ESSENTIAL REQUISITES; CONSENT; A THREAT TO FORECLOSE THE MORTGAGE IN CASE OF DEFAULT IN PAYMENT IS A LEGAL REMEDY THAT WOULD NOT VITIATE CONSENT. — Petitioner Renato's claim that he and his mother were threatened of foreclosure of the subject property if his mother would not sign Exhibit "A", thus, their consent were vitiated, does not persuade us. As correctly ruled by the lower courts, the last paragraph of Article 1335 of the New Civil Code was applicable in this case, which provides that a threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent. It has been held that foreclosure of mortgaged properties in case of default in payment of a debtor is a legal remedy afforded by law to a creditor. Hence, a threat to foreclose the mortgage would not *per se* vitiate consent.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AS A RULE, NO QUESTION WILL BE ENTERTAINED ON APPEAL UNLESS IT HAS BEEN RAISED IN THE COURT BELOW. — xxx [P]etitioner De Guia's claim that he was an innocent purchaser for value, who bought the subject property without notice of the mortgage on the subject property, was not raised in the trial court. As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel this rule.

APPEARANCES OF COUNSEL

Manuel T. De Guia for petitioners.
Manuel P. Punzalan for private respondents.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* which assails the Decision[1] dated August 30, 2002 and the Resolution[2] dated November 28, 2003 of the Court of Appeals (CA) in CA-G.R. CV No. 38031.

Petitioners Fe Davis Maramba, Renato Davis, Flordeliza D. Yeh, Jocelyn D. Queblatin and Betty Davis are the heirs of the late Primitiva Lejano Davis (Primitiva), the owner of the ½ undivided portion (subject property) of two parcels of land (fishpond), situated in Meycauayan, Bulacan, covered by TCT No. T-6358 of the Register of Deeds of Bulacan. Petitioner Manuel T. de Guia alleged to be the owner of the subject property, having acquired the same from his co-petitioners.

The antecedents, as borne by the records, are as follows:

On August 8, 1973, Primitiva executed a document denominated as *Kasulatan ng Sanglaan* (Exhibit "J"),[3] a deed of mortgage, in favor of respondents spouses Teofilo R. Morte and Angelina C. Villarico (respondents Spouses Morte) over the subject property in consideration of Primitiva's loan in the amount of ₱20,000.00.

On February 15, 1974, Primitiva executed another document, *Kasunduan ng Bilihang Tuluyan* (Exhibit "F"),[4] a deed of sale, over the same subject property in favor of spouses Ruperto C.

---

[1] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Ruben T. Reyes and Amelita G. Tolentino, concurring; *rollo*, pp. 49-60.

[2] *Id.* at 61.

[3] Records, Vol. I, pp. 376-377.

[4] *Id.* at 372.

Villarico and Milagros D. Barretto (respondents Spouses Villarico) for and in consideration of the amount of ₱33,000.00.

On February 14, 1977, respondents Spouses Villarico executed a document denominated as *Kasunduan ng Bilihang Tuluyan* (Exhibit "G"),[5] a deed of sale, wherein they sold back the subject property to Primitiva for the same amount of ₱33,000.00.

On March 26, 1977, Primitiva executed another document, *Kasunduan ng Bilihang Tuluyan* (Exhibit"H"),[6] a deed of sale, wherein she again sold the subject property to respondents Spouses Villarico for the amount of ₱180,000.00.

On March 28, 1977, Primitiva executed a *Kasulatan ng Sanglaan* (Exhibit "I"),[7] a deed of mortgage, over the subject property in favor of respondents Spouses Morte in consideration of a loan in the amount of ₱180,000.00.

Except for Exhibit "H", all documents were duly notarized and petitioner Renato was one of the instrumental witnesses in all these documents.

On November 10, 1979, Primitiva, respondents Spouses Villarico and Spouses Morte executed before Notary Public Mamerto A. Abaño the following five (5) documents, each of which was signed by petitioner Renato as an instrumental witness, to wit:

1. *Kasulatan ng Sanglaan* (Exhibit "A")[8] - executed by Primitiva mortgaging the subject property to respondent Spouses Morte in consideration of a loan in the amount of ₱500,000.00 payable in one (1) year from date of contract at 12% interest;
2. General Power of Attorney (Exhibit "B")[9] - executed by Primitiva appointing respondent Spouses Villarico as her attorney-in-fact in the exercise of general control

---

[5] *Id.* at 45.

[6] *Id.* at 46.

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

[8] *Id.* at 359-361.

[9] *Id.* at 362-363.

and supervision over the subject property with full authority to act as her representative and agent, to lease, mortgage or sell said share, among other things, for and in her behalf;

3. *Kasulatan ng Pagpapabuwis ng Palaisdaan* (Exhibit "C")[10] - executed between Primitiva, as lessor, and respondent Spouses Villarico, as lessees, over the same subject property at ₱10,000.00 per year as rental. Primitiva also acknowledged in the same document the receipt of ₱150,000.00 as advance payment of the yearly rentals for a period of fifteen (15) years;

4. *Pagpapawalang Saysay ng Kasulatan ng Sanglaan* (Exhibit "D")[11] - executed by respondent spouses Morte canceling and rendering without any valid force and effect the "*Kasulatan ng Sanglaan*" (Exhibit "I") dated March 28, 1977 for a loan of ₱180,000.00;

5. *Kasulatan ng Pagpapawalang Saysay at Pagpapawalang Bisa ng mga Kasulatan* (Exhibit "E")[12] - executed by Primitiva and respondent Spouses Villarico canceling the following documents:

   a) *Kasunduan ng Bilihang Tuluyan* (Exhibit "F") dated February 15, 1974;

   b) *Kasunduan ng Bilihang Tuluyan* (Exhibit "G") dated February 14, 1977; and

   c) *Kasunduan ng Bilihang Tuluyan* (Exhibit "H") dated March 26, 1977;

   because the amounts stated in those deeds had already been returned by Primitiva to respondent Spouses Villarico.

Primitiva failed to pay her loan in the amount of ₱500,000.00 to respondents Spouses Morte as secured by a real estate

---

[10] *Id.* at 364-365.

[11] *Id.* at 367.

[12] *Id.* at 368-369.

mortgage on the subject property (Exhibit "A") executed on November 10, 1979. Thus, the latter filed with the Office of the Provincial Sheriff of Bulacan, a petition for extrajudicial foreclosure of real estate mortgage. On January 16, 1986, a Notice of Sheriffs' Sale of the property was published.

On February 17, 1986, petitioner De Guia, for himself and as attorney-in-fact of the other co-petitioners, filed with the Regional Trial Court (RTC) of Malolos, Bulacan, an Amended Complaint for annulment of real estate mortgage and contract of lease with preliminary injunction against respondents Spouses Morte, Spouses Villarico, and Deputy Sheriff Benjamin C. Hao. Petitioners sought to annul the *Kasulatan ng Sanglaan* (Exhibit "A") and *Kasulatan ng Pagbubuwis ng Palaisdaan* (Exhibit "C"), both executed by Primitiva in favor of respondents Spouses on November 10, 1979, contending that the documents were null and void, since Primitiva signed them under threat of immediate foreclosure of mortgage on the subject property and without any valuable consideration; and that respondent Sheriff Hao had scheduled the auction sale of the subject property which would cause great and irreparable injury to petitioners. Thus, they prayed that the public auction be enjoined.

In their Answer, respondents Spouses argued that these documents were executed for valuable consideration, and that petitioner Renato was one of the instrumental witnesses in these documents; that Atty. Mamerto Abaño, the Notary Public who notarized the questioned documents, was then Primitiva's lawyer and not of respondents. Respondents clarified that the documents *Pagpapawalang Saysay ng Kasulatan ng Sanglaan* (Exhibit "D") and the *Pagpapawalang Saysay at Pagpapawalang Bisa ng Mga Kasulatan* (Exhibit "E"), both dated November 10, 1979, which made the earlier documents, to wit: Exhibits "F", "G", "H" and "I", executed between Primitiva and the respondents Spouses of no force and effect, were executed to avoid confusion and to show that the latest documents dated November 10, 1979 represented the actual and subsisting transactions between the parties. In their Counterclaim, respondents Spouses Villarico claimed that they should have been in possession of the fishpond

since 1979 if not for the unwarranted refusal of petitioner De Guia to vacate the fishpond despite demands.

On March 6, 1986, the RTC issued an Order granting petitioners' application for the issuance of a writ of preliminary injunction upon the filing of an injunction bond. A writ of preliminary injunction was, subsequently, issued and was served on Sheriff Hao and respondents Spouses.

Thereafter, trial ensued.

On February 28, 2002, the RTC rendered its Decision,[13] the dispositive portion of which reads:

> WHEREFORE, the evidence having shown the plaintiffs, particularly Manuel de Guia, their successor-in-interest, not entitled upon the facts and the law to the relief prayed for in the amended complaint, the same is hereby DISMISSED with costs against said plaintiff. Instead as prayed for by defendants, judgment is hereby rendered:
>
> 1. Declaring the "*Kasulatan ng Sanglaan* (Exhs. "A" & "1") dated November 10, 1979, and the "*Kasulatan ng Pagpapabuwis ng Palaisdaan* (Exhs. "C" & "3") also dated November 10, 1979, as valid for all legal intents and purposes;
>
> 2. Ordering the *Ex-Officio* Sheriff, RTC, Bulacan, to proceed with the extrajudicial foreclosure of the subject real estate mortgage; and
>
> 3. Ordering plaintiffs to pay defendants attorney's fees in the amount of ₱20,000.00
>
> SO ORDERED.[14]

The RTC found that petitioner Renato, Primitiva's son and an instrumental witness to all the questioned documents, did not deny the outstanding obligations of his mother to respondents; that he explicitly declared that his mother had to execute Exhibit "A" to restructure her indebtedness to respondents Spouses Morte, so as to avoid the foreclosure of the mortgage over the subject property; that there was no

---

[13] Penned by Judge Crisanto C. Concepcion; *rollo*, pp. 126-133.

[14] *Id.* at 132-133.

other force or intimidation used by respondents Spouses upon him or his mother. The RTC ruled that if respondents Spouses Morte threatened to foreclose the mortgage because of Primitiva's failure to pay her indebtedness to them, they were only exercising their right as mortgagees and it was within their right to file a petition for extrajudicial foreclosure of the real estate mortgage. The RTC also found that Primitiva executed the questioned documents for valuable consideration as established by petitioner Renato's testimony that his mother executed the documents to restructure her outstanding obligation with respondents. And it was also established by Atty. Abaño, a former lawyer of Primitiva, that in his presence, certain amounts of money were given or paid by respondents Spouses to Primitiva.

Petitioners filed their appeal with the CA. On August 30, 2002, the CA issued its assailed Decision, the dispositive portion of which reads:

> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the judgment appealed from must be, as it hereby is AFFIRMED. Costs shall be taxed against appellants.[15]

Petitioners' motion for reconsideration was denied in a Resolution dated November 28, 2003.

Hence, petitioners filed a petition for review raising the following issues, to wit:

> A. WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECLARING THAT THE "TRANSACTIONS" EXECUTED ON SAME DATE, NOVEMBER 10, 1979, ARE NOT VOID AND SIMULATED;
>
> B. ASSUMING *ARGUENDO*, WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT DECLARING THE SAID REAL ESTATE MORTGAGE FOR ₱500,000.00 AND THE LEASE CONTRACT AS VOID WHEN BOTH AGREEMENTS WERE NOT REGISTERED AND THEREFORE NOT BINDING TO THIRD PERSONS, TO INCLUDE PETITIONER DE GUIA;

---

[15] *Rollo*, p. 60.

C. THE INSTANT PETITION INVOLVES A QUESTION OF LAW WELL WITHIN THE POWER OF REVIEW BY THIS HONORABLE TRIBUNAL.[16]

The issue for resolution of whether the CA committed a reversible error when it upheld the RTC judgment declaring the *Kasulatan ng Sanglaan* (Exhibit "A") and the *Kasulatan ng Pagpapabuwis ng Palaisdaan* (Exhibit "C"), both dated November 10, 1979, as valid, is a factual issue.

In petitions 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.[17] 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 when the same is unsupported by the evidence on record,[18] which we found not obtaining in this case.

Petitioners' claim that Exhibit "A" was simulated, since the signatures of Primitiva and petitioner Renato, as one of the instrumental witnesses, were obtained under threat of an immediate foreclosure of the subject property, is devoid of merit.

The CA affirmed the RTC's finding that petitioner Renato admitted his mother's outstanding obligations to respondents Spouses Morte when he testified that his mother had to execute Exhibit "A" to restructure her indebtedness to respondents Spouses Morte to avoid the foreclosure of the mortgage on the subject property; that other than the threat of foreclosure, petitioner Renato declared that there was no other force or intimidation exerted on them by respondents Spouses Morte to execute Exhibit "A"; and that a threat to enforce one's just and

---

[16] *Id.* at 17.

[17] *Development Bank of the Philippines v. Perez*, 484 Phil. 843, 854 (2004), citing *Montecillo v. Reynes*, 385 SCRA 244 (2002).

[18] *Id.*, citing *Changco v. Court of Appeals*, 379 SCRA 590 (2002).

legal claim through a competent authority did not vitiate Primitiva and petitioner Renato's consent.

We agree. Records show that petitioner Renato indeed admitted that his mother Primitiva was not able to pay her loan in the amount of ₱180,000.00, plus interest, as agreed upon in the earlier Deed of Mortgage dated March 28, 1977 executed between his mother and respondents Spouses Morte. Consequently, Primitiva approached the Spouses Morte for the restructuring of her loan and, thus, she executed Exhibit "A" in order that the subject property will not be foreclosed. Petitioner Renato's testimony on cross-examination stated:

ATTY. PUNO:

x x x x x x x x x

Q. Tell us, Mr. Davis, what was your participation in that mortgage for ₱180,000.00?
A. I signed as witness to the document, sir.

Q. And I supposed that your mother signed as the mortgagor, is it not?
A. Yes, sir.

x x x x x x x x x

Q. Now after this document or mortgage for ₱180,000.000 was executed by your mother, what happened to that mortgage?
A. The same was not paid also, sir.

Q. It was not paid by your mother?
A. Yes, sir.

Q. And so what happened?
A. Because of that the interest on the same loan was added to that making it bigger than the previously ₱180,000.00, sir.

Q. How long was the period for that mortgage for ₱180,000.00.
A. I could not recall how much but (interrupted).

Q. How long a period? The period?
A. It was also for another year at 12%.

Q. Interest?
A. Yes, sir.

Q. And so your mother was not able to pay that and naturally the interest accumulated?
A. Yes, sir.

Q. What happened after that?
A. After the interest accumulated and since we cannot pay we have to execute another mortgage in order not to foreclose the property, sir.

Q. Which mortgage are you referring to now, Mr. Davis?
A. We executed another mortgage for ₱500,000.00, sir.

Q. Do you recall what document was that?
A. It was a mortgage for ₱500,000.00 regarding the same property

Q. You are referring to Exh. "A".

ATTY. PUNO:
Q. Could you recall , Mr. Davis, when was the due date of that mortgage for ₱180,000.00 which was signed by your mother and attested by you as an instrumental witness thereon?
A. Actually, it was intended for only one (1) year, sir.

Q. What year was that?
A. About 1977, sir.

Q. Now is this Exhibit "A" one of the documents which you said you signed in the office of Notary Public Mamerto Abaño?
A. Yes, sir.

Q. Now when you read – Before you signed this document as an instrumental witness you read its contents, Mr. Davis?
A. Yes, sir.

Q. You understood its contents?
A. Yes, sir.

Q. Do you know what it meant ?
A. Yes, sir.

Q. And after that you signed as a witness?
A. Yes, sir.

Q. Your mother also signed this document "*Kasulatan ng Sanglaan*"?
A. Yes, sir.[19]

---

[19] TSN, October 4, 1990, pp. 4-14.

Petitioner Renato's claim that he and his mother were threatened of foreclosure of the subject property if his mother would not sign Exhibit "A", thus, their consent were vitiated, does not persuade us. As correctly ruled by the lower courts, the last paragraph of Article 1335 of the New Civil Code was applicable in this case, which provides that a threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent. It has been held that foreclosure of mortgaged properties in case of default in payment of a debtor is a legal remedy afforded by law to a creditor. Hence, a threat to foreclose the mortgage would not *per se* vitiate consent.[20]

We, likewise, find no merit in petitioners' contention that Exhibit "C", executed between Primitiva and the Spouses Villarico, was also simulated. As correctly found by the CA, petitioners failed to adduce any evidence in support of such claim. It had been established that petitioner Renato, an instrumental witness to this document, admitted that he read and understood and was satisfied with the explanation of Notary Public Abaño regarding the contents of the same, before he and his mother affixed their signatures on the documents. Thus, we find no reason to deviate from the findings of both the trial and appellate courts that the assailed documents were validly executed by Primitiva in favor of the respondents Spouses.

Petitioners' argument that both documents were executed without valuable consideration deserves scant consideration. Notably, petitioner Renato admitted that Exhibit "A" was executed by his mother to restructure his mother's outstanding loan obligation to respondents Spouses Morte, which had not been paid. Moreover, respondent Teofilo Morte had also given ₱200,000.00 to Primitiva when Exhibit "A" was executed, thus, increasing the loaned amount to ₱500,000.00.[21] In fact, Notary Public Abaño categorically declared that on the day the documents were executed, he saw respondents, the Spouses Morte and the Spouses Villarico, give money to Primitiva and his son petitioner

---

[20] *Development Bank of the Philippines v. Perez, supra* note 17.

[21] TSN, November 15, 1990, p. 11.

Renato. Thus, it had been established that there was sufficient consideration for the execution of the assailed documents.

Petitioners tried to show the fraudulent character of the assailed documents by alleging that several documents had earlier been executed between Primitiva and the respondents Spouses involving the subject property, to wit: Deed of Sale dated February 15, 1974 (Exhibit "F"), where Primitiva sold the subject property to the Spouses Villarico for ₱33,000.00; Deed of Sale dated February 14, 1977 (Exhibit "G") where the subject property was sold back to Primitiva for the same amount of ₱33,000.00; and Deed of Sale dated March 26, 1977 (Exhibit "H"), where Primitiva sold the subject property to the Spouses Villarico for ₱180,000.00. Petitioners contend that Primitiva could no longer mortgage the subject property to respondents Spouses Morte on March 28, 1977, since the same was earlier sold by Primitiva to respondents Spouses Villarico on March 26, 1977 (Exhibit "H").

We are not persuaded.

Respondent Milagros Villarico provided the explanation for the execution of Exhibits "F", "G" and "H". She testified that she, her husband Ruperto and Primitiva executed Exhibit "F". However, when they went to the house of Judge Teofilo Abejo, the co-owner of the other ½ undivided portion of the property covered by TCT No. T-6358, (the other half is the subject property) to ask his consent to the sale, the latter did not give his consent thereto as he wanted to buy the subject property.[22] Thus, they (respondents Spouses Villarico) had to execute Exhibit "G" selling back the subject property to Primitiva. However, Primitiva executed Exhibit "H", selling the subject property again to respondents Spouses Villarico. Again, Judge Abejo did not give his consent to such sale, thus, the sale did not push through, and in fact, the deed was not notarized.[23]

---

[22] TSN, January 31, 1991, pp. 4-6.

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

Notably, Milagros' testimony was corroborated by the fact that Primitiva executed on November 10, 1979, a document denominated as *Pagpapawalang Saysay at Pagpapawalang Bisa ng mga Kasulatan* (Exhibit "E"), wherein she declared Exhibits "F", "G" and "H", of no force and effect. It bears stressing that petitioner Renato was one of the instrumental witnesses in the execution of Exhibit "E" and he testified that Notary Public Abaño had explained to him the reason why Exhibit "E" was executed, together with the other documents, including the assailed documents, *i.e.*, the documents executed on November 10, 1979 which were the latest transactions between the parties, were intended to show the nullity of the previously signed documents. As petitioner Renato was satisfied with such explanation, coupled with the fact that he read and understood the document, he and his mother then affixed their signatures on Exhibit "E".

Finally, petitioner De Guia's claim that he was an innocent purchaser for value, who bought the subject property without notice of the mortgage on the subject property, was not raised in the trial court. As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel this rule.[24]

WHEREFORE, the Petition is hereby *DENIED*. The assailed Decision of the Court of Appeals, dated August 30, 2002 in CA-G.R. CV No. 38031, is *AFFIRMED*.

SO ORDERED.

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

---

[24] *Del Rosario v. Bonga,* 402 Phil. 949, 958 (2001), citing *Keng Hua v. Court of Appeals*, 286 SCRA 257 (1998); *Arcelona v. Court of Appeals*, 280 SCRA 20 (1997); *Mendoza v. Court of Appeals*, 274 SCRA 527 (1997); *Remman Enterprises, Inc. v. Court of Appeals*, 268 SCRA 688 (1997).

THIRD DIVISION

[G.R. No. 167563. March 22, 2010]

COLLEGE OF THE IMMACULATE CONCEPTION, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and ATTY. MARIUS F. CARLOS, PH.D.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; REINSTATEMENT DURING APPEAL; IN CASE OF REVERSAL WITH FINALITY THEREOF, EMPLOYEE IS NOT REQUIRED TO REIMBURSE WHATEVER SALARY RECEIVED; RELEVANT RULING, CITED. — Does the subsequent reversal of the LA's findings mean that respondent should reimburse petitioner all the salaries and benefits he received pursuant to the immediate execution of the LA's erroneous decision ordering his reinstatement as Department Dean? We rule in the negative. In *Air Philippines Corporation v. Zamora*, citing *Roquero v. Philippine Airlines, Inc.*, we held that: x x x Hence, even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. **On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is not required to reimburse whatever salary he received for he is entitled to such,** more so if he actually rendered services during the period.

2. ID.; ID.; ID.; ID.; ID.; ID.; CONTENTION THAT *ROQUERO V. PHILIPPINE AIRLINES, INC.* FINDS NO APPLICATION TO CASE AT BAR LACKS MERIT; EXPLAINED. — Petitioner, however, insists that *Roquero* finds no application to the case at bar, because here, respondent was ordered reinstated to a position different from that which he previously held, *i.e.*, the LA wrongfully ordered his reinstatement as Dean,

when he should have been reinstated only as a full-time faculty member, because this was the position he held when he filed the complaint for illegal dismissal. Further, petitioner takes a firm stand that the case of *International Container Terminal Services, Inc v. NLRC* refers only to a case of a dismissed employee and is inapplicable here, where it was correctly found on appeal that the employee was not dismissed at all, but was only sanctioned for teaching in another university without petitioner's permission. It is not disputed at this point that the LA erred in ordering respondent's reinstatement as Dean. The NLRC ruled that respondent should have been merely reinstated as a full-time law professor, because the term of his appointment as Dean had long expired. However, such mistake on the part of the LA cannot, in any way, alter the fact that during the pendency of the appeal of his decision, his order for respondent's reinstatement as Dean was immediately executory. Article 223 of the Labor Code explicitly provides that: Art. 223.–*Appeal*. – x x x x x x In any event, **the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll.** The posting of a bond by the employer shall not stay the execution for reinstatement provided therein. Therefore, petitioner could not validly insist that it is entitled to reimbursement for the payment of the salaries of respondent pursuant to the execution of the LA's decision by simply arguing that the LA's order for reinstatement is incorrect. The pertinent law on the matter is not concerned with the wisdom or propriety of the LA's order of reinstatement, for if it was, then it should have provided that the pendency of an appeal should stay its execution. After all, a decision cannot be deemed irrefragable unless it attains finality. In *Garcia v. Philippine Airlines, Inc.,* the Court made a very enlightening discussion on the aspect of reinstatement pending appeal: On this score, the Court's attention is drawn to seemingly divergent decisions concerning reinstatement pending appeal or, particularly, the **option of payroll reinstatement**. On the one hand is the jurisprudential trend as expounded in a line of cases including *Air Philippines Corp. v. Zamora,* while on

the other is the recent case of *Genuino v. National Labor Relations Commission*. At the core of the seeming divergence is the application of paragraph 3 of Article 223 of the Labor Code x x x The view as maintained in a number of cases is that: x x x [**E**]**ven if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court**. On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is *not* required to reimburse whatever salary he received for he is entitled to such, more so if he actually rendered services during the period.

3. ID.; ID.; ID.; ID.; ID.; ID.; ILLOGICAL AND UNJUST EFFECTS OF THE "REFUND DOCTRINE"; DISCUSSED. — In [*Garcia v. Philippine Airlines, Inc.*] the Court went on to discuss the illogical and unjust effects of the "refund doctrine" erroneously espoused in *Genuino*: Even outside the theoretical trappings of the discussion and into the mundane realities of human experience, the "refund doctrine" easily demonstrates how a favorable decision by the Labor Arbiter could harm, more than help, a dismissed employee. The employee, to make both ends meet, would necessarily have to use up the salaries received during the pendency of the appeal, only to end up having to refund the sum in case of a final unfavorable decision. It is mirage of a stop-gap leading the employee to a risky cliff of insolvency. Advisably, the sum is better left unspent. It becomes more logical and practical for the employee to refuse payroll reinstatement and simply find work elsewhere in the interim, if any is available. Notably, the option of payroll reinstatement belongs to the employer, even if the employee is able and raring to return to work. Prior to *Genuino*, it is unthinkable for one to refuse payroll reinstatement. In the face of the grim possibilities, the rise of concerned employees declining payroll reinstatement is on the horizon. Further, the *Genuino* ruling not only disregards the social justice principles behind the rule, but also institutes a scheme unduly favorable to management. Under such scheme, the salaries dispensed *pendente lite* merely serve as a bond posted in installment by the employer. For in the event of a reversal of the Labor Arbiter's decision ordering

reinstatement, the employer gets back the same amount without having to spend ordinarily for bond premiums. This circumvents, if not directly contradicts, the proscription that the "posting of a bond [even a cash bond] by the employer shall not stay the execution for reinstatement." In playing down the stray posture in *Genuino* requiring the dismissed employee on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal, the Court realigns the proper course of the prevailing doctrine on reinstatement pending appeal *vis-à-vis* the effect of a reversal on appeal. x x x The Court reaffirms the prevailing principle that even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. x x x

4. ID.; ID.; ID.; ID.; ID.; MANNER OF IMMEDIATE REINSTATEMENT PENDING APPEAL, IMMATERIAL; ILLUSTRATED. — Petitioner alleged that due to the unreasonable demand of the respondent that he be reinstated as a Dean, instead of a faculty member, petitioner was constrained to reinstate him in the payroll only. Thus, petitioner argued that when the respondent imposed uncalled conditions for his reinstatement, his claim for reinstatement pending appeal was effectively nullified. We rule that respondent did not impose any unreasonable condition on his reinstatement as a Dean, because he was merely demanding that he be reinstated in the manner set forth by the LA in the writ of execution. Moreover, it bears stressing that the manner of immediate reinstatement, pending appeal, or the promptness thereof is immaterial, as illustrated in the following two scenarios: Situation No. 1. (As in the cases of *Air Philippines Corporation* and *International Container Terminal Services, Inc.)* The LA ruled in favor of the dismissed employee and ordered his reinstatement. However, the employer did not immediately comply with the LA's directive. On appeal, the NLRC reversed the LA and found that there was no illegal dismissal. In this scenario, We ruled that the employee is entitled to payment of his salaries and allowances pending appeal. Situation No. 2. (As in the present case) The LA ruled in favor of the dismissed employee and ordered the latter's reinstatement. This time, the employer complied by reinstating the employee in the payroll. On appeal,

the LA's ruling was reversed, finding that there was no case of illegal dismissal but merely a temporary sanction, akin to a suspension. Here, We also must rule that the employee cannot be required to reimburse the salaries he received because if he was not reinstated in the payroll in the first place, the ruling in situation no. 1 will apply, *i.e.*, the employee is entitled to payment of his salaries and allowances pending appeal. Thus, either way we look at it, at the end of the day, the employee gets his salaries and allowances pending appeal. The only difference lies as to the time when the employee gets it.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULARITY IN THE DISCHARGE OF ONE'S OFFICIAL DUTIES AND FUNCTIONS, NOT OVERCOME IN CASE AT BAR. — xxx [P]etitioner alleged that the LA's decision was tainted with fraud and graft and corruption, as the dispositive portion of the decision cites facts not found in the pleadings and documents submitted by the parties. Allegedly, the LA's computation of respondent's basic salary, representation allowance and 13th-month pay are not supported by the records of the case. Petitioner even opined that the LA and the respondent connived in drafting the decision. Aside from the fact that this Court is not the proper forum to consider the merits of petitioner's charge of fraud and graft and corruption against the LA and the respondent, petitioner failed to overcome the presumption of regularity in the performance of the LA's official duties in rendering his decision. Petitioner was not able to show clear and convincing proof to establish partiality, fraud and acts constituting graft and corruption. Well-entrenched in jurisprudence is the time-honored principle that the law bestows upon a public official the presumption of regularity in the discharge of one's official duties and functions. The Court held that: x x x public respondents have in their favor the presumption of regularity in the performance of official duties which petitioners failed to rebut when they did not present evidence to prove partiality, malice and bad faith. Bad faith can never be presumed; it must be proved by clear and convincing evidence. x x x

APPEARANCES OF COUNSEL

Padilla Law Office for petitioner.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 83321, which affirmed the Resolution rendered by the National Labor Relations Commission (NLRC), Third Division in NLRC NCR CA No. 028096-01.

Petitioner College of the Immaculate Conception, through its former President Rev. Fr. Antonio A. Mangahas, Jr., appointed respondent Atty. Marius F. Carlos on June 1, 1995 as Acting Dean of the Department of Business Administration and Accountancy. Thereafter, in a letter dated May 23, 1996, petitioner informed respondent of his appointment as Dean of the Department of Business, Economics and Accountancy effective June 1, 1996 until May 31, 2000. Respondent served as Dean of said department for the designated term.

In a letter dated May 15, 2000, petitioner reminded respondent that upon the expiration of his term as Dean, he will be appointed as full-time professor of Law and Accounting without diminution of his teaching salary as Dean. As promised, on June 1, 2000, respondent was given eight (8) teaching loads as full-time professor. Respondent then requested for the payment of overload pay, arguing that the regular full time load of a faculty member is only six. Petitioner, in a letter dated July 3, 2000, denied respondent's claim for overload pay and explained that pursuant to the Faculty Manual, a full time faculty member, such as the respondent, is one who teaches at least twenty-four units or eight (8) teaching loads per semester in the College Department. In the same letter, petitioner requested the respondent to vacate the Dean's office. Petitioner also directed respondent to explain why no disciplinary

---

[1] Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Portia Aliño-Hormachuelos and Rebecca De Guia-Salvador, concurring; *rollo,* pp. 29-40.

[2] *Id.* at 42-43.

action should be taken against him for engaging in the practice of law and teaching law in another law school without prior permission from the petitioner.

In his written reply, respondent admitted that he was teaching at Araullo University without written permission because it was unnecessary. As to his law practice, he explained that the only case he was handling was a petition for Declaration of Nullity of Marriage, which was referred to him by petitioner's Vice-President for Academic Affairs. Respondent said that his demotion from Dean of the Department to a Faculty member was without legal basis and that the non-renewal of his appointment as Dean was arbitrary, capricious, unlawful, tainted with abuse of discretion, and injurious to his integrity and reputation. Further, the subsequent appointment of other personnel as acting Dean was violative of the law.

Petitioner replied that there was no demotion in position from Dean to Faculty member, because respondent's appointment as Dean was for a fixed period of four (4) years, from June 1, 1996 to May 31, 2000, as stated in petitioner's letter dated May 23, 1996.

Petitioner refused to accept respondent's explanation that securing petitioner's prior written permission to teach elsewhere, or to engage in any other remunerative occupation, is unnecessary. Thus, in its letter[3] dated July 17, 2000, petitioner gave respondent two options, to wit:

> 1. Remain as a full-time professor, but without teaching loads outside; you may also continue to practice your profession as a lawyer, provided that any additional cases you wish to handle should be subject to the prior written approval of the College; or
>
> 2. Become a part-time professor with an initial teaching load of fifteen (15) units, and with complete freedom to teach elsewhere and to practice your profession. This means that you will lose your tenure as a full-time faculty member; moreover, your teaching loads in subsequent semesters will depend upon the College's evaluation of your performance and the teaching loads you will be carrying for that particular semester in other schools.

[3] Records, pp. 26-27.

Since respondent failed to respond to the aforementioned letter, petitioner again sent a letter to respondent on September 20, 2000 to give him another chance to choose between the two foregoing options and to call his attention to Section 16.8, CHED Memorandum No. 19, S. 1998, of which provides:

> x x x faculty members teaching in more than one school must give formal notice in their teaching assignment to all schools concerned; failure to give notices mean automatic withdrawal or cancellation of his teaching assignment and non-assignment of teaching load for the succeeding semester.[4]

Respondent requested for more time to reply, but failed to do so. Thus, petitioner informed respondent that he will not be assigned any teaching load for the succeeding semester pursuant to Section 16.8,[5] CHED Memorandum No. 19, series of 1998.

In a letter[6] dated October 15, 2000, respondent protested the imposition of sanction against him arising from his part-time teaching of law in another university. He maintained that teaching in another university is a benefit he enjoyed since July 1, 1999 as an administrator and Dean. He further said that his part-time teaching benefit cannot be withheld despite his alleged demotion as a faculty member. Even assuming that he violated Section 16.8, CHED Memorandum No. 19, series of 1998, respondent pointed out that under the College Faculty Manual, teaching in another school without permission from the Department Head and the President is punishable at the first instance by mere censure or oral reprimand.

On October 19, 2000, respondent filed a complaint[7] against petitioner before Regional Arbitration Branch No. III of San Fernando, Pampanga, for unfair labor practice, illegal dismissal, with payment of backwages and damages. Respondent argued that the non-renewal of his appointment as Dean and his alleged

---

[4] *Id.* at 28.

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

[6] *Id.* at 33-38.

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

demotion to a faculty member already constituted constructive dismissal and was but a prelude to his actual dismissal. Thereafter, his dismissal materialized when he was deprived of his teaching load.

Petitioner denied dismissing respondent and said it was only constrained to deprive respondent of his teaching load because he refused to abide by the mandate of Section 16.8, CHED Memorandum No. 19, series of 1998.

The Labor Arbiter (LA), in his Decision[8] dated February 14, 2001, ruled that respondent was illegally dismissed. The dispositive portion of the decision reads:

> WHEREFORE, in light of the foregoing, decision is hereby rendered declaring the employment termination as illegal. Respondents are hereby ordered to reinstate the complainant to his former position without loss of seniority rights and other privileges appurtenant thereto immediately upon receipt of this decision. Further, respondents are hereby ordered to pay complainant's backwages which as of the date of this decision has been computed in the amount of ₱54,567.00; representation allowance in the amount of ₱7,092.00; 13th month pay in the amount of ₱5,138.25, plus moral and exemplary damages in the amount of ₱50,000.00 and ₱30,000.00, respectively.
>
> SO ORDERED.

On March 19, 2001, the LA then issued a Writ of Execution,[9] directing the Sheriff of the NLRC to implement his Decision dated February 14, 2001. The Petitioner opted to reinstate respondent in its payroll only.[10]

Dissatisfied with the Labor Arbiter's finding, petitioner appealed to the NLRC, which rendered a Decision[11] dated August 13, 2003, the dispositive portion of which reads:

---

[8] *Rollo,* pp. 44-67.

[9] Records, pp. 208-209.

[10] *Id.* at 212.

[11] *Rollo,* pp. 68-84.

WHEREFORE, premises considered, the Decision dated February 14, 2001 is hereby SET ASIDE and a new one entered DISMISSING the complaint. However, respondents are hereby ordered to reinstate complainant as full-time professor of Law and Accountancy without backwages.

SO ORDERED.

The NLRC ruled that petitioner's non-assignment of teaching load for the respondent was merely resorted to as a sanction pursuant to Section 16.8 of CHED Memorandum No. 19, series of 1998. It was clear that respondent's contract as Dean was only for a period of four years, from June 1, 1996 to May 31, 2000, afterwhich, he would be appointed as a full- time professor without diminution of salary as a dean. Thus, the LA was incorrect when it directed the reinstatement of the respondent to his former position as a Dean. The NLRC, likewise, deleted the award of moral and exemplary damages for lack of factual and legal basis.

Petitioner filed a Motion for Clarification and/or Partial Reconsideration,[12] praying that since the respondent was not illegally dismissed, then he should be directed to refund the petitioner all the amounts he received by way of payroll reinstatement. The NLRC, in its Resolution[13] dated January 30, 2004, denied petitioner's motion for lack of merit.

Undaunted, petitioner filed a petition for *certiorari*[14] with the CA alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it refused to order the respondent to return all the monetary benefits he had received on account of his payroll reinstatement as Dean. The CA, in its Decision dated August 31, 2004, dismissed the petition and sustained the ruling of the NLRC. Petitioner filed a motion for reconsideration, which the CA denied. Hence, the instant petition, which mainly poses the following issue:

---

[12] Records, pp. 480-488.

[13] *Id.* at 494-499.

[14] CA *rollo*, pp. 2-37.

Does the subsequent reversal of the LA's findings mean that respondent should reimburse petitioner all the salaries and benefits he received pursuant to the immediate execution of the LA's erroneous decision ordering his reinstatement as Department Dean?

We rule in the negative. In *Air Philippines Corporation v. Zamora,*[15] citing *Roquero v. Philippine Airlines, Inc.,*[16] we held that:

> x x x Hence, even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. **On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is not required to reimburse whatever salary he received for he is entitled to such**, more so if he actually rendered services during the period.

Petitioner, however, insists that *Roquero* finds no application to the case at bar, because here, respondent was ordered reinstated to a position different from that which he previously held, *i.e.*, the LA wrongfully ordered his reinstatement as Dean, when he should have been reinstated only as a full-time faculty member, because this was the position he held when he filed the complaint for illegal dismissal. Further, petitioner takes a firm stand that the case of *International Container Terminal Services, Inc v. NLRC*[17]

---

[15] G.R. No. 148247, August 7, 2006, 498 SCRA 59, 72-73. (Emphasis ours.)

[16] 449 Phil. 437, 446 (2003). In this case, the LA found the employees' dismissal to be valid. The NLRC ordered reinstatement to their former positions with backwages. The CA reinstated the LA's decision insofar as it upheld the dismissal order. The Court ruled that reinstatement is immediately executory. It is mandatory on the employer to actually reinstate the employee or reinstate him in the payroll. If the employer failed to reinstate the employee, the employer must pay the employee the salary he is entitled to, as if he was reinstated, from the time the reinstatement was ordered until its reversal by a higher court.

[17] 360 Phil. 527 (1998). In this case, the LA found the employee's dismissal unjustified and ordered his reinstatement with full backwages. The NLRC found the termination legal, but ordered the employer to pay employee wages

refers only to a case of a dismissed employee and is inapplicable here, where it was correctly found on appeal that the employee was not dismissed at all, but was only sanctioned for teaching in another university without petitioner's permission.

It is not disputed at this point that the LA erred in ordering respondent's reinstatement as Dean. The NLRC ruled that respondent should have been merely reinstated as a full-time law professor, because the term of his appointment as Dean had long expired. However, such mistake on the part of the LA cannot, in any way, alter the fact that during the pendency of the appeal of his decision, his order for respondent's reinstatement as Dean was immediately executory. Article 223 of the Labor Code explicitly provides that:

> Art. 223.– *Appeal*. – x x x
>
> x x x x x x x x x
>
> In any event, **the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll.** The posting of a bond by the employer shall not stay the execution for reinstatement provided therein. (Emphasis supplied)

Therefore, petitioner could not validly insist that it is entitled to reimbursement for the payment of the salaries of respondent pursuant to the execution of the LA's decision by simply arguing that the LA's order for reinstatement is incorrect. The pertinent

---

from the filing of the appeal with the NLRC until its promulgation of the decision. The Court held that under Art. 223, the reinstatement aspect of the LA's decision, *albeit* under appeal, was immediately enforceable as a consequence of which, the employer was duty-bound to choose forthwith whether to re-admit the employee or to reinstate him in the payroll and to inform the employee of his choice to enable the latter to act accordingly. Failing to exercise the options in the alternative, the employer must pay the employee's salary which automatically accrued from notice of the LA's order of reinstatement until its ultimate reversal by the NLRC.

law on the matter is not concerned with the wisdom or propriety of the LA's order of reinstatement, for if it was, then it should have provided that the pendency of an appeal should stay its execution. After all, a decision cannot be deemed irrefragable unless it attains finality.

In *Garcia v. Philippine Airlines, Inc.*,[18] the Court made a very enlightening discussion on the aspect of reinstatement pending appeal:

> On this score, the Court's attention is drawn to seemingly divergent decisions concerning reinstatement pending appeal or, particularly, the **option of payroll reinstatement**. On the one hand is the jurisprudential trend as expounded in a line of cases including *Air Philippines Corp. v. Zamora*, while on the other is the recent case of *Genuino v. National Labor Relations Commission*. At the core of the seeming divergence is the application of paragraph 3 of Article 223 of the Labor Code x x x
>
> The view as maintained in a number of cases is that:
>
> > x x x [**E**]**ven if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court**. On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is *not* required to reimburse whatever salary he received for he is entitled to such, more so if he actually rendered services during the period. (Emphasis in the original; italics and underscoring supplied)

In other words, a dismissed employee whose case was favorably decided by the Labor Arbiter is entitled to receive wages pending appeal upon reinstatement, which is immediately executory. Unless there is a restraining order, it is ministerial upon the Labor Arbiter to implement the order of reinstatement and it is mandatory on the employer to comply therewith.

The opposite view is articulated in *Genuino* which states:

---

[18] G.R. No. 164856, January 20, 2009, 576 SCRA 479.

> If the decision of the labor arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then **the employer has the right to require the dismissed employee *on payroll reinstatement* to refund the salaries [he] received** while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from [his] employer under existing laws, collective bargaining agreement provisions, and company practices. However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund.
>
> Considering that Genuino was not reinstated to work or placed on payroll reinstatement, and her dismissal is based on a just cause, then she is not entitled to be paid the salaries stated in item no. 3 of the *fallo* of the September 3, 1994 NLRC Decision. (Emphasis, italics and underscoring supplied)

It has thus been advanced that there is no point in releasing the wages to petitioners since their dismissal was found to be valid, and to do so would constitute unjust enrichment.

Prior to *Genuino*, there had been no known similar case containing a dispositive portion where the employee was required to refund the salaries received on payroll reinstatement. In fact, in a catena of cases, the Court did not order the refund of salaries garnished or received by payroll-reinstated employees despite a subsequent reversal of the reinstatement order.

The dearth of authority supporting *Genuino* is not difficult to fathom for it would otherwise render inutile the rationale of reinstatement pending appeal.

x x x x x x x x x

> x x x Then, by and pursuant to the same power (police power), the State may authorize an immediate implementation, pending appeal, of a decision reinstating a dismissed or separated employee since that saving act is designed to stop, although temporarily since the appeal may be decided in favor of the appellant, a continuing threat or danger to the survival or even the life of the dismissed or separated employee and his family.

In the same case, the Court went on to discuss the illogical and unjust effects of the "refund doctrine" erroneously espoused in *Genuino*:

> Even outside the theoretical trappings of the discussion and into the mundane realities of human experience, the "refund doctrine" easily demonstrates how a favorable decision by the Labor Arbiter could harm, more than help, a dismissed employee. The employee, to make both ends meet, would necessarily have to use up the salaries received during the pendency of the appeal, only to end up having to refund the sum in case of a final unfavorable decision. It is mirage of a stop-gap leading the employee to a risky cliff of insolvency.
>
> Advisably, the sum is better left unspent. It becomes more logical and practical for the employee to refuse payroll reinstatement and simply find work elsewhere in the interim, if any is available. Notably, the option of payroll reinstatement belongs to the employer, even if the employee is able and raring to return to work. Prior to *Genuino*, it is unthinkable for one to refuse payroll reinstatement. In the face of the grim possibilities, the rise of concerned employees declining payroll reinstatement is on the horizon.
>
> Further, the *Genuino* ruling not only disregards the social justice principles behind the rule, but also institutes a scheme unduly favorable to management. Under such scheme, the salaries dispensed *pendente lite* merely serve as a bond posted in installment by the employer. For in the event of a reversal of the Labor Arbiter's decision ordering reinstatement, the employer gets back the same amount without having to spend ordinarily for bond premiums. This circumvents, if not directly contradicts, the proscription that the "posting of a bond [even a cash bond] by the employer shall not stay the execution for reinstatement."
>
> In playing down the stray posture in *Genuino* requiring the dismissed employee on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal, the Court realigns the proper course of the prevailing doctrine on reinstatement pending appeal *vis-à-vis* the effect of a reversal on appeal.
>
> x x x x x x x x x
>
> The Court reaffirms the prevailing principle that even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages

of the dismissed employee during the period of appeal until reversal by the higher court. x x x

Thus, the Court resolved the *impasse* by reaffirming the principle earlier enunciated in *Air Philippines Corporation*, that an employee cannot be compelled to reimburse the salaries and wages he received during the pendency of his appeal, notwithstanding the reversal by the NLRC of the LA's order of reinstatement. In this case, there is even more reason to hold the employee entitled to the salaries he received pending appeal, because the NLRC did not reverse the LA's order of reinstatement, but merely declared the correct position to which respondent is to be reinstated, *i.e.*, that of full-time professor, and not as Dean.

Petitioner alleged that due to the unreasonable demand of the respondent that he be reinstated as a Dean, instead of a faculty member, petitioner was constrained to reinstate him in the payroll only. Thus, petitioner argued that when the respondent imposed uncalled conditions for his reinstatement, his claim for reinstatement pending appeal was effectively nullified. We rule that respondent did not impose any unreasonable condition on his reinstatement as a Dean, because he was merely demanding that he be reinstated in the manner set forth by the LA in the writ of execution. Moreover, it bears stressing that the manner of immediate reinstatement, pending appeal, or the promptness thereof is immaterial, as illustrated in the following two scenarios:

Situation No. 1. (As in the cases of *Air Philippines Corporation* and *International Container Terminal Services, Inc.)* The LA ruled in favor of the dismissed employee and ordered his reinstatement. However, the employer did not immediately comply with the LA's directive. On appeal, the NLRC reversed the LA and found that there was no illegal dismissal. In this scenario, We ruled that the employee is entitled to payment of his salaries and allowances pending appeal.

Situation No. 2. (As in the present case) The LA ruled in favor of the dismissed employee and ordered the latter's

reinstatement. This time, the employer complied by reinstating the employee in the payroll. On appeal, the LA's ruling was reversed, finding that there was no case of illegal dismissal but merely a temporary sanction, akin to a suspension. Here, We also must rule that the employee cannot be required to reimburse the salaries he received because if he was not reinstated in the payroll in the first place, the ruling in situation no. 1 will apply, *i.e.*, the employee is entitled to payment of his salaries and allowances pending appeal.

Thus, either way we look at it, at the end of the day, the employee gets his salaries and allowances pending appeal. The only difference lies as to the time when the employee gets it.

Lastly, petitioner alleged that the LA's decision was tainted with fraud and graft and corruption, as the dispositive portion of the decision cites facts not found in the pleadings and documents submitted by the parties. Allegedly, the LA's computation of respondent's basic salary, representation allowance and 13th-month pay are not supported by the records of the case. Petitioner even opined that the LA and the respondent connived in drafting the decision.

Aside from the fact that this Court is not the proper forum to consider the merits of petitioner's charge of fraud and graft and corruption against the LA and the respondent, petitioner failed to overcome the presumption of regularity in the performance of the LA's official duties[19] in rendering his decision. Petitioner was not able to show clear and convincing proof to establish partiality, fraud and acts constituting graft and corruption. Well-entrenched in jurisprudence is the time-honored principle that the law bestows upon a public official the presumption of regularity in the discharge of one's official duties and functions.[20] The Court held that:

---

[19] Revised Rules on Evidence, Rule 131, Sec. 3 (m).

[20] *Gatmaitan v. Gonzales*, G.R. No. 149226, June 26, 2006, 492 SCRA 591, 604.

x x x public respondents have in their favor the presumption of regularity in the performance of official duties which petitioners failed to rebut when they did not present evidence to prove partiality, malice and bad faith. Bad faith can never be presumed; it must be proved by clear and convincing evidence. x x x[21]

WHEREFORE, the petition is *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 83321, dated August 31, 2004 and March 11, 2005, respectively, are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 168289. March 22, 2010]

THE MUNICIPALITY OF HAGONOY, BULACAN, represented by the HON. FELIX V. OPLE, Municipal Mayor, and FELIX V. OPLE, in his personal capacity, *petitioners, vs.* **HON. SIMEON P. DUMDUM, JR., in his capacity as the Presiding Judge of the REGIONAL TRIAL COURT, BRANCH 7, CEBU CITY; HON. CLERK OF COURT & *EX-OFFICIO* SHERIFF of the REGIONAL TRIAL COURT of CEBU CITY; HON. CLERK OF COURT & *EX-OFFICIO* SHERIFF of the REGIONAL TRIAL COURT of BULACAN and his DEPUTIES; and EMILY ROSE GO KO LIM CHAO, doing business under the name and style KD SURPLUS,** *respondents.*

---

[21] *Id.,* citing *Fernando v. Sto. Tomas,* 234 SCRA 546, 552 (1994).

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; UNENFORCEABLE CONTRACTS; STATUTE OF FRAUDS, ELUCIDATED; EFFECT OF NON-COMPLIANCE THEREWITH. — To begin with, the Statute of Frauds found in paragraph (2), Article 1403 of the Civil Code, requires for enforceability certain contracts enumerated therein to be evidenced by some note or memorandum. The term "Statute of Frauds" is descriptive of statutes that require certain classes of contracts to be in writing; and that do not deprive the parties of the right to contract with respect to the matters therein involved, but merely regulate the formalities of the contract necessary to render it enforceable. In other words, the Statute of Frauds only lays down the method by which the enumerated contracts may be proved. But it does not declare them invalid because they are not reduced to writing inasmuch as, by law, contracts are obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. The object is to prevent fraud and perjury in the enforcement of obligations depending, for evidence thereof, on the unassisted memory of witnesses by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged. The effect of noncompliance with this requirement is simply that no action can be enforced under the given contracts.

2. ID.; ID.; ID.; ID.; ID.; ID.; RULE ON DISMISSAL BASED ON UNENFORCEABILITY, NOT APPLICABLE WHEN THERE HAS BEEN TOTAL OR PARTIAL PERFORMANCE OF THE OBLIGATION; CASE AT BAR. — xxx If an action is nevertheless filed in court, it shall warrant a dismissal under Section 1(i), Rule 16 of the Rules of Court, unless there has been, among others, total or partial performance of the obligation on the part of either party. It has been private respondent's consistent stand, since the inception of the instant case that she has entered into a contract with petitioners. As far as she is concerned, she has already performed her part of the obligation under the agreement by undertaking the delivery of the 21 motor vehicles contracted for by Ople in the name of petitioner municipality. This claim is well substantiated — at least for the initial purpose of setting out a valid cause of

action against petitioners — by copies of the bills of lading attached to the complaint, naming petitioner municipality as consignee of the shipment. Petitioners have not at any time expressly denied this allegation and, hence, the same is binding on the trial court for the purpose of ruling on the motion to dismiss. In other words, since there exists an indication by way of allegation that there has been performance of the obligation on the part of respondent, the case is excluded from the coverage of the rule on dismissals based on unenforceability under the statute of frauds, and either party may then enforce its claims against the other.

3. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; HYPOTHETICAL ADMISSION EXTENDS NOT ONLY TO RELEVANT AND MATERIAL FACTS WELL PLEADED IN THE COMPLAINT, BUT ALSO TO INFERENCES THAT MAY BE FAIRLY DEDUCTED FROM THEM. — No other principle in remedial law is more settled than that when a motion to dismiss is filed, the material allegations of the complaint are deemed to be hypothetically admitted. This hypothetical admission, according to *Viewmaster Construction Corporation v. Roxas* and *Navoa v. Court of Appeals,* extends not only to the relevant and material facts well pleaded in the complaint, but also to inferences that may be fairly deduced from them. Thus, where it appears that the allegations in the complaint furnish sufficient basis on which the complaint can be maintained, the same should not be dismissed regardless of the defenses that may be raised by the defendants. Stated differently, where the motion to dismiss is predicated on grounds that are not indubitable, the better policy is to deny the motion without prejudice to taking such measures as may be proper to assure that the ends of justice may be served.

4. POLITICAL LAW; CONSTITUTIONAL LAW; IMMUNITY FROM SUIT; STATE AND ITS POLITICAL SUBDIVISIONS MAY NOT BE SUED WITHOUT THEIR CONSENT; POWER OF LOCAL GOVERNMENT UNITS TO SUE AND BE SUED IS EMBODIED IN THE LOCAL GOVERNMENT CODE OF 1991. — The general rule spelled out in Section 3, Article XVI of the Constitution is that the state and its political subdivisions may not be sued without their consent. Otherwise

put, they are open to suit but only when they consent to it. Consent is implied when the government enters into a business contract, as it then descends to the level of the other contracting party; or it may be embodied in a general or special law such as that found in Book I, Title I, Chapter 2, Section 22 of the Local Government Code of 1991, which vests local government units with certain corporate powers —one of them is the power to sue and be sued.

5. ID.; ID.; ID.; ID.; ID.; WHERE THE CONSENT TO BE SUED IS GIVEN BY GENERAL OR SPECIAL LAW THE IMPLICATION THEREOF IS LIMITED ONLY TO THE RESULTANT VERDICT ON THE ACTION BEFORE EXECUTION OF JUDGMENT; STATE IS AT LIBERTY TO DETERMINE FOR ITSELF WHETHER TO SATISFY THE JUDGMENT OR NOT; RELEVANT RULING, CITED. — Be that as it may, a difference lies between suability and liability. As held in *City of Caloocan v. Allarde*, where the suability of the state is conceded and by which liability is ascertained judicially, the state is at liberty to determine for itself whether to satisfy the judgment or not. Execution may not issue upon such judgment, because statutes waiving non-suability do not authorize the seizure of property to satisfy judgments recovered from the action. These statutes only convey an implication that the legislature will recognize such judgment as final and make provisions for its full satisfaction. Thus, where consent to be sued is given by general or special law, the implication thereof is limited only to the resultant verdict on the action before execution of the judgment. *Traders Royal Bank v. Intermediate Appellate Court*, citing *Commissioner of Public Highways v. San Diego*, is instructive on this point. In that case which involved a suit on a contract entered into by an entity supervised by the Office of the President, the Court held that while the said entity opened itself to suit by entering into the subject contract with a private entity; still, the trial court was in error in ordering the garnishment of its funds, which were public in nature and, hence, beyond the reach of garnishment and attachment proceedings. Accordingly, the Court ordered that the writ of preliminary attachment issued in that case be lifted, and that the parties be allowed to prove their respective claims at the trial on the merits. There, the Court highlighted the reason for the rule, to wit: The universal

rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of execution" and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriations as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects. x x x

6. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; WRIT OF PRELIMINARY ATTACHMENT MUST NOT HAVE BEEN ISSUED IN CASE AT BAR, HENCE MUST BE DISSOLVED. — xxx [T]he Court holds that the writ of preliminary attachment must be dissolved and, indeed, it must not have been issued in the very first place. While there is merit in private respondent's position that she, by affidavit, was able to substantiate the allegation of fraud in the same way that the fraud attributable to petitioners was sufficiently alleged in the complaint and, hence, the issuance of the writ would have been justified. Still, the writ of attachment in this case would only prove to be useless and unnecessary under the premises, since the property of the municipality may not, in the event that respondent's claim is validated, be subjected to writs of execution and garnishment — unless, of course, there has been a corresponding appropriation provided by law.

7. ID.; ID.; ID.; ID.; ISSUES AS TO THE UNENFORCEABILITY OF THE CONTRACT AND THE VERACITY OF PRIVATE RESPONDENT'S ALLEGATION OF FRAUD RAISED BY PETITIONERS RELATIVE TO DENIAL OF THEIR MOTION TO DISSOLVE WRIT OF ATTACHMENT PERTAIN TO THE MERITS OF THE MAIN ACTION. — Anent the other issues raised by petitioners relative to the denial of their motion to dissolve the writ of attachment, *i.e.*, unenforceability of the contract and the veracity of private respondent's allegation of fraud, suffice it to say that these

pertain to the merits of the main action. Hence, these issues are not to be taken up in resolving the motion to discharge, lest we run the risk of deciding or prejudging the main case and force a trial on the merits at this stage of the proceedings.

8. ID.; ID.; MOTION FOR RECONSIDERATION; DENIAL THEREOF WARRANTED IN CASE AT BAR; EXPLAINED. — There is one final concern raised by petitioners relative to the denial of their motion for reconsideration. They complain that it was an error for the Court of Appeals to have denied the motion on the ground that the same was filed by an unauthorized counsel and, hence, must be treated as a mere scrap of paper. It can be derived from the records that petitioner Ople, in his personal capacity, filed his Rule 65 petition with the Court of Appeals through the representation of the law firm Chan Robles & Associates. Later on, municipal legal officer Joselito Reyes, counsel for petitioner Ople, in his official capacity and for petitioner municipality, filed with the Court of Appeals a Manifestation with Entry of Appearance to the effect that he, as counsel, was "adopting all the pleadings filed for and in behalf of [Ople's personal representation] relative to this case." It appears, however, that after the issuance of the Court of Appeals' decision, only Ople's personal representation signed the motion for reconsideration. There is no showing that the municipal legal officer made the same manifestation, as he previously did upon the filing of the petition. From this, the Court of Appeals concluded that it was as if petitioner municipality and petitioner Ople, in his official capacity, had never moved for reconsideration of the assailed decision, and adverts to the ruling in *Ramos v. Court of Appeals* and *Municipality of Pililla, Rizal v. Court of Appeals* that only under well-defined exceptions may a private counsel be engaged in lawsuits involving a municipality, none of which exceptions obtains in this case. The Court of Appeals is mistaken. As can be seen from the manner in which the Manifestation with Entry of Appearance is worded, it is clear that petitioner municipality's legal officer was intent on adopting, for both the municipality and Mayor Ople, not only the *certiorari* petition filed with the Court of Appeals, but also all other pleadings that may be filed thereafter by Ople's personal representation, including the motion for reconsideration subject of this case. In any event, however, the said motion for reconsideration would warrant a

denial, because there seems to be no matter raised therein that has not yet been previously addressed in the assailed decision of the Court of Appeals as well as in the proceedings below, and that would have otherwise warranted a different treatment of the issues involved.

APPEARANCES OF COUNSEL

Law Firm of Chan Robles and Associates for petitioners.
Felino C. Torrente, Jr. for Emily Rose Go Ko lim Chao.

D E C I S I O N

PERALTA, *J.*:

This is a Joint Petition[1] under Rule 45 of the Rules of Court brought by the Municipality of Hagonoy, Bulacan and its former chief executive, Mayor Felix V. Ople in his official and personal capacity, from the January 31, 2005 Decision[2] and the May 23, 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 81888. The assailed decision affirmed the October 20, 2003 Order[4] issued by the Regional Trial Court of Cebu City, Branch 7 in Civil Case No. CEB-28587 denying petitioners' motion to dismiss and motion to discharge/dissolve the writ of preliminary attachment previously issued in the case. The assailed resolution denied reconsideration.

The case stems from a Complaint[5] filed by herein private respondent Emily Rose Go Ko Lim Chao against herein petitioners, the Municipality of Hagonoy, Bulacan and its chief executive, Felix V. Ople (Ople) for collection of a sum of money

---

[1] *Rollo,* pp. 3-51.

[2] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Arsenio J. Magpale and Pampio A. Abarintos, concurring; *id.* at 60-69.

[3] *Id.* at 70-74.

[4] CA *rollo,* pp. 48-52.

[5] The complaint was docketed as Civil Case No. CEB-28587; records, pp. 1-16.

and damages. It was alleged that sometime in the middle of the year 2000, respondent, doing business as KD Surplus and as such engaged in buying and selling surplus trucks, heavy equipment, machinery, spare parts and related supplies, was contacted by petitioner Ople. Respondent had entered into an agreement with petitioner municipality through Ople for the delivery of motor vehicles, which supposedly were needed to carry out certain developmental undertakings in the municipality. Respondent claimed that because of Ople's earnest representation that funds had already been allocated for the project, she agreed to deliver from her principal place of business in Cebu City twenty-one motor vehicles whose value totaled ₱5,820,000.00. To prove this, she attached to the complaint copies of the bills of lading showing that the items were consigned, delivered to and received by petitioner municipality on different dates.[6] However, despite having made several deliveries, Ople allegedly did not heed respondent's claim for payment. As of the filing of the complaint, the total obligation of petitioner had already totaled ₱10,026,060.13 exclusive of penalties and damages. Thus, respondent prayed for full payment of the said amount, with interest at not less than 2% per month, plus ₱500,000.00 as damages for business losses, ₱500,000.00 as exemplary damages, attorney's fees of ₱100,000.00 and the costs of the suit.

On February 13, 2003, the trial court issued an Order[7] granting respondent's prayer for a writ of preliminary attachment conditioned upon the posting of a bond equivalent to the amount of the claim. On March 20, 2003, the trial court issued the Writ of Preliminary Attachment[8] directing the sheriff "to attach the estate, real and personal properties" of petitioners.

Instead of addressing private respondent's allegations, petitioners filed a Motion to Dismiss[9] on the ground that the claim on which the action had been brought was unenforceable

---

[6] Records, Vol. 1, pp. 17-34.

[7] *Id.* at 41-42.

[8] *Id.* at 49.

[9] *Id.* at. 78-82.

under the statute of frauds, pointing out that there was no written contract or document that would evince the supposed agreement they entered into with respondent. They averred that contracts of this nature, before being undertaken by the municipality, would ordinarily be subject to several preconditions such as a public bidding and prior approval of the municipal council which, in this case, did not obtain. From this, petitioners impress upon us the notion that no contract was ever entered into by the local government with respondent.[10] To address the claim that respondent had made the deliveries under the agreement, they advanced that the bills of lading attached to the complaint were hardly probative, inasmuch as these documents had been accomplished and handled exclusively by respondent herself as well as by her employees and agents.[11]

Petitioners also filed a Motion to Dissolve and/or Discharge the Writ of Preliminary Attachment Already Issued,[12] invoking immunity of the state from suit, unenforceability of the contract, and failure to substantiate the allegation of fraud.[13]

On October 20, 2003, the trial court issued an Order[14] denying the two motions. Petitioners moved for reconsideration, but they were denied in an Order[15] dated December 29, 2003.

Believing that the trial court had committed grave abuse of discretion in issuing the two orders, petitioners elevated the matter to the Court of Appeals via a petition for *certiorari* under Rule 65. In it, they faulted the trial court for not dismissing the complaint despite the fact that the alleged contract was unenforceable under the statute of frauds, as well as for ordering the filing of an answer and in effect allowing private respondent to prove that she did make several deliveries of the subject

---

[10] *Id.* at 80.

[11] *Id.*

[12] *Id.* at 91-97.

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

[14] *Id.* at 112-116.

[15] *Id.* at 153.

motor vehicles. Additionally, it was likewise asserted that the trial court committed grave abuse of discretion in not discharging/dissolving the writ of preliminary attachment, as prayed for in the motion, and in effect disregarding the rule that the local government is immune from suit.

On January 31, 2005, following assessment of the parties' arguments, the Court of Appeals, finding no merit in the petition, upheld private respondent's claim and affirmed the trial court's order.[16] Petitioners moved for reconsideration, but the same was likewise denied for lack of merit and for being a mere scrap of paper for having been filed by an unauthorized counsel.[17] Hence, this petition.

In their present recourse, which raises no matter different from those passed upon by the Court of Appeals, petitioners ascribe error to the Court of Appeals for dismissing their challenge against the trial court's October 20 and December 29, 2003 Orders. Again, they reason that the complaint should have been dismissed at the first instance based on unenforceability and that the motion to dissolve/discharge the preliminary attachment should have been granted.[18]

Commenting on the petition, private respondent notes that with respect to the Court of Appeals' denial of the *certiorari* petition, the same was rightly done, as the fact of delivery may be properly and adequately addressed at the trial of the case on the merits; and that the dissolution of the writ of preliminary attachment was not proper under the premises inasmuch as the application for the writ sufficiently alleged fraud on the part of petitioners. In the same breath, respondent laments that the denial of petitioners' motion for reconsideration was rightly done

---

[16] *Rollo*, p. 68. The Court of Appeals disposed of the case as follows:

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

[17] *Rollo*, p. 74.

[18] *Id.* at 16-18.

by the Court of Appeals, because it raised no new matter that had not yet been addressed.[19]

After the filing of the parties' respective memoranda, the case was deemed submitted for decision.

We now rule on the petition.

To begin with, the Statute of Frauds found in paragraph (2), Article 1403 of the Civil Code,[20] requires for enforceability certain contracts enumerated therein to be evidenced by some note or memorandum. The term "Statute of Frauds" is descriptive of statutes that require certain classes of contracts to be in writing; and that do not deprive the parties of the right to contract with

---

[19] *Id.* at 256-259.

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

x x x x x x x x x

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

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

(b) A special promise to answer for the debt, default, or miscarriage of another;

(c) An agreement made in consideration of marriage, other than a mutual promise to marry;

(d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;

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

(f) A representation as to the credit of a third person.

respect to the matters therein involved, but merely regulate the formalities of the contract necessary to render it enforceable.[21]

In other words, the Statute of Frauds only lays down the method by which the enumerated contracts may be proved. But it does not declare them invalid because they are not reduced to writing inasmuch as, by law, contracts are obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present.[22] The object is to prevent fraud and perjury in the enforcement of obligations depending, for evidence thereof, on the unassisted memory of witnesses by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged.[23] The effect of noncompliance with this requirement is simply that no action can be enforced under the given contracts.[24] If an action is nevertheless filed in court, it shall warrant a dismissal under Section 1(i),[25] Rule 16 of the Rules of Court, unless there has been, among others, total or partial performance of the obligation on the part of either party.[26]

It has been private respondent's consistent stand, since the inception of the instant case that she has entered into a contract with petitioners. As far as she is concerned, she has already performed her part of the obligation under the agreement by undertaking the delivery of the 21 motor vehicles contracted

---

[21] *Rosencor Development Corporation v. Court of Appeals*, 406 Phil. 565, 575 (2001).

[22] Civil Code, Art. 1356.

[23] *Asia Production Co., Inc. v. Paño,* G.R. No. 51058, January 27, 1992, 205 SCRA 458.

[24] *Gallemit v. Tabilaran,* 20 Phil. 241 (1911).

[25] Section 1. *Grounds.*—Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x x x x x x

(i) that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds.

[26] *Id.*

for by Ople in the name of petitioner municipality. This claim is well substantiated — at least for the initial purpose of setting out a valid cause of action against petitioners — by copies of the bills of lading attached to the complaint, naming petitioner municipality as consignee of the shipment. Petitioners have not at any time expressly denied this allegation and, hence, the same is binding on the trial court for the purpose of ruling on the motion to dismiss. In other words, since there exists an indication by way of allegation that there has been performance of the obligation on the part of respondent, the case is excluded from the coverage of the rule on dismissals based on unenforceability under the statute of frauds, and either party may then enforce its claims against the other.

No other principle in remedial law is more settled than that when a motion to dismiss is filed, the material allegations of the complaint are deemed to be hypothetically admitted.[27] This hypothetical admission, according to *Viewmaster Construction Corporation v. Roxas*[28] and *Navoa v. Court of Appeals*,[29] extends not only to the relevant and material facts well pleaded in the complaint, but also to inferences that may be fairly deduced from them. Thus, where it appears that the allegations in the complaint furnish sufficient basis on which the complaint can be maintained, the same should not be dismissed regardless of the defenses that may be raised by the defendants.[30] Stated differently, where the motion to dismiss is predicated on grounds that are not indubitable, the better policy is to deny the motion without prejudice to taking such measures as may be proper to assure that the ends of justice may be served.[31]

---

[27] *Spouses Jayme and Ana Solidarios v. Alampay*, 159 Phil. 149, 153 (1975).

[28] 390 Phil. 872 (2000).

[29] G.R. No. 59255, December 29, 1995, 251 SCRA 545.

[30] *Viewmaster Construction Corporation v. Roxas*, *supra* note 28, at 546, citing *Navoa v. Court of Appeals*, *supra* note 29.

[31] See *Kimpo v. Tabañar*, G.R. No. L-16476, October 31, 1961, 3 SCRA 423, 427.

It is interesting to note at this point that in their bid to have the case dismissed, petitioners theorize that there could not have been a contract by which the municipality agreed to be bound, because it was not shown that there had been compliance with the required bidding or that the municipal council had approved the contract. The argument is flawed. By invoking unenforceability under the Statute of Frauds, petitioners are in effect acknowledging the existence of a contract between them and private respondent — only, the said contract cannot be enforced by action for being non-compliant with the legal requisite that it be reduced into writing. Suffice it to say that while this assertion might be a viable defense against respondent's claim, it is principally a matter of evidence that may be properly ventilated at the trial of the case on the merits.

Verily, no grave abuse of discretion has been committed by the trial court in denying petitioners' motion to dismiss this case. The Court of Appeals is thus correct in affirming the same.

We now address the question of whether there is a valid reason to deny petitioners' motion to discharge the writ of preliminary attachment.

Petitioners, advocating a negative stance on this issue, posit that as a municipal corporation, the Municipality of Hagonoy is immune from suit, and that its properties are by law exempt from execution and garnishment. Hence, they submit that not only was there an error committed by the trial court in denying their motion to dissolve the writ of preliminary attachment; they also advance that it should not have been issued in the first place. Nevertheless, they believe that respondent has not been able to substantiate her allegations of fraud necessary for the issuance of the writ.[32]

Private respondent, for her part, counters that, contrary to petitioners' claim, she has amply discussed the basis for the issuance of the writ of preliminary attachment in her affidavit; and that petitioners' claim of immunity from suit is negated by Section 22 of the Local Government Code, which vests municipal

---

[32] *Rollo,* pp. 40-50.

corporations with the power to sue and be sued. Further, she contends that the arguments offered by petitioners against the writ of preliminary attachment clearly touch on matters that when ruled upon in the hearing for the motion to discharge, would amount to a trial of the case on the merits.[33]

The general rule spelled out in Section 3, Article XVI of the Constitution is that the state and its political subdivisions may not be sued without their consent. Otherwise put, they are open to suit but only when they consent to it. Consent is implied when the government enters into a business contract, as it then descends to the level of the other contracting party; or it may be embodied in a general or special law[34] such as that found in Book I, Title I, Chapter 2, Section 22 of the Local Government Code of 1991, which vests local government units with certain corporate powers — one of them is the power to sue and be sued.

Be that as it may, a difference lies between suability and liability. As held in *City of Caloocan v. Allarde*,[35] where the suability of the state is conceded and by which liability is ascertained judicially, the state is at liberty to determine for itself whether to satisfy the judgment or not. Execution may not issue upon such judgment, because statutes waiving non-suability do not authorize the seizure of property to satisfy judgments recovered from the action. These statutes only convey an implication that the legislature will recognize such judgment as final and make provisions for its full satisfaction. Thus, where consent to be sued is given by general or special law, the implication thereof is limited only to the resultant verdict on the action before execution of the judgment.[36]

---

[33] *Id.* at 258.

[34] See *Municipality of San Fernando, La Union v. Firme*, G.R. No. 52179, April 8, 1991, 195 SCRA 692; *U.S. v. Guinto*, G.R. Nos. 76607, 79470, 80018, 80258, February 26, 1990, 182 SCRA 644; *Merritt v. Government of the Philippine Islands*, 34 Phil. 311 (1916).

[35] 457 Phil. 543, 553 (2003), citing *Republic v. Palacios*, 23 SCRA 899 (1968).

[36] *City of Caloocan v. Allarde, supra.*

Traders Royal Bank v. Intermediate Appellate Court,[37] citing *Commissioner of Public Highways v. San Diego*,[38] is instructive on this point. In that case which involved a suit on a contract entered into by an entity supervised by the Office of the President, the Court held that while the said entity opened itself to suit by entering into the subject contract with a private entity; still, the trial court was in error in ordering the garnishment of its funds, which were public in nature and, hence, beyond the reach of garnishment and attachment proceedings. Accordingly, the Court ordered that the writ of preliminary attachment issued in that case be lifted, and that the parties be allowed to prove their respective claims at the trial on the merits. There, the Court highlighted the reason for the rule, to wit:

> The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of execution" and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriations as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects. x x x[39]

With this in mind, the Court holds that the writ of preliminary attachment must be dissolved and, indeed, it must not have been issued in the very first place. While there is merit in private respondent's position that she, by affidavit, was able to substantiate the allegation of fraud in the same way that the fraud attributable to petitioners was sufficiently alleged in the complaint and, hence, the issuance of the writ would have been justified. Still, the writ of attachment in this case would only

---

[37] G.R. No. 68514, December 17, 1990, 192 SCRA 305.

[38] G.R. No. L-30098, February 18, 1970, 31 SCRA 616.

[39] See note 37, at 313-314.

prove to be useless and unnecessary under the premises, since the property of the municipality may not, in the event that respondent's claim is validated, be subjected to writs of execution and garnishment — unless, of course, there has been a corresponding appropriation provided by law.[40]

Anent the other issues raised by petitioners relative to the denial of their motion to dissolve the writ of attachment, *i.e.*, unenforceability of the contract and the veracity of private respondent's allegation of fraud, suffice it to say that these pertain to the merits of the main action. Hence, these issues are not to be taken up in resolving the motion to discharge, lest we run the risk of deciding or prejudging the main case and force a trial on the merits at this stage of the proceedings.[41]

There is one final concern raised by petitioners relative to the denial of their motion for reconsideration. They complain that it was an error for the Court of Appeals to have denied the motion on the ground that the same was filed by an unauthorized counsel and, hence, must be treated as a mere scrap of paper.[42]

It can be derived from the records that petitioner Ople, in his personal capacity, filed his Rule 65 petition with the Court of Appeals through the representation of the law firm Chan Robles & Associates. Later on, municipal legal officer Joselito Reyes, counsel for petitioner Ople, in his official capacity and for petitioner municipality, filed with the Court of Appeals a Manifestation with Entry of Appearance[43] to the effect that he, as counsel, was "adopting all the pleadings filed for and in behalf of [Ople's personal representation] relative to this case."[44]

---

[40] See *City of Caloocan v. Allarde*, *supra* note 35, and *Municipality of San Miguel, Bulacan v. Fernandez*, G.R. No. 61744, June 25, 1984, 130 SCRA 56.

[41] See *Davao Light & Power Co., Inc. v. Court of Appeals*, G.R. No. 93262, November 29, 1991, 204 SCRA 343; *GB, Inc. v. Sanchez*, 98 Phil. 886 (1956).

[42] *Rollo*, pp. 18-24.

[43] CA *rollo*, p. 230.

[44] *Id.* at 230.

It appears, however, that after the issuance of the Court of Appeals' decision, only Ople's personal representation signed the motion for reconsideration. There is no showing that the municipal legal officer made the same manifestation, as he previously did upon the filing of the petition.[45] From this, the Court of Appeals concluded that it was as if petitioner municipality and petitioner Ople, in his official capacity, had never moved for reconsideration of the assailed decision, and adverts to the ruling in *Ramos v. Court of Appeals*[46] and *Municipality of Pililla, Rizal v. Court of Appeals*[47] that only under well-defined exceptions may a private counsel be engaged in lawsuits involving a municipality, none of which exceptions obtains in this case.[48]

The Court of Appeals is mistaken. As can be seen from the manner in which the Manifestation with Entry of Appearance is worded, it is clear that petitioner municipality's legal officer was intent on adopting, for both the municipality and Mayor Ople, not only the *certiorari* petition filed with the Court of Appeals, but also all other pleadings that may be filed thereafter by Ople's personal representation, including the motion for reconsideration subject of this case. In any event, however, the said motion for reconsideration would warrant a denial, because there seems to be no matter raised therein that has not yet been previously addressed in the assailed decision of the Court of Appeals as well as in the proceedings below, and that would have otherwise warranted a different treatment of the issues involved.

WHEREFORE, the Petition is *GRANTED IN PART*. The January 31, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 81888 is *AFFIRMED* insofar as it affirmed the October 20, 2003 Decision of the Regional Trial Court of Cebu

---

[45] The motion for reconsideration was signed only by the law firm of Chan Robles & Associates; *id.* at 288.

[46] G.R. No. 99425, March 3, 1997, 269 SCRA 34.

[47] G.R. No. 105909, June 28, 1994, 233 SCRA 484.

[48] *Rollo*, pp. 71-73.

City, Branch 7 denying petitioners' motion to dismiss in Civil Case No. CEB-28587. The assailed decision is *REVERSED* insofar as it affirmed the said trial court's denial of petitioners' motion to discharge the writ of preliminary attachment issued in that case. Accordingly, the August 4, 2003 Writ of Preliminary Attachment issued in Civil Case No. CEB-28587 is ordered lifted.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174420. March 22, 2010]

MIGUELA SANTUYO, CORAZON ZACARIAS, EUGENIA CINCO, ELIZABETH PERALES, SUSANA BELEDIANO, RUFINA TABINAS, LETICIA L. DELA ROSA, NENITA LINESES, EDITHA DELA RAMA, MARIBEL M. OLIVAR, LOEVEL MALAPAD, FLORENDA M. GONZALO, ELEANOR O. BUEN, EULALIA ABAGAO, LORECA MOCORRO, DIANA MAGDUA, LUZ RAGAY, LYDIA MONTE, CORNELIA BALTAZAR and DAISY MANGANTE, *petitioners, vs.* **REMERCO GARMENTS MANUFACTURING, INC. and/or VICTORIA REYES,**[1] *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; LEGALITY

---

[1] The Court of Appeals was impleaded as respondent but was excluded by the Court as party in this case pursuant to Section 4, Rule 45 of the Rules of Court.

OF ADOPTION OF NEW SALARY SCHEME WAS A LABOR DISPUTE INVOLVING THE MANNER OF ASCERTAINING EMPLOYEES' SALARIES; CASE AT BAR. — Petitioners clearly and consistently questioned the legality of RGMI's adoption of the new salary scheme (*i.e.*, piece-rate basis), asserting that such action, among others, violated the existing CBA. Indeed, the controversy was not a simple case of illegal dismissal but a labor dispute involving the manner of ascertaining employees' salaries, a matter which was governed by the existing CBA.

2. ID.; ID.; ID.; IMPLEMENTATION OF THE COLLECTIVE BARGAINING AGREEMENT (CBA) SHOULD BE REFERRED TO THE GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION; LABOR ARBITER HAS NO JURISDICTION IN CASE AT BAR. — Pursuant to Articles 217 in relation to Articles 260 and 261 of the Labor Code, the labor arbiter should have referred the matter to the grievance machinery provided in the CBA. Because the labor arbiter clearly did not have jurisdiction over the subject matter, his decision was void.

3. ID.; ID.; STRIKES AND LOCKOUTS; JURISDICTION OF THE SECRETARY OF LABOR; CASE AT BAR. — xxx [T]he Secretary of the Labor assumed jurisdiction over the labor dispute between the union and RGMI and resolved the same in his September 18, 1996 order. Article 263(g) of the Labor Code gives the Secretary of Labor discretion to assume jurisdiction over a labor dispute likely to cause a strike or a lockout in an industry indispensable to the national interest and to decide the controversy or to refer the same to the NLRC for compulsory arbitration. In doing so, the Secretary of Labor shall resolve all questions and controversies in order to settle the dispute. His power is therefore plenary and discretionary in nature to enable him to effectively and efficiently dispose of the issue. The Secretary of Labor assumed jurisdiction over the controversy because RGMI had a substantial number of employees and was a major exporter of garments to the United States and Canada. In view of these considerations, the Secretary of Labor resolved the labor dispute between the union and RGMI in his September 18, 1996 order. Since neither the union nor RGMI appealed the said order, it became final and executory.

4. ID.; ID.; COLLECTIVE BARGAINING; UNIONS ARE AGENTS OF ITS MEMBERS FOR THE PURPOSE OF SECURING JUST AND FAIR WAGES; SEPTEMBER 18, 1996 ORDER OF THE SECRETARY OF LABOR APPLIES TO PETITIONERS IN CASE AT BAR. — Settled is the rule that unions are the agents of its members for the purpose of securing just and fair wages and good working conditions. Since petitioners were part of the bargaining unit represented by the union and members thereof, the September 18, 1996 order of the Secretary of Labor applies to them.

5. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; A CASE OF. — xxx [S]ince the union was the bargaining agent of petitioners, the complaint was barred under the principle of conclusiveness of judgments. The parties to a case are bound by the findings in a previous judgment with respect to matters actually raised and adjudged therein. Hence, the labor arbiter should have dismissed the complaint on the ground of *res judicata.*

APPEARANCES OF COUNSEL

Legal Advocates for Workers' Interest for petitioners.

Romulo Mabanta Buenaventura Sayoc & De los Angeles for respondent.

D E C I S I O N

CORONA, *J.*:

From 1992 to 1994, due to a serious industrial dispute, the Kaisahan ng Manggagawa sa Remerco Garments Manufacturing Inc. - KMM Kilusan (union) staged a strike against respondent Remerco Garments Manufacturing, Inc. (RGMI). Because the strike was subsequently declared illegal, all union officers were dismissed. Employees who wanted to sever their employment were paid separation pay while those who wanted to resume work were recalled on the condition that they would no longer be paid a daily rate but on a piece-rate basis.

Petitioners, who had been employed as sewers, were among those recalled.

Without allowing RGMI to normalize its operations, the union filed a notice of strike in the National Conciliation and Mediation Board (NCMB) on August 8, 1995.[2] According to the union, RGMI conducted a time and motion study and changed the salary scheme from a daily rate to piece-rate basis without consulting it. RGMI therefore not only violated the existing collective bargaining agreement (CBA) but also diminished the salaries agreed upon. It therefore committed an unfair labor practice.

On August 24, 1995, RGMI filed a notice of lockout in the NCMB.[3]

On November 11, 1995, while the union and RGMI were undergoing conciliation in the NCMB, RGMI transferred its factory site.

On November 13, 1995, the union went on strike and blocked the entry to RGMI's (new) premises.

In an order dated November 21, 1995,[4] the Secretary of Labor assumed jurisdiction pursuant to Article 263(g) of the Labor Code[5] and ordered RGMI's striking workers to return

---

[2] Docketed as NCMB-NCR-NS-08-356-95.

[3] Docketed as NCMB-NCR-NL-08-017-95.

[4] Order penned by Acting Secretary Jose S. Brillantes in OS-AJ-0057-95. *Rollo,* pp. 242-243.

[5] LABOR CODE, Art. 263(g) provides:

Article. 263. Strikes, picketing, and lockouts. — x x x x x x x x x

(g) **When**, **in his opinion**, **there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the** [**NLRC**] **for compulsory arbitration**. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked

to work immediately. He likewise ordered the union and RGMI to submit their respective position papers.

---

out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout. In such cases, therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over any labor dispute in such industries in order to settle or terminate the same.

x x x x x x x x x

The Secretary of Labor, in his November 21, 1995 order, explained:

Respondent] is engaged in the manufacture of garments and it exports one hundred percent (100%) of its products. At present, it holds a substantial export quota allocation for the United States and Canada. It has in its employ a total of 305 workers. As a major exporter of garments, the company contributes substantial foreign exchange to the economy.

In its position paper, the union denied going on strike and blocking entries (and exits) at RGMI's premises. Furthermore, the union enumerated RGMI's alleged unfair labor practices. RGMI not only changed its salary scheme but also refused to pay wages to its employees for three weeks and transferred the plant to a new site. The union therefore asked for the reinstatement of all employees to their former positions at the old worksite and payment of their unpaid salaries based on the daily rate (as provided in the CBA).

RGMI, on the other hand, insisted that its employees refused to obey the November 21, 1995 order. Thus, it prayed that the strike be declared illegal and that all union officers and those employees who refused to return to work be declared to have abandoned their employment.

After evaluating the respective arguments of the union and RGMI, the Secretary of Labor held that RGMI did not lock out its employees inasmuch as it informed them of the transfer of the worksite. However, he did not rule on the legality of the strike.

Furthermore, based on the time and motion study, the Secretary of Labor found that the employees would receive higher wages if they were paid on a piece-rate rather than on a daily rate basis. Hence, the new salary scheme would be more advantageous to the employees. For this reason, despite the provisions of the CBA, the change in salary scheme was validated.

In an order dated September 18, 1996,[6] the Secretary of Labor ordered all employees to return to work and RGMI to pay its employees their unpaid salaries (from September 25, 1995 to October 14, 1995) on the piece-rate basis. Neither the union nor RGMI appealed the aforementioned order.

On October 18, 1995, while the conciliation proceedings between the union and respondent were pending, petitioners

---

[6] Penned by Secretary Leonardo A. Quisumbing (a retired member of this Court). *Rollo*, pp. 245-250.

filed a complaint for illegal dismissal against RGMI and respondent Victoria Reyes, accusing the latter of harassment.[7] Petitioners subsequently amended their complaint,[8] demanding payment of their accrued salaries from September 25 to October 14, 1995 (computed at the daily rate of ₱145 plus the CBA-decreed increase of ₱11 per day) and the monetary equivalent of benefits they were entitled to under the CBA but allegedly withheld by RGMI, namely:

(1) ₱200 Christmas package and ₱50 per person budget for the 1994 and 1995 Christmas party which was not held and

(2) 17-day vacation leave in 1994 and 1995.

Later, petitioners again amended their complaint, stating that respondents suspended them for questioning their decision to pay salaries on a piece-rate basis.[9]

Respondents, on the other hand, moved to dismiss the complaint in view of the pending conciliation proceedings (which involved the same issue) in the NCMB. Moreover, alleged violations of the CBA should be resolved according to the grievance procedure laid out therein.[10] Thus, the labor arbiter had no jurisdiction over the complaint.

---

[7] Docketed as NLRC-NCR-CA No. 023224-00/ NLRC-NCR Case No. 00-10-07018-95.

[8] Amended complaint and joint affidavit. Dated February 21, 1996. Annex "A", *rollo,* pp. 30-33.

[9] Supplemental complaint. Dated September 23, 1996. Annex "B", *id.*, pp. 34-40.

[10] Art. VI of the CBA provided:

Section 1. All disputes, grievances or matters arising from the implementation or interpretation of the [CBA] shall be threshed out in accordance with the Grievance Procedure provided in this Agreement.

Section 2. **Any grievance, complaint, dispute or agreement between** [**RGMI**] **and the covered employees** or the union and its members **on matters such as** interpretation or **enforcement and/or violation of this** [**CBA**] **shall be settled** [**according the following grievance procedure**].

x x x x x x x x x

The labor arbiter found that respondents did not pay petitioners their salaries and deprived them of the benefits they were entitled to under the CBA. Thus, in a decision dated July 15, 1999,[11] he ordered respondents to pay petitioners their unpaid salaries according to their daily rate with the corresponding increase provided in the CBA and benefits, separation pay and attorney's fees.

Respondents appealed the decision of the labor arbiter in the National Labor Relations Commission (NLRC)[12] but it was denied.[13]

Aggrieved, respondents filed a petition for *certiorari* in the Court of Appeals (CA) claiming that the NLRC acted with grave abuse of discretion in affirming the decision of the labor arbiter. They argued that since the complaint involved the implementation of the CBA, the labor arbiter had no jurisdiction over it.

In a decision dated April 27, 2006,[14] the CA reversed and set aside the decision of the NLRC on the ground that the labor arbiter had no jurisdiction over the complaint.[15]

Petitioners moved for reconsideration but it was denied.[16] Hence, this recourse.[17]

---

[11] Penned by Labor Arbiter Madjayran H. Ayan. *Rollo,* pp. 66-80.

[12] Docketed as NLRC NCR CA No. 023224-00.

[13] Decision penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay. Dated March 19, 2004. *Rollo,* pp. 136-146.

Respondents moved for reconsideration but it was denied in an order dated July 7, 2005. *Id.*, pp. 147-148.

[14] Penned by Associate Justice Conrado M. Vasquez, Jr. (retired) and concurred in by Associate Justices Mariano C. del Castillo (now a member of this Court) and Magdangal M. de Leon of the Third Division of the Court of Appeals. *Id.*, pp. 187-199.

[15] Citing *Silva v. National Labor Relations Commission,* G.R. No. 110226, 19 June 1997, 274 SCRA 159.

[16] Resolution dated August 9, 2006. *Rollo,* pp. 218-219.

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

Petitioners insist that the labor arbiter had jurisdiction inasmuch as the complaint was for illegal dismissal. Furthermore, they claim that the September 18, 1996 order of the Secretary of Labor was inapplicable to them. Despite being members of the union, they were not among those who went on strike.

The petition has no merit.

Petitioners clearly and consistently questioned the legality of RGMI's adoption of the new salary scheme (*i.e.*, piece-rate basis), asserting that such action, among others, violated the existing CBA. Indeed, the controversy was not a simple case of illegal dismissal but a labor dispute[18] involving the manner of ascertaining employees' salaries, a matter which was governed by the existing CBA.

With regard to the question of jurisdiction over the subject matter, Article 217(c) of the Labor Code provides:

Article 217. Jurisdiction of Labor Arbiters and the Commission.

x x x x x x x x x

(c) **Cases arising from** the interpretation or **implementation of collective bargaining agreements** and those arising from the interpretation or enforcement of company personnel policies **shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration** as may be provided in said agreements. (emphasis supplied)

This provision requires labor arbiters to refer cases involving the implementation of CBAs to the grievance machinery provided therein and to voluntary arbitration.

Moreover, Article 260 of the Labor Code clarifies that such disputes must be referred first to the grievance machinery and,

---

[18] Labor Code, Art. 212(l) provides:

(l) "**Labor dispute**" includes **any controversy or matter concerning terms or conditions of employment** or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. (emphasis supplied)

if unresolved within seven days, they shall automatically be referred to voluntary arbitration.[19] In this regard, Article 261 thereof states:

> Article 261. Jurisdiction of voluntary arbitrators and 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 referred to in the immediately preceding Article. **Accordingly, violations of a Collective Bargaining Agreement**, **except those which are gross in character**, **shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement**. For purposes of this Article, gross violations of a Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement. (emphasis supplied)
>
> x x x x x x x x x

Under this provision, voluntary arbitrators have original and exclusive jurisdiction over matters which have not been resolved by the grievance machinery.

Pursuant to Articles 217 in relation to Articles 260 and 261 of the Labor Code, the labor arbiter should have referred the matter to the grievance machinery provided in the CBA. Because the labor arbiter clearly did not have jurisdiction over the subject matter, his decision was void.

---

[19] Labor Code, Art. 260(2) provides:

> Article 260. Grievance machinery and voluntary arbitration. — x x x
>
> x x x x x x x x x
>
> All grievances submitted to the grievance machinery which are not settled within seven (7) calendar days from the date of its submission shall automatically be referred to voluntary arbitration prescribed in the collective bargaining agreement.
>
> x x x x x x x x x

Nonetheless, the Secretary of the Labor assumed jurisdiction over the labor dispute between the union and RGMI and resolved the same in his September 18, 1996 order. Article 263(g) of the Labor Code[20] gives the Secretary of Labor discretion[21] to assume jurisdiction over a labor dispute likely to cause a strike or a lockout in an industry indispensable to the national interest and to decide the controversy or to refer the same to the NLRC for compulsory arbitration. In doing so, the Secretary of Labor shall resolve all questions and controversies in order to settle the dispute. His power is therefore plenary and discretionary in nature to enable him to effectively and efficiently dispose of the issue.[22]

The Secretary of Labor assumed jurisdiction over the controversy because RGMI had a substantial number of employees and was a major exporter of garments to the United States and Canada.[23] In view of these considerations, the Secretary of Labor resolved the labor dispute between the union and RGMI in his September 18, 1996 order.[24] Since neither the union nor RGMI appealed the said order, it became final and executory.

Settled is the rule that unions are the agent of its members for the purpose of securing just and fair wages and good working conditions.[25] Since petitioners were part of the bargaining unit represented by the union and members thereof, the September 18, 1996 order of the Secretary of Labor applies to them.

---

[20] *Supra* note 5.

[21] *Steel Corporation of the Philippines v. SCP Employees Union-National Federation of Labor Unions*, G.R. Nos. 169829-30, 16 April 2008, 551 SCRA 594, 609.

[22] *Philcom Employees Union v. Philippine Global Communications*, G.R. No. 144315, 17 July 2006, 495 SCRA 214, 232-234.

[23] November 21, 1995 order. *Supra* note 5.

[24] *Supra* note 6.

[25] *Heirs of Teodolo M. Cruz v. Court of Industrial Relations*, G.R. Nos. L-23331-32 and L-23361-62, 27 December 1969, 30 SCRA 917, 944.

Furthermore, since the union was the bargaining agent of petitioners, the complaint was barred under the principle of conclusiveness of judgments. The parties to a case are bound by the findings in a previous judgment with respect to matters actually raised and adjudged therein.[26] Hence, the labor arbiter should have dismissed the complaint on the ground of *res judicata.*

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioners.

SO ORDERED.

Velasco, Jr., Nachura, Peralta, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 174835. March 22, 2010]

ANITA REYES-MESUGAS, *petitioner, vs.* **ALEJANDRO AQUINO REYES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; JUDGMENT RENDERED IN ACCORDANCE WITH A COMPROMISE AGREEMENT; NATURE.— A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. Once submitted to the court and stamped with judicial approval, it becomes more than a mere private contract binding upon the parties; having the sanction of the court and entered as its determination of the controversy, it has the force and effect of any judgment. Consequently, a judgment rendered

---

[26] *Philippine Commercial International Bank v. Alejandro,* G.R. No. 175587, 21 September 2007, 533 SCRA 738, 747.

in accordance with a compromise agreement is immediately executory as there is no appeal from such judgment. When both parties enter into an agreement to end a pending litigation and request that a decision be rendered approving said agreement, such action constitutes an implied waiver of the right to appeal against the said decision.

2. ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; PROBATE COURT; JURISDICTION IS LIMITED TO MATTERS PERTAINING TO THE ESTATE.— In this instance, the case filed with the RTC was a special proceeding for the settlement of the estate of Lourdes. The RTC therefore took cognizance of the case as a probate court. Settled is the rule that a probate court is a tribunal of limited jurisdiction. It acts on matters pertaining to the estate but never on the rights to property arising from the contract. It approves contracts entered into for and on behalf of the estate or the heirs to it but this is by fiat of the Rules of Court. It is apparent therefore that when the RTC approved the compromise agreement on September 13, 2000, the settlement of the estate proceeding came to an end.

3. ID.; CIVIL PROCEDURE; FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PLEADINGS; NOTICE OF *LIS PENDENS*; WHEN CANCELLED; CASE AT BAR.— [A] notice of *lis pendens* may be cancelled when the annotation is not necessary to protect the title of the party who caused it to be recorded. The compromise agreement did not mention the grant of a right of way to respondent. Any agreement other than the judicially approved compromise agreement between the parties was outside the limited jurisdiction of the probate court. Thus, any other agreement entered into by the petitioner and respondent with regard to a grant of a right of way was not within the jurisdiction of the RTC acting as a probate court. Therefore, there was no reason for the RTC not to cancel the notice of *lis pendens* on TCT No. 24475 as respondent had no right which needed to be protected. Any alleged right arising from the "side agreement" on the right of way can be fully protected by filing an ordinary action for specific performance in a court of general jurisdiction.

4. ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; PROBATE COURT; EFFECT

OF ORDER APPROVING THE COMPROMISE AGREEMENT IN CASE AT BAR.— [T]he order of the probate court approving the compromise had the effect of directing the delivery of the residue of the estate of Lourdes to the persons entitled thereto under the compromise agreement. As such, it brought to a close the intestate proceedings and the probate court lost jurisdiction over the case, except only as regards to the compliance and the fulfillment by the parties of their respective obligations under the compromise agreement.

5. ID.; ID.; ID.; DISTRIBUTION AND PARTITION OF THE ESTATE; RECORDING OF THE ORDER OF PARTITION OF ESTATE; HAS THE EFFECT OF CANCELLING THE NOTICE OF *LIS PENDENS*.— Having established that the proceedings for the settlement of the estate of Lourdes came to an end upon the RTC's promulgation of a decision based on the compromise agreement, Section 4, Rule 90 of the Rules of Court provides: "Sec. 4. *Recording the order of partition of estate*. - Certified copies of final orders and judgments of the court relating to the real estate or the partition thereof shall be recorded in the registry of deeds of the province where the property is situated." In line with the recording of the order for the partition of the estate, paragraph 2, Section 77 of Presidential Decree (PD) No. 1529 provides: "Section 77. *Cancellation of Lis Pendens* – x x x **At any time after final judgment** in favor of the defendant**, or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land and/or buildings involved,** in any case in which a memorandum or notice of *lis pendens* has been registered as provided in the preceding section, **the notice of *lis pendens* shall be deemed cancelled** upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof." Thus, when the September 13, 2000 decision was recorded in the Registry of Deeds of Rizal pursuant to Section 4, Rule 90 of the Rules of Court, the notice of *lis pendens* inscribed on TCT No. 24475 was deemed cancelled by virtue of Section 77 of PD No. 1529.

APPEARANCES OF COUNSEL

Henedino M. Brondial for petitioner.
Orlando C. Catral for respondent.

D E C I S I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] seeking to reverse the June 23, 2006 and September 21, 2006 orders[2] of the Regional Trial Court of Makati (RTC), Branch 62 denying the petitioner's motion to cancel a notice of *lis pendens*.

Petitioner Anita Reyes-Mesugas and respondent Alejandro A. Reyes are the children of Lourdes Aquino Reyes and Pedro N. Reyes. Lourdes died intestate, leaving to her heirs, among others, three parcels of land, including a lot covered by Transfer Certificate of Title (TCT) No. 24475.

On February 3, 2000, respondent filed a petition for settlement of the estate of Lourdes,[3] praying for his appointment as administrator due to alleged irregularities and fraudulent transactions by the other heirs. Petitioner, her father Pedro and Arturo, a sibling of the petitioner, opposed the petition.

On August 30, 2000, a compromise agreement[4] was entered into by the parties whereby the estate of Lourdes was partitioned. A decision[5] dated September 13, 2000 was rendered by the RTC pursuant to the said compromise agreement. The compromise agreement with respect to TCT No. 24475 is reproduced below:

5. That the parties hereto hereby agree to recognize, acknowledge and respect:

5.1. the improvements found on the parcel of land covered under TCT No. 24475 of the Registry of Deeds of Rizal consisting of two lots namely Lot 4-A and Lot 4-B of the new survey with two (2) residential houses presently occupied and

---

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

[2] Penned by Judge Selma Palacio Alaras. *Rollo*, pp. 25-26.

[3] Docketed as SP No. M-4984.

[4] Dated August 30, 2000. *Id.*, pp. 50-56.

[5] Penned by Judge Roberto C. Diokno. *Id.*, pp. 57-62.

possessed as owners thereof by Antonio Reyes and Anita Reyes-Mesugas to constitute part of their shares in the estate of Lourdes Aquino Reyes;

5.2 further, the improvement consisting of a bakery-store under lease to a third party. The proceeds thereof shall be shared by Antonio Reyes and Pedro N. Reyes;

5.3 that the expenses for the partition and titling of the property between Antonio Reyes and Anita Reyes-Mesugas shall be equally shared by them.

On December 7, 2004, petitioner filed a motion to cancel *lis pendens* annotation for TCT No. 24475[6] in the RTC in view of the finality of judgment in the settlement of the estate. Petitioner argued that the settlement of the estate proceeding had terminated; hence, the annotation of *lis pendens* could already be cancelled since it had served its purpose.

Respondent opposed the motion and claimed that the parties, in addition to the compromise agreement, executed "side agreements" which had yet to be fulfilled. One such agreement was executed between petitioner[7] and respondent granting respondent a one-meter right of way on the lot covered by TCT No. 24475. However, petitioner refused to give the right of way and threatened to build a concrete structure to prevent access. He argued that, unless petitioner permitted the inscription of the right of way on the certificate of title pursuant to their agreement, the notice of *lis pendens* in TCT No. 24475 must remain.

In its order[8] dated January 26, 2006, the RTC denied the motion to cancel the notice of *lis pendens* annotation for lack of sufficient merit. It found that the cancellation of the notice of *lis pendens* was unnecessary as there were reasons for maintaining it in view of petitioner's non-compliance with the alleged right of way agreement between the parties. It stated that:

---

[6] Two hundred nine (209) sq. m. situated in Makati.

[7] With sibling Antonio.

[8] *Id.*, pp. 27-28.

A careful perusal of the compromise agreement dated September 13, 2000 revealed that one of the properties mentioned is a parcel of land with improvements consisting [of] two hundred nine (209) square meters situated in Makati covered under TCT No. 24475 of the Registry of Deeds [of] Rizal in the name of Pedro N. Reyes married to Lourdes Aquino Reyes and form[s] part of the notarized right of way agreement on TCT No. 24475, considering that the movant Anita Reyes is still bound by the right of way agreement, the same should be complied with before the cancellation of the subject annotation.[9] (Citations omitted)

Petitioner filed a notice of appeal.[10] Because the denial of a motion to cancel the notice of *lis pendens* annotation was an interlocutory order, the RTC denied the notice of appeal as it could not be appealed until the judgment on the main case was rendered.[11] A motion for reconsideration was filed by petitioner but the same was also denied.[12]

Hence, this petition.

We find for petitioner.

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.[13] Once submitted to the court and stamped with judicial approval, it becomes more than a mere private contract binding upon the parties; having the sanction of the court and entered as its determination of the controversy, it has the force and effect of any judgment.[14]

Consequently, a judgment rendered in accordance with a compromise agreement is immediately executory as there is no

---

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

[10] Dated March 9, 2006. *Id.*, p. 29.

[11] Order dated July 26, 2006. *Id.*, p. 25.

[12] Order dated September 21, 2006. *Id.*, p. 26.

[13] Article 2028, NEW CIVIL CODE.

[14] *Domingo v. Court of Appeals*, 325 Phil. 469 (1996).

appeal from such judgment.[15] When both parties enter into an agreement to end a pending litigation and request that a decision be rendered approving said agreement, such action constitutes an implied waiver of the right to appeal against the said decision.[16]

In this instance, the case filed with the RTC was a special proceeding for the settlement of the estate of Lourdes. The RTC therefore took cognizance of the case as a probate court.

Settled is the rule that a probate court is a tribunal of limited jurisdiction. It acts on matters pertaining to the estate but never on the rights to property arising from the contract.[17] It approves contracts entered into for and on behalf of the estate or the heirs to it but this is by fiat of the Rules of Court.[18] It is apparent therefore that when the RTC approved the compromise agreement on September 13, 2000, the settlement of the estate proceeding came to an end.

Moreover, a notice of *lis pendens* may be cancelled when the annotation is not necessary to protect the title of the party who caused it to be recorded.[19] The compromise agreement did not mention the grant of a right of way to respondent. Any agreement other than the judicially approved compromise agreement between the parties was outside the limited jurisdiction of the probate court. Thus, any other agreement entered into by the petitioner and respondent with regard to a grant of a right of way was not within the jurisdiction of the RTC acting as a probate court. Therefore, there was no reason for the RTC not to cancel the notice of *lis pendens* on TCT No. 24475 as respondent had no right which needed to be protected. Any alleged right arising from the "side agreement"

---

[15] *Id*.

[16] *Id*.

[17] *Pio Baretto Realty Dev., Inc. v. Court of Appeals*, No. 62432, 3 August 1984, 131 SCRA 606.

[18] Rule 89 of the RULES OF COURT. *See also* Article 2032, NEW CIVIL CODE.

[19] Section 14, Rule 13 of the RULES OF COURT.

on the right of way can be fully protected by filing an ordinary action for specific performance in a court of general jurisdiction.

More importantly, the order of the probate court approving the compromise had the effect of directing the delivery of the residue of the estate of Lourdes to the persons entitled thereto under the compromise agreement. As such, it brought to a close the intestate proceedings[20] and the probate court lost jurisdiction over the case, except only as regards to the compliance and the fulfillment by the parties of their respective obligations under the compromise agreement.

Having established that the proceedings for the settlement of the estate of Lourdes came to an end upon the RTC's promulgation of a decision based on the compromise agreement, Section 4, Rule 90 of the Rules of Court provides:

> Sec. 4. *Recording the order of partition of estate*. – Certified copies of final orders and judgments of the court relating to the real estate or the partition thereof shall be recorded in the registry of deeds of the province where the property is situated.

In line with the recording of the order for the partition of the estate, paragraph 2, Section 77 of Presidential Decree (PD) No. 1529[21] provides:

> Section 77. *Cancellation of Lis Pendens* – xxx xxx xxx
>
> x x x x x x x x x
>
> **At any time after final judgment** in favor of the defendant, **or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land and/or buildings involved**, in any case in which a memorandum or notice of *lis pendens* has been registered as provided in the preceding section, **the notice of *lis pendens* shall be deemed cancelled** upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof. (emphasis supplied)

---

[20] *Santiesteban v. Santiesteban*, 68 Phil. 367 (1939); *Philippine Commercial and Industrial Bank v. Escolin*, G.R. No. L-27860, 29 March 1974, 50 SCRA 266.

[21] PROPERTY REGISTRATION DECREE. PRESIDENTIAL DECREE NO. 1529.

Thus, when the September 13, 2000 decision was recorded in the Registry of Deeds of Rizal pursuant to Section 4, Rule 90 of the Rules of Court, the notice of *lis pendens* inscribed on TCT No. 24475 was deemed cancelled by virtue of Section 77 of PD No. 1529.

WHEREFORE, the petition is hereby *GRANTED*. The Orders of the Regional Trial Court of Makati, Branch 62 dated June 23, 2006 and September 21, 2006 are *SET ASIDE*. The notice of *lis pendens* annotated on TCT No. 24475 is hereby declared *CANCELLED* pursuant to Section 77 of the PD No. 1529 in relation to Section 4, Rule 90 of the Rules of Court.

SO ORDERED.

Velasco, Jr., Nachura, Peralta, and *Abad,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 175380. March 22, 2010]

GREGORIO ESPINOZA, in his own personal capacity and as surviving spouse, and JO ANNE G. ESPINOZA, herein represented by their attorney-in-fact, BEN SANGIL, *petitioners, vs.* **UNITED OVERSEAS BANK PHILS. (formerly Westmont Bank),** *respondent.*

SYLLABUS

1. MERCANTILE LAW; REAL ESTATE MORTGAGE LAW; EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; WRIT OF POSSESSION; WHEN ISSUED.— The order for a writ of possession issues as a matter of course upon the

---

[*] Additional member per raffle dated March 17, 2010 in lieu of Justice Jose Catral Mendoza.

filing of the proper motion and the approval of the corresponding bond if the redemption period has not yet lapsed. If the redemption period has expired, then the filing of the bond is no longer necessary. Any and all questions regarding the regularity and validity of the sale is left to be determined in a subsequent proceeding and such questions may not be raised as a justification for opposing the issuance of a writ of possession.

2. ID.; ID.; ID.; ID.; PETITION FOR A WRIT OF POSSESSION; NATURE.— In *Santiago v. Merchants Rural Bank of Talavera, Inc.*, we defined the nature of a petition for a writ of possession: "The proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard." By its very nature, an *ex parte* petition for issuance of a writ of possession is a non-litigious proceeding. It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong.

3. ID.; ID.; ID.; PETITION FOR NULLIFICATION OF FORECLOSURE PROCEEDINGS; ELUCIDATED.— [B]y its nature, a petition for nullification or annulment of foreclosure proceedings contests the presumed right of ownership of the buyer in a foreclosure sale and puts in issue such presumed right of ownership. Thus, a party scheming to defeat the right to a writ of possession of a buyer in a foreclosure sale who had already consolidated his ownership over the property subject of the foreclosure sale can simply resort to the subterfuge of filing a petition for nullification of foreclosure proceedings with motion for consolidation of the petition for issuance of a writ of possession. This we cannot allow as it will render nugatory the presumed right of ownership, as well as the right of possession, of a buyer in a foreclosure sale, rights which are supposed to be implemented in an *ex parte* petition for issuance of a writ of possession. Besides, the mere fact that the "presumed right of ownership is contested and

made the basis of another action" does not by itself mean that the proceedings for issuance of a writ of possession will become groundless. The presumed right of ownership and the right of possession should be respected until and unless another party successfully rebuts that presumption in an action for nullification of the foreclosure proceedings. As such, and in connection with the issuance of a writ of possession, the grant of a complaint for nullification of foreclosure proceedings is a resolutory condition, not a suspensive condition.

4. ID.; ID.; ID.; WRIT OF POSSESSION; PROCEEDINGS FOR THE ISSUANCE OF THE WRIT ARE *EX PARTE* AND NON-LITIGIOUS IN NATURE; EXCEPTION; INAPPLICABLE IN CASE AT BAR.— The long-standing rule is that proceedings for the issuance of a writ of possession are *ex parte* and non-litigious in nature. The only exemption from this rule is *Active Wood Products Co., Inc. v. Court of Appeals* where the consolidation of the proceedings for the issuance of a writ of possession and nullification of foreclosure proceedings was allowed following the provisions on consolidation in the Rules of Court. However, the circumstances in this case are substantially distinct from that in *Active Wood*. Therefore, the exception granted in that case cannot be applied here. In *Active Wood*, the petition for writ of possession was filed before the expiration of the one-year redemption period while, in this case, the petition for writ of possession was filed after the one-year redemption period had lapsed. Moreover, in *Active Wood*, title to the litigated property had not been consolidated in the name of the mortgagee. Therefore, in that case, the mortgagee did not yet have an absolute right over the property.

5. ID.; ID.; ID.; ID.; WHEN ISSUED AS A MATTER OF RIGHT.— In *De Vera v. Agloro*, we ruled: "The possession of land becomes an **absolute right** of the purchaser as confirmed owner. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a **matter of right**."

6. REMEDIAL LAW; ACTIONS; CONSOLIDATION OF CASES; CONSOLIDATION OF THE PETITION FOR THE ISSUANCE OF A WRIT OF POSSESSION WITH THE PROCEEDINGS FOR NULLIFICATION OF FORECLOSURE, IMPROPER IN CASE AT BAR.— In another case involving these two parties, *Fernandez and United Overseas Bank Phils. v. Espinoza*, we held: "Upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute. The basis of this right to possession is the purchaser's ownership of the property." In this case, title to the litigated property had already been consolidated in the name of respondent, making the issuance of a writ of possession a matter of right. Consequently, the consolidation of the petition for the issuance of a writ of possession with the proceedings for nullification of foreclosure would be highly improper. Otherwise, not only will the very purpose of consolidation (which is to avoid unnecessary delay) be defeated but the procedural matter of consolidation will also adversely affect the substantive right of possession as an incident of ownership. Finally, petitions for the issuance of writs of possession, a land registration proceeding, do not fall within the ambit of the Rules of Court. Thus, the rules on consolidation should not be applied.

APPEARANCES OF COUNSEL

Napoleon M. Marapao for petitioners.
Villanueva Caña & Associates Law Offices for respondent.

D E C I S I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of the November 9, 2006 decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 62250.

---

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

[2] Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Rodrigo V. Cosico (retired) and Edgardo F. Sundiam (deceased) of the Sixth Division of the Court of Appeals. *Rollo*, pp. 47-15.

On March 24, 1996, Firematic Philippines was granted a credit line by respondent United Overseas Bank (then known as Westmont Bank). As security, petitioners Gregorio Espinoza and the late Joji Gador Espinoza (spouses Espinoza) executed a third-party mortgage in favor of respondent over four parcels of land, one of which was covered by Transfer Certificate of Title (TCT) No. 197553 of the Registry of Deeds of Caloocan City. Through its credit line, Firematic obtained several loans from respondent, as evidenced by promissory notes and trust receipts.

Due to Firematic's failure to pay its loans, respondent filed a petition for extrajudicial foreclosure in July 1996 with notary public Eduardo S. Rodriguez in Caloocan City. After complying with the legal requirements, the property covered by TCT No. 197553 was sold at public auction. Respondent was awarded the property, being the only bidder in the amount of ₱200,000.[3]

The certificate of sale was registered with the Register of Deeds of Caloocan City on September 25, 1996. In July 1998, an affidavit of consolidation of ownership over the property was also registered with the same office. On July 24, 1998, ownership was consolidated in the name of respondent as evidenced by the issuance of TCT No. C-328807.

On March 10, 2000, respondent filed an *ex parte* petition for the issuance of a writ of possession which was docketed as LRC Case No. C-4233 in the Regional Trial Court (RTC) of Caloocan City, Branch 124. This action was opposed by petitioners who moved for the consolidation of the proceedings with Civil Case No. C-17913 pending before RTC Branch 120 of the same city. Civil Case No. C-17913 was an action for the nullification of the extra-judicial foreclosure proceedings and certificate of sale of the property subject of this case.

In an order dated April 18, 2000, RTC Branch 124 granted petitioners' motion for consolidation and ordered that LRC Case No. C-4233 be consolidated with Civil Case No. C-17913, provided that the presiding judge of RTC Branch 120 did not

[3] Subsequently, the spouses Espinoza, their agents and representatives received notice to vacate the premises. *Id.*, p. 49.

object. Respondent's motion for reconsideration was denied in an order dated September 7, 2000.

Respondent then filed a petition for *certiorari* and *mandamus*[4] in the CA, which was granted. The orders of RTC Branch 124 dated April 18, 2000 and September 7, 2000, respectively, were reversed and set aside. The CA adhered to the long-established doctrine that purchasers in a foreclosure sale are entitled, as a matter of right, to a writ of possession and that any question regarding the regularity and validity of the sale is to be determined in a separate proceeding. The CA also held that such questions are not to be raised as a justification for opposing the issuance of the writ of possession, since such proceedings are *ex parte*. Hence, the CA directed the issuance of a writ of possession in favor of respondent.

Aggrieved, petitioners filed this petition.

The core issue for resolution is whether a case for the issuance of a writ of possession may be consolidated with the proceedings for the nullification of extra-judicial foreclosure.

Petitioners contend that peculiar circumstances in the instant case make it an exception from the general rule on the ministerial duty of courts to issue writs of possession. Given that the issuance of a writ of possession in this case must be litigated, consolidation with the pending case on the nullification of extra-judicial foreclosure is mandatory because both proceedings involve the same parties and subject matter.

Respondent, on the other hand, insists that the consolidation of the *ex parte* petition for the issuance of a writ of possession with the complaint for nullification of extra-judicial foreclosure of mortgage is highly improper and irregular because there are no common questions of fact and law between the two cases. Respondent also argues that any question regarding the validity of the mortgage or foreclosure cannot be a ground for refusing the issuance of the writ of possession and should, instead, be taken up in the proceedings for the nullification of the foreclosure.

---

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

We rule for respondent.

The order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond if the redemption period has not yet lapsed.[5] If the redemption period has expired, then the filing of the bond is no longer necessary. Any and all questions regarding the regularity and validity of the sale is left to be determined in a subsequent proceeding and such questions may not be raised as a justification for opposing the issuance of a writ of possession.[6]

In *Santiago v. Merchants Rural Bank of Talavera, Inc.*,[7] we defined the nature of a petition for a writ of possession:

> The proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.

By its very nature, an *ex parte* petition for issuance of a writ of possession is a non-litigious proceeding.[8] It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong.[9]

On the other hand, by its nature, a petition for nullification or annulment of foreclosure proceedings contests the presumed right of ownership of the buyer in a foreclosure sale and puts in issue such presumed right of ownership. Thus, a party scheming

---

[5] *Maliwat v. Metropolitan Bank and Trust Company*, G.R. No. 165971, 3 September 2007, 532 SCRA 124, 128.

[6] *Id.*

[7] G.R. No. 147820, 18 March 2005, 453 SCRA 756, 763-764.

[8] *Penson v. Maranan*, G.R. No. 148630, 20 June 2006, 491 SCRA 396, 407.

[9] *De Vera v. Agloro*, G.R. No. 155673, 14 January 2005, 448 SCRA 203, 213-314.

to defeat the right to a writ of possession of a buyer in a foreclosure sale who had already consolidated his ownership over the property subject of the foreclosure sale can simply resort to the subterfuge of filing a petition for nullification of foreclosure proceedings with motion for consolidation of the petition for issuance of a writ of possession. This we cannot allow as it will render nugatory the presumed right of ownership, as well as the right of possession, of a buyer in a foreclosure sale, rights which are supposed to be implemented in an *ex parte* petition for issuance of a writ of possession.

Besides, the mere fact that the "presumed right of ownership is contested and made the basis of another action" does not by itself mean that the proceedings for issuance of a writ of possession will become groundless. The presumed right of ownership and the right of possession should be respected until and unless another party successfully rebuts that presumption in an action for nullification of the foreclosure proceedings. As such, and in connection with the issuance of a writ of possession, the grant of a complaint for nullification of foreclosure proceedings is a resolutory condition, not a suspensive condition.

Given the foregoing discussion, it is clear that the proceedings for the issuance of a writ of possession should not be consolidated with the case for the declaration of nullity of a foreclosure sale. The glaring difference in the nature of the two militates against their consolidation.

The long-standing rule is that proceedings for the issuance of a writ of possession are *ex parte* and non-litigious in nature.[10] The only exemption from this rule is *Active Wood Products Co., Inc. v. Court of Appeals*[11] where the consolidation of the

---

[10] *De Gracia v. San Jose*, 94 Phil. 623 (1954); *Marcelo Steel Corporation, et al. v. Tarin, et al.*, 153 Phil. 362 (1973); *Songco v. The Presiding Judge, CFI of Rizal, et al.*, 212 Phil. 299; *Mirasol v. Intermediate Appellate Court*, G.R. No. 67588, 20 June 1988, 162 SCRA 306.

[11] G.R. No. 86603, 5 February 1990, 181 SCRA 774. The ruling in *Active* Wood was reiterated in *Philippine Savings Bank v. Mañalac* (G.R. No. 145441, 26 April 2005, 457 SCRA 203).

proceedings for the issuance of a writ of possession and nullification of foreclosure proceedings was allowed following the provisions on consolidation in the Rules of Court. However, the circumstances in this case are substantially distinct from that in *Active Wood*. Therefore, the exception granted in that case cannot be applied here.

In *Active Wood*, the petition for writ of possession was filed before the expiration of the one-year redemption period[12] while, in this case, the petition for writ of possession was filed after the one-year redemption period had lapsed. Moreover, in *Active Wood*, title to the litigated property had not been consolidated in the name of the mortgagee. Therefore, in that case, the mortgagee did not yet have an absolute right over the property. In *De Vera v. Agloro*,[13] we ruled:

> The possession of land becomes an **absolute right** of the purchaser as confirmed owner. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes **a matter of right**.[14]

In another case involving these two parties, *Fernandez and United Overseas Bank Phils. v. Espinoza*,[15] we held:

> Upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute. The basis of this right to possession is the purchaser's ownership of the property.[16]

---

[12] The certificate of sale was registered on December 2, 1983. The petition for writ of possession was filed on February 14, 1984. *Supra* note 11 at 776.

[13] *Supra* note 9.

[14] *Id.* at 214.

[15] G.R. No. 156421, 14 April 2008.

[16] *Id.* at 149.

In this case, title to the litigated property had already been consolidated in the name of respondent, making the issuance of a writ of possession a matter of right. Consequently, the consolidation of the petition for the issuance of a writ of possession with the proceedings for nullification of foreclosure would be highly improper. Otherwise, not only will the very purpose of consolidation (which is to avoid unnecessary delay) be defeated but the procedural matter of consolidation will also adversely affect the substantive right of possession as an incident of ownership.

Finally, petitions for the issuance of writs of possession, a land registration proceeding, do not fall within the ambit of the Rules of Court.[17] Thus, the rules on consolidation should not be applied.

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioners.

SO ORDERED.

Velasco, Jr., *Nachura*, *Peralta*, and *Mendoza, JJ.*, concur.

---

[17] Rules of Court, Rule 1, Sec. 4. *In what cases not applicable.* – **These Rules shall not apply to** election cases, **land registration**, cadastral, naturalization and insolvency **proceedings**, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient. (emphasis supplied)

SECOND DIVISION

[G.R. No. 186180. March 22, 2010]

MAGSAYSAY MARITIME CORPORATION AND/OR CRUISE SHIPS CATERING AND SERVICES INTERNATIONAL N.V., *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) and ROMMEL B. CEDOL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL UNDER RULE 45; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTIONS; CASE AT BAR.— [W]e are reviewing in this Rule 45 petition the decision of the CA on a Rule 65 petition filed by the petitioners with that court. In so doing, we review the legal correctness of the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it. In this task, the Court is allowed, in exceptional cases, to delve into and resolve factual issues when insufficient or insubstantial evidence to support the findings of the tribunal or court below is alleged, or when too much is concluded, inferred or deduced from the bare and incomplete facts submitted by the parties, to the point of grave abuse of discretion. The present case constitutes one of these exceptional cases.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA STANDARD EMPLOYMENT CONTRACT (POEA-SEC); RULE ON DISABILITY BENEFITS; DISABILITY, WHEN COMPENSABLE.— For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must be **work-related**; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially

disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.

3. ID.; ID.; ID.; ID.; "WORK-RELATED INJURY" AND "WORK-RELATED ILLNESS," DEFINED.— The 2000 POEA-SEC defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."

4. ID.; ID.; ID.; ID.; ASSESSMENT OF SEAMAN'S DISABILITY; PROCEDURE FOR DIAGNOSIS OR TREATMENT.— Under Section 20 (B), paragraphs (2) and (3) of the 2000 POEA-SEC, it is the company-designated physician who is entrusted with the task of assessing the seaman's disability x x x. [T]he seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA-SEC and by applicable Philippine laws. If the 120-day initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

5. ID.; ID.; ID.; ID.; ID.; LYMPHOMA, NOT LISTED AS A DISABILITY OR AS AN OCCUPATIONAL DISEASE UNDER POEA-SEC; ILLNESSES NOT LISTED IN THE CONTRACT ARE DISPUTABLY PRESUMED AS WORK-RELATED; CASE AT BAR.— Lymphoma is a cancer that begins in the lymphocites of the immune system and presents as a solid tumor of lymphoid cells. Like other cancers,

lymphoma occurs when lymphocytes are in a state of uncontrolled cell growth and multiplication. It is treatable with chemotherapy, and, in some cases, radiotherapy and/or bone marrow transplantation, and can be curable, depending on the histology, type, and stage of the disease. These malignant cells often originate in lymph nodes, presenting as an enlargement of the node (a tumor). Lymphoma is neither listed as a disability under Section 32 (Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted) of the 2000 POEA-SEC nor listed as an occupational disease under Section 32-A thereof. Nonetheless, Section 20 (B), paragraph (4) provides that "those illnesses not listed in Section 32 of this Contract are *disputably presumed* as work-related." The burden is therefore placed upon the respondent to present substantial evidence, or such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion that there is a causal connection between the nature of his employment and his illness, or that the risk of contracting the illness was increased by his working conditions. This, the respondent failed to do. In fact, a careful review of the records shows that the respondent did not, by way of a contrary medical finding, assail the diagnosis arrived at by the company-designated physician.

6. ID.; ID.; ID.; ID.; ID.; NON-WORK RELATEDNESS OF RESPONDENT'S ILLNESS, SUFFICIENTLY ESTABLISHED.— While it is true that medical reports issued by the company-designated physicians do not bind the courts, our examination of Dr. Ong-Salvador's Initial Medical Report leads us to agree with her findings. Dr. Ong-Salvador was able to sufficiently explain her basis in concluding that the respondent's illness was not work-related: she found the respondent not to have been exposed to any carcinogenic fumes, or to any viral infection in his workplace. Her findings were arrived at after the respondent was made to undergo a physical, neurological and laboratory examination, taking into consideration his (respondent's) past medical history, family history, and social history. In addition, the respondent was evaluated by a specialist, a surgeon and an oncologist. The series of tests and evaluations show that Dr. Ong-Salvador's findings were not arrived at arbitrarily; neither were they biased in the company's favor. The respondent, on the other hand, did not

adduce proof to show a reasonable connection between his work as an assistant housekeeping manager and his lymphoma. There was no showing how the demands and nature of his job *vis-à-vis* the ship's working conditions increased the risk of contracting lymphoma. The non-work relatedness of the respondent's illness is reinforced by the fact that under the Implementing Rules and Regulations of the Labor Code (ECC Rules), lymphoma is considered occupational only ***when contracted by operating room personnel due to exposure to anesthetics***. The records do not show that the respondent's work as an assistant housekeeping manager exposed him to anesthetics. In short, the evidence on record is totally bare of essential facts on how the respondent contracted or developed lymphoma and how and why his working conditions increased the risk of contracting this illness. In the absence of substantial evidence, we cannot just presume that respondent's job caused his illness or aggravated any pre-existing condition he might have had.

7. ID.; ID.; ID.; PRE-EMPLOYMENT MEDICAL EXAMINATION; NOT INTENDED TO BE A TOTALLY IN-DEPTH AND THOROUGH EXAMINATION OF AN APPLICANT'S MEDICAL CONDITION.— The fact that respondent passed the company's PEME is of no moment. We have ruled that in the past the PEME is not exploratory in nature. It was not intended to be a totally in-depth and thorough examination of an applicant's medical condition. The PEME merely determines whether one is "fit to work" at sea or "fit for sea service," it does not state the real state of health of an applicant. In short, the "fit to work" declaration in the respondent's PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.

8. ID.; ID.; ID.; RULE ON DISABILITY BENEFITS; ASSESSMENT OF SEAMAN'S DISABILITY; "FIT TO WORK" CONCLUSION OF THE COMPANY-DESIGNATED PHYSICIAN, JUSTIFIED IN CASE AT BAR.— [I]t is the company-designated physician who is entrusted with the task of assessing the seaman's disability. Since Dr. Ong-Salvador deemed the respondent as fit to resume sea duties, then such declaration should be given credence, considering the amount of time and effort she gave to monitoring and treating the

respondent's condition. It bears emphasizing that the respondent has been under the care and supervision of Dr. Ong-Salvador since his repatriation in February 2005 and no contrary medical evidence exists on record disputing Dr. Ong-Salvador's medical conclusions. The extensive medical attention she has given the respondent undeniably enabled her to acquire familiarity and detailed knowledge of the latter's medical condition. We cannot help but note that the Medical Progress Report was replete with details justifying its "fit to work" conclusion. In addition, the respondent did not contest the findings contained in this Medical Progress Report; neither did he seek the opinion of other doctors.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
The Solicitor General for public respondent.
Linsangan Linsangan & Linsangan Law Office for private respondent.

D E C I S I O N

BRION, *J.*:

We review in this petition for review on *certiorari*[1] the December 15, 2008 decision[2] and January 28, 2009 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP. No. 105625 that affirmed the April 30, 2008 and July 31, 2008 resolutions of the National Labor Relations Commission (*NLRC*). The NLRC resolutions affirmed the Labor Arbiter's decision granting respondent Rommel M. Cedol (*respondent*) disability benefits and attorney's fees in the amounts of US$60,000.00 and US$6,000.00, respectively.

---

[1] Under Rule 45 of the Revised RULES OF COURT.

[2] Penned by Associate Justice Mariano C. del Castillo (now a member of this Court), and concurred in by Associate Justice Arcangelita M. Romilla-Lontok and Associate Justice Romeo F. Barza; *rollo*, pp. 13-25.

[3] *Id.* at 135.

ANTECEDENT FACTS

On July 14, 2004, the respondent entered into a seven-month contract of employment with petitioner Magsaysay Maritime Corporation (*Magsaysay Maritime*) for its foreign principal, Cruise Ships Catering and Services International N.V. (*Cruise Ships*); he was employed as an assistant housekeeping manager on board the vessel *Costa Mediterranea* with a basic monthly salary of US$482.00. The respondent submitted himself to the required Pre-Employment Medical Examination (*PEME*), and was pronounced fit to work. He boarded the vessel *Costa Mediterranea* on July 19, 2004.

Prior to the execution of this employment contract, the respondent had previously worked as housekeeping cleaner and assistant housekeeping manager on board the petitioners' other vessels from 2000 to 2004.[4]

In November 2004, the respondent felt pain in his lower right quadrant. He was brought to and conferred at the Andreas Constantinou Medical Center in Cyprus for consultation. On January 18, 2005, he underwent a procedure called *exploratory laparotomy* which revealed a massive tumor in the terminal ileum and in the ascending colon near the hepatic flexture. On the same day, the respondent underwent a surgical procedure called *right hemicolectomy with end to end ilectransverse anastomosis*.[5] The Histopathology Report showed the following findings:

CONCLUSION

The appearances are consistent with a malignant lymphoid infiltration of the ileum and the mesenteric lymph nodes.

The appearances are consistent [with] the interstinal lymphoma of small and large sized lymphoid cells.

x x x x x x x x x[6]

---

[4] *Id.* at 156.

[5] *Id.* at 157-158.

[6] *Id.* at 191.

The respondent was discharged from the hospital and repatriated to the Philippines on February 1, 2005.

Upon repatriation, the respondent was placed under the medical care and supervision of the company-designated physician, Dr. Susannah Ong-Salvador (*Dr. Ong-Salvador*). In Dr. Ong-Salvador's Initial Medical Report[7] dated February 10, 2005, she found the respondent to be suffering from lymphoma, and declared his illness to be non-work related.

On April 14, 2005, the respondent was brought to the Chinese General Hospital, where he underwent a surgical procedure called *excision biopsy*.[8] Dr. Ong-Salvador's Medical Progress Report found the respondent's recurrent lymphoma to be in complete remission, and declared him "fit to resume sea duties" after undergoing six (6) sessions of chemotherapy.[9]

On June 16, 2006, the respondent filed before the Labor Arbiter a complaint for total and permanent disability benefits, reimbursement of medical and hospital expenses, damages, and attorney's fees[10] against the petitioners. He claims that he contracted his illness while working on board the petitioners' vessel.

The Labor Arbiter's Decision

Labor Arbiter Marita V. Padolina (*LA Padolina*) ruled in respondent's favor. She found the respondent permanently and totally disabled and awarded him disability compensation of US$60,000.00 or its peso equivalent; and US$6,000.00 attorney's fees.

LA Padolina ruled the respondent's illness to be work-related, hence compensable. She held that the respondent's illness was aggravated by his work, as he had always passed the company's physical examinations since 2000. She explained that the

---

[7] *Id.* at 192-195.

[8] *Id.* at 159.

[9] *Id.* at 233-234.

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

respondent's work need not be the main cause of his illness; it is enough that his employment had contributed even in a small degree to the development of the disease.

LA Padolina likewise held that each person has his own physical tolerance. That it was only the respondent who had contracted lymphoma among the petitioners' workers did not remove the fact that his illness was aggravated by his employment. She also ruled that the respondent was not fit to work as a seafarer because he had undergone chemotherapy.[11]

The labor arbiter likewise awarded attorney's fees in respondent's favor, as he was forced to litigate to protect his rights.

The NLRC Ruling

The NLRC affirmed the labor arbiter's decision *in toto* in its resolution dated April 30, 2008.[12] The NLRC held that the respondent is not fit to work as a seafarer because he is suffering from recurrent lymphoma - a sickness that required him undergo chemotherapy. The NLRC explained that the respondent is in a state of permanent total disability because he can no longer earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do.

The NLRC ruled that there was a reasonable connection between the nature of the respondent's work as assistant housekeeping manager and the development of his illness. The NLRC explained that the respondent had passed every PEME before signing the six employment contracts with the petitioner from 2000 to 2005, and was declared "fit to work" each time. It was only after the respondent was exposed to an extreme working environment in the petitioners' vessel that he developed his sickness. At any rate, the law merely requires a reasonable work connection, and not a direct causal connection for a disability to be compensable.

---

[11] *Id.* at 239-251.

[12] *Id.* at 354-364.

The petitioners moved to reconsider this resolution, but the NLRC denied their motion in its resolution of July 31, 2008.[13]

The CA Decision

The petitioners filed a **petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order**[14] before the CA, docketed as CA-G.R. SP. No. 105625. The CA, in its decision[15] of December 15, 2008, denied the petition for lack of merit.

The CA held that under the provisions of the POEA Standard Employment Contract (*POEA-SEC*), it is enough that the work has contributed, even in a small degree, to the development of the worker's disease. The CA further held that the Courts are not bound by the assessment of the company-designated physician. According to the CA, Dr. Ong-Salvador's pronouncement that the respondent is "fit to resume sea duties" was inconsistent with the fact that the respondent had previously undergone chemotherapy, and needed to undergo periodic check-ups.

The CA affirmed the award of attorney's fees because Article 2208 of the Civil Code allows the recovery of attorney's fees in actions for indemnity under the workman's compensation and employer liability laws.

The petitioners moved to reconsider this decision, but the CA denied their motion in its resolution of January 28, 2009.[16]

The Petition

In the present petition, the petitioners argue that the CA erred in holding the petitioners liable for US$60,000.00 in total and permanent disability benefits despite the company-designated physician's finding that the respondent's illness was not work-related. They assert that under the 2000 POEA-SEC, only work-

---

[13] *Id.* at 397-398.

[14] *Id.* at 399-446.

[15] *Id.* at 13-25.

[16] *Id.* at 27.

related injury or illness is compensable. They likewise maintain that the company-designated physician's finding that the respondent's illness was not work-related should be given credence. Aside from the fact that lymphoma is not listed as an occupational disease under Section 32-A of the POEA-SEC, the respondent's work could not have exposed him to carcinogenic fumes or chemicals that cause cancer because his duties merely involved housekeeping and cleaning.

The Respondent's Position

In his Comment,[17] the respondent claims that the company-designated physician had no factual basis in ruling that his illness was not work-related. He posits that the opinions of company-designated physicians should not be taken as gospel truth because of their non-independent nature. Finally, he claims that his illness could have only been acquired on board since he passed the company's PEME.

THE COURT'S RULING

We find the petition meritorious.

The petitioners essentially claim that the evidence on record does not support the findings of the labor tribunals and the CA that the respondent's illness was work-related. This argument clearly involves a factual inquiry whose determination is not a function of this Court. We emphasize, however, that we are reviewing in this Rule 45 petition the decision of the CA on a Rule 65 petition filed by the petitioners with that court. In so doing, we review the legal correctness of the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it.

In this task, the Court is allowed, in exceptional cases, to delve into and resolve factual issues when insufficient or insubstantial evidence to support the findings of the tribunal or court below is alleged, or when too much is concluded, inferred or deduced from the bare and incomplete facts submitted by

[17] *Id.* at 501-513.

the parties, to the point of grave abuse of discretion.[18] The present case constitutes one of these exceptional cases.

The Rule on Disability Benefits

Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' Collective Bargaining Agreement (*CBA*) bind the seaman and his employer to each other.[19]

Section 20 (B), paragraph 3 of the 2000 POEA-SEC[20] reads:

Section 20-B. *Compensation and Benefits for Injury or Illness.*

The liabilities of the employer when the seafarer suffers **work-related injury or illness** during the term of his contract are as follows:

x x x x x x x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. [*Emphasis supplied.*]

For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or

---

[18] See *Nisda v. Sea Serve Maritime Agency*, G.R. No. 179177, July 23, 2009.

[19] *Vergara v. Hammonia Maritime Services, Inc.*, G.R. No. 172933, October 6, 2008, 567 SCRA 610, 623.

[20] Department Order No. 4, s. of 2000 is entitled Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels.

illness must be **work-related**; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.[21] In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.[22]

The 2000 POEA-SEC defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."

Under Section 20 (B), paragraphs (2) and (3) of the 2000 POEA-SEC, it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, thus:

Section 20-B. *Compensation and Benefits for Injury or Illness.*

The liabilities of the employer when the seafarer suffers **work-related injury or illness during the term of his contract are as follows**:

x x x x x x x x x

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is **declared fit or the degree of his disability has been established by the company-designated physician.**

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**

---

[21] *Supra* note 18.

[22] See *Masangcay v. Trans-Global Maritime Agency, Inc.*, G.R. No. 172800, October 17, 2008, 569 SCRA 592, 609.

has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a **company-designated physician** within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

x x x [*Emphasis supplied.*]

Thus, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA-SEC and by applicable Philippine laws. If the 120-day initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days,[23] subject to

---

[23] See also Rule X, Section 2 of the Rules and Regulations implementing Book IV of the LABOR CODE, which reads: *Period of entitlement.* - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from the onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[24]

In the case before us, there is no dispute that the respondent reported to the company-designated physician for treatment immediately upon repatriation. Problems arose when he was diagnosed with lymphoma, and the company-designated physician ruled this illness to be non-work-related.

Lymphoma is a cancer that begins in the lymphocites of the immune system and presents as a solid tumor of lymphoid cells. Like other cancers, lymphoma occurs when lymphocytes are in a state of uncontrolled cell growth and multiplication. It is treatable with chemotherapy, and, in some cases, radiotherapy and/or bone marrow transplantation, and can be curable, depending on the histology, type, and stage of the disease. These malignant cells often originate in lymph nodes, presenting as an enlargement of the node (a tumor).[25]

Lymphoma is neither listed as a disability under Section 32 (Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted) of the 2000 POEA-SEC nor listed as an occupational disease under Section 32-A thereof. Nonetheless, Section 20 (B), paragraph (4) provides that "those illnesses not listed in Section 32 of this Contract are *disputably presumed* as work-related." The burden is therefore placed upon the respondent to present substantial evidence, or such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion that there is a causal connection between the nature of his employment and his illness, or that the risk of contracting the illness was increased by his working conditions. This, the respondent failed to do. In fact, a careful review of the records shows that the respondent did not, by way of a contrary medical finding, assail the diagnosis arrived at by the company-designated physician. For clarity and

---

[24] *Supra* note 19.

[25] http://en.wikipedia.org/wiki/Lymphoma

precision, we reproduce the pertinent parts of Dr. Ong-Salvador's Initial Medical Report dated February 10, 2005, thus:

WORKING IMPRESSION:	To Consider **Lymphoma** Status post Right hemilectomy with anastomosis with end to end ileotransverse anastomosis with extensive removal of the mesenteries

Lymphoma is the cancer of the lymph nodes. It has 2 types: Hodgkins and Non-hodgkins lymphoma. Etiology of this condition may arise from genetic predisposition (family history of cancer), cytogenetic abnormalities, viral infection or exposure to highly carcinogenic fumes.

By history, the patient has not been exposed to any carcinogenic fumes nor did he contact any viral infection such as Epstein Barr virus in his workplace nor was there a family history of cancer. His condition may be brought about by cytogenetic abnormalities. Hence, his condition is <u>non-work related</u>.

x x x[26] [*Emphasis supplied.*]

While it is true that medical reports issued by the company-designated physicians do not bind the courts, our examination of Dr. Ong-Salvador's Initial Medical Report leads us to agree with her findings. Dr. Ong-Salvador was able to sufficiently explain her basis in concluding that the respondent's illness was not work-related: she found the respondent not to have been exposed to any carcinogenic fumes, or to any viral infection in his workplace. Her findings were arrived at after the respondent was made to undergo a physical, neurological and laboratory examination, taking into consideration his (respondent's) past medical history, family history, and social history. In addition, the respondent was evaluated by a specialist, a surgeon and an oncologist. The series of tests and evaluations show that Dr. Ong-Salvador's findings were not arrived at arbitrarily; neither were they biased in the company's favor.

---

[26] *Rollo,* p. 194.

The respondent, on the other hand, did not adduce proof to show a reasonable connection between his work as an assistant housekeeping manager and his lymphoma. There was no showing how the demands and nature of his job *vis-à-vis* the ship's working conditions increased the risk of contracting lymphoma. The non-work relatedness of the respondent's illness is reinforced by the fact that under the Implementing Rules and Regulations of the Labor Code (ECC Rules), lymphoma is considered occupational only ***when contracted by operating room personnel due to exposure to anesthetics***. The records do not show that the respondent's work as an assistant housekeeping manager exposed him to anesthetics.

In short, the evidence on record is totally bare of essential facts on how the respondent contracted or developed lymphoma and how and why his working conditions increased the risk of contracting this illness. In the absence of substantial evidence, we cannot just presume that respondent's job caused his illness or aggravated any pre-existing condition he might have had.

The fact that respondent passed the company's PEME is of no moment. We have ruled that in the past the PEME is not exploratory in nature. It was not intended to be a totally in-depth and thorough examination of an applicant's medical condition. The PEME merely determines whether one is "fit to work" at sea or "fit for sea service," it does not state the real state of health of an applicant.[27] In short, the "fit to work" declaration in the respondent's PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment. Thus we held in *NYK-FIL Ship Management, Inc. v. NLRC*:[28]

> While a PEME may reveal enough for the petitioner (vessel) to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory.

---

[27] See *Estate of Posedio Ortega v. Court of Appeals*, G.R. No. 175005, April 30, 2008, 553 SCRA 649, 660.

[28] G.R. No. 161104, September 27, 2006, 503 SCRA 595, 609.

The respondent was declared fit to resume sea duties

Another factor that further militates against the respondent's claim for permanent and total disability benefits is Dr. Ong-Salvador's Medical Progress Report declaring him to be "fit to resume sea duties." The relevant portions of this report are hereunder reproduced:

MEDICAL PROGRESS REPORT

x x x x x x x x x

CT Scan of the abdomen

- Comparison is made with the previous examination dated November 29, 2005
- The previously noted irregular soft tissue module inferior to the pancreatic is no longer evident
- There is no gross lymph node enlargement
- Fatty changes in the liver and gallstones are again demonstrated
- The rest of the findings are stationary
- **Impression: Further disease regression since November 2005.**

Our Oncologist examined the patient today who opines that patient has responded well after undergoing 6 sessions of chemotherapy. His present state of remission is supported by further disease regression in his latest CT Scan of the abdomen. Blood chemistry result of his createnine and lactate dehydrogenase levels are within normal limits. Check-up from year to year was suggested to evaluate periodically his health condition. Since Mr. Cedol is noted asymptomatic he is therefore cleared from Oncology standpoint.

After thorough evaluation by our specialists, Mr. Cedol is now deemed **fit to resume sea duties.**

FINAL DIAGNOSIS: Recurrent Lymphoma, in complete remission.[29]

As previously discussed, it is the company-designated physician who is entrusted with the task of assessing the seaman's disability. Since Dr. Ong-Salvador deemed the respondent as

---

[29] *Rollo*, p. 233.

fit to resume sea duties, then such declaration should be given credence, considering the amount of time and effort she gave to monitoring and treating the respondent's condition.[30] It bears emphasizing that the respondent has been under the care and supervision of Dr. Ong-Salvador since his repatriation in February 2005 and no contrary medical evidence exists on record disputing Dr. Ong-Salvador's medical conclusions. The extensive medical attention she has given the respondent undeniably enabled her to acquire familiarity and detailed knowledge of the latter's medical condition. We cannot help but note that the Medical Progress Report was replete with details justifying its "fit to work" conclusion. In addition, the respondent did not contest the findings contained in this Medical Progress Report; neither did he seek the opinion of other doctors.

We emphasize that the constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. The commitment of this Court to the cause of labor does not prevent us from sustaining the employer when it is in the right.[31] We should always be mindful that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[32]

In sum, we hold that the respondent is not entitled to total and permanent disability benefits ***for his failure to refute*** the company-designated physician's findings that: (1) his illness was not work-related; and (2) he was fit to resume sea duties. The CA thus erred in not finding grave abuse of discretion on the part of the NLRC when the latter affirmed the labor arbiter's decision to grant permanent and total disability benefits to the respondent despite insufficient evidence to justify this grant.

---

[30] See *Magsaysay Maritime Corp. v. Velasquez*, G.R. No. 179802, November 14, 2008, 571 SCRA 239, 251.

[31] *Sarocam v. Interorient Maritime Ent., Inc.*, G.R. No. 167813, June 27, 2006, 493 SCRA 502, 516.

[32] *Klaveness Maritime Agency, Inc. v. Beneficiaries of the Late Second Officer Anthony S. Allas*, G.R. No. 168560, January 28, 2008, 542 SCRA 593, 603.

WHEREFORE, in view of all the foregoing, the instant petition is *GRANTED*. The assailed decision of the Court of Appeals in CA-G.R. SP. No. 105625 is *REVERSED* and *SET ASIDE*. Accordingly, the respondent's complaint before the Labor Arbiter is *DISMISSED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. Nos. 167055-56. March 25, 2010]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *petitioner, vs.* **SILANGAN INVESTORS AND MANAGERS, INC. and SANDIGANBAYAN,** *respondents.*

[G.R. No. 170673. March 25, 2010]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *petitioner, vs.* **POLYGON INVESTORS AND MANAGERS, INCORPORATED and SANDIGANBAYAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN AVAILED OF.— In petitions for *certiorari* under Rule 65 of the Rules of Court, petitioner must show that respondent tribunal acted with grave abuse of discretion. In *Angara v. Fedman Development Corporation*, the Court held

---

[*] Designated additional Member of the Second Division in lieu of Associate Justice Mariano C. Del Castillo per Raffle dated March 15, 2010.

that: "*Certiorari* under Rule 65 is a remedy narrow in scope and inflexible in character. It is not a general utility tool in the legal workshop. It offers only a limited form of review. Its principal function is to keep an inferior tribunal within its jurisdiction. It can be invoked only for an error of jurisdiction, that is, one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or excess of jurisdiction."

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; DEFINED.— In *Garcia, Jr. v. Court of Appeals*, the Court defined grave abuse of discretion: "Grave abuse of discretion is defined as such capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."

3. ID.; ID.; ID.; ID.; NOT ESTABLISHED IN CASE AT BAR.— PCGG failed to show that the Sandiganbayan acted with grave abuse of discretion. The Resolutions ordering the release to Silangan and Polygon of their Oceanic cash dividends, with interest, were grounded on sound legal and factual bases: (1) PCGG agreed to the release to Silangan of 49% of its cash dividends, with interest; (2) Benedicto ceded to the government his 51% equity in Silangan, not Oceanic; (3) Silangan, being a stockholder of Oceanic, was entitled to the cash dividends declared by the company; (4) Silangan engaged the services of M.M. Lazaro & Associates and agreed to pay 15% of the total amount it may recover as contingent fee; (5) in its 25 April 1994 Decision, the Sandiganbayan declared void PCGG's sequestration of the Oceanic shares of stock in the names of Polygon, Aerocom, Silangan, Belgor, Jose and Victor — Silangan and Polygon were not sequestered; (6) In *Presidential Commission*, the Court affirmed the Sandiganbayan's 25 April 1994 Decision; (7) *Presidential Commission* became final and executory and was entered in the Book of Entries of Judgments; (8) the Sandiganbayan issued a writ of execution, dated 30 September 2003, to implement the 25 April 1994 Decision; and (9) the 30 September 2003 writ of execution

was implemented. Silangan and Polygon are entitled to their Oceanic cash dividends, with interest, because they are not sequestered or impleaded in Civil Case No. 0009. In *PCGG v. Sandiganbayan*, the Court affirmed the Resolutions of the Sandiganbayan ordering the release to Aerocom of its cash dividends because Aerocom was not sequestered or impleaded in Civil Case No. 0009. x x x PCGG failed to show that the Sandiganbayan acted with grave abuse of discretion. The Sandiganbayan correctly held that Silangan and Polygon were entitled to their Oceanic cash dividends, with interest, because the declaration of cash dividends was valid. PCGG declared the cash dividends before the Sandiganbayan's 25 April 1994 Decision came out. At that time, the 11 April 1986 and 15 June 1988 writs of sequestration were presumed valid.

4. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); SEQUESTRATION; SHARES PRESUMED TO HAVE BEEN REGULARLY SEQUESTERED; PCGG'S ACT OF VOTING THE SHARES OF STOCK IN CASE AT BAR, CONSIDERED VALID.— In *Republic of the Philippines v. Sandiganbayan*, the Court held that PCGG's act of voting the shares of stock in the names of Victor, Aerocom and Polygon was valid because, at that time, the shares of stock were presumed to have been validly sequestered. The Court stated: x x x "x x x **[T]hat this Court rendered decisions holding that the shares of Africa, AEROCOM and POLYGON are not or no longer sequestered is of little consequence since the decisions were promulgated *after* the Sandiganbayan issued its resolution granting the PCGG authority to call and hold the stockholders meeting to increase the authorized capital stock. At that time, the shares were presumed to have been regularly sequestered."**

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

M.M. Lazaro & Associates for Silangan Investor and Managers, Inc.

Rilloraza Africa De Ocampo & Africa for Polygon Investors and Managers Incorporated.

D E C I S I O N

CARPIO, *Acting C.J.*:

The Case

G.R. Nos. 167055 and 167056 involve a petition for *certiorari* and prohibition under Rule 65 of the Rules of Court. The petition[1] challenges the 21 June 2004 Resolution[2] and 23 December 2004 Joint Resolution[3] of the Sandiganbayan, Third Division, in Civil Case Nos. 0126 and 0127. The Sandiganbayan ordered the Land Bank of the Philippines (Land Bank), Commission on Audit Branch, Commonwealth Avenue, Quezon City, to release to Silangan Investors and Managers, Inc. (Silangan) its cash dividends, with interest, declared by Oceanic Wireless Network, Inc. (Oceanic). Fifteen percent of the total amount shall be paid to M.M. Lazaro & Associates as contingent fee.

G.R. No. 170673 is a petition for *certiorari* and prohibition under Rule 65 of the Rules of Court. The petition[4] challenges the 7 July[5] and 25 October[6] 2005 Resolutions of the Sandiganbayan, Third Division, in Civil Case No. 0127. The Sandiganbayan ordered the Land Bank to release to Polygon Investors and Managers, Inc. (Polygon) its cash dividends, with interest, declared by Oceanic.

In its 22 March 2006 Resolution,[7] the Court consolidated G.R. No. 170673 with G.R. Nos. 167055 and 167056.

---

[1] *Rollo* (G.R. Nos. 167055-56), pp. 18-64.

[2] *Id.* at 7-9. Penned by Associate Justice Godofredo L. Legaspi, with Associate Justices Raoul V. Victorino and Norberto Y. Geraldez, concurring.

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

[4] *Rollo* (G.R. No. 170673), pp. 23-63.

[5] *Id.* at 9-15. Penned by Associate Justice Godofredo L. Legaspi, with Associate Justices Efren N. De La Cruz and Norberto Y. Geraldez, concurring.

[6] *Id.* at 18-19.

[7] *Id.* at 349.

The Facts

Silangan and Polygon owned 25,429 (39.999%) and 12,700 (19.977%) shares of stock, respectively, in Oceanic.

On 11 April 1986, the Presidential Commission on Good Government (PCGG) issued a writ[8] of sequestration against Roberto S. Benedicto (Benedicto), Jose L. Africa (Jose), Victor A. Africa (Victor), and Alfredo L. Africa, stating:

> The Presidential Commission on Good Government by authority of the President of the Philippines, hereby orders the sequestration of the shares which belong to or are owned or controlled by ROBERTO S. BENEDICTO, JOSE L. AFRICA, VICTOR A. AFRICA AND ALFREDO L. AFRRICA (sic) in the following business entities, including whatever emoluments or benefits may be due the said shares in:
>
> 1. Philippine Overseas Telecommunications Corp.
> 2. Philippine Communications Satellite Corp.
> 3. Eastern Telecommunications Phils.
> 4. Domestic Satellite Corporation
> 5. **Oceanic Wireless Network, Inc.**
> 6. Philippine Consultancy Systems, Inc.
> 7. Premiere Building Administration Corp.
> 8. All Subsidiaries Organizations emanating from the above-named Corporations
> 9. All other business enterprises or entities in which the above-named individuals directly or in directly [sic] own or hold any form of interest.[9] (Emphasis supplied)

On 27 July 1987, PCGG filed before the Sandiganbayan a complaint[10] for reconveyance, accounting and damages against Jose, Manuel H. Nieto, Jr. (Nieto, Jr.), Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Benedicto, Juan Ponce Enrile, and Potenciano Ilusorio. The case was docketed as Civil Case No. 0009.

---

[8] *Rollo* (G.R. Nos. 167055-56), p. 79.

[9] *Id.*

[10] *Id.* at 82-106.

On 15 June 1988, PCGG issued writs[11] of sequestration against Aerocom Investors and Managers, Inc. (Aerocom) and Polygon, stating, "By virtue of the authority vested in the Commission, the above-named [companies are] hereby placed under sequestration, together with all of the shares of stock, office premises, records, documents, assets and other properties thereof."[12]

By virtue of the writs of sequestration, PCGG sequestered majority of Oceanic's shares of stock and took over its management. PCGG voted the shares of stock registered in the names of Silangan and Polygon, reorganized the board of directors, elected its own set of officers, and declared cash dividends.

On 3 November 1990, Benedicto and PCGG entered into a compromise agreement,[13] stating:

NOW, THEREFORE, for and in consideration of the foregoing premises, parties hereunto agree as they hereby agree to execute the following reciprocal cessions and concessions:

I. Property Cessions by BENEDICTO To The Government:

a) Cession to the Government by BENEDICTO and/or of his group-controlled corporations/businesses of their shareholdings/dividends/deposits Indicated In Annex "A" hereof.

x x x x x x x x x

CESSION TO THE GOVERNMENT:

I. PHILIPPINE ASSETS:

x x x x x x x x x

2. Oceanic Wireless Network, Inc.
51% of the equity belonging to

---

[11] *Id.* at 80-81.

[12] *Id.*

[13] *Id.* at 112-122.

Benedicto/and or [sic] his companies
₱1,014.00/share book value . . . . . 13,538,765.00 M.[14]

On 29 July 1991, PCGG filed before the Sandiganbayan a complaint[15] for injunction and damages against Victor, Jose, Nieto, Jr., and Juan De Ocampo, praying:

> WHEREFORE, it is respectfully prayed that this Honorable Court:
>
> 1. Immediately issue a Temporary Restraining Order enjoining the defendants and all persons acting for them from interfering with the work and functions and business transactions of [Oceanic's] present PCGG-installed Board and Management; until proper proceedings are filed by defendants and finally decided, resolving the legitimacy of the present PCGG-installed Board and Management, the defendants and their agents should be restrained from representing themselves as supposed [Oceanic] Directors or officers, or from acting as such, likewise stopping defendants from further sending to [Oceanic's] clients, suppliers, depositary banks, and other entities, letters or demands.[16]

The case was docketed as Civil Case No. 0126.

On 1 August 1991, Jose, Nieto, Jr., Andres L. Africa, Aerocom, Polygon, Belgor Investment, Inc., and Silangan filed before the Sandiganbayan a petition[17] for *certiorari* and prohibition under Rule 65 of the Rules of Court against PCGG. For this purpose, Silangan engaged the services of M.M. Lazaro & Associates and agreed to pay 15% of the total amount it may recover as contingent fee. The case was docketed as Civil Case No. 0127. The Sandiganbayan jointly heard Civil Case Nos. 0126 and 0127.

In its 7 March 1994 Order,[18] the Sandiganbayan issued a writ of execution of the 3 November 1990 compromise agreement, stating:

---

[14] *Id.* at 114-119.

[15] *Id.* at 124-133.

[16] *Id.* at 132.

[17] *Id.* at 156-190.

[18] *Id.* at 123.

Acting on the motion of counsel for the plaintiff, the parties being cognizant of the fact that partial execution of the Compromise Agreement had already been implemented, it appearing that the judgment on a compromise in respect to defendant former Ambassador Roberto Benedicto has become final and executory, let a writ of execution issue as prayed for.[19]

In its 25 April 1994 Decision,[20] the Sandiganbayan held that (1) the 15 June 1988 writs of sequestration were void because the PCGG failed to commence judicial action within the required six-month period; (2) the 11 April 1986 writ of sequestration was void because it was signed by only one commissioner; and (3) the acts of PCGG in managing Oceanic were void. The dispositive portion of the Decision reads:

WHEREFORE, judgment is hereby rendered as follows:

(1) Declaring as null and void the PCGG writs of sequestration, dated June 15, 1988 against Aerocom Investors & Managers, Inc., Polygon Investors & Managers, Inc., Silangan Investors & Managers, Inc. and Belgor Investments, Inc. for the reason that the said writs of sequestration were deemed automatically lifted for failure of the PCGG to commence the necessary judicial action against the said corporations within the required six-month period pursuant to Section 26 of Article XVIII of the 1987 Constitution.

(2) Declaring as null and void the order of sequestration, dated April 11, 1986, relative to the [Oceanic] shares owned by Jose L. Africa and Victor A. Africa on the ground that the said order of sequestration was signed only by PCGG Commissioner Mary Concepcion Bautista in violation of Section 3 of the Rules & Regulations of the PCGG requiring the signatures of at least two Commissioners on such order of sequestration.

(3) Declaring as null and void the acts and conduct of PCGG, its agents, nominees and representatives in reorganizing and taking over the Board of Directors and management of [Oceanic].[21]

---

[19] *Id*.

[20] *Id.* at 224-246. Penned by Associate Justice Sabino R. De Leon, Jr., with Associate Justices Regino Hermosisima, Jr. and Cipriano A. Del Rosario, concurring.

[21] *Id*. at 242-243.

PCGG filed a motion for reconsideration, which was denied by the Sandiganbayan in its 30 March 1995 Resolution.

In its 31 July 1998 Order,[22] the Sandiganbayan placed the cash dividends declared by Oceanic in *custodia legis*. The Sandiganbayan ordered PCGG to "convey or transmit to this Court such [Oceanic] Cash dividends together with the accrued interest thereto, if any, for immediate placement in *custodia legis*."[23]

PCGG filed before the Court a petition for review on *certiorari* under Rule 45 of the Rules of Court, challenging the Sandiganbayan's 25 April 1994 Decision. In *Presidential Commission on Good Government v. Sandiganbayan*,[24] the Court affirmed the Sandiganbayan's Decision. The Court held that:

> We find the writ of sequestration issued against [Oceanic] not valid because the suit in Civil Case No. 0009 against Manuel H. Nieto and Jose L. Africa as shareholders in [Oceanic] is not a suit against [Oceanic]. This Court has held that "failure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would in effect be disregarding their distinct and separate personality without a hearing."
>
> Furthermore, PCGG issued the writs of sequestration on August 3, 1988, which was beyond the period set by the Constitution.
>
> x x x x x x x x x
>
> The sequestration orders issued against respondents shall be deemed automatically lifted due to the failure of PCGG to commence the proper judicial action or to implead the respondents therein within the period prescribed by Article XVIII, Section 26 of the 1987 Constitution.
>
> x x x x x x x x x

---

[22] *Rollo* (G.R. No. 170673), p. 184.

[23] *Id.*

[24] 418 Phil. 8 (2001).

The Fallo

WHEREFORE, the petitions are hereby *DENIED*. The decision and resolution of the Sandiganbayan are hereby *AFFIRMED*.[25]

PCGG filed a motion for reconsideration, which was denied by the Court. *Presidential Commission* became final and executory and was entered in the Book of Entries of Judgments on 19 February 2003.

On 10 April 2003, Victor filed before the Sandiganbayan a motion[26] for issuance of writ of execution to implement the 25 April 1994 Decision. On 15 April 2003, Nieto, Jr., Aerocom, Silangan, Jose, and Oceanic filed a motion adopting Victor's motion for issuance of writ of execution. On 30 September 2003, the Sandiganbayan issued the writ, which was implemented.

Silangan filed before the Sandiganbayan an omnibus motion,[27] dated 6 February 2004, praying for the release of its cash dividends, with interest, declared by Oceanic:

WHEREFORE, it is respectfully prayed of this Honorable Court that an order be issued as follows:

x x x x x x x x x

2) DIRECTING the release in favor of, and payment to **SILANGAN** of the cash dividends declared by [Oceanic], including the interests thereof, and deposited/placed in escrow by authority of this Honorable Court with the PNB, Land Bank, Bureau of Treasury or any other banking institution, in the aggregate sum of **₱54,337,852.61**, less the amount equivalent to FIFTEEN (15%) PERCENT thereof as contingent fee to be paid directly to the undersigned counsel, with the express conformity of SILANGAN.[28]

PCGG filed a comment,[29] dated 26 February 2004, to Silangan's 6 February 2004 omnibus motion, stating:

---

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

[26] *Rollo* (G.R. No. 170673), pp. 295-299.

[27] *Rollo* (G.R. Nos. 167055-56), pp. 257-266.

[28] *Id.* at 264.

[29] *Id.* at 267-270.

2. While PCGG does not have any objections to the release of the dividends to the private individuals and corporations, as well as their payment of whatever attorney's fees may have been agreed upon between them and their lawyers, PCGG however would invite the attention of the Honorable Court to the fact that it is also entitled to its share of the dividends and interest due thereon;

3. In the Compromise Agreement entered into by and between the REPUBLIC/PCGG and Roberto S. Benedicto on November 3, 1990, the latter ceded to the government "51% of the equity belonging to Benedicto and/or his companies" in [Oceanic]. x x x

4. While Roberto S. Benedicto owns only 115 shares in [Oceanic], his companies which are identified as Belgor Investments, Inc. and Silangan Investors & Managers, Inc. own 12,600 and 25,429 shares respectively or a total equity of 38,134 shares of stock.

5. Thus, by virtue of the compromise agreement, the REPUBLIC/ PCGG is entitled to receive 51% of the cash dividends and interests due on the ceded shares of Roberto S. Benedicto and his two companies.

6. Also, to the extent that FIFTY-ONE PERCENT (51%) of the dividends and interests due to Belgor and Silangan are owned by the REPUBLIC, to that same extent must they be excluded from any computation of attorney's fees due to any lawyer of the other parties, since said lawyers could not have represented the interests of the REPUBLIC.[30]

In response to PCGG's 26 February 2004 comment, Silangan filed a motion,[31] dated 1 June 2004, for the release of the uncontested 49% of the cash dividends, with interest, declared by Oceanic.

Polygon filed before the Sandiganbayan a motion,[32] dated 12 July 2004, for the release of its cash dividends, with interest, declared by Oceanic.

---

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

[31] *Id.* at 313-316.

[32] *Rollo* (G.R. No. 170673), pp. 203-204.

Civil Case No. 0009 was transferred from the Fourth Division to the Third Division of the Sandiganbayan.

The Sandiganbayan's Ruling

In its 21 June 2004 Resolution, the Sandiganbayan granted Silangan's 1 June 2004 motion and released the uncontested 49% of the cash dividends, with interest, declared by Oceanic. The Sandiganbayan held that:

> Since the PCGG interposed no objection to the release of 49% of the dividends and interest due to Silangan, hence, the instant motion.
>
> When the motion at bar was called for hearing on June 4,2004 at 2:00 o'clock in the afternoon, Atty. Jose de Veyra for the PCGG maintained the same position of the PCGG that it has no objection to the release of the 49% cash dividends including the interest declared by [Oceanic] in favor of the movant Silangan Investors and Managers, Inc.
>
> PREMISES CONSIDERED, the Court GRANTS the motion and orders the Land Bank, COA Branch, Commonwealth Avenue, Quezon City to release and pay to Silangan Investors and Managers, Inc. the amount equivalent to 49% of the cash dividends including interest thereon declared by [Oceanic] due to Silangan Investors and Managers, Inc. and deposited in the Escrow acoounts of Civil Case No. 0009, entitled "*Republic versus Africa, et al.,*" with the said Bank, 15% of which shall be given directly to M.M. Lazaro and Associates thru Atty. Manuel M. Lazaro, as contingent attorney's fees, subject to the payment of Clerk's Commission for the care and custody of the said sum of money pursuant to the schedule of legal fees issued by the Supreme Court effective June 15, 2000, the same shall form part of the Judiciary Development Funds.[33]

PCGG filed a motion[34] for reconsideration, dated 7 July 2004, raising as issues that:

I.

In releasing the cash dividends due Silangan Investors & Managers, Inc. even if only 49% thereof, the Honorable Court exceeded its

---

[33] *Rollo* (G.R. Nos. 167055-56), pp. 8-9.

[34] *Id.* at 317-323.

jurisdiction considering that the whole equity of Silangan in [Oceanic] is being claimed by the government in Civil Case No. 0009;

II.

It is not for the Honorable Court to rule on the issue of attorney's fees as there was no issue or claim in these cases raised by the parties.[35]

In its 23 December 2004 Joint Resolution, the Sandiganbayan denied PCGG's 7 July 2004 motion for reconsideration and granted Silangan's 6 February 2004 omnibus motion. The Sandiganbayan held that:

In the instant PCGG's Motion for Reconsideration, the PCGG claims that not only 51% but 100% of 25,249 shares of Silangan in [Oceanic] is being claimed by the Government. The same has no basis. It was the 51% equity of Roberto S. Benedicto in Silangan that was ceded by the latter to the Government.

The 51% equity of Roberto S. Benedicto is in Silangan and not in [Oceanic]. By virtue thereof, the Government took over from Roberto S. Benedicto and became one of the stockholders of Silangan owning 51% shares of stock. The government became a stockholder of [Oceanic] only to the extent of the 115 shares of stocks [sic] of Roberto S. Benedicto in [Oceanic].

Only the stockholders of [Oceanic] are entitled to the cash dividends declared by the said corporation. Silangan, being one of the stockholders of [Oceanic] is entitled to the cash dividends due to its [sic] equivalent to 40% of the total cash dividends or in the amount of ₱54,337,852.61.

Clearly, the Government's claim on the cash dividends declared by [Oceanic] in favor of Silangan is pre-mature. The government will only be entitled to cash dividends received by Silangan from [Oceanic] only if Silangan will declare cash dividends to its stockholders, the Government being just one of its stockholders.

It was Silangan, as a corporation with separate and distinct personality from its stockholders that engaged the services of M.M. Lazaro and Associates with attorney's fees on a contingent basis of

---

[35] *Id.* at 317-318.

20%, which was reduced to 15% of whatever amount that maybe recovered or collected by Silangan.

It was the law firm M.M. Lazaro and Associates which filed Civil Case No. 0127, entitled "*Jose L. Africa, et al. vs. PCGG, et al.*" for *Certiorari* and Prohibition with Preliminary Injunction and Restraining Order on August 1, 1991. It was by reason of this case that the writs of sequestration against [Oceanic], Silangan and other majority stockholders of [Oceanic] were lifted and set aside. The writs of sequestration having been lifted, [Oceanic] declared cash dividends to its stockholders. Considering that the Omnibus Motion praying for the payment of attorney's fees of M.M. Lazaro and Associates is with the conformity of Silangan thru [sic] its President Manuel H. Nieto, Jr., the Court may act on it and grants the same in the interest of justice.

The Motion for Reconsideration dated July 7, 2004 filed by the PCGG, which is intertwined with the instant Omnibus Motion is for the same reasons, denied.

PREMISES CONSIDERED,

1. The PCGG's Motion for Reconsideration is DENIED for lack of merit.

2. The Silangan's Omnibus Motion is hereby GRANTED.

The Land Bank of the Philippines, COA Branch, Commonwealth Avenue, Quezon City is ordered to release and pay to Silangan Investors and Managers, Inc. the entire cash dividends, including interest earned in the amount of ₱54,337,852.61, declared by [Oceanic] due to Silangan Investors and Managers, Inc. and deposited in the Escrow accounts of Civil Case No. 0009 entitled, "*Republic of the Philippines vs. Jose L. Africa, et al.*", with the said Bank. The 15% of which, with the conformity of the Silangan Investors and Managers, Inc. shall be given to M.M. Lazaro and Associates thru Atty. Manuel M. Lazaro, as his contingent attorney's fees.[36]

In its 7 July 2005 Resolution, the Sandiganbayan granted Polygon's 12 July 2004 motion. The Sandiganbayan held that:

The sequestration of the [Oceanic] shares of Polygon Aerocom, Silangan, Belgor, Jose L. Africa and Victor A. Africa were [sic]

---

[36] *Id.* at 13-15.

declared null and void in the decision issued in this case dated April 25, 1994 x x x.

On September 21, 2001, the Supreme Court affirmed *in toto* the Sandiganbayan decision dated April 25, 1994 which lifted among others the sequestration against Polygon *et al.* On February 19, 2003, the Supreme Court issued the corresponding Entry of Judgment which states that as of February 21, 2002, the aforesaid decision has become final and executory. Thus, the Sandiganbayan issued a writ of execution dated September 30, 2003 to implement its decision dated April 25, 1994, as affirmed by the Supreme Court. The writ of execution was implemented and the records and documents and management of [Oceanic] were turned over to the new management of Africa-Nieto group.

Thus, the release of dividends including the interest earned declared by [Oceanic] and due to Polygon Investors and Managers, Inc. is in order.

PREMISES CONSIDERED, the Court grants the Motion and orders the Land Bank of the Philippines, COA Branch, Commonwealth Avenue, Quezon City to release and pay to Polygon Investors and Managers, Inc. the amount of ₱25,786,357.59 equivalent to 19.977% of the total dividends declared by [Oceanic] for Class "A" shares, together with accrued interest.[37]

PCGG filed a motion[38] for reconsideration, dated 20 July 2005, raising as issue that "the dividends sought to be released by Polygon are held in *custodia legis* by the Sandiganbayan (Fourth Division) in favor of whoever will eventually be held the rightful owner thereof in the principal case, Civil Case No. 0009."[39]

In its 25 October 2005 Resolution, the Sandiganbayan denied PCGG's 20 July 2005 motion for reconsideration. The Sandiganbayan held that, "Since Polygon is not sequestered, its shares are not sequestered too, and its dividends which follow the principal are not also sequestered, Polygon is entitled to

---

[37] *Rollo* (G.R. No. 170673), pp. 12-14.

[38] *Id.* at 227-243.

[39] *Id.* at 240.

receive its share on [sic] the dividends declared by [Oceanic] to its Class "A" shareholders in the amount of ₱25,786,357.59."[40]

Hence, the present petitions.

The Issues

PCGG raises as issues that the Sandiganbayan committed grave abuse of discretion when it ordered the release of the cash dividends, with interest, to Silangan and Polygon because (1) the cash dividends were under *custodia legis*, and (2) the acts of PCGG in managing Oceanic — including the declaration of cash dividends — were void.

The Court's Ruling

The petitions are unmeritorious.

PCGG claims that the Sandiganbayan committed grave abuse of discretion when it ordered the release of the cash dividends, with interest, to Silangan and Polygon because the cash dividends are under *custodia legis*. PCGG states that, "The Order dated July 31, 1998 of the Sandiganbayan (Fourth Division), specifically placing the cash dividends in *custodia legis*, prevents respondent Court from acquiring jurisdiction over the subject cash dividends for purposes of distribution."[41]

The Court is not impressed. In petitions for *certiorari* under Rule 65 of the Rules of Court, petitioner must show that respondent tribunal acted with grave abuse of discretion. In *Angara v. Fedman Development Corporation*,[42] the Court held that:

> *Certiorari* under Rule 65 is a remedy narrow in scope and inflexible in character. It is not a general utility tool in the legal workshop. It offers only a limited form of review. Its principal function is to keep an inferior tribunal within its jurisdiction. It can be invoked only for an error of jurisdiction, that is, one where the act complained

---

[40] *Id.* at 19.

[41] *Rollo* (G.R. Nos. 167055-56), pp. 51-52.

[42] 483 Phil. 495 (2004).

of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or excess of jurisdiction.[43]

In *Garcia, Jr. v. Court of Appeals*,[44] the Court defined grave abuse of discretion:

> Grave abuse of discretion is defined as such capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[45]

PCGG failed to show that the Sandiganbayan acted with grave abuse of discretion. The Resolutions ordering the release to Silangan and Polygon of their Oceanic cash dividends, with interest, were grounded on sound legal and factual bases: (1) PCGG agreed to the release to Silangan of 49% of its cash dividends, with interest; (2) Benedicto ceded to the government his 51% equity in Silangan, not Oceanic; (3) Silangan, being a stockholder of Oceanic, was entitled to the cash dividends declared by the company; (4) Silangan engaged the services of M.M. Lazaro & Associates and agreed to pay 15% of the total amount it may recover as contingent fee; (5) in its 25 April 1994 Decision, the Sandiganbayan declared void PCGG's sequestration of the Oceanic shares of stock in the names of Polygon, Aerocom, Silangan, Belgor, Jose and Victor — Silangan and Polygon were not sequestered; (6) In *Presidential Commission*, the Court affirmed the Sandiganbayan's 25 April 1994 Decision; (7) *Presidential Commission* became final and executory and was entered in the Book of Entries of Judgments; (8) the Sandiganbayan issued a writ of execution, dated 30 September 2003, to implement the 25 April 1994 Decision; and (9) the 30 September 2003 writ of execution was implemented.

---

[43] *Id.* at 505.

[44] G.R. No. 185132, 24 April 2009, 586 SCRA 799.

[45] *Id.* at 812-813.

Silangan and Polygon are entitled to their Oceanic cash dividends, with interest, because they are not sequestered or impleaded in Civil Case No. 0009. In *PCGG v. Sandiganbayan*,[46] the Court affirmed the Resolutions of the Sandiganbayan ordering the release to Aerocom of its cash dividends because Aerocom was not sequestered or impleaded in Civil Case No. 0009. The Court stated:

> During the pendency of Civil Case No. 0044, Aerocom filed on July 5, 1995 a Manifestation and Motion praying that the Sandiganbayan direct the PCGG to release and distribute the dividends pertaining to the shares of Aerocom in all corporations where it owns shares of stock. x x x
>
> The Sandiganbayan in its Resolution promulgated on January 31, 1996 acted favorably on Aerocom's Manifestation and Motion and thus ordered the PCGG to release the dividends pertaining to Aerocom except the dividends on the sequestered shares of stock registered in the names of Manuel Nieto and Jose Africa in POTC, ETPI and Aerocom x x x.
>
> After a motion for reconsideration thereof was denied by the Sandiganbayan per Resolution promulgated on May 7, 1996, the PCGG filed the present petition for *certiorari* on August 16, 1996 assailing the Sandiganbayan order for the release of the dividends as having been issued with grave abuse of discretion. x x x
>
> The petition must fail.
>
> x x x x x x x x x
>
> x x x A writ of sequestration x x x runs the risk of being struck down as invalid if and when the twin requirements of issuance and service are not satisfied within the deadline.
>
> Such is the fate of the subject writ of sequestration, unfortunately. Whether the 18-month period expired on July 26, 1988 (as claimed by Aerocom, in line with the computation of time under Article 13 of the Civil Code and the ruling in "*National Marketing Corp. v. Tecson*," 29 SCRA 70) or on August 2, 1988 (the PCGG's position), the fact remains that service of the writ on Aerocom on August 3, 1988 was made beyond these dates. x x x

---

[46] 353 Phil. 80 (1998).

x x x The PCGG cannot justify its failure, as found by the Sandiganbayan, to file the corresponding judicial action against Aerocom within the six (6)-month period as provided for under the same constitutional provision in focus (Section 26, Article XVIII, second paragraph) by the fact that Aerocom was mentioned in the complaint of the PCGG in Civil Case No. 0009 (the Nieto, Africa, *et al.* case) and in Annex "A" thereof notwithstanding that **Aerocom was not impleaded as party-defendant**, and on the argument that the filing of Civil Case No. 0009 against the "Nieto, Africa, *et al.* group" is enough compliance with the "judicial action" requirement. x x x

There is no existing sequestration to talk about in this case, as the writ issued against Aerocom, to repeat, is invalid for reasons hereinbefore stated. *Ergo*, the suit in Civil Case No. 0009 against Mr. Nieto and Mr. Africa as shareholders in Aerocom is not and cannot *ipso facto* be a suit against the unimpleaded Aerocom itself without violating the fundamental principle that a corporation has a legal personality distinct and separate from its stockholders. Such is the ruling laid down in *PCGG v. Interco* reiterated anew in a case of more recent vintage — *Republic v. Sandiganbayan, Sipalay Trading Corp. and Allied Banking Corp.* where this Court, speaking through Mr. Justice Ricardo J. Francisco, hewed to the lone dissent of Mr. Justice Teodoro R. Padilla in the very same *Republic v. Sandiganbayan* case herein invoked by the PCGG, to wit:

> "x x x failure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would in effect be disregarding their distinct and separate personality without a hearing.
>
> "In cases where stocks of a corporation were allegedly the fruits of ill-gotten wealth, it should be remembered that in most of these cases the stocks involved constitute a substantial if not controlling interest in the corporations. The basic tenets of fair play demand that these corporations be impleaded as defendants since a judgment in favor of the government will undoubtedly substantially and decisively affect the corporations as distinct entities. The judgment could strip them of everything without being previously heard as they are not parties to the action in which judgment is rendered.

> "x x x. Holding that the 'corresponding judicial action or proceeding' contemplated by the Constitution is any action concerning or involving the corporation under sequestration is oversimplifying the solution, the rsult (sic) of which is antagonistic to the principles of justice and fair play.
>
> "x x x *the actions contemplated by the Constitution should be those which include the corporation not as a mere annex to the complaint but as defendant. This is the minimum requirement of the due process guarantee*. Short of being impleaded, the corporation has no standing in the judicial action. It cannot adequately defend itself. It may not even be heard.[47] (Emphasis supplied)

PCGG claims that the Sandiganbayan committed grave abuse of discretion when it ordered the release of the cash dividends, with interest, to Silangan and Polygon because the acts of PCGG in managing Oceanic — including the declaration of cash dividends — were void. PCGG states that:

> In *PCGG, et al. v. Sandiganbayan, et al.*, 365 SCRA 538, 549 (2001), this Honorable Court affirmed respondent Court's declaration that all actions of the PCGG-constituted [Oceanic] Board are null and void. Such actions include the aforesaid declaration of dividends. Therefore, private [respondents have] no legal basis to claim the dividends.[48]

The Court is not impressed. Again, PCGG failed to show that the Sandiganbayan acted with grave abuse of discretion. The Sandiganbayan correctly held that Silangan and Polygon were entitled to their Oceanic cash dividends, with interest, because the declaration of cash dividends was valid. PCGG declared the cash dividends before the Sandiganbayan's 25 April 1994 Decision came out. At that time, the 11 April 1986 and 15 June 1988 writs of sequestration were presumed valid.

In *Republic of the Philippines v. Sandiganbayan*,[49] the Court held that PCGG's act of voting the shares of stock in the

---

[47] *Id.* at 85-92.

[48] *Rollo* (G.R. Nos. 167055-56), pp. 55-56.

[49] 450 Phil. 98 (2003).

names of Victor, Aerocom and Polygon was valid because, at that time, the shares of stock were presumed to have been validly sequestered. The Court stated:

> FINALLY, the question on the validity of the PCGG's voting the Class "A" shares to increase the authorized capital stock of ETPI.
>
> In his petition in G.R. No. 147214, Africa faults the Sandiganbayan for failing to acknowledge, in its Resolution of February 16, 2001, the Decisions of this Court declaring that his shares in ETPI and those of AEROCOM and POLYGON (Polygon Investors & Managers, Inc.) were not sequestered. Hence, so he contends, they, and not the PCGG, should have been allowed to vote their respective shares during the meeting.
>
> x x x [**T**]**hat this Court rendered decisions holding that the shares of Africa, AEROCOM and POLYGON are not or no longer sequestered is of little consequence since the decisions were promulgated *after* the Sandiganbayan issued its resolution granting the PCGG authority to call and hold the stockholders meeting to increase the authorized capital stock. At that time, the shares were presumed to have been regularly sequestered**.[50] (Emphasis supplied)

WHEREFORE, the petitions are *DISMISSED*. The Court *AFFIRMS* the 21 June 2004 Resolution and 23 December 2004 Joint Resolution of the Sandiganbayan, Third Division, in Civil Case Nos. 0126 and 0127, and the 7 July 2005 and 25 October 2005 Resolutions of the Sandiganbayan, Third Division, in Civil Case No. 0127.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.*, concur.

---

[50] *Id.* at 142-143.

SECOND DIVISION

[G.R. No. 168959. March 25, 2010]

NAPOLEON MAGNO, *petitioner, vs.* **GONZALO FRANCISCO and REGINA *VDA. DE* LAZARO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE GENERALLY CONCLUSIVE UPON THE SUPREME COURT; EXCEPTION; PRESENT IN CASE AT BAR.— It is well-settled that this Court is not a trier of facts. The factual findings of the CA are regarded as final, binding and conclusive upon this Court, especially when supported by substantial evidence. However, there are recognized exceptions to this rule, such as when the factual findings of the CA are contrary to those of the quasi-judicial agency. In this case, the factual findings of the CA and the DARAB are conflicting; thus, we are compelled to look at the factual milieu of this case and review the records. The CA had also overlooked certain relevant facts undisputed by the parties, which, if properly considered, would justify a different conclusion.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; DEPARTMENT OF AGRARIAN REFORM (DAR) AND DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); JURISDICTION.— In *Department of Agrarian Reform v. Abdulwahid*, the Court, quoting *Centeno v. Centeno*, held: "[T]he DAR is vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have the exclusive jurisdiction over all matters involving the implementation of the agrarian reform program. The DARAB has primary, original and appellate jurisdiction 'to determine and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program under RA No. 6657, E.O. Nos. 229, 228 and 129-A, R.A. No. 3844 as amended by R.A. No. 6389, P.D. No. 27

and other agrarian laws and their implementing rules and regulations."

3. ID.; ID.; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); AGRARIAN DISPUTE, DEFINED.— Agrarian dispute as defined in Section 3(d) of Republic Act (RA) No. 6657 refers "to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee."

4. ID.; ID.; DARAB RULES OF PROCEDURE; AGRARIAN LAW IMPLEMENTATION CASES; DAR SECRETARY; HAS AUTHORITY TO CLASSIFY AND IDENTIFY LANDHOLDINGS FOR COVERAGE UNDER THE AGRARIAN REFORM PROGRAM; CASE AT BAR.— It is undisputed that petitioner and respondents have an established tenancy relationship, such that the complaint for collection of back rentals and ejectment is classified as an agrarian dispute and under the jurisdiction of the PARAD and thereafter by the DARAB. However, in view of the conflicting claims where petitioner asserted ownership over the lot and respondents emphasized that the lot is subject to OLT coverage, there is a need to ascertain if the lot is under the agrarian reform program. Since the classification and identification of landholdings for coverage under the agrarian reform program are Agrarian Law Implementation cases, the DAR Secretary should first resolve this issue. x x x Therefore, the PARAD of Cabanatuan City had no authority to render a decision declaring the lot under OLT coverage. In fact, when the case was appealed, the DARAB acknowledged that it had no jurisdiction on the OLT coverage. In an Order dated 10 October 2002, the DARAB suspended the case proceedings until the submission of the result of the

administrative determination of the lot and thus submitted the entire records to the DAR Secretary. Respondents themselves admitted in their Memorandum that the DAR has not submitted the result of its administrative determination of the lot to the DARAB. It is therefore essential that the DAR Secretary should first resolve the issue on the lot's inclusion or exclusion from OLT coverage before a final determination of this case can be had. Proof necessary for the resolution of the issues on OLT coverage and petitioner's right of retention should be introduced in the proper forum. The Office of the DAR Secretary is in a better position to resolve these issues being the agency lodged with such authority since it has the necessary expertise on the matter.

APPEARANCES OF COUNSEL

Marius F. Carlos for petitioner.
Felipe R. De Belen for respondents.

D E C I S I O N

CARPIO, *Acting C.J.*:

The Case

Napoleon Magno (petitioner) filed this Petition for Review[1] to reverse the Court of Appeals' (CA) Decision[2] dated 4 July 2005 in CA-G.R. SP No. 84467. In the assailed decision, the CA set aside the Department of Agrarian Reform Adjudication Board's (DARAB) Decision dated 8 January 2004 and reinstated the Decision dated 22 December 1993 of the Provincial Agrarian Reform Adjudicator (PARAD) of Cabanatuan City. The PARAD dismissed petitioner's action for collection of lease rentals and ejectment against Gonzalo Francisco and Regina *Vda. De* Lazaro (respondents).

---

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

[2] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Portia Aliño-Hormachuelos, and Vicente Q. Roxas, concurring.

The Facts

Petitioner is the owner of a 5.3 hectare lot (lot) which is a portion of an agricultural land identified as Lot No. 593 situated in Brgy. San Fernando, Cabiao, Nueva Ecija. Petitioner's lot is part of the 13 parcels of land registered in the name of petitioner's mother, Maria Candelaria Salud Talens (Talens). Talens' landholding totals 61 hectares, more or less.

Petitioner acquired the lot through a Deed of Sale executed by Talens on 28 July 1972,[3] but the sale was only registered on 3 September 1986.[4] At the time of the sale, Gonzalo Francisco and Manuel Lazaro tenanted the land and their separate areas of tillage were 2.8 and 2.5 hectares, respectively.[5]

Petitioner entered into a written contract of agricultural leasehold with Manuel Lazaro on 5 October 1972[6] and with Gonzalo Francisco on 7 August 1980.[7] In the leasehold contract, Manuel Lazaro was obliged to pay a lease rental of 35 cavans during the regular season, and 20 cavans during *dayatan* cropping season. Gonzalo Francisco, on the other hand, was required to pay a lease rental of 35 cavans during the regular season and 25 cavans during the cropping season.[8]

Gonzalo Francisco and Manuel Lazaro (who was succeeded by his surviving spouse Regina *Vda. De* Lazaro upon his death) complied with the conditions of the agricultural leasehold until the regular season of April 1991 when they stopped paying rentals despite petitioner's repeated demands.[9] Respondents believed that they have fully paid the price of the lot under

---

[3] Records, pp. 12-14.

[4] *Id.* at 49.

[5] *Rollo,* p. 17.

[6] Records, pp. 8-9.

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

[8] *Rollo,* p. 17.

[9] *Id.*

the Barangay Committee on Land Production's (BCLP) valuation.[10]

On 10 January 1990, Gonzalo Francisco was issued Emancipation Patent (EP) No. 416156 covering an area of 27,284 square meters. On the same date, Manuel Lazaro was also issued EP No. 416157[11] covering an area of 25,803 square meters.[12]

On 19 May 1993, petitioner filed with PARAD of Cabanatuan City a complaint for ejectment and collection of lease rentals against respondents. At the time of filing of the complaint, respondent Francisco and respondent Lazaro were already in arrears of 155 cavans and 145 cavans, respectively.[13]

Respondents sought the dismissal of the complaint invoking the following arguments:

1. The leasehold contracts are without force and effect since the lot was under the Operation Land Transfer (OLT) program pursuant to Presidential Decree No. (PD) 27.[14] The sale executed by Talens was merely designed to exclude the land from OLT coverage.
2. Since the lot value, as determined and approved by the Department of Agrarian Reform (DAR), has been paid, the collection of lease rentals is now moot.
3. Respondents are now considered owners-cultivators of their respective landholdings and cannot be ejected.[15]

---

[10] *Id.* at 49.

[11] Records, p. 75.

[12] CA *rollo*, pp. 57-58.

[13] Records, pp. 15-18.

[14] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefore, 21 October 1972.

[15] *Rollo*, pp. 99-100.

On 22 December 1993, the PARAD of Cabanatuan City dismissed the case for lack of merit.[16]

On appeal, the DARAB rendered a Decision dated 8 January 2004, the dispositive portion of which states:

> WHEREFORE, in view of all the foregoing considerations, the decision appealed from is hereby SET ASIDE and a NEW DECISION is hereby rendered:
>
> 1. Finding and declaring the Deed of Absolute sale binding upon respondents Gonzalo Francisco and Regina *vda. De* Lazaro;
> 2. Maintaining the agricultural leasehold relationship between landowner-petitioner Napoleon Magno and respondents-lessees Gonzalo Francisco and Regina *vda. De* Lazaro; accordingly, declaring the Contracts of Agricultural Leasehold respectively entered into by and between the said parties still subsisting and in full force and effect;
> 3. Ordering respondents Gonzalo Francisco and Regina *vda. De* Lazaro to pay severally their lease rentals in arrears covering the period from the regular season of (April) 1991 up to and until the final restoration or proper reinstatement of the lease contracts in question.
>
> SO ORDERED.[17]

Respondents filed a petition for review with the CA assailing the DARAB's decision. On 4 July 2005, the CA rendered a decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the petition is GRANTED. The assailed decision dated January 8, 2004 is REVERSED and SET ASIDE and the decision of the PARAD-Cabanatuan City dated December 22, 1993 is hereby REINSTATED.
>
> SO ORDERED.[18]

---

[16] *Id.* at 55.

[17] *Id.* at 45.

[18] *Id.* at 33.

Aggrieved by the CA's decision reinstating the decision of the PARAD of Cabanatuan City, petitioner elevated the case before this Court.

Ruling of the PARAD of Cabanatuan City

The PARAD stated that on 10 January 1990, EPs were issued to respondents. Then, in the conferences held on 8 March and 9 August 1990, Municipal Agrarian Reform Officer (MARO) Rogelio C. Palomo found out that the lot is covered by the OLT program and the DAR-Central Office had not received any petition for OLT exemption. The PARAD noted that in the final land valuation conference, a thorough computation of the paid lease rentals was conducted. The PARAD believed that respondents are no longer liable to pay the lease rentals because respondents are now considered owners of their respective landholdings. The PARAD stated that from 1990, respondents have fully paid the amount of the lot as evidenced by the land valuation under the BCLP scheme prepared by DAR officials.[19]

The PARAD relied on the 2nd Indorsement submitted by PARAD Benjamin M. Yambao (PARAD Yambao) that the lot is covered by OLT and that the farmer-beneficiaries including respondents have fully paid for the lot. The 2nd Indorsement reads:

> Respectfully returned to Mr. Enrique S. Valenzuela, PARO, NEPARO, Cabanatuan City, the herein Claim Folder thru BCLP of Ms. Candelaria S. Talens covered by TCT No. 7390 containing an area of 26 hectares, more or less, situated at San Fernando, Norte, Cabiao, Nueva Ecija which this Office after an appraisal of the documents attached and as per his comments therein, the landholding in question appears to have been subjected to an Operation Land Transfer pursuant to PD 27; that a BCLP has already been prepared and approved by the authorities concerned, and that as per findings, the subject landholding has already been FULLY PAID by the farmer-beneficiaries. Let it be emphasized that the landholding in question was covered by P.D. No. 27 and not pursuant to RA No. 6657, for which reason any valuation to be made in the landholding in question

[19] Records, pp. 118-119.

should be within the memorandum circular implementing P.D. 27 and not under memorandum circular implementing RA No. 6657. Besides, as per his findings thereto, the land in question is now fully paid. By that the valuation process is a *fait accompli*. With that, it is now the honest opinion of the undersigned that any action to be taken thereto is within the administrative prerogative of that office there-being no formal complaint nor protest filed before this office, pursuant to DARAB Procedures this Office could not take possible action thereof unless and under a formal complaint of protest is lodge before this office, either the landowner or by the farmer-beneficiaries.[20]

The PARAD took note of the fact that the Deed of Absolute Sale executed by Talens, where she conveyed her land to different persons including petitioner for ₱1 and other valuable considerations, was suspicious in nature. The PARAD reasoned that the sale was consummated on 28 July 1972 but the registration occurred in 1986. The PARAD believed that the sale made by Talens was a device to circumvent PD 27 in order to exclude her land from OLT coverage. The PARAD noted that when the claim folder was prepared, processed and approved by the BCLP, Talens was still declared the landowner of 26 hectares including petitioner's lot. The PARAD explained that petitioner also failed to file a formal complaint or protest on the land valuation prepared by DAR officials before the proper forum. Since petitioner is estopped from claiming that respondents are still his tenants, respondents are not liable to pay lease rentals to petitioner.[21]

Ruling of the DARAB

The DARAB found a different state of facts. The DARAB re-examined the pleadings filed and evidence submitted by the parties and found that petitioner, together with his siblings, wrote then Ministry of Agrarian Reform (MAR) Minister Conrado F. Estrella (Minister Estrella) for exemption of their properties from OLT coverage by way of a letter-protest dated 19 May 1974. Minister Estrella acted with dispatch and gave the following instruction to then District Officer Gene Bernardo, which reads:

---

[20] *Id.* at 117.

[21] *Id.* at 114-116.

D/O Gene Bernardo,

Please look into this petition and get the facts. Verify and make your report and recommendation.

Sgd. CFE
5/26/74[22]

The DARAB stated that petitioner wrote another letter dated 25 December 1975 to Minister Estrella seeking to exercise his right of retention. The DARAB ruled that these letters belie the PARAD's finding that petitioner is estopped from claiming that respondents are still his tenants.[23]

The DARAB stated that in 1974, Minister Estrella issued MAR Memorandum Circular No. 8, Series of 1974 declaring that transfers of ownership of lands covered by PD 27 executed by landowners after 21 October 1972 shall all be considered acts committed to circumvent PD 27. This memorandum circular was further amended by an undated Memorandum which provides:

With respect to transfers of ownership of lands covered by P.D. 27, you shall be guided by the following:

Transfers of ownership of lands covered by a Torrens Certificate of Title duly executed prior to October 21, 1972 but not registered with the Register of Deeds concerned before said date in accordance with the Land Registration Act (Act No. 496) shall not be considered a valid transfer of ownership insofar as the tenants-farmers are concerned and therefore the lands shall be placed under Operation Land Transfer.

Transfers of ownership of unregistered lands x x x executed prior to October 21, 1972, whether registered or not, with the Register of Deeds concerned, pursuant to Act No. 3344 may be considered a valid transfer/conveyance as between the parties subject to the verification of the due execution of the conveyance/transfer in accordance with the formalities prescribed by law.

In order that the foregoing transfers of ownership mentioned in the preceding paragraphs maybe binding upon the tenant, such tenant

---

[22] *Rollo*, p. 38.

[23] *Id.* at 39.

should have knowledge of the transaction prior to October 21, 1972, have recognized the persons of the new owners and have been paying rental to such new owners." (Emphasis in the original)[24]

The DARAB ruled that respondents as petitioner's tenants had knowledge of the Deed of Sale executed on 28 July 1972 and had recognized petitioner as the new owner and paid rentals to him. Since all the requirements have been met and satisfied, the sale between petitioner and Talens is binding upon respondents. The DARAB ruled that respondents are still tenant-lessees of petitioner and shall be entitled to security of tenure and obligated to comply with their duty to pay the lease rentals in accordance with the terms and conditions of their leasehold contract.[25]

Ruling of the Court of Appeals

The CA stated that the EPs are public documents and are *prima facie* evidence of the facts stated therein. The EPs are presumably issued in the regular performance of an official duty. The CA ruled that petitioner has not presented any evidence showing that the issuance of the EPs was tainted with defects and irregularities; hence, they are entitled to full faith and credit.[26]

The CA, quoting the 2nd Indorsement issued by PARAD Yambao, held that the matter of OLT coverage of petitioner's lot has been settled. The CA also upheld the PARAD's ruling that respondents have fully paid the value of the lot.[27]

The CA ruled that the factual findings and conclusion of the PARAD of Cabanatuan City are supported with substantial evidence as opposed to the DARAB's findings of fact.[28]

Issue

Petitioner submits this sole issue for our consideration: Whether unregistered EPs issued to agricultural lessees which appear to

---

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

[25] *Id.* at 41-45.

[26] *Id.* at 31.

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

[28] *Id.* at 33.

be irregular on their face can defeat the landowner's rights to agricultural leasehold rentals.[29]

Ruling of the Court

We grant the petition.

Petitioner contends that the CA committed grave error because the evidence on record is bereft of any showing that certificates of land transfer (CLTs) have been issued to respondents and that the EPs have been registered with the Register of Deeds of Nueva Ecija.[30] Petitioner points out that the CA disregarded a significant fact that the land valuation came after the issuance of the EPs; hence, the issuance of the EPs was tainted with irregularity because it was violative of Section 2 of PD 266.[31] Petitioner claims that his retention rights and rights to land rentals from respondents cannot be defeated by patently fraudulent EPs.

Petitioner also alleges that MARO Palomo had no authority in fact or law to determine the just compensation. Assuming that MARO Palomo had the authority, petitioner cannot be bound by the determination of just compensation because petitioner was not present and could not have signified his agreement during the land valuation conferences.[32]

Respondents claim that in appeals in agrarian cases, the findings of fact of the PARAD, as affirmed by the CA, are final and conclusive especially if they are based on substantial evidence.[33]

---

[29] *Id.* at 16.

[30] *Id.* at 90.

[31] Providing for the Mechanics of Registration of Ownership and/or Title to Land Under Presidential Decree No. 27, 4 August 1973.

Section 2. After the tenant-farmer shall have fully complied with the requirements for a grant of title under Presidential Decree No. 27, an Emancipation Patent and/or Grant shall be issued by the Department of Agrarian Reform on the basis of a duly approved survey plan.

[32] *Rollo*, p. 92.

[33] *Id.* at 108-109.

Respondents allege that in the Order dated 10 October 2002, this case was forwarded to DAR Secretary. The dispositive portion of the Order reads:

> WHEREFORE, premises considered, the proceeding in this case is hereby suspend (sic) until the submission of the result of the administrative determination of the coverage of the subject landholding in dispute to this Board. Let the entire records of the above-entitled case be forwarded to the office of the DAR Secretary to effect such determination as stated above.

Respondents argue that the DAR has not yet submitted the result of the administrative determination of the lot in dispute to the DARAB. Respondents contend that the DARAB's decision dated 8 January 2004 was issued without jurisdiction.[34]

Findings of Fact

It is well-settled that this Court is not a trier of facts. The factual findings of the CA are regarded as final, binding and conclusive upon this Court, especially when supported by substantial evidence. However, there are recognized exceptions[35] to this rule, such as when the factual findings of the CA are contrary to those of the quasi-judicial agency. In this case, the factual findings of the CA and the DARAB are conflicting;

---

[34] *Id.* at 103.

[35] Recognized exceptions to this rule are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellee and the appellant; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

thus, we are compelled to look at the factual milieu of this case and review the records.[36] The CA had also overlooked certain relevant facts undisputed by the parties, which, if properly considered, would justify a different conclusion.

Petitioner claims that upon the proclamation of PD 27 on 21 October 1972, Talens no longer owned the land consisting of 61 hectares. Therefore, petitioner together with his siblings filed their Petitions for Exemption with respect to their landholdings.[37]

In a letter dated 19 May 1974, petitioner together with his siblings requested Minister Estrella to certify that Talens' 61-hectare land, which was sold to her ten children, is exempt from the OLT coverage.[38]

In another letter dated 26 December 1975, petitioner informed Minister Estrella that he would like to exercise his retention right of five hectares on the lot he owned.[39]

A document entitled "Date Notice Send" presented as Exhibit "1" by the respondents and signed by MARO Palomo stated that conferences[40] for land valuation were held but petitioner failed to appear. MARO Palomo stated that the lot was subjected to BCLP valuation and after a thorough computation, respondents together with other farmer-beneficiaries were declared as having fully paid for their areas of cultivation. MARO Palomo recommended the approval of the BCLP claim folders and the issuance of the EPs to the farmer-beneficiaries.[41]

---

[36] *Buada v. Cement Center, Inc.*, G.R. No. 180374, 22 January 2010.

[37] Records, p. 256.

[38] *Id.* at 269-270.

[39] *Id.* at 414.

[40] The first conference concerning petitioner's land was held on 9 August 1990.

[41] Records, p. 90.

A document entitled "Lease Rentals Paid" presented as Exhibit "1-A",[42] reveals:

Name of FBs	Area Cultivated	Approved AGP in		Total land value		Lease rentals paid	
		cavans	Pesos	cavans	Pesos	cavans	Pesos
x x x							
Manuel Lazaro	2.5803	130	11,375.00	335	29,350.90	990	82,774.50
Gonzalo Francisco	2.8597	130	11,375.00	371	32,529.08	1,005	87,730.70

On 18 December 1991, PARAD Yambao issued a 2nd Indorsement stating that Talens' land is covered by OLT and the farmer-beneficiaries have fully paid the land such that the valuation process is only a *fait accompli*.[43]

On 2 January 1992, Provincial Agrarian Reform Officer (PARO) Enrique S. Valenzuela issued a 3rd Indorsement stating that a formal complaint or protest should be filed first by the landowner or the farmer-beneficiaries before the DARAB can take possible action.[44]

On 22 September 1994, PARO Rogelio M. Chaves issued a certification stating that Manuel Lazaro and Gonzalo Francisco both paid the sum of ₱82,774.50 and ₱87,730.70 as lease rentals from 1973 to 1990 representing full payment of the land value owned and registered in the name of Talens with an area of 2.5803 and 2.7284 hectares, respectively.[45]

In a letter dated 1 April 1997, Atty. Teodoro C. Linsangan, Register of Deeds III wrote to Mr. Emmanuel N. Paralisan, CARP[46] Program Director of the Land Registration Authority.

---

[42] *Id.* at 89.

[43] *Id.* at 88.

[44] *Id.*

[45] *Id.* at 343-344.

[46] Comprehensive Agrarian Reform Program.

The Register of Deeds acknowledged receipt of the EPs issued to Gonzalo Francisco and his associates. However, the Register of Deeds stated that they cannot effect registration because there is a pending case filed by PARO Chaves at the Regional Trial Court of Gapan: In Re: Cad. Case No. 081 — for reconstitution of mutilated TCT No. 7390 (Mother Title), where the EPs were taken.[47]

In an Order dated 10 October 2002, the DARAB suspended the case proceedings until the submission of the result of the administrative determination of the coverage of the subject lot in dispute. The DARAB ordered the entire records to be forwarded to the office of the DAR Secretary to effect such determination of OLT coverage.[48]

On 8 January 2004, the DARAB rendered a decision declaring the Deed of Absolute Sale between petitioner and Talens as binding upon the respondents. The DARAB also declared that the agricultural leasehold relationship between petitioner and respondents still subsists. The DARAB ordered respondents to pay the lease rentals from April 1991 until the proper reinstatement of the lease contracts.

OLT Coverage

In *Department of Agrarian Reform v. Abdulwahid*,[49] the Court, quoting *Centeno v. Centeno*,[50] held:

> [T]he DAR is vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have the exclusive jurisdiction over all matters involving the implementation of the agrarian reform program. The DARAB has primary, original and appellate jurisdiction "to determine and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program under RA No. 6657, E.O. Nos. 229, 228 and 129-A, R.A. No. 3844

---

[47] Records, p. 376.

[48] *Id.* at 410-412.

[49] G.R. No. 163285, 27 February 2008, 547 SCRA 30, 40.

[50] 397 Phil. 170, 177 (2000).

as amended by R.A. No. 6389, P.D. No. 27 and other agrarian laws and their implementing rules and regulations."

Agrarian dispute as defined in Section 3(d) of Republic Act (RA) No. 6657[51] refers "to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee."

Section 3, Rule II of the 2003 DARAB Rules of Procedure provides:

SECTION 3. ***Agrarian Law Implementation Cases.***

The Adjudicator or the Board shall have no jurisdiction over matters involving the administrative implementation of RA No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other agrarian laws as enunciated by pertinent rules and administrative orders, which shall be under the exclusive prerogative of and cognizable by the Office of the Secretary of the DAR in accordance with his issuances, to wit:

3.1 **Classification and identification of landholdings for coverage under the agrarian reform program** and the initial issuance of CLOAs and EPs, including protests or oppositions thereto and petitions for lifting of such coverage;

3.2 Classification, identification, inclusion, exclusion, qualification, or disqualification of potential/actual farmer-beneficiaries;

---

[51] An Act Instituting A Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization Providing the Mechanism for its Implementation, and For Other Purposes.

3.3 Subdivision surveys of land under CARP;

3.4 Recall, or cancellation of provisional lease rentals, Certificates of Land Transfers (CLTs) and CARP Beneficiary Certificates (CBCs) in cases outside the purview of Presidential Decree (PD) No. 816, including the issuance, recall, or cancellation of EPs or CLOAs not yet registered with the Register of Deeds;

3.5 Exercise of the right of retention by the landowner;

3.6 Application for exemption from coverage under Section 10 of RA 6657;

3.7 Application for exemption pursuant to Department of Justice (DOJ) Opinion No. 44 (1990);

3.8 Exclusion from CARP coverage of agricultural land used for livestock, swine, and poultry raising;

3.9 Cases of exemption/exclusion of fish pond and prawn farms from the coverage of CARP pursuant to RA 7881;

3.10 Issuance of Certificate of Exemption for land subject of Voluntary Offer to Sell (VOS) and Compulsory Acquisition (CA) found unsuitable for agricultural purposes;

3.11 Application for conversion of agricultural land to residential, commercial, industrial, or other non-agricultural uses and purposes including protests or oppositions thereto;

3.12 Determination of the rights of agrarian reform beneficiaries to homelots;

3.13 Disposition of excess area of the tenant's/farmer-beneficiary's landholdings;

3.14 Increase in area of tillage of a tenant/farmer-beneficiary;

3.15 Conflict of claims in landed estates administered by DAR and its predecessors; or

3.16 Such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR. (Boldfacing supplied)

It is undisputed that petitioner and respondents have an established tenancy relationship, such that the complaint for collection of back rentals and ejectment is classified as an agrarian dispute and under the jurisdiction of the PARAD and thereafter by the DARAB. However, in view of the conflicting claims where petitioner asserted ownership over the lot and respondents emphasized that the lot is subject to OLT coverage, there is a need to ascertain if the lot is under the agrarian reform program. Since the classification and identification of landholdings for coverage under the agrarian reform program are Agrarian Law Implementation cases, the DAR Secretary should first resolve this issue. In *Sta. Ana v. Carpo*,[52] we held:

> Verily, there is an established tenancy relationship between petitioner and respondents in this case. An action for Ejectment for Non-Payment of lease rentals is clearly an agrarian dispute, cognizable at the initial stage by the PARAD and thereafter by the DARAB. **But issues with respect to the retention rights of the respondents as landowners and the exclusion/exemption of the subject land from the coverage of agrarian reform are issues not cognizable by the PARAD and the DARAB, but by the DAR Secretary because, as aforementioned, the same are Agrarian Law Implementation (ALI) Cases**. (Boldfacing supplied)

Therefore, the PARAD of Cabanatuan City had no authority to render a decision declaring the lot under OLT coverage. In fact, when the case was appealed, the DARAB acknowledged that it had no jurisdiction on the OLT coverage. In an Order dated 10 October 2002, the DARAB suspended the case proceedings until the submission of the result of the administrative determination of the lot and thus submitted the entire records to the DAR Secretary. Respondents themselves admitted in their Memorandum that the DAR has not submitted the result of its administrative determination of the lot to the DARAB. It is therefore essential that the DAR Secretary should first resolve the issue on the lot's inclusion or exclusion from OLT coverage before a final determination of this case can be had.

---

[52] G.R. No. 164340, 28 November 2008, 572 SCRA 463, 482.

Proof necessary for the resolution of the issues on OLT coverage and petitioner's right of retention should be introduced in the proper forum. The Office of the DAR Secretary is in a better position to resolve these issues being the agency lodged with such authority since it has the necessary expertise on the matter.[53]

We sustain the DARAB's ruling declaring the Contracts of Agricultural Leasehold entered into by petitioner and respondents still subsisting and in full force and effect. We modify the DARAB's ruling ordering respondents to pay severally their lease rentals in arrears covering the period from the regular season of April 1991 until the final determination on the OLT coverage of the lot.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the assailed Decision of the Court of Appeals in CA-G.R. SP No. 84467. We *REINSTATE* with *MODIFICATION* the Decision of the Department of Agrarian Reform Adjudication Board dated 8 January 2004 in DARAB Case No. 2404 (Reg. Case No. 2332 "NE"93) without prejudice to the rights of the parties to seek recourse from the Office of the Department of Agrarian Reform (DAR) Secretary on the issues they have raised.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

---

[53] *Supra* note 52 at 483-484.

SECOND DIVISION

[G.R. No. 169207. March 25, 2010]

WPP MARKETING COMMUNICATIONS, INC., JOHN STEEDMAN, MARK WEBSTER, and NOMINADA LANSANG, *petitioners, vs.* **JOCELYN M. GALERA,** *respondent.*

[G.R. No. 169239. March 25, 2010]

JOCELYN M. GALERA, *petitioner, vs.* **WPP MARKETING COMMUNICATIONS, INC., JOHN STEEDMAN, MARK WEBSTER, and NOMINADA LANSANG,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; CORPORATE OFFICERS; GIVEN SUCH CHARACTER EITHER BY THE CORPORATION CODE OR BY THE CORPORATION'S BY-LAWS.— Corporate officers are given such character either by the Corporation Code or by the corporation's by-laws. Under Section 25 of the Corporation Code, the corporate officers are the president, secretary, treasurer and such other officers as may be provided in the by-laws. Other officers are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary.

2.LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST; APPLIED IN CASE AT BAR.— The appellate court x x x justified that Galera was an employee and not a corporate officer by subjecting WPP and Galera's relationship to the four-fold test: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished. The appellate court found: "x x x Sections 1 and 4 of the employment contract mandate where and how often

she is to perform her work; Sections 3, 5, 6 and 7 show that wages she receives are completely controlled by x x x WPP; and Sections 10 and 11 clearly state that she is subject to the regular disciplinary procedures of x x x WPP. Another indicator that she was a regular employee and not a corporate officer is Section 14 of the contract, which clearly states that she is a permanent employee — not a Vice-President or a member of the Board of Directors. x x x Another indication that the Employment Contract was one of regular employment is Section 12, which states that the rights to any invention, discovery, improvement in procedure, trademark, or copyright created or discovered by petitioner GALERA during her employment shall automatically belong to private respondent WPP. x x x Another convincing indication that she was only a regular employee and not a corporate officer is the disciplinary procedure under Sections 10 and 11 of the Employment Contract, which states that her right of redress is through Mindshare's Chief Executive Officer for the Asia-Pacific. This implies that she was not under the disciplinary control of private respondent WPP's Board of Directors (BOD), which should have been the case if in fact she was a corporate officer because only the Board of Directors could appoint and terminate such a corporate officer."

3. ID.; ID.; LABOR ARBITERS AND THE NATIONAL LABOR RELATIONS COMMISSION; JURISDICTION.— Galera being an employee, then the Labor Arbiter and the NLRC have jurisdiction over the present case. Article 217 of the Labor Code provides: "*Jurisdiction of Labor Arbiters and the Commission.* — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide x x x the following cases involving all workers, whether agricultural or non-agricultural: 1. Unfair labor practice cases; 2. Termination disputes; 3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment; 4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations; 5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; 6. Except claims for Employees Compensation, Social Security, Medicare and

other maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement. (b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters. (c) Cases arising from the interpretation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements."

4. ID.; ID.; TERMINATION OF EMPLOYMENT; JUST OR AUTHORIZED CAUSE; NOT PRESENT IN CASE AT BAR.— Apart from Steedman's letter dated 15 December 2000 to Galera, WPP failed to prove any just or authorized cause for Galera's dismissal. x x x WPP, Steedman, Webster, and Lansang x x x failed to substantiate the allegations in Steedman's letter. Galera, on the other hand, presented documentary evidence in the form of congratulatory letters, including one from Steedman, which contents are diametrically opposed to the 15 December 2000 letter.

5. ID.; ID.; ID.; TWO-NOTICE RULE; NON-COMPLIANCE THEREWITH TAINTS THE DISMISSAL WITH ILLEGALITY.— The law x x x requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him. Failure to comply with the requirements taints the dismissal with illegality. WPP's acts clearly show that Galera's dismissal did not comply with the two-notice rule.

6. ID.; ID.; IMPLEMENTING RULES AND REGULATIONS; EMPLOYMENT OF ALIENS; EMPLOYMENT PERMIT, REQUIRED FOR ENTRY.— The law and the rules are consistent in stating that the employment permit must be acquired **prior** to employment. The Labor Code states: "Any alien seeking admission to the Philippines for employment

purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor." Section 4, Rule XIV, Book 1 of the Implementing Rules and Regulations provides: "*Employment permit required for entry.* — No alien seeking employment, whether as a resident or non-resident, may enter the Philippines without first securing an employment permit from the Ministry. If an alien enters the country under a non-working visa and wishes to be employed thereafter, he may only be allowed to be employed upon presentation of a duly approved employment permit."

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for WPP Marketing & Communications, Inc., John Steedman, Mark Webster & Nominada Lansang.

Picazo Buyco Tan Fider & Santos and Cer*vantes Jurisprudencia and Partners* for Jocelyn M. Galera.

D E C I S I O N

CARPIO, *Acting C.J.*:

The Case

G.R. Nos. 169207 and 169239 are petitions for review[1] assailing the Decision[2] promulgated on 14 April 2005 as well as the Resolution[3] promulgated on 1 August 2005 of the Court of Appeals

---

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

[2] *Rollo* (G.R. No. 169207), pp. 10-43; *rollo*, (G.R. No. 169239), pp. 40-73. Penned by Associate Justice Vicente Q. Roxas with Associate Justices Renato C. Dacudao and Lucas P. Bersamin, concurring; Associate Justice Jose Catral Mendoza, concurring and dissenting; and Associate Justice Celia C. Librea-Leagogo, dissenting.

[3] *Rollo* (G.R. No. 169207), pp. 63-64; *rollo*, (G.R. No. 169239), pp. 93-94. Penned by Associate Justice Vicente Q. Roxas with Associate Justices Renato C. Dacudao and Lucas P. Bersamin, concurring; Associate Justice Jose Catral Mendoza, concurring and dissenting; and Associate Justice Celia C. Librea-Leagogo, dissenting.

(appellate court) in CA-G.R. SP No. 78721. The appellate court granted and gave due course to the petition filed by Jocelyn M. Galera (Galera). The appellate court's decision reversed and set aside that of the National Labor Relations Commission (NLRC), and directed WPP Marketing Communications, Inc. (WPP) to pay Galera backwages, separation pay, unpaid housing benefit, unpaid personal and accident insurance benefits, cash value under the company's pension plan, 30 days paid holiday benefit, moral damages, exemplary damages, 10% of the total judgment award as attorney's fees, and costs of the suit.

The Facts

The appellate court narrated the facts as follows:

> Petitioner is Jocelyn Galera (GALERA), a [sic] American citizen who was recruited from the United States of America by private respondent John Steedman, Chairman-WPP Worldwide and Chief Executive Officer of Mindshare, Co., a corporation based in Hong Kong, China, to work in the Philippines for private respondent WPP Marketing Communications, Inc. (WPP), a corporation registered and operating under the laws of Philippines. GALERA accepted the offer and she signed an Employment Contract entitled "Confirmation of Appointment and Statement of Terms and Conditions" (Annex B to Petition for *Certiorari*). The relevant portions of the contract entered into between the parties are as follows:
>
> Particulars:
> Name: Jocelyn M. Galera
> Address: 163 Mediterranean Avenue
> Hayward, CA 94544
> Position: Managing Director
> Mindshare Philippines
> Annual Salary: Peso 3,924,000
> Start Date: 1 September 1999
> Commencement Date: 1 September 1999
> (for continuous service)
> Office: Mindshare Manila
>
> 6. Housing Allowance
> The Company will provide suitable housing in Manila at a maximum cost (including management fee and other associated costs) of Peso 576,000 per annum.

7. Other benefits.

The Company will provide you with a fully maintained company car and a driver.

The Company will continue to provide medical, health, life and personal accident insurance plans, to an amount not exceeding Peso 300,000 per annum, in accordance with the terms of the respective plans, as provided by JWT Manila.

The Company will reimburse you and your spouse one way business class air tickets from USA to Manila and the related shipping and relocation cost not exceeding US$5,000 supported by proper documentation. If you leave the Company within one year, you will reimburse the Company in full for all costs of the initial relocation as described therein.

You will participate in the JWT Pension Plan under the terms of this plan, the Company reserves the right to transfer this benefit to a Mindshare Pension Plan in the future, if so required.

8. Holidays

You are entitled to 20 days paid holiday in addition to public holidays per calendar year to be taken at times agreed with the Company. Carry-over of unused accrued holiday entitlement into a new holiday year will not normally be allowed. No payment will be made for holidays not taken. On termination of your employment, unless you have been summarily dismissed, you will be entitled to receive payment for unused accrued holiday pay. Any holiday taken in excess of your entitlement shall be deducted from your final salary payment.

9. Leave Due to Sickness or Injury

The maximum provision for sick leave is 15 working days per calendar year.

12. Invention/Know-How

Any discovery, invention, improvement in procedure, trademark, trade name, designs, copyrights or get-ups made, discovered or created by you during the continuance of your employment hereunder relating to the business of the Company shall belong to and shall be the absolute property of the Company. If required to do so by the Company (whether during or after the termination of your employment) you shall at the expense of the company execute all instruments and do all things necessary to vest in ownership for all other rights, title and interests (including any registered rights therein) in such discovery, invention, improvement in procedure, trademark,

trade name, design, copyright or get-up in the Company (or its Nominee) absolutely and as sole beneficial owner.

14. Notice.

The first three months of your employment will be a trial period during which either you or the Company may terminate your employment on one week's notice. If at the end of that period, the Company is satisfied with your performance, you will become a permanent employee. Thereafter you will give Company and the Company will give you three months notice of termination of employment. The above is always subject to the following: (1) the Company's right to terminate the contract of employment on no or short notice where you are in breach of contract; (2) your employment will at any event cease without notice on your retirement date when you are 60 years of age.

SIGNED JOCELYN M. GALERA 8-16-99
Date of Borth [sic] 12-25-55

Employment of GALERA with private respondent WPP became effective on **September 1, 1999** solely on the instruction of the CEO and upon signing of the contract, without any further action from the Board of Directors of private respondent WPP.

Four months had passed when private respondent WPP filed before the Bureau of Immigration an application for petitioner GALERA to receive a working visa, wherein she was designated as Vice President of WPP. Petitioner alleged that she was constrained to sign the application in order that she could remain in the Philippines and retain her employment.

Then, on **December 14, 2000**, petitioner GALERA alleged she was verbally notified by private respondent STEEDMAN that her services had been terminated from private respondent WPP. A termination letter followed the next day.[4]

On 3 January 2001, Galera filed a complaint for illegal dismissal, holiday pay, service incentive leave pay, 13th month pay, incentive plan, actual and moral damages, and attorney's fees against WPP and/or John Steedman (Steedman), Mark Webster (Webster) and Nominada Lansang (Lansang). The case was docketed as NLRC NCR Case No. 30-01-00044-01.

---

[4] *Rollo* (G.R. No. 169207), pp. 12-15; *rollo* (G.R. No. 169239), pp. 42-45.

The Labor Arbiter's Ruling

In his Decision dated 31 January 2002, Labor Arbiter Edgardo M. Madriaga (Arbiter Madriaga) held WPP, Steedman, Webster, and Lansang liable for illegal dismissal and damages. Arbiter Madriaga stated that Galera was not only illegally dismissed but was also not accorded due process. Arbiter Madriaga explained, thus:

> [WPP] failed to observe the two-notice rule. [WPP] through respondent Steedman for a five (5) minute meeting on December 14, 2000 where she was verbally told that as of that day, her employment was being terminated. [WPP] did not give [Galera] an opportunity to defend herself and explain her side. [Galera] was even prohibited from reporting for work that day and was told not to report for work the next day as it would be awkward for her and respondent Steedman to be in the same premises after her termination. [WPP] only served [Galera] her written notice of termination only on 15 December 2001, one day after she was verbally apprised thereof.
>
> The law mandates that the dismissal must be properly done otherwise, the termination is gravely defective and may be declared unlawful as we hereby hold [Galera's] dismissal to be illegal and unlawful. Where there is no showing of a clear, valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause. The law mandates that both the substantive and procedural aspects of due process should be observed. The facts clearly show that respondents were remiss on both aspects. Perforce, the dismissal is void and unlawful.
>
> x x x x x x x x x
>
> Considering the work performance and achievements of [Galera] for the year 2000, we do not find any basis for the alleged claim of incompetence by herein respondents. Had [Galera] been really incompetent, she would not have been able to generate enormous amounts [sic] of revenues and business for [WPP]. She also appears to be well liked as a leader by her subordinates, who have come forth in support of [Galera]. These facts remain undisputed by respondents.
>
> A man's job being a property right duly protected by our laws, an employer who deprives an employee [of] the right to defend himself is liable for damages consistent with Article 32 of the Civil Code.

To allow an employer to terminate the employment of his worker based merely on allegations without proof places the [employee] in an uncertain situation. The unflinching rule in illegal dismissal cases is that the employer bears the burden of proof.

In the instant case, respondents have not been able to muster evidence to counter [Galera's] allegations. [Galera's] allegations remain and stand absent proof from respondents rebutting them. Hence, our finding of illegal dismissal against respondents who clearly have conspired in bad faith to deprive [Galera] of her right to substantive and procedural due process.[5]

The dispositive portion of Arbiter Madriaga's decision reads as follows:

WHEREFORE, premises considered, we hereby hold herein respondents liable for illegal dismissal and damages, and award to [Galera], by virtue of her expatriate status, the following:

a. Reinstatement without loss of seniority rights.

b. Backwages amounting to $120,000 per year at ₱50.00 to US $1 exchange rate, 13th month pay, transportation and housing benefits.

c. Remuneration for business acquisitions amounting to Two Million Eight Hundred Fifty Thousand Pesos (₱2,850,000.00) and Media Plowback Incentive equivalent to Three Million Pesos (₱3,000,000.00) or a total of not less than One Hundred Thousand US Dollars ($100,000.00).

d. US Tax Protection of up to 35% coverage equivalent to Thirty Eight Thousand US Dollars ($38,000).

e. Moral damages including implied defamation and punitive damages equivalent to Two Million Dollars (US$2,000,000.00).

f. Exemplary damages equivalent to One Million Dollars ($1,000,000.00).

g. Attorney's fees of 10% of the total award herein.

SO ORDERED.[6]

---

[5] *Rollo* (G.R. No. 169207), pp. 337-341; *rollo* (G.R. No. 169239), pp. 299-303.

[6] *Rollo* (G.R. No. 169207), p. 344; *rollo* (G.R. No. 169239), p. 306.

The Ruling of the NLRC

The First Division of the NLRC reversed the ruling of Arbiter Madriaga. In its Decision[7] promulgated on 19 February 2003, the NLRC stressed that Galera was WPP's Vice-President, and therefore, a corporate officer at the time she was removed by the Board of Directors on 14 December 2000. The NLRC stated thus:

> It matters not that her having been elected by the Board to an added position of being a member of the Board of Directors did not take effect as her May 31, 2000 election to such added position was conditioned to be effective upon approval by SEC of the Amended By-Laws, an approval which took place only in February 21, 2001, *i.e.*, after her removal on December 14, 2000. What counts is, at the time of her removal, she continued to be WPP's Vice-President, a corporate officer, on hold over capacity.
>
> Ms. Galera's claim that she was not a corporate officer at the time of her removal because her May 31, 2000 election as Vice President for Media, under WPP's Amended By-Laws, was subject to the approval by the Securities and Exchange Commission and that the SEC approved the Amended By-Laws only in February 2001. Such claim is unavailing. Even if Ms. Galera's subsequent election as Vice President for Media on May 31, 2000 was subject to approval by the SEC, she continued to hold her previous position as Vice President under the December 31, 1999 election until such time that her successor is duly elected and qualified. It is a basic principle in corporation law, which principle is also embodied in WPP's by-laws, that a corporate officer continues to hold his position as such until his successor has been duly elected and qualified. When Ms. Galera was elected as Vice President on December 31, 1999, she was supposed to have held that position until her successor has been duly elected and qualified. The record shows that Ms. Galera was not replaced by anyone. She continued to be Vice President of WPP with the same operational title of Managing Director for Mindshare and continued to perform the same functions she was performing prior to her May 31, 2000 election.
>
> In the recent case of Dily Dany Nacpil v. International Broadcasting Corp., the definition of corporate officer for purposes of intra-

---

[7] *Rollo* (G.R. No. 169239), pp. 140-150. Per Curiam decision signed by Commissioners Roy V. Señeres and Victoriano R. Calaycay.

corporate controversy was even broadened to include a Comptroller/ Assistant Manager who was appointed by the General Manager, and whose appointment was later approved by the Board of Directors. In this case, the position of comptroller was not even expressly mentioned in the By-Laws of the corporation, and yet, the Supreme Court found him to be a corporate officer. The Court ruled that —

> (since) petitioner's appointment as comptroller required the approval and formal action of IBC's Board of Directors to become valid, it is clear therefore that petitioner is a corporate officer whose dismissal may be the subject of a controversy cognizable by the SEC... Had the petitioner been an ordinary employee, such board action would not have been required.

Such being the case, the imperatives of law require that we hold that the Arbiter below had no jurisdiction over Galera's case as, again, she was a corporate officer at the time of her removal.

WHEREFORE, the appeals of petitioner from the Decision of Labor Arbiter Edgardo Madriaga dated January 31, 2002 and his Order dated March 21, 2002, respectively, are granted. The January 31, 2002 decision of the Labor Arbiter is set aside for being null and void and the temporary restraining order we issued on April 24, 2002 is hereby made permanent. The complaint of Jocelyn Galera is dismissed for lack of jurisdiction.

SO ORDERED.[8]

In its Resolution[9] promulgated on 4 June 2003, the NLRC further stated:

We are fully convinced that this is indeed an intra-corporate dispute which is beyond the labor arbiter's jurisdiction. These consolidated cases clearly [involve] the relationship between a corporation and its officer and is properly within the definition of an intra-corporate relationship which, under P.D. No. 902-A, is within the jurisdiction of the SEC (now the commercial courts). Such being the case, We are constrained to rule that the Labor Arbiter below had no jurisdiction over Ms. Galera's complaint for illegal dismissal.

---

[8] *Id.* at 148-150.

[9] *Rollo* (G.R. No. 169207), pp. 502-505; *rollo* (G.R. No. 169239), pp. 151-154.

WHEREFORE, the motion for reconsideration filed by Ms. Galera is hereby denied for lack of merit. We reiterate our February 19, 2003 Decision setting aside the Labor Arbiter's Decision dated January 31, 2002 for being null and void.

SO ORDERED.[10]

Galera assailed the NLRC's decision and resolution before the appellate court and raised a lone assignment of error.

The National Labor Relations Commission acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it reversed the decision of the Labor Arbiter not on the merits but for alleged lack of jurisdiction.[11]

The Decision of the Appellate Court

The appellate court reversed and set aside the decision of the NLRC. The appellate court ruled that the NLRC's dismissal of Galera's appeal is not in accord with jurisprudence. A person could be considered a "corporate officer" only if appointed as such by a corporation's Board of Directors, or if pursuant to the power given them by either the Articles of Incorporation or the By-Laws.[12]

The appellate court explained:

A corporation, through its board of directors, could only act in the manner and within the formalities, if any, prescribed by its charter or by the general law. If the action of the Board is *ultra vires* such is *motu proprio void ab initio* and without legal effect whatsoever. The by-laws of a corporation are its own private laws which substantially have the same effect as the laws of the corporation. They are, in effect, written into the charter. In this sense, they beome (sic) part of the fundamental law of the corporation with which the corporation and its directors and officers must comply.

---

[10] *Rollo* (G.R. No. 169207), pp. 504-505; *rollo* (G.R. No. 169239), pp. 153-154.

[11] *Rollo* (G.R. No. 169207), p. 18.

[12] *Rollo* (G.R. No. 169207), p. 21; *rollo* (G.R. No. 169239), p. 51.

Even if petitioner GALERA had been appointed by the Board of Directors on December 31, 1999, private respondent WPP's By-Laws provided for only one Vice-President, a position already occupied by private respondent Webster. The same defect also stains the Board of Directors' appointment of petitioner GALERA as a Director of the corporation, because at that time the By-Laws provided for only five directors. In addition, the By-laws only empowered the Board of Directors to appoint a general manager and/or assistant general manager as corporate officers in addition to a chairman, president, vice-president and treasurer. There is no mention of a corporate officer entitled "Managing Director."

Hence, when the Board of Directors enacted the Resolutions of December 31, 1999 and May 31, 2000, it exceeded its authority under the By-Laws and are, therefore, *ultra vires*. Although private respondent WPP sought to amend these defects by filing Amended By-Laws with the Securities and Exchange Commission, they did not validate the *ultra vires* resolutions because the Amended By-Laws did not take effect until February 16, 2001, when it was approved by the SEC. Since by-laws operate only prospectively, they could not validate the *ultra vires* resolutions.[13]

The dispositive portion of the appellate court's decision reads:

WHEREFORE, the petition is hereby GRANTED and GIVEN DUE COURSE. The assailed Decision of the National Labor Relations Commission is hereby REVERSED and SET ASIDE and a new one is entered DIRECTING private respondent WPP MARKETING COMMUNICATIONS, INC. to:

1. Pay [Galera] backwages at the peso equivalent of US$120,000.00 per annum plus three months from her summary December 14, 2000 dismissal up to March 14, 2001 because three months notice is required under the contract, plus 13th month pay, bonuses and general increases to which she would have been normally entitled, had she not been dismissed and had she not been forced to stop working, including US tax protection of up to 35% coverage which she had been enjoying as an expatriate;

2. Pay x x x GALERA the peso equivalent of US$185,000.00 separation pay (1 ½ years);

---

[13] *Rollo* (G.R. No. 169207), pp. 33-34; *rollo* (G.R. No. 169239), pp. 63-64.

3. Pay x x x GALERA any unpaid housing benefit for the 18 ½ months of her employment in the service to the Company as an expatriate in Manila, Philippines at the rate of ₱576,000 per year; unpaid personal and accident insurance benefits for premiums at the rate of ₱300,000.00 per year; whatever cash value in the JWT Pension Plan; and thirty days paid holiday benefit under the contract for the 1 ½ calendar years with the Company;

4. Pay x x x GALERA the reduced amount of PhP2,000,000.00 as moral damages;

5. Pay [Galera] the reduced amount of PhP1,000,000.00 as exemplary damages;

6. Pay [Galera] an amount equivalent to 10% of the judgment award as attorney's fees;

7. Pay the cost of the suit.

SO ORDERED.[14]

Respondents filed a motion for reconsideration on 5 May 2005. Galera filed a motion for partial reconsideration and/or clarification on the same date. The appellate court found no reason to revise or reverse its previous decision and subsequently denied the motions in a Resolution promulgated on 1 August 2005.[15]

The Issues

WPP, Steedman, Webster, and Lansang raised the following grounds in G.R. No. 169207:

I. The Court of Appeals seriously erred in ruling that the NLRC has jurisdiction over [Galera's] complaint because she was not an employee. [Galera] was a corporate officer of WPP from the beginning of her term until her removal from office.

II. Assuming *arguendo* that the Court of Appeals correctly ruled that the NLRC has jurisdiction over [Galera's] complaint, it should have remanded the case to the Labor Arbiter for reception of evidence on the merits of the case.

---

[14] *Rollo* (G.R. No. 169207), p. 42; *rollo* (G.R. No. 169239), p. 72.

[15] *Rollo* (G.R. No. 169207), pp. 63-64; *rollo* (G.R. No. 169239), pp. 93-94.

III. [Galera] is an alien, hence, can never attain a regular or permanent working status in the Philippines.

IV. [Galera] is not entitled to recover backwages, other benefits and damages from WPP.[16]

On the other hand, in G.R. No. 169239, Galera raised the following grounds in support of her petition:

The CA decision should be consistent with Article 279 of the Labor Code and applicable jurisprudence, that full backwages and separation pay (when in lieu of reinstatement), should be reckoned from time of dismissal up to time of reinstatement (or payment of separation pay, in case separation instead of reinstatement is awarded).

Accordingly, petitioner Galera should be awarded full backwages and separation pay for the period from 14 December 2000 until the finality of judgment by the respondents, or, at the very least, up to the promulgation date of the CA decision.

The individual respondents Steedman, Webster and Lansang must be held solidarily liable with respondent WPP for the wanton and summary dismissal of petitioner Galera, to be consistent with law and jurisprudence as well as the specific finding of the CA of bad faith on the part of respondents.[17]

This Court ordered the consolidation of G.R. Nos. 169207 and 169239 in a resolution dated 16 January 2006.[18]

The Ruling of the Court

In its consolidated comment, the Office of the Solicitor General (OSG) recommended that (A) the Decision dated 14 April 2005 of the appellate court finding (1) Galera to be a regular employee of WPP; (2) the NLRC to have jurisdiction over the present case; and (3) WPP to have illegally dismissed Galera, be affirmed; and (B) the case remanded to the Labor Arbiter for the computation of the correct monetary award. Despite the OSG's recommendations, we see that Galera's failure to seek

---

[16] *Rollo* (G.R. No. 169207), pp. 83-84.

[17] *Rollo* (G.R. No. 169239), pp. 18-19.

[18] *Rollo* (G.R. No. 169207), p. 879; *rollo* (G.R. No. 169239), p. 470.

an employment permit prior to her employment poses a serious problem in seeking relief before this Court. Hence, we settle the various issues raised by the parties for the guidance of the bench and bar.

Whether Galera is an Employee or a Corporate Officer

Galera, on the belief that she is an employee, filed her complaint before the Labor Arbiter. On the other hand, WPP, Steedman, Webster and Lansang contend that Galera is a corporate officer; hence, any controversy regarding her dismissal is under the jurisdiction of the Regional Trial Court. We agree with Galera.

Corporate officers are given such character either by the Corporation Code or by the corporation's by-laws. Under Section 25 of the Corporation Code, the corporate officers are the president, secretary, treasurer and such other officers as may be provided in the by-laws.[19] Other officers are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary.

An examination of WPP's by-laws resulted in a finding that Galera's appointment as a corporate officer (Vice-President with the operational title of Managing Director of Mindshare) during a special meeting of WPP's Board of Directors is an appointment to a non-existent corporate office. WPP's by-laws provided for only one Vice-President. At the time of Galera's appointment on 31 December 1999, WPP already had one Vice-President in the person of Webster. Galera cannot be said to be a director of WPP also because all five directorship positions provided in the by-laws are already occupied. Finally, WPP cannot rely on its Amended By-Laws to support its argument that Galera is a corporate officer. The Amended By-Laws provided for more than one Vice-President and for two additional directors. Even though WPP's stockholders voted for the amendment on 31 May 2000, the SEC approved the amendments only on 16 February 2001. Galera was dismissed on 14 December 2000.

---

[19] *Easycall Communications Phils., Inc. v. King*, G.R. No. 145901, 15 December 2005, 478 SCRA102.

WPP, Steedman, Webster, and Lansang did not present any evidence that Galera's dismissal took effect with the action of WPP's Board of Directors.

The appellate court further justified that Galera was an employee and not a corporate officer by subjecting WPP and Galera's relationship to the four-fold test: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished. The appellate court found:

> x x x Sections 1 and 4 of the employment contract mandate where and how often she is to perform her work; Sections 3, 5, 6 and 7 show that wages she receives are completely controlled by x x x WPP; and Sections 10 and 11 clearly state that she is subject to the regular disciplinary procedures of x x x WPP.
>
> Another indicator that she was a regular employee and not a corporate officer is Section 14 of the contract, which clearly states that she is a permanent employee — not a Vice-President or a member of the Board of Directors.
>
> x x x x x x x x x
>
> Another indication that the Employment Contract was one of regular employment is Section 12, which states that the rights to any invention, discovery, improvement in procedure, trademark, or copyright created or discovered by petitioner GALERA during her employment shall automatically belong to private respondent WPP. Under Republic Act 8293, also known as the Intellectual Property Code, this condition prevails if the creator of the work subject to the laws of patent or copyright is an employee of the one entitled to the patent or copyright.
>
> Another convincing indication that she was only a regular employee and not a corporate officer is the disciplinary procedure under Sections 10 and 11 of the Employment Contract, which states that her right of redress is through Mindshare's Chief Executive Officer for the Asia-Pacific. This implies that she was not under the disciplinary control of private respondent WPP's Board of Directors (BOD), which should have been the case if in fact she was a corporate officer because only the Board of Directors could appoint and terminate such a corporate officer.

Although petitioner GALERA did sign the Alien Employment Permit from the Department of Labor and Employment and the application for a 9(g) visa with the Bureau of Immigration – both of which stated that she was private respondent's WPP' Vice President – these should not be considered against her. Assurming *arguendo* that her appointment as Vice-President was a valid act, it must be noted that these appointments occurred afater she was hired as a regular employee. After her appointments, there was no appreciable change in her duties.[20]

Whether the Labor Arbiter and the NLRC have jurisdiction over the present case

Galera being an employee, then the Labor Arbiter and the NLRC have jurisdiction over the present case. Article 217 of the Labor Code provides:

Jurisdiction of Labor Arbiters and the Commission. — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide x x x the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;

2. Termination disputes;

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts;

6. Except claims for Employees Compensation, Social Security, Medicare and other maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.

---

[20] *Rollo* (G.R. No. 169207), pp. 34-36; *rollo* (G.R. No. 169239), pp. 64-66.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

In contrast, Section 5.2 of Republic Act No. 8799, or the Securities Regulation Code, states:

The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

The pertinent portions of Section 5 of Presidential Decree No. 902-A, mentioned above, states:

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

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

Whether WPP illegally dismissed Galera

WPP's dismissal of Galera lacked both substantive and procedural due process.

Apart from Steedman's letter dated 15 December 2000 to Galera, WPP failed to prove any just or authorized cause for Galera's dismissal. Steedman's letter to Galera reads:

> The operations are currently in a shamble. There is lack of leadership and confidence in your abilities from within, our agency partners and some clients.
>
> Most of the staff I spoke with felt they got more guidance and direction from Minda than yourself. In your role as Managing Director, that is just not acceptable.
>
> I believe your priorities are mismanaged. The recent situation where you felt an internal strategy meeting was more important than a new business pitch is a good example.
>
> You failed to lead and advise on the two new business pitches. In both cases, those involved sort (sic) Minda's input. As I discussed with you back in July, my directive was for you to lead and review all business pitches. It is obvious [that] confusion existed internally right up until the day of the pitch.
>
> The quality output is still not to an acceptable standard, which was also part of my directive that you needed to focus on back in July.
>
> I do not believe you understand the basic skills and industry knowledge required to run a media special operation.[21]

WPP, Steedman, Webster, and Lansang, however, failed to substantiate the allegations in Steedman's letter. Galera, on the other hand, presented documentary evidence[22] in the form of congratulatory letters, including one from Steedman, which contents are diametrically opposed to the 15 December 2000 letter.

The law further requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss

---

[21] *Rollo* (G.R. No. 169239), p. 267.

[22] *Id.* at 237-266.

him. Failure to comply with the requirements taints the dismissal with illegality.[23] WPP's acts clearly show that Galera's dismissal did not comply with the two-notice rule.

Whether Galera is entitled to the monetary award

WPP, Steedman, Webster, and Lansang argue that Galera is not entitled to backwages because she is an alien. They further state that there is no guarantee that the Bureau of Immigration and the Department of Labor and Employment will continue to grant favorable rulings on the applications for a 9(g) visa and an Alien Employment Permit after the expiry of the validity of Galera's documents on 31 December 2000. WPP's argument is a circular argument, and assumes what it attempts to prove. Had WPP not dismissed Galera, there is no doubt in our minds that WPP would have taken action for the approval of documents required for Galera's continued employment.

This is Galera's dilemma: Galera worked in the Philippines without a proper work permit but now wants to claim employee's benefits under Philippine labor laws.

Employment of GALERA with private respondent WPP became effective on September 1, 1999 solely on the instruction of the CEO and upon signing of the contract, without any further action from the Board of Directors of private respondent WPP**.**

Four months had passed when private respondent WPP filed before the Bureau of Immigration an application for petitioner GALERA to receive a working visa, wherein she was designated as Vice President of WPP. Petitioner alleged that she was constrained to sign the application in order that she could remain in the Philippines and retain her employment.[24]

The law and the rules are consistent in stating that the employment permit must be acquired **prior** to employment. The Labor Code states: "Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign

---

[23] *Pepsi-Cola Bottling Co. v. NLRC,* G.R. No. 101900, 23 June 1992, 210 SCRA 277, 286.

[24] *Rollo* (G.R. No. 169207), pp. 14-15; *rollo* (G.R. No. 169239), pp. 44-45.

employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor."[25] Section 4, Rule XIV, Book 1 of the Implementing Rules and Regulations provides:

> *Employment permit required for entry.* — No alien seeking employment, whether as a resident or non-resident, may enter the Philippines without first securing an employment permit from the Ministry. If an alien enters the country under a non-working visa and wishes to be employed thereafter, he may only be allowed to be employed upon presentation of a duly approved employment permit.

Galera cannot come to this Court with unclean hands. To grant Galera's prayer is to sanction the violation of the Philippine labor laws requiring aliens to secure work permits **before** their employment. We hold that the status quo must prevail in the present case and we leave the parties where they are. This ruling, however, does not bar Galera from seeking relief from other jurisdictions.

WHEREFORE, we *PARTIALLY GRANT* the petitions in G.R. Nos. 169207 and 169239. We *SET ASIDE* the Decision of the Court of Appeals promulgated on 14 April 2005 as well as the Resolution promulgated on 1 August 2005 in CA-G.R. SP No. 78721.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

---

[25] First paragraph, Article 40, Labor Code of the Philippines.

EN BANC

[G.R. No. 191084. March 25, 2010]

JOSELITO R. MENDOZA, *petitioner, vs.* **COMMISSION ON ELECTIONS AND ROBERTO M. PAGDANGANAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); SECTION 6, RULE 18 OF THE COMELEC RULES OF PROCEDURE; PROCEDURE WHEN THE COMMISSION *EN BANC* IS EQUALLY DIVIDED IN OPINION; CASE AT BAR.— The failure of the COMELEC *En Banc* to muster the required majority vote even after the 15 February 2010 re-hearing should have caused the dismissal of respondent's ***Election Protest***. Promulgated on 15 February 1993 pursuant to Section 6, Article IX-A and Section 3, Article IX-C of the Constitution, the ***COMELEC Rules of Procedure*** is clear on this matter. Without any trace of ambiguity, Section 6, Rule 18 of said Rule categorically provides as follows: "Sec. 6. *Procedure if Opinion is Equally Divided.* – When the Commission *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed; and in all incidental matters, the petition or motion shall be denied." The propriety of applying the foregoing provision according to its literal tenor cannot be gainsaid. As one pertaining to the election of the provincial governor of Bulacan, respondent's ***Election Protest*** was originally commenced in the COMELEC, pursuant to its exclusive original jurisdiction over the case. Although initially raffled to the COMELEC Second Division, the elevation of said election protest on motion for reconsideration before the Commission *En Banc* cannot, by any stretch of the imagination, be considered an appeal. Tersely put, there is no

appeal within the COMELEC itself. As aptly observed in the lone dissent penned by COMELEC Commissioner Rene V. Sarmiento, respondent's ***Election Protest*** was filed with the Commission "at the first instance" and should be, accordingly, considered an action or proceeding "originally commenced in the Commission."

2. ID.; ID.; ID.; ID.; ID.; ID.; NOT VIOLATIVE OF THE CONSTITUTION; EXPLAINED.— We cannot, in this case, get out of the square cover of Section 6, Rule 18 of the COMELEC Rules. The provision is not violative of the Constitution. The Rule, in fact, was promulgated obviously pursuant to the Constitutional mandate in the first sentence of Section 3 of Article IX(C). Clearly too, the Rule was issued "in order to expedite disposition of election cases" such that even the absence of a majority in a Commission *En Banc* opinion on a case under reconsideration does not result in a non-decision. Either the judgment or order appealed from "shall stand affirmed" or the action originally commenced in the Commission "shall be dismissed." It is easily evident in the second sentence of Section 3 of Article IX(C) that all election cases before the COMELEC are passed upon in one integrated procedure that consists of a hearing and a decision "in division" and when necessitated by a motion for reconsideration, a decision "by the Commission *En Banc*." What is included in the phrase "all such election cases" may be seen in Section 2(2) of Article IX(C) of the Constitution x x x. Section 2(2) read in relation to Section 3 shows that however the jurisdiction of the COMELEC is involved, either in the exercise of "exclusive original jurisdiction" or an "appellate jurisdiction," the COMELEC will act on the case in one whole and single process: to repeat, in division, and if impelled by a motion for reconsideration, *en banc*.

3. ID.; ID.; ID.; ID.; ID.; JURISDICTION OVER ELECTION PROTESTS; EXCLUSIVE ORIGINAL JURISDICTION AND APPELLATE JURISDICTION, DISTINGUISHED AS TO EFFECT.— There is a difference in the result of the exercise of jurisdiction by the COMELEC over election contests. The difference inheres in the kind of jurisdiction invoked, which in turn, is determined by the case brought before the COMELEC. When a decision of a trial court is brought before the COMELEC

for it to exercise appellate jurisdiction, the division decides the appeal but, if there is a motion for reconsideration, the appeal proceeds to the *banc* where a majority is needed for a decision. If the process ends without the required majority at the *banc*, the appealed decision stands affirmed. Upon the other hand, and this is what happened in the instant case, if what is brought before the COMELEC is an original protest invoking the original jurisdiction of the Commission, the protest, as one whole process, is first decided by the division, which process is continued in the *banc* if there is a motion for reconsideration of the division ruling. If no majority decision is reached in the *banc*, the protest, which is an original action, shall be dismissed. There is no first instance decision that can be deemed affirmed.

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; RATIONALE.— It is easy to understand the reason for the difference in the result of the two protests, one as original action and the other as an appeal, if and when the protest process reaches the COMELEC *En Banc*. In a protest originally brought before the COMELEC, no completed process comes to the *banc*. It is the *banc* which will complete the process. If, at that completion, no conclusive result in the form of a majority vote is reached, the COMELEC has no other choice except to dismiss the protest. In a protest placed before the Commission as an appeal, there has been a completed proceeding that has resulted in a decision. So that when the COMELEC, as an appellate body, and after the appellate process is completed, reaches an inconclusive result, the appeal is in effect dismissed and resultingly, the decision appealed from is affirmed.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DULY ESTABLISHED IN CASE AT BAR.— [T]he grave abuse of discretion of the COMELEC is patent in the fact that despite the existence in its books of the clearly worded Section 6 of Rule 18, which incidentally has been acknowledged by this Court in the recent case of *Marcoleta v. COMELEC*, it completely ignored and disregarded its very own decree and proceeded with the questioned Resolution of 8 February 2010 and Order of 4 March 2010, in all, annulling the proclamation of petitioner Joselito R. Mendoza as the duly elected governor of Bulacan, declaring

respondent Roberto M. Pagdanganan as the duly elected governor, and ordering petitioner Joselito R. Mendoza to cease and desist from performing the functions of the Governor of Bulacan and to vacate said office in favor of respondent Roberto M. Pagdanganan. The grave abuse of discretion of the COMELEC is underscored by the fact that the protest that petitioner Pagdanganan filed on 1 June 2007 overstayed with the COMELEC until the present election year when the end of the term of the contested office is at hand and there was hardly enough time for the re-hearing that was conducted only on 15 February 2010. As the hearing time at the division had run out, and the re-hearing time at the *banc* was fast running out, the unwanted result came about: incomplete appreciation of ballots; invalidation of ballots on general and unspecific grounds; unrebutted presumption of validity of ballots.

CARPIO, *Acting C.J., separate concurring opinion*:

1. POLITICAL LAW; ELECTION LAWS; BATAS PAMBANSA BLG. 881 (THE OMNIBUS ELECTION CODE OF THE PHILIPPINES); COUNTING OF VOTES; APPRECIATION OF BALLOTS; RULE.— Section 211 of Batas Pambansa Blg. 881 (BP 881), otherwise known as the Omnibus Election Code of the Philippines, states that "[i]n the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is a clear and good reason to justify its rejection." It is therefore imperative that extreme caution be exercised before any ballot is invalidated, and in the appreciation of ballots, doubts should be resolved in favor of their validity. For after all, the primary objective in the appreciation of ballots is to discover and give effect to the intention of the voter and, thus, preserve the sanctity of the electoral process.

2. ID.; CONSTITUTIONAL LAW; CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); COMELEC RULES OF PROCEDURE; BALLOTS INVALIDATED ON THE GROUND OF BEING WRITTEN BY ONE PERSON; PROCEDURE.— In this case, the COMELEC invalidated the contested ballots in favor of Mendoza mainly on the grounds of written by one person (WBO) and marked ballots (MB). However, as pointed out by Commissioner Sarmiento, **only**

the general objections were mentioned in the ballots invalidated on the ground of WBO, without clearly and distinctly indicating the specifics or details of the WBO objections. Such generalization falls short of the mandate provided under Section 1, Rule 18 of the COMELEC Rules of Procedure which states that "[e]very decision shall express therein clearly and distinctly the facts and the law on which it is based." Section 2(d) of Rule 14, which should apply by analogy to this case, provides: "(d) On Pair or Group of Ballots Written by One or Individual Ballots Written By Two – When ballots are invalidated on the ground of written by one person, the court must clearly and distinctly specify why the pair or group of ballots has been written by only one person. **The specific strokes, figures or letters indicating that the ballots have been written by one person must be specified. A simple ruling that a pair or group of ballots has been written by one person would not suffice."** x x x The ruling of the COMELEC fails to specify the **"strokes, figures or letters indicating that the ballots were written by one person."** The COMELEC merely made this omnibus ruling: "*These ballots are void for being written by one person. The similarity in the handwriting style/strokes is more real than apparent. The dents and slants used in writing the names of the candidates prove that these pairs of ballots were written by one person*." Such a ruling is clearly insufficient.

3. ID.; ID.; ID.; ID.; ID.; ID.; VERIFICATION FROM THE MINUTES OF VOTING OR THE COMPUTERIZED VOTER'S LIST FOR THE PRESENCE OF ASSISTED VOTERS, REQUIRED.— [T]he ballots were invalidated without consulting the Minutes of Voting to determine the existence of incapacitated and illiterate voters in the voting precincts. The presence of illiterate and incapacitated voters would likely account for some ballots to appear as written by one person due to assisted voting, which is authorized under Section 196 of BP 881 x x x. In *Delos Reyes v. Commission on Elections*, the Court ruled that **in the evaluation of ballots contested on the ground of WBO, the COMELEC must first verify from the Minutes of Voting or the Computerized Voters' List for the presence of assisted voters** in the contested precincts and take this fact into account; otherwise, the appreciation of ballots is incomplete.

4. ID.; ELECTION LAWS; BATAS PAMBANSA BLG. 881 (THE OMNIBUS ELECTION CODE OF THE PHILIPPINES); COUNTING OF VOTES; APPRECIATION OF BALLOTS; INVALIDATION OF BALLOTS ON THE GROUND OF MARKED BALLOTS; BALLOTS, WHEN CONSIDERED MARKED.— The COMELEC likewise did not specifically indicate the reasons for the invalidation of the contested ballots on the ground of marked ballots (MB). Most of the rulings in the Division Resolution in invalidating on the ground of MB merely states that "distinctive markings on each ballot which serves no other purpose but to identify the ballot and or the voter himself." Such general statement, which does not indicate the distinctive markings found on the ballots, is not sufficient considering that there are marks that cannot be considered as signs to identify a ballot which would warrant its invalidation. Thus, pertinent provisions of Section 211 of BP 881 state: "SEC. 211. *Rules for the appreciation of ballots*. x x x 22. **Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, commas, dots, lines, or hyphens between the first name and surname of a candidate or in other parts of the ballot, traces of the letter 'T', 'J', and other similar ones, the first letters or syllables of names which the voter does not continue, the use of two or more kinds of writing and unintentional or accidental flourishes, strokes, or strains, shall not invalidate the ballot."** Indeed, no ballot should be discarded as marked ballot unless clear and sufficient reasons justify that action and any doubt must be resolved in favor of the validity of the ballot. x x x Thus, in order for a ballot to be considered marked, it must clearly appear that the marks or words found on the ballot were deliberately placed thereon to serve as identification marks which therefore invalidate it.

5. ID.; CONSTITUTIONAL LAW; CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMELEC; FAILURE OF THE COMELEC *EN BANC* TO REACH A MAJORITY DECISION, EFFECT; CASE AT BAR.— I disagree with the *ponencia's* ruling that the decision of the COMELEC Second Division was abandoned, resulting in the dismissal of the election protest, when the COMELEC *En Banc* failed to reach a majority decision. The COMELEC Second Division had jurisdiction to decide this election contest under

Section 3, Article IX-C of the Constitution. The failure of the COMELEC *En Banc* to reach a majority decision on the motion for reconsideration operated to affirm the decision of the COMELEC Second Division.

CARPIO MORALES, *J.*, *separate opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM-SHOPPING; DEFINED.— Forum shopping is defined in *Santos v. Comelec* as "an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly securing a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*[; and] may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition."

2. ID.; ID.; ID.; PRESUPPOSES A SIMULTANEOUS OR SUCCESSIVE AVAILMENT OF TWO VIABLE REMEDIES WHICH COULD RESULT IN TWO CONFLICTING OPINIONS; CASE AT BAR.— A circumstance of forum-shopping presupposes a simultaneous or successive availment of two viable remedies, which could result in two conflicting opinions. Petitioner's (1) Urgent Motion to Recall the Resolution promulgated on February 8, 2010 before the Comelec *en banc* (filed alongside the present petition), and (2) Urgent Motion to Declare Null & Void and Recall Latest *En Banc* Resolution Dated March 4, 2010 and Urgent Motion to Set Aside March 4, 2010 *En Banc* Resolution Granting Motion for Execution Pending Motion for Reconsideration before the Comelec *en banc* (filed alongside a Supplement to the present petition) are *prohibited pleadings*, for they are in the nature of a "motion for reconsideration of an *en banc* ruling, resolution, order or decision" which is one of the pleadings not allowed by the Comelec Rules of Procedure. As prohibited pleadings, they do not deserve the attention of the Comelec as they face the certainty of outright dismissal and the vulnerability of being expunged. In fact, a prohibited pleading cannot be given any legal effect precisely because it is being prohibited. The Comelec cannot grant or entertain prohibited pleadings regardless of their merit. The evils of coming up with a conflicting opinion and congesting the dockets are thus absent. The Comelec cannot be considered another forum from which

to shop since it is no longer offering any legal remedy or recourse to the parties.

3. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; ACTUAL CASE OR CONTROVERSY; PETITION IN CASE AT BAR, NOT PREMATURELY FILED BUT MATURITY OF ISSUES WAS SPOILED BY MOOTNESS.— In *Juliano v. Commission on Elections*, the Court granted a petition similar to the present and underscored the necessity of the conduct of a rehearing in cases when the Comelec *en banc* was equally divided in opinion or when the necessary majority cannot be had. It held that the Comelec *en banc* acts with grave abuse of discretion when it fails to give a party the rehearing required by the Comelec Rules of Procedure. At the time of filing of the present petition, the issues raised therein were already mature for adjudication. The maturity of the issues, however, was immediately spoiled by mootness. The Comelec *en banc* eventually ordered on February 10, 2010 the conduct of a rehearing, which order contradicted its earlier pronouncement that its February 8, 2010 Resolution is "immediately executory." The parties' notification on February 12, 2010 of this Comelec Order of February 10, 2010 incidentally coincided with the present petition's filing on February 12, 2010. This development effectively forestalled an argument of petitioner in challenging the February 8, 2010 Resolution, and may have mooted an issue, as what happened in *Marcoleta v. Commission on Elections* where the Comelec's subsequent positive action for a rehearing frustrated the resolution of the issue, but it is not an argument for prematurity.

4. ID.; ID.; ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); CASES TO BE DECIDED BY THE COMELEC *EN BANC*; WHEN NO MAJORITY VOTE IS ATTAINED AFTER REHEARING, THE EFFECT IS THE DISMISSAL OF THE ACTION.— There are cases which may be initiated at the Comelec *en banc*, the voting in which could also result to a stalemate. The Comelec sits *en banc* in cases specifically provided by the Rules, pre-proclamation cases upon a vote of a majority of its members, all other cases where a Division is not authorized to act, *inter alia*. These matters include election offense cases, contempt proceedings, and postponement or declaration of failure of

elections and the calling for a special elections. In such cases, when the necessary majority in the Comelec *en banc* cannot be had even after a rehearing of the action, the effect is dismissal of the **action**.

5. ID.; ID.; ID.; ID.; ID.; ELECTION PROTEST; MOTION FOR RECONSIDERATION BEFORE THE COMELEC *EN BANC*; WHEN NO MAJORITY VOTE IS ATTAINED AFTER REHEARING, THE EFFECT IS DISMISSAL OF THE PROCEEDING.— In an election protest originally commenced in the Comelec and a decision is reached by the Division, it is, as the *ponencia* correctly posits, the *banc* that shall effectively "complete the process," which position hews well with Justice Presbitero Velasco, Jr.'s view of "one integrated process," to which I also agree. A motion for reconsideration before the Comelec *en banc* is one such proceeding that is a part of the *entire* procedural mechanism of election cases. *Ergo*, when the necessary majority in the Comelec *en banc* cannot be had even after a rehearing, the effect is dismissal of the **proceeding**. The motion for reconsideration should be dismissed.

6. ID.; ID.; ID.; ID.; ID.; ID.; ID.; ELUCIDATED.— As defined by Black, the term "proceeding" may refer to a procedural step that is part of a larger action or special proceeding. Black defines "process" as a series of actions, motions or occurrences. The word "proceeding" could not have been used as an innocuous term. It was used to refer to matters requiring the resolution of the *banc* in cases originally commenced in the Comelec that pass through a two-tiered process, as differentiated from actions initiated and totally completed at the *banc* level. It is a universal rule of application that a construction of a statute is to be favored, and must be adopted if reasonably possible, which will give meaning to every word, clause, and sentence of the statute and operation and effect to every part and provision of it. Following the position of the *ponencia*, it is observed that in such cases where a Comelec Division dismisses an election protest and the necessary majority is not reached after the rehearing of a motion for reconsideration, the Comelec *en banc*, in effect, affirms such decision by similarly dismissing the "action." Under my submission, the result is the same but what is dismissed is the "proceeding" which is the motion for

reconsideration. There should be no declaration of affirmance since, as the *ponencia* concedes, there is "no conclusive result in the form of a majority vote." The Comelec *en banc* should dismiss the proceeding at hand but not the action, petition or case.

7. ID.; ID.; ID.; ID.; ID.; ID.; ID.; SHOULD BE DISMISSED IN CASE AT BAR; RATIONALE.— The glaring difference becomes more apparent when the Comelec Division grants an election protest like that in the present case. Since a majority vote was not attained after rehearing the Motion for Reconsideration, the *ponencia* states that the Comelec *en banc* should have dismissed the election protest itself or, in effect, vacated the decision of the Division. Again I submit that it is the Motion for Reconsideration that is the "proceeding" which should be dismissed. *First*, it is absurd for a deliberating body which arrived at "no conclusive result in the form of a majority vote" to do something about a matter on the table, much less to overturn it. *Second*, the resulting tyranny of the minority is unjust for, in such cases where the Comelec *en banc* has a quorum of four, the protestee only needs to obtain the vote of just one Commissioner to frustrate the protestant's victory that was handed down by three Commissioners. *Third*, the *ponencia* incorrectly denotes that a body which *could not* pronounce a decision can effectively pronounce one and even one contrary to that of a body that *could* reach a decision. Otherwise stated, it downplays the significance of "the concurrence of a majority," which breathes life to any handiwork of the decision-making power of the Comelec. Certainly, that was not the purpose and principle envisioned by the Comelec Rules of Procedure.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; COMMITTED BY COMELEC *EN BANC* FOR FAILURE TO MAKE A COMPLETE APPRECIATION OF THE CONTESTED BALLOTS IN CASE AT BAR.— When the handwritings on the ballots are the subject matter of the election contest, the best evidence would be the ballots themselves as the Comelec can examine or compare these handwritings even without the assistance from handwriting experts, with due consideration to the presence of assisted voters, if any is reflected in the Minutes of Voting. General appearance or pictorial effect is not enough to warrant that two writings are by the same hand.

The ballots cannot be invalidated on such ground if they display but a single consistent dissimilarity in any feature which is fundamental to the structure of the handwriting, and whose presence is not capable of reasonable explanation. An exegesis of the semblances or similarities and differences or variations in the master patterns governing letter design is thus imperative. I thus agree with Justice Antonio Carpio's position that the Comelec abdicated its positive duty. The Comelec failed to consider whether there is a type of consistent dissimilarity in a fundamental feature of the handwriting structure of the entries in the ballots. The Comelec did not rebut the presumption of validity of the ballots since it did not take the position that the similarities in the class and individual characteristics do not lean more towards accidental coincidence or that the divergences in class and individual characteristics are superficial. Neither did it point out that the presence of the alleged dissimilarities could be reasonably explained by or attributed to an attempt to disguise the handwriting after examining its fluency and rhythm which may normally vary from one ballot to another but should remain consistent within each ballot.

VELASCO, JR., *J., concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); ELECTION CASES SHALL BE DECIDED IN DIVISIONS AND BY THE COMELEC *EN BANC* ON MOTION FOR RECONSIDERATION.— Under Section 3, Article IX-C of the 1987 Constitution, the COMELEC, sitting *en banc*, does not have the authority to decide election cases in the first instance as this authority belongs to the divisions of the COMELEC. x x x As a matter of fact, if the COMELEC *en banc* renders a decision in an election case in the first instance, said decision is void. x x x Verily, it is only when a motion for reconsideration is filed that the COMELEC *en banc* hears the same. Nonetheless, this does not in any way mean that the filing of such a motion constitutes an appeal to the COMELEC *en banc*. x x x Significantly, the COMELEC, sitting *en banc* or in divisions, is just one body. By analogy, even the Court which hears and decides cases in divisions and *en banc* is composed of only one body. Decisions of any division are not appealable to the *en banc*, and decisions of each division and the *en banc* form acts of only one Supreme Court.

2. ID.; ID.; ID.; ID.; ID.; ORIGINAL AND APPELLATE JURISDICTIONS, DISTINGUISHED.— A distinction must be made as to whether an election case is brought before the COMELEC in the exercise of its original or appellate jurisdiction. As stated in Section 2(2), Article IX-C of the 1987 Constitution, the COMELEC is vested with adjudicatory power consisting of both original and appellate jurisdictions x x x. Concomitantly, election protests involving elective regional, provincial or city positions fall within the exclusive original jurisdiction of the COMELEC. On the other hand, election protests involving elective municipal and *barangay* positions fall within the exclusive original jurisdiction of the proper regional trial court and municipal trial court, respectively. The COMELEC, in turn, exercises appellate jurisdiction over the decisions of either court.

3. ID.; ID.; ID.; ID.; ID.; APPELLATE JURISDICTION; OPERATES AS A REVIEW BY THE COMELEC OF DECISIONS OF TRIAL COURTS.— While the Constitution grants COMELEC appellate jurisdiction, it is clear that such appellate jurisdiction operates as a review by the COMELEC of decisions of trial courts. There is really no appeal within the COMELEC itself. As such, it is absurd to consider the filing of a motion for reconsideration as an appeal from the COMELEC, sitting in a division, to the COMELEC, sitting *en banc*. At best, the filing of a motion for reconsideration with the COMELEC *en banc* of a decision or resolution of the division of the COMELEC should be viewed as part of one integrated process. Such motion for reconsideration before the COMELEC *en banc* is a constitutionally guaranteed remedial mechanism for parties aggrieved by a division decision or resolution. However, at the risk of repetition, it is not an appeal from the COMELEC division to the *en banc*.

4. ID.; ID.; ID.; ID.; ID.; WHEN SITTING *EN BANC,* A MAJORITY VOTE OF ALL THE MEMBERS IS REQUIRED TO REACH A DECISION.— The COMELEC is an independent constitutional commission. As such, the rule set forth by the Constitution as to how constitutional commissions should arrive at a decision applies to it. As sanctioned by Section 7, Article IX-A of the 1987 Constitution: "Section 7. **Each Commission shall decide by a majority vote of *all* its members any case or matter**

brought before it x x x." The foregoing constitutional provision was faithfully observed by the COMELEC when it adopted the same in its own Rules of Procedure. Rule 3, Section 5(a) of the COMELEC Rules of Procedure provides: "Section 5. Quorum; Votes Required.—(a) When sitting *en banc*, four (4) Members of the Commission shall constitute a quorum for the purpose of transacting business. The concurrence of a majority of the Members of the Commission shall be necessary for the pronouncement of a decision, resolution, order or ruling." In reinforcing the above-quoted provision, the Court, in *Estrella v. COMELEC*, prescribed that **the majority of *all* the commissioners is necessary for the pronouncement of a decision or resolution by the COMELEC *en banc*.**

5. ID.; ID.; ID.; ID.; ID.; COMELEC RULES OF PROCEDURE; WHEN COMELEC *EN BANC* IS EQUALLY DIVIDED IN OPINION; REMEDIES.— In cases x x x where the COMELEC *en banc* is equally divided in opinion or the necessary majority vote cannot be obtained, Rule 18, Section 6 of the 1993 COMELEC Rules of Procedure applies x x x. Based on the above-cited provision, if no decision is reached after the case is reheard, there are two different remedies available to the COMELEC, *to wit*: (1) dismiss the action or proceeding, if the case was originally commenced in the COMELEC; or (2) consider as affirmed the judgment or order appealed from, in appealed cases. This rule adheres to the constitutional provision that the COMELEC must decide by a majority of all its members.

6. ID.; ID.; ID.; ID.; ID.; ID.; ID.; ID.; ELUCIDATED.— [I]t is evident that when Rule 18, Section 6 of the 1993 COMELEC Rules of Procedure speaks of cases originally commenced in the COMELEC, the reference is to election protests involving elective regional, provincial or city positions falling within its exclusive original jurisdiction. On the other hand, when the same provision mentioned appealed cases, this has reference to election protests involving elective municipal and *barangay* positions cognizable by the COMELEC in the exercise of its appellate jurisdiction. In the first instance, an election protest is originally commenced before the COMELEC, which first decides by the division. If a motion for reconsideration is subsequently filed with the COMELEC *en banc* and no majority decision is reached even after a rehearing, then pursuant to

Section 6, Rule 18 of the COMELEC Rules of Procedure, the election protest shall be dismissed. In the second instance, the trial court originally decides an election protest. If the case is brought on appeal to the COMELEC, which again shall first act thru a division, the division's decision may become the subject of a motion for reconsideration filed with the COMELEC *en banc*. And if before the *en banc* a majority decision is not reached even after a rehearing, then, also pursuant to Section 6, Rule 18 of the COMELEC Rules of Procedure, the appealed decision stands affirmed. In both cases, however, if no motion for reconsideration is filed with the COMELEC *en banc*, the decision or resolution of the division shall remain.

LEONARDO-DE CASTRO, *J., dissenting opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; COMMITTED IN CASE AT BAR.— Respondent Pagdanganan and the COMELEC both claim that petitioner's act of filing on **February 11, 2010** with the COMELEC a ***Motion to Recall the Resolution Promulgated on February 8, 2010*** and praying that the questioned Resolution be immediately recalled by the latter, and thereafter filing on the following day, *i.e.*, on **February 12, 2010**, with this Court the instant ***Petition for Certiorari with Prayer for a Temporary Restraining Order and/or Status Quo Order*** asking, among others, that the questioned Resolution be set aside, **undeniably constitute forum shopping**; that at the time of the filing of the case at bar, petitioner did not disclose his act of filing a Motion to Recall with the COMELEC; and that petitioner sought to have this procedural lapse cured through his ***Manifestation and Motion to Admit Further Documents for Compliance and Additional Annexes to the Petition*** filed on February 15, 2010, with a modified "Verification and Certification of Non-Forum Shopping" wherein he had inserted a clause saying, "*[t]hat other than the Motion to Recall the Resolution Promulgated on February 8, 2010 which I filed before the Commission on Elections En Banc on February 11, 2010, I have not commenced any other action or proceeding involving the same issues* x x x." Petitioner's actions do constitute forum shopping, as this term was defined in *Santos v. Commission on Elections*, cited by the COMELEC in its Comment, the

pertinent portions of which read as follows: ***"Santos is Guilty of Forum-Shopping* – Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly securing a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. x x x"**

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES; NONCOMPLIANCE THEREWITH RESULTS IN THE PREMATURITY OF ACTION; CASE AT BAR.— It is clear from the events immediately succeeding the filing of this petition that it was, as correctly averred by respondents, premature. The parties do not dispute the fact that this petition was filed during the pendency of the ***Urgent Motion to Recall the Resolution Promulgated on February 8, 2010*** filed on February 11, 2010 by petitioner and the scheduled "re-hearing" of the case on February 15, 2010 before the COMELEC. Respondent COMELEC aptly pointed out that there was nothing to judicially pass upon at this time considering that, when the instant petition was filed, the COMELEC had yet to make a final ruling on the protest of respondent Pagdanganan. x x x Further proof that this petition is premature is the fact that the rehearing conducted on February 15, 2010 rendered moot and academic the primary issues raised by petitioner regarding the questioned Resolution, specifically, "whether or not [the COMELEC] gravely abused its discretion tantamount to lack of or in excess of jurisdiction when it issued the **assailed resolution without the concurrence of the majority of the members of the Commission and without conducting a rehearing of the case,"** as well as **without issuing a notice of promulgation** of the said assailed Division Resolution, and **before it had attained finality.** The COMELEC Rules require that a rehearing be conducted when the necessary majority is not reached in the *En Banc* level. This was already complied with on February 10, 2010 when the COMELEC issued an Order scheduling a rehearing of the case, and fulfilled when such

hearing actually took place on February 15, 2010, after which the COMELEC issued an Order dated March 4, 2010.

3. ID.; CONSTITUTIONAL LAW; CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); A COMELEC DIVISION IS VESTED WITH THE AUTHORITY TO DECIDE ELECTION CASES SUBJECT TO THE FILING OF A MOTION FOR RECONSIDERATION WITH THE COMELEC *EN BANC*.— The COMELEC is a constitutionally-created body that is primarily an administrative agency, which also possesses quasi-judicial and quasi-legislative functions. Article IX(A) of the 1987 Constitution contains the provisions common to all Constitutional Commissions, and Sections 1 and 7 thereof read: "SECTION 1. The Constitutional Commissions, **which shall be independent,** are the Civil Service Commission, **the Commission on Elections,** and the Commission on Audit. x x x SECTION 7. **Each Commission shall decide by a majority vote of all its Members any case or matter brought before it** x x x." Specifically, Article IX(C) of the Constitution covers the COMELEC, Section 3 of which provides: "SECTION 3. The Commission on Elections may sit ***En Banc*** or **in two divisions**, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. **All such election cases shall be heard and decided in division**, provided that **motions for reconsideration of decisions shall be decided by the Commission *En Banc***." It is clear from the above that the framers of the Constitution intended the COMELEC to be an independent body. It appears that a **division** of the COMELEC is vested with constitutional authority to hear and decide election cases subject to the filing of a motion for reconsideration with the COMELEC *En Banc*. Thus, before a case is elevated to the COMELEC *En Banc*, there exists a decision of a division of the COMELEC, which it has rendered in accordance with its constitutionally vested jurisdiction to hear and decide election cases.

4. ID.; ID.; ID.; ID.; ID.; COMELEC RULES OF PROCEDURE; ELECTION CASES; VOTES REQUIRED; LACK OF

NECESSARY MAJORITY VOTE IN THE COMELEC *EN BANC*, EFFECT.— [U]nder the COMELEC Rules, a COMELEC division can validly decide election cases upon the concurrence of *at least two* Members. Rule 3, Section 5 provides: "SECTION 5. **Quorum Votes Required.** – (a) When sitting *En Banc*, four (4) members of the Commission shall constitute a quorum for the purpose of transacting business. The Concurrence of a majority of the Members of the Commission shall be necessary for the pronouncement of a decision or resolution. (b) When sitting in Division, two (2) Members of a Division shall constitute a quorum to transact business. The concurrence of at least two (2) Members of a Division shall be necessary to reach a decision, resolution, order or ruling. **If this required number is not obtained, the case shall be automatically elevated to the Commission *En Banc* for decision or resolution. (c) Any motion to reconsider a decision, resolution, or order of ruling of a Division shall be resolved by the Commission *En Banc*** except motions on interlocutory orders of the division which shall be resolved by the division which issued the order." It appears that this Rule contemplates two distinct situations when a case originally heard before a Division reaches the COMELEC *En Banc*. Under paragraph (b), when the required number of two (2) Members is not obtained in the Division, **the case** shall be *automatically elevated* to the COMELEC *En Banc*, and in that situation, what is before the latter is the *original election protest*. On the other hand, under paragraph (c), when the required number is in fact obtained and a decision, resolution, order, or ruling is duly reached by the Division, the ***motion for reconsideration* of such decision, resolution, order, or ruling** shall be resolved by the COMELEC *En Banc*, and **NOT** the original election protest. Applying Section 6, Rule 18, x x x the effect of the lack of the necessary majority of four (4) votes in the COMELEC *En Banc*, which results in the inability of the COMELEC *En Banc* to reach a decision either to grant or deny the protest or a motion for reconsideration, is as follows: (i) the original election protest is dismissed, in cases falling under **paragraph (b)**; while (ii) the decision of the division sought to be reconsidered must be deemed affirmed, in cases falling under **paragraph (c)**. Furthermore, even if we consider the proceeding before the *En Banc* as a continuation of the election protest heard and decided

by the division, the motion for reconsideration will be but an incident of the original election protest. Utilizing the provisions of the COMELEC Rules (Sec. 6, Rule 18) cited by Commissioner Sarmiento, the Motion for Reconsideration, not being an appeal but only an incidental motion, should be denied.

5. ID.; ID.; ID.; ID.; ID.; ID.; COMELEC *EN BANC*; WHEN OPINION IS EQUALLY DIVIDED; RULE ON DISMISSAL OF THE ORIGINAL PROTEST ACTION UPON FAILURE TO REACH THE NECESSARY MAJORITY, WHEN APPLICABLE.— [C]onstruing Section 6, Rule 18 in relation to Section 5(b) and (c) of the same COMELEC Rules, in harmony with the pertinent provisions of the Constitution, the rule providing for dismissal of the original protest action upon failure to reach the necessary majority before the COMELEC *En Banc* should only apply in a case where there was NO decision reached by the Division, because in such situation, the COMELEC *En Banc* would be acting not on the motion for reconsideration but on the original election protest. But if the COMELEC *En Banc* acts on a motion for reconsideration of a decision or resolution of a Division, then the failure to reach the necessary majority of four should result to the DENIAL of the motion for reconsideration. Otherwise, the motion for reconsideration would be accorded greater weight than the decision rendered by the Division, which was arrived at in the exercise of its constitutionally vested jurisdiction over election protests.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT DULY ESTABLISHED IN CASE AT BAR.— In determining whether the COMELEC *en banc* acted with grave abuse of discretion in this case as asserted by petitioner, the standard used by the Court in *Mendoza v. Commission on Elections* is as follows: "Thus, our standard of review is 'grave abuse of discretion,' a term that defies exact definition, but generally refers to 'capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.'

Mere abuse of discretion is not enough; the abuse must be grave to merit our positive action." I maintain the presumption that the COMELEC regularly performed its official duties in relation to the revision of ballots in this election case, absent a clear showing that it acted in an arbitrary, whimsical, capricious, or despotic manner. Records show that the COMELEC ordered the respective Election Officers and City/Municipal Treasurers of the various cities and municipalities of Bulacan to undertake all the necessary security measures to preserve and secure the ballot boxes and their contents. In addition, the COMELEC granted the requests of both petitioner and respondent Pagdanganan for the designation of their respective security personnel in the storage facility where the ballot boxes were kept. Its findings that some ballots were written by one or by two or more persons, or marked, or spurious were supported by laws and jurisprudence regarding the appreciation of ballots.

ABAD, *J., dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); COMELEC DIVISION; HAS POWER TO HEAR AND DECIDE ALL ELECTION CASES.— Section 3, Article IX-C, of the 1987 Constitution empowers every COMELEC Division to decide election cases for the COMELEC as a body, not to act as commissioners with mere recommendatory powers. Section 3 reads: **"Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*."** Actually, although the COMELEC "may sit *en banc* or in two divisions," the COMELEC *en banc* has no power to decide election cases. **"All such election cases,"** says Section 3 above, **"shall be heard and decided in division."** The majority opinion's theory that the Division's decisions in original actions are **not decisions** if, on motion for reconsideration, the required vote of the *En Banc* cannot be had, contravenes Section 3. Nothing in the provisions

of the Constitution implies a proposition that the decision-making process it prescribed for the COMELEC is integrated in that the decision of the Division is a half-decision in original election cases and needs to be approved by the *En Banc*.

2. ID.; ID.; ID.; ID.; ID.; POWER IS LIMITED TO DECIDING MOTIONS FOR RECONSIDERATION.— The COMELEC cannot pass a rule that, when the *En Banc* fails to muster the majority vote required for denying the losing party's motion for reconsideration, the decision of the Division shall be deemed vacated or reversed. Such rule will alter the scope of the power of the *En Banc*. The latter's power with respect to all kinds of election cases is **limited to deciding motions for reconsideration.** Thus, the pertinent portion of Section 3, Article IX-C, of the 1987 Constitution, provides: **"Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc."** The reconsideration of a decision implies reexamination, and possibly a different decision by the entity which initially decided it. Since the *En Banc* needs four votes to reconsider and set aside a Division's decision, its failure to muster such votes means that it is unable to exercise its power to decide the motion for reconsideration before it. This also means that it cannot grant the reconsideration asked of it by the losing party. Correct? Consequently, a COMELEC-generated rule which says that such failure to grant reconsideration is the equivalent of actually granting the reconsideration is absurd. It also contravenes the Constitution.

3. ID.; ID.; ID.; ID.; ID.; ELECTION CASES; NO DISTINCTION BETWEEN ELECTION CASES BROUGHT TO THE COMELEC BY APPEAL AND THOSE ORIGINALLY FILED WITH IT; EXPLAINED.— The Constitution does not make a distinction between election cases brought to the COMELEC by appeal and those originally filed with it. The same Section 3 provides that "**all** such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission

> *en banc*." There cannot be one way of disposing of motions for reconsideration in original cases and another way of disposing of motions for reconsideration in appealed cases. The distinction made by Section 6, Rule 18, of the COMELEC rules is unwarranted. x x x [I]t is to the Divisions that the Constitution gave the power to decide all election cases, not to the *En Banc*. It can be granted that the procedure that the Division may follow in hearing and deciding appealed cases might differ from the procedure it will follow in hearing and deciding original cases. But is there a significant difference between these two kinds of cases that will justify a divergence in results when, on motions for reconsideration, the *En Banc* is unable to muster the required vote for denying such motions? There is none. Indeed, the Supreme Court hears and decides both appealed and original cases but it has never crossed its mind to decree that, in original cases filed with it as distinguished from appealed cases, a failure to muster the required vote for acting on a motion for reconsideration shall result in the reversal of its decision. Such a rule would be an outrage to the principle of fairness and to the Constitutional guarantee of due process.

APPEARANCES OF COUNSEL

Bello Law Office for petitioner.
The Solicitor General for public respondent.
George Erwin M. Garcia for private respondent.

D E C I S I O N

PEREZ, *J.*:

When the language of the law is clear and explicit, there is no room for interpretation, only application. And if statutory construction be necessary, the statute should be interpreted to assure its being in consonance with, rather than repugnant to, any constitutional command or prescription.[1] It is upon these basic principles that the petition must be granted.

---

[1] *Mutuc v. COMELEC*, 146 Phil. 798, 805 (1970), citing cases.

The factual and procedural antecedents are not in dispute.

Petitioner Joselito R. Mendoza was proclaimed the winner of the 2007 gubernatorial election for the province of Bulacan, besting respondent Roberto M. Pagdanganan by a margin of 15,732 votes. On 1 June 2007, respondent filed the ***Election Protest*** which, anchored on the massive electoral fraud allegedly perpetrated by petitioner, was raffled to the Second Division of the Commission on Elections (COMELEC) as EPC No. 2007-44. With petitioner's filing of his ***Answer with Counter-Protest*** on 18 June 2007, the COMELEC proceeded to conduct the preliminary conference and to order a revision of the ballots from the contested precincts indicated in said pleadings.

Upon the evidence adduced and the memoranda subsequently filed by the parties, the COMELEC Second Division went on to render the 1 December 2009 Resolution, which annulled and set aside petitioner's proclamation as governor of Bulacan and proclaimed respondent duly elected to said position by a winning margin of 4,321 votes. Coupled with a directive to the Department of Interior and Local Government to implement the same, the resolution ordered petitioner to immediately vacate said office, to cease and desist from discharging the functions pertaining thereto and to cause a peaceful turn-over thereof to respondent.

Dissatisfied, petitioner filed a ***Motion for Reconsideration*** of the foregoing resolution with the COMELEC *En Banc*. Against respondent's ***Motion for Execution of Judgment Pending Motion for Reconsideration***, petitioner also filed an ***Opposition to the Motion for Execution*** before the COMELEC Second Division. On 8 February 2010, however, the COMELEC *En Banc* issued a Resolution, effectively disposing of the foregoing motions/incidents in this wise:

> WHEREFORE, in view of the foregoing, the Commission *En Banc* **DENIES** the Motion for Reconsideration for lack of merit. The Resolution of the Commission (Second Division) promulgated on December 1, 2009 **ANNULLING** the proclamation of **JOSELITO R. MENDOZA** as the duly elected Governor of Bulacan and DECLARING **ROBERTO M. PAGDANGANAN** as duly elected to said Office is **AFFIRMED** with modification.

Considering the proximity of the end of the term of office involved, this Resolution is declared immediately executory.

ACCORDINGLY, the Commission *En Banc* hereby **ISSUES** a **WRIT OF EXECUTION** directing the Provincial Election Supervisor of Bulacan, in coordination with the DILG Provincial Operations Officer to implement the Resolution of the Commission (Second Division) dated December 1, 2009 and this Resolution of the Commission *En Banc* by ordering **JOSELITO R. MENDOZA** to **CEASE** and **DESIST** from performing the functions of Governor of the Province of Bulacan and to **VACATE** said office in favor of **ROBERTO M. PAGDANGANAN**.

Let a copy of this Resolution be furnished the Secretary of the Department of Interior and Local Government, the Provincial Election Supervisor of Bulacan, and the DILG Provincial Operations Officer of the Province of Bulacan. (Underscoring supplied)

On 11 February 2010, petitioner filed before the COMELEC an ***Urgent Motion to Recall the Resolution Promulgated on February 8, 2010*** on the following grounds: (a) lack of concurrence of the majority of the members of the Commission pursuant to Section 5, Rule 3 of the ***COMELEC Rules of Procedure***; (b) lack of re-hearing pursuant to Section 6, Rule 18 of the Rules; and (c) lack of notice for the promulgation of the resolution pursuant to Section 5, Rule 18 of said Rules. Invoking Section 13, Rule 18 of the same Rules, petitioner additionally argued that the resolution pertained to an ordinary action and, as such, can only become final and executory after 30 days from its promulgation.

On 12 February 2010, petitioner filed the instant ***Petition for Certiorari with an Urgent Prayer for the Issuance of a Temporary Restraining Order and/or a Status Quo Order and Writ of Preliminary Injunction***. Directed against the 8 February 2010 Resolution of the COMELEC *En Banc*, the petition is noticeably anchored on the same grounds raised in petitioner's urgent motion to recall the same resolution before the COMELEC. In addition, the petitioner disputes the appreciation and result of the revision of the contested ballots.

In the meantime, it appears that the COMELEC *En Banc* issued a 10 February 2010 Order, scheduling the case for re-hearing on 15 February 2010, on the ground that "***there was no majority vote of the members obtained in the Resolution of the Commission En Banc promulgated on February 8, 2010***." At said scheduled re-hearing, it further appears that the parties agreed to submit the matter for resolution by the COMELEC *En Banc* upon submission of their respective memoranda, without further argument. As it turned out, the deliberations which ensued again failed to muster the required majority vote since, with three (3) Commissioners not taking part in the voting, and only one dissent therefrom, the assailed 1 December 2009 Resolution of the COMELEC Second Division only garnered three concurrences.

In their respective ***Comments*** thereto, both respondent and the Office of the Solicitor General argue that, in addition to its premature filing, the petition at bench violated the rule against forum shopping. Claiming that he received the 10 February 2010 Order of the COMELEC *En Banc* late in the morning of 12 February 2010 or when the filing of the petition was already underway, petitioner argued that: (a) he apprised the Court of the pendency of his ***Urgent Motion to Recall the Resolution Promulgated on 8 February 2010***; and, (b) that the writ of execution ensconced in said resolution compelled him to resort to the petition for *certiorari* before us.

On 4 March 2010, the COMELEC *En Banc* issued an Order for the issuance of a Writ of Execution directing the implementation of the 1 December 2009 Resolution of the COMELEC Second Division. While the COMELEC Electoral Contests Adjudication Department (ECAD) issued the corresponding Writ of Execution on 5 March 2010, the record shows that COMELEC *En Banc* issued an Order on the same date, directing the ECAD to deliver said 4 March 2010 Order and 5 March 2010 Writ of Execution by personal service to the parties. Aggrieved, petitioner filed the following motions with the COMELEC *En Banc* on 5 March 2010, *viz*.: (a) ***Urgent Motion to Declare Null and Void and Recall Latest En Banc Resolution Dated March 4, 2010***; and, (b) ***Urgent Motion to Set Aside 4 March 2010 En Banc***

Resolution Granting Protestant's Motion for Execution Pending Motion for Reconsideration.

On 8 March 2010, petitioner filed before us a ***Supplement to the Petition with a Most Urgent Reiterating Motion for the Issuance of a Temporary Restraining Order or a Status Quo Order***. Contending that respondent's protest should have been dismissed when no majority vote was obtained after the re-hearing in the case, petitioner argues that: (a) the 4 March 2010 Order and 5 March 2010 Writ of Execution are null and void; (b) no valid decision can be rendered by the COMELEC *En Banc* without the appreciation of the original ballots; (c) the COMELEC ignored the Court's ruling in the recent case of *Corral v. Commission on Elections;*[2] and (d) the foregoing circumstances are indicative of the irregularities which attended the adjudication of the case before the Division and *En Banc* levels of the COMELEC.

Despite receipt of respondent's ***Most Respectful Urgent Manifestation*** which once again called attention to petitioner's supposed forum shopping, the Court issued a Resolution dated 9 March 2010 granting the ***Status Quo Ante Order*** sought in the petition. With respondent's filing of a ***Manifestation and Comment*** to said supplemental pleading on 10 March 2010, petitioner filed a ***Manifestation with Motion to Appreciate Ballots Invalidated as Written by One Person and Marked Ballot*** on 12 March 2010.

The submissions, as measured by the election rules, dictate that we grant the petition, set aside and nullify the assailed resolutions and orders, and order the dismissal of respondent's election protest.

The Preliminaries

More than the justifications petitioner proffers for the filing of the petition at bench, the public interest involved in the case militates against the dismissal of the pleading on technical grounds like forum shopping. On the other hand, to rule that

---

[2] G.R. No. 190156, 12 February 2010.

petitioner should have filed a new petition to challenge the 4 March 2010 Order of the COMELEC *En Banc* is to disregard the liberality traditionally accorded amended and supplemental pleadings and the very purpose for which supplemental pleadings are allowed under Section 6, Rule 10 of the 1997 Rules of Civil Procedure.[3] More importantly, such a course of action would clearly be violative of the injunction against multiplicity of suits enunciated in a long *catena* of decisions handed down by this Court.

The Main Matter

Acting on petitioner's motion for reconsideration of the 1 December 2009 Resolution issued by the COMELEC Second Division, the COMELEC *En Banc*, as stated, initially issued the Resolution dated 8 February 2010, denying the motion for lack of merit and declaring the same resolution immediately executory. However, even before petitioner's filing of his ***Urgent Motion to Recall the Resolution Promulgated on 8 February 2010*** and the instant ***Petition for Certiorari with an Urgent Prayer for the Issuance of a Temporary Restraining Order and/or a Status Quo Order and Writ of Preliminary Injunction***, the record shows that the COMELEC *En Banc* issued the 10 February 2010 Resolution, ordering the re-hearing of the case on the ground that "***there was no majority vote of the members obtained in the Resolution of the Commission En Banc promulgated on February 8, 2010***." Having conceded one of the grounds subsequently raised in petitioner's ***Urgent Motion to Recall the Resolution Promulgated on February 8, 2010***, the COMELEC *En Banc* significantly failed to obtain the votes required under Section 5(a), Rule 3 of its own **Rules of Procedure**[4] for a second time.

---

[3] Sec. 6. *Supplemental pleadings.* – Upon motion of a party, the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading.

[4] Sec. 5. ***Quorum; Votes Required.*** – (a) When sitting *en banc*, four (4) Members of the Commission shall constitute a quorum for the purpose of

The failure of the COMELEC *En Banc* to muster the required majority vote even after the 15 February 2010 re-hearing should have caused the dismissal of respondent's ***Election Protest***. Promulgated on 15 February 1993 pursuant to Section 6, Article IX-A and Section 3, Article IX-C of the Constitution, the ***COMELEC Rules of Procedure*** is clear on this matter. Without any trace of ambiguity, Section 6, Rule 18 of said Rule categorically provides as follows:

> Sec. 6. *Procedure if Opinion is Equally Divided.* – When the Commission *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed; and in all incidental matters, the petition or motion shall be denied.

The propriety of applying the foregoing provision according to its literal tenor cannot be gainsaid. As one pertaining to the election of the provincial governor of Bulacan, respondent's ***Election Protest*** was originally commenced in the COMELEC, pursuant to its exclusive original jurisdiction over the case. Although initially raffled to the COMELEC Second Division, the elevation of said election protest on motion for reconsideration before the Commission *En Banc* cannot, by any stretch of the imagination, be considered an appeal. Tersely put, there is no appeal within the COMELEC itself. As aptly observed in the lone dissent penned by COMELEC Commissioner Rene V. Sarmiento, respondent's ***Election Protest*** was filed with the Commission "at the first instance" and should be, accordingly, considered an action or proceeding "originally commenced in the Commission."

The dissent reads Section 6 of COMELEC Rule 18 to mean exactly the opposite of what it expressly states. Thus was made the conclusion to the effect that since no decision was reached by the COMELEC *En Banc*, then the decision of the Second

---

transacting business. The concurrence of a majority of the Members of the Commission shall be necessary for the pronouncement of a decision, resolution, order or ruling.

Division should stand, which is squarely in the face of the Rule that when the Commission *En Banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be re-heard, and if on re-hearing, no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission. The reliance is on Section 3, Article IX(C) of the Constitution which provides:

> Section 3. The Commission on Elections may sit *En Banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *En Banc*.

The dissent reasons that it would be absurd that for a lack of the necessary majority in the motion for reconsideration before the COMELEC *En Banc,* the original protest action should be dismissed as this would render nugatory the constitutional mandate to authorize and empower a division of the COMELEC to decide election cases.

We cannot, in this case, get out of the square cover of Section 6, Rule 18 of the COMELEC Rules. The provision is not violative of the Constitution.

The Rule, in fact, was promulgated obviously pursuant to the Constitutional mandate in the first sentence of Section 3 of Article IX(C). Clearly too, the Rule was issued "in order to expedite disposition of election cases" such that even the absence of a majority in a Commission *En Banc* opinion on a case under reconsideration does not result in a non-decision. Either the judgment or order appealed from "shall stand affirmed" or the action originally commenced in the Commission "shall be dismissed."

It is easily evident in the second sentence of Section 3 of Article IX(C) that all election cases before the COMELEC are passed upon in one integrated procedure that consists of a hearing and a decision "in division" and when necessitated by a motion for reconsideration, a decision "by the Commission *En Banc*."

What is included in the phrase "all such election cases" may be seen in Section 2(2) of Article IX(C) of the Constitution which states:

> Section 2. The Commission on Elections shall exercise the following powers and functions:
>
> x x x x x x x x x
>
> (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 of officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Section 2(2) read in relation to Section 3 shows that however the jurisdiction of the COMELEC is involved, either in the exercise of "exclusive original jurisdiction" or an "appellate jurisdiction," the COMELEC will act on the case in one whole and single process: to repeat, in division, and if impelled by a motion for reconsideration, *en banc*.

There is a difference in the result of the exercise of jurisdiction by the COMELEC over election contests. The difference inheres in the kind of jurisdiction invoked, which in turn, is determined by the case brought before the COMELEC. When a decision of a trial court is brought before the COMELEC for it to exercise appellate jurisdiction, the division decides the appeal but, if there is a motion for reconsideration, the appeal proceeds to the *banc* where a majority is needed for a decision. If the process ends without the required majority at the *banc,* the appealed decision stands affirmed. Upon the other hand, and this is what happened in the instant case, if what is brought before the COMELEC is an original protest invoking the original jurisdiction of the Commission, the protest, as one whole process, is first decided by the division, which process is continued in the *banc* if there is a motion for reconsideration of the division ruling. If no majority decision is reached in the *banc*, the protest, which is an original action, shall be dismissed. There is no first instance decision that can be deemed affirmed.

It is easy to understand the reason for the difference in the result of the two protests, one as original action and the other as an appeal, if and when the protest process reaches the COMELEC *En Banc*. In a protest originally brought before the COMELEC, no completed process comes to the *banc*. It is the *banc* which will complete the process. If, at that completion, no conclusive result in the form of a majority vote is reached, the COMELEC has no other choice except to dismiss the protest. In a protest placed before the Commission as an appeal, there has been a completed proceeding that has resulted in a decision. So that when the COMELEC, as an appellate body, and after the appellate process is completed, reaches an inconclusive result, the appeal is in effect dismissed and resultingly, the decision appealed from is affirmed.

To repeat, Rule 18, Section 6 of the COMELEC Rules of Procedure follows, is in conformity with, and is in implementation of Section 3 of Article IX(C) of the Constitution.

Indeed, the grave abuse of discretion of the COMELEC is patent in the fact that despite the existence in its books of the clearly worded Section 6 of Rule 18, which incidentally has been acknowledged by this Court in the recent case of *Marcoleta v. COMELEC*,[5] it completely ignored and disregarded its very own decree and proceeded with the questioned Resolution of 8 February 2010 and Order of 4 March 2010, in all, annulling the proclamation of petitioner Joselito R. Mendoza as the duly elected governor of Bulacan, declaring respondent Roberto M. Pagdanganan as the duly elected governor, and ordering petitioner Joselito R. Mendoza to cease and desist from performing the functions of the Governor of Bulacan and to vacate said office in favor of respondent Roberto M. Pagdanganan.

The grave abuse of discretion of the COMELEC is underscored by the fact that the protest that petitioner Pagdanganan filed on 1 June 2007 overstayed with the COMELEC until the present election year when the end of the term of the contested office is at hand and there was hardly enough time for the re-hearing

---

[5] G.R. No. 181377, 24 April 2009.

that was conducted only on 15 February 2010. As the hearing time at the division had run out, and the re-hearing time at the *banc* was fast running out, the unwanted result came about: incomplete appreciation of ballots; invalidation of ballots on general and unspecific grounds; unrebutted presumption of validity of ballots.

WHEREFORE, the petition is *GRANTED*. The questioned Resolution of the COMELEC promulgated on 8 February 2010 in EPC No. 2007-44 entitled *"Roberto M. Pagdanganan v. Joselito R. Mendoza,"* the Order issued on 4 March 2010, and the consequent Writ of Execution dated 5 March 2010 are *NULLIFIED* and *SET ASIDE*. The election protest of respondent Roberto M. Pagdanganan is hereby *DISMISSED*.

SO ORDERED.

Peralta, Bersamin, Del Castillo, and *Villarama, Jr., JJ.,* concur.

Puno, C.J., is on official leave. A.C.J. Carpio certifies that C.J. Puno voted to concur in the result of the *ponencia* of Justice Perez.

Carpio[*] and *Carpio Morales, JJ.,* see separate concurring opinions.

Velasco, Jr., J., please see concurring opinion.

Leonardo-de Castro and *Abad, JJ.,* please see dissenting opinions.

Nachura and *Brion, JJ.,* join the dissenting opinion of *J.* De Castro.

Corona and *Mendoza, JJ.,* no part.

---

[*] Per Special Order No. 826, Senior Associate Justice Antonio T. Carpio is designated as Acting Chief Justice from March 17-30, 2010.

SEPARATE CONCURRING OPINION

CARPIO, *Acting C.J.*:

This case involves the election protest filed with the Commission on Elections (COMELEC) against Joselito R. Mendoza (Mendoza), who was proclaimed elected Governor of Bulacan in the 14 May 2007 elections. Mendoza garnered 364,566 votes while private respondent Roberto M. Pagdanganan (Pagdanganan) got 348,834 votes, giving Mendoza a winning margin of 15,732 votes.

After the appreciation of the contested ballots, the COMELEC Second Division deducted a total of 20,236 votes from Mendoza and 616 votes from Pagdanganan. As regards the claimed ballots, Mendoza was awarded 587 ballots compared to Pagdanganan's 586 ballots. Thus, the result of the revision proceedings showed that Pagdanganan obtained 342,295 votes, which is more than Mendoza's 337,974 votes. In its Resolution dated 1 December 2009 (Division Resolution), the COMELEC Second Division annulled the proclamation of Mendoza and proclaimed Pagdanganan as the duly elected Governor of Bulacan with a winning margin of 4,321 votes.

The COMELEC *En Banc* affirmed the Division Resolution on 8 February 2010. On 4 March 2010, the COMELEC *En Banc* issued an Order denying Mendoza's Motion for Reconsideration and granting Pagdanganan's Motion for Execution of the Division Resolution. Hence, this petition for *certiorari*.

I vote to grant the petition solely on the ground of the incomplete appreciation of the contested ballots, and not on the ground that the decision of the COMELEC Second Division was abandoned, resulting in the dismissal of the election protest, when the COMELEC *En Banc* failed to reach a majority decision.

The fundamental reason for granting the petition is the incomplete appreciation of the contested ballots. Section 211

of Batas Pambansa Blg. 881 (BP 881), otherwise known as the Omnibus Election Code of the Philippines, states that "[i]n the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is a clear and good reason to justify its rejection." It is therefore imperative that extreme caution be exercised before any ballot is invalidated, and in the appreciation of ballots, doubts should be resolved in favor of their validity.[1] For after all, the primary objective in the appreciation of ballots is to discover and give effect to the intention of the voter[2] and, thus, preserve the sanctity of the electoral process.

In this case, the COMELEC invalidated the contested ballots in favor of Mendoza mainly on the grounds of written by one person (WBO) and marked ballots (MB). However, as pointed out by Commissioner Sarmiento, **only the general objections were mentioned in the ballots invalidated on the ground of WBO, without clearly and distinctly indicating the specifics or details of the WBO objections**. Such generalization falls short of the mandate provided under Section 1, Rule 18 of the COMELEC Rules of Procedure which states that "[e]very decision shall express therein clearly and distinctly the facts and the law on which it is based."

Section 2(d) of Rule 14,[3] which should apply by analogy to this case, provides:

(d) On Pair or Group of Ballots Written by One or Individual Ballots Written By Two – When ballots are invalidated on the ground of written by one person, the court must clearly and distinctly specify why the pair or group of ballots has been written by only one person.

---

[1] *Dojillo v. Commission on Elections*, G.R. No. 166542, 25 July 2006, 496 SCRA 482; *Silverio v. Clamor*, 125 Phil. 917 (1967).

[2] *Velasco v. Commission on Elections*, G.R. No. 166931, 22 February 2007, 516 SCRA 447; *De Guzman v. Commission on Elections*, G.R. No. 159713, 31 March 2004, 426 SCRA 698; *Torres v. House of Representatives Electoral Tribunal*, 404 Phil. 125 (2001).

[3] Rules of Procedure in Election Contests Before the Courts Involving Municipal and *Barangay* Officials.

The specific strokes, figures or letters indicating that the ballots have been written by one person must be specified. A simple ruling that a pair or group of ballots has been written by one person would not suffice. The same is true when ballots are excluded on the ground of having been written by two persons. The court must likewise take into consideration the entries of the Minutes of Voting and Counting relative to illiterate or disabled voters, if any, who cast their votes through assistors, in determing the validity of the ballots found to be written by one person, whether the ballots are in pairs or in groups;" (Emphasis supplied)

The ruling of the COMELEC fails to specify the "**strokes, figures or letters indicating that the ballots were written by one person**." The COMELEC merely made this omnibus ruling: "*These ballots are void for being written by one person. The similarity in the handwriting style/strokes is more real than apparent. The dents and slants used in writing the names of the candidates prove that these pairs of ballots were written by one person*." Such a ruling is clearly insufficient.

Furthermore, **the ballots were invalidated without consulting the Minutes of Voting to determine the existence of incapacitated and illiterate voters in the voting precincts**. The presence of illiterate and incapacitated voters would likely account for some ballots to appear as written by one person due to assisted voting, which is authorized under Section 196 of BP 881, thus:

SEC. 196. *Preparation of ballots for illiterate and disabled persons.* – A voter who is illiterate or physically unable to prepare the ballot by himself may be assisted in the preparation of his ballot by a relative, by affinity or consanguinity within the fourth civil degree or if he has none, by any person of his confidence who belong to the same household or any member of the board of election inspectors, except the two party member: *Provided*, That no voter shall be allowed to vote as illiterate or physically disabled unless it is so indicated in his registration record: *provided, further*, That in no case shall an assistor assist more than three times except the non-party member of the board of election inspectors. The person thus chosen shall prepare the ballot for the illiterate or disabled voter inside the voting booth. The person assisting shall bind himself

in a formal document under oath to fill out the ballot strictly in accordance with the instructions of the voter and not to reveal the contents of the ballot prepared by him. Violation of this provision shall constitute an election offense.

In *Delos Reyes v. Commission on Elections*,[4] the Court ruled that **in the evaluation of ballots contested on the ground of WBO, the COMELEC must first verify from the Minutes of Voting or the Computerized Voters' List for the presence of assisted voters** in the contested precincts and take this fact into account; otherwise, the appreciation of ballots is incomplete. The Court held:

> Indeed, even if it is patent on the face of the ballots that these were written by only one person, that fact alone cannot invalidate said ballots for it may very well be that, under the system of assisted voting, the latter was duly authorized to act as an assistor and prepare all said ballots. To hinder disenfranchisement of assisted voters, it is imperative that, in the evaluation of ballots contested on the ground of having been prepared by one person, the COMELEC first verify from the Minutes of Voting or the Computerized Voters' List for the presence of assisted voters in the contested precincts and take this fact into account when it evaluates ballots bearing similar handwritings. Omission of this verification process will render its reading and appreciation of ballots incomplete.
>
> In the present case, COMELEC'S appreciation of the 44 contested ballots was deficient for it referred exclusively to said ballots without consulting the Minutes of Voting or the Computerized Voters' List to verify the presence of assisted in the contested precincts.
>
> Thus, COMELEC acted with grave abuse of discretion in overturning the presumption of validity of the 44 ballots and declaring them invalid based on an incomplete appreciation of said ballots.[5]

Likewise, in *De Guzman v. Commission on Elections*,[6] the Court held:

---

[4] G.R. No. 170070, 28 February 2007, 517 SCRA 137.

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

[6] G.R. No. 159713, 31 March 2004, 426 SCRA 698.

As regards the 7 ballots cast in favor of De Guzman which were rejected as written-by-one in Precinct 27A Mabini, the COMELEC should have considered the data reflected in the Minutes of Voting Precinct 27A Mabini. It shows the existence of 24 illiterate or physically disabled voters which necessitated voting by assistors pursuant to Section 196 of B.P. Blg. 881 which does not allow an assistor to assist more that three times except the non-party members of the board of election inspectors. There is no showing that the 7 rejected ballots is the same as that appearing in the Minutes of Voting. All of the 7 assailed ballots were cast in favor of De Guzman. Consequently, four ballots should be appreciated in his favor it being reasonably presumed that the identically written ballots were prepared by the assistor, not only for three illiterate or physically disabled voters but also for himself. Hence, added to the 38 votes, De Guzman won the election by 42 votes.[7]

In this case, not just seven (7) or forty-four (44) ballots were invalidated, but **thousands**[8] **of ballots were invalidated on the ground of WBO without taking into account the existence of illiterate and incapacitated voters in the affected voting precincts** as may be shown in the Minutes of Voting or the Computerized Voters' List. Surely, such patent omission is so grave as would put into doubt the reliability of the findings and the conclusion based thereon by the COMELEC.

The COMELEC likewise did not specifically indicate the reasons for the invalidation of the contested ballots on the ground of marked ballots (MB). Most of the rulings in the Division Resolution in invalidating on the ground of MB merely states that "distinctive markings on each ballot which serves no other purpose but to identify the ballot and or the voter himself." Such general statement, which does not indicate the distinctive markings found on the ballots, is not sufficient considering that there are marks that cannot be considered as signs to identify a ballot which would warrant its invalidation. Thus, pertinent provisions of Section 211 of BP 881 state:

---

[7] *Id.* at 711-712.

[8] In his petition, Mendoza alleged that 9,160 ballots in his favor were invalidated as written by one person.

SEC. 211. *Rules for the appreciation of ballots*. – In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voter's will:

x x x x x x x x x

21. Circles, crosses or lines put on the spaces on which the voter has not voted shall be considered as signs to indicate his desistance from voting and shall not invalidate the ballot.

22. **Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, commas, dots, lines, or hyphens between the first name and surname of a candidate or in other parts of the ballot, traces of the letter "T", "J", and other similar ones, the first letters or syllables of names which the voter does not continue, the use of two or more kinds of writing and unintentional or accidental flourishes, strokes, or strains, shall not invalidate the ballot.** (Emphasis supplied)

Indeed, no ballot should be discarded as marked ballot unless clear and sufficient reasons justify that action and any doubt must be resolved in favor of the validity of the ballot. As held by the Court in *Farin v. Gonzales*:[9]

We must re-affirm the rule that no ballot shall be discarded as marked unless its character as such is unmistakable. Distinction should be made between marks that were accidentally, carelessly or innocently made, and those designedly placed thereon by the voter with a view to possible identification of the ballot, which, therefore, invalidates it. In the absence of any circumstance showing that the intention of the voter to mark the ballot is unmistakable, or of any evidence *aliunde* to show that the words were deliberately written to identify the ballot, the ballot should not be discarded.[10] (Emphasis supplied)

---

[9] 152 Phil. 598 (1973).

[10] *Id.* at 603-604.

Thus, in order for a ballot to be considered marked, it must clearly appear that the marks or words found on the ballot were deliberately placed thereon to serve as identification marks which therefore invalidate it.[11]

However, I disagree with the *ponencia's* ruling that the decision of the COMELEC Second Division was abandoned, resulting in the dismissal of the election protest, when the COMELEC *En Banc* failed to reach a majority decision. The COMELEC Second Division had jurisdiction to decide this election contest under Section 3, Article IX-C of the Constitution.[12] The failure of the COMELEC *En Banc* to reach a majority decision on the motion for reconsideration operated to affirm the decision of the COMELEC Second Division.

Accordingly, I vote to GRANT the petition on the sole ground that the COMELEC En Banc committed grave abuse of discretion when the *En Banc*, just like the COMELEC Second Division, failed to make a complete appreciation of the contested ballots.

---

[11] *Cordia v. Monforte*, G.R. No. 174620, 4 March 2009, 580 SCRA 588; *Cundangan v. Commission on Elections*, G.R. No. 174392, 28 August 2007, 531 SCRA 542; *Perman v. Commission on Elections*, G.R. No. 174010, 8 February 2007, 515 SCRA 219.

[12] Section 3 of Article IX-C of the Constitution reads:

The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. **All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.** (Emphasis supplied)

SEPARATE OPINION

CARPIO MORALES, *J.*:

I proffer my opinion on four issues indicated below as sub-headings in interrogative form. The *ponencia* of Justice Jose Perez glosses over the first and second questions, into which I opt to delve and to which I answer in the negative. I register my dissent on the third issue. As to the fourth issue, I concur in the finding that the Commission on Elections (Comelec) abdicated its positive duty.

Is petitioner guilty of forum shopping?

Forum shopping is defined in *Santos v. Comelec*[1] as "an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly securing a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*[; and] may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition."[2]

Petitioner did not forum-shop.

A circumstance of forum-shopping presupposes a simultaneous or successive availment of two viable remedies, which could result in two conflicting opinions. Petitioner's (1) Urgent Motion to Recall the Resolution promulgated on February 8, 2010 before the Comelec *en banc* (filed alongside the present petition), and (2) Urgent Motion to Declare Null & Void and Recall Latest *En Banc* Resolution Dated March 4, 2010 and Urgent Motion to Set Aside March 4, 2010 *En Banc* Resolution Granting Motion for Execution Pending Motion for Reconsideration before the Comelec *en banc* (filed alongside a Supplement to the present petition) are **prohibited pleadings**,

---

[1] G.R. No. 164439, January 23, 2006, 479 SCRA 487.

[2] *Id.* at 493.

for they are in the nature of a "motion for reconsideration of an *en banc* ruling, resolution, order or decision"[3] which is one of the pleadings not allowed by the Comelec Rules of Procedure.

As prohibited pleadings, they do not deserve the attention of the Comelec as they face the certainty of outright dismissal and the vulnerability of being expunged. In fact, a prohibited pleading cannot be given any legal effect precisely because it is being prohibited.[4]

The Comelec cannot grant or entertain prohibited pleadings regardless of their merit. The evils of coming up with a conflicting opinion and congesting the dockets are thus absent. The Comelec cannot be considered another forum from which to shop since it is no longer offering any legal remedy or recourse to the parties.

Petitioner no longer waited for the resolution of the motions before filing the present petition, after perhaps realizing the futility of the prohibited pleadings that, moreover, do not toll the running of the reglementary period.[5] Petitioner may not thus be faulted for beating the deadline and resorting to the *only* remedy available provided under Rule 64 of the Rules of Court.

While petitioner did not faithfully comply with the rule on prohibited pleadings, the consequences of which he alone, by all means, should bear, his actuations cannot be likened to forum-shopping.

In line with the foregoing, I answer the next question in the negative.

Is the petition premature?

---

[3] COMELEC RULES OF PROCEDURE, Rule 13, Sec. 1(d).

[4] *Securities and Exchange Commission v. PICOP Resources, Inc.*, G.R. No. 164314, September 26, 2008, 566 SCRA 451, 468; *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc.*, G.R. No. 175163, October 19, 2007, 537 SCRA 396, 405.

[5] *Ibid.*; *Villamor v. Commission on Elections*, G.R. No. 169865, July 21, 2006, 496 SCRA 334, 343.

The petition was not prematurely filed.

Upon the promulgation by the Comelec *en banc* of the February 8, 2010 Resolution which was arrived at without a rehearing in spite of a "deadlock," there was nothing else to be done in the ordinary course of law to ripen the petition.

By law, the Comelec *en banc* is not required to rectify its mistakes upon motion, precisely because of the rule prohibiting a motion for reconsideration of an *en banc* resolution. Neither are the parties expected to wait and see if the Comelec *en banc* would *motu proprio*[6] reconsider its resolution and realize the need for a hearing, for the clock is ticking in the meantime and the reglementary period would soon toll the bells of finality of judgment. Certainly, petitioner cannot risk preparing a petition at the eleventh hour when he is very certain that the Comelec would no longer correct itself.

In *Juliano v. Commission on Elections*,[7] the Court granted a petition similar to the present and underscored the necessity of the conduct of a rehearing in cases when the Comelec *en banc* was equally divided in opinion or when the necessary majority cannot be had. It held that the Comelec *en banc* acts with grave abuse of discretion when it fails to give a party the rehearing required by the Comelec Rules of Procedure.

At the time of filing of the present petition, the issues raised therein were already mature for adjudication.

---

[6] *Marcoleta v. Commission on Elections*, G.R. No. 181377, April 24, 2009, 586 SCRA 765, 775, where it was held that the Comelec has "x x x the inherent power to amend or control its processes and orders before these become final and executory. It can even proceed to issue an order *motu proprio* to reconsider, recall or set aside an earlier resolution which is still under its control. The Comelec's own Rules of Procedure authorize the body to 'amend and control its processes and orders so as to make them conformable to law and justice,' and even to suspend said Rules or any portion thereof 'in the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission.'"

[7] G.R. No. 167033, April 12, 2006, 487 SCRA 263, where the Court differentiated "re-consultation" from "rehearing."

The maturity of the issues, however, was immediately spoiled by mootness. The Comelec *en banc* eventually ordered on February 10, 2010 the conduct of a rehearing, which order contradicted its earlier pronouncement that its February 8, 2010 Resolution is "immediately executory." The parties' notification on February 12, 2010 of this Comelec Order of February 10, 2010 incidentally coincided with the present petition's filing on February 12, 2010. This development effectively forestalled an argument of petitioner in challenging the February 8, 2010 Resolution, and may have mooted an issue, as what happened in *Marcoleta v. Commission on Elections*[8] where the Comelec's subsequent positive action for a rehearing frustrated the resolution of the issue, but it is not an argument for prematurity.

After rehearing and having failed to reach the necessary majority, the Comelec *en banc*, by Order of March 4, 2010, disposed of the motion for reconsideration in the same way as its February 8, 2010 Resolution. This development technically provided the basis for the filing of petitioner's *supplemental* petition which assails said March 4, 2010 Order of the Comelec. As observed by the *ponencia*, the filing of the supplemental petition was proper.

What happens when the necessary majority cannot be reached by the Comelec *en banc* after a rehearing?

The parties cite Section 6, Rule 18 of the Comelec Rules of Procedure, reading:

> Sec. 6. *Procedure if Opinion is Equally Divided*. – When the Commission *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the **action or proceeding shall be dismissed** if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed; and in all incidental matters, the petition or motion shall be denied. (emphasis and underscoring supplied)

---

[8] *Supra* note 6.

The bone of contention is the manner of disposition of a motion for reconsideration when in spite of rehearing, no decision is reached by the Comelec *en banc* which remains equally divided in opinion, or wherein the necessary majority still cannot be had. The rule states that "the action or proceeding shall be dismissed if originally commenced in the Commission."

I respectfully differ from the *ponencia*.

There are cases which may be initiated at the Comelec *en banc*, the voting in which could also result to a stalemate. The Comelec sits *en banc* in cases specifically provided by the Rules, pre-proclamation cases upon a vote of a majority of its members, all other cases where a Division is not authorized to act,[9] *inter alia*. These matters include election offense cases,[10] contempt proceedings,[11] and postponement or declaration of failure of elections and the calling for a special elections.[12] In such cases, when the necessary majority in the Comelec *en banc* cannot be had even after a rehearing of the action, the effect is dismissal of the **action**.

In an election protest originally commenced in the Comelec and a decision is reached[13] by the Division, it is, as the *ponencia* correctly posits, the *banc* that shall effectively "complete the process,"[14] which position hews well with Justice Presbitero

---

[9] *Vide* COMELEC RULES OF PROCEDURE, Rule 3, Sec. 2.

[10] *Baytan v. Commission on Elections*, G.R. No. 153945, February 4, 2003, 396 SCRA 703, 716. The Comelec *en banc* can directly approve the filing of a criminal information for an election offense.

[11] *Bedol v. Commission on Elections*, G.R. No. 179830, December 3, 2009.

[12] *Macabago v. Commission on Elections*, G.R. No. 152163, November 18, 2002, 392 SCRA 178, 187 citing REPUBLIC ACT No. 7166, Art. 1, Secs. 4-6.

[13] There are cases that are originally cognizable by the Division but is automatically elevated to the Comelec *en banc* for decision due to lack of majority vote in the Division; *vide* COMELEC RULES OF PROCEDURE, Rule 3, Sec. 5(b).

[14] Decision, p. 12.

Velasco, Jr.'s view of "one integrated process,"[15] to which I also agree. A motion for reconsideration before the Comelec *en banc* is one such proceeding that is a part of the *entire* procedural mechanism of election cases. *Ergo*, when the necessary majority in the Comelec *en banc* cannot be had even after a rehearing, the effect is dismissal of the **proceeding**. The motion for reconsideration should be dismissed.

As defined by Black, the term "proceeding" may refer to a procedural step that is part of a larger action or special proceeding.[16] Black defines "process" as a series of actions, motions or occurrences.[17]

The word "proceeding" could not have been used as an innocuous term. It was used to refer to matters requiring the resolution of the *banc* in cases originally commenced in the Comelec that pass through a two-tiered process, as differentiated from actions initiated[18] and totally completed at the *banc* level. It is a universal rule of application that a construction of a statute is to be favored, and must be adopted if reasonably possible, which will give meaning to every word, clause, and sentence of the statute and operation and effect to every part and provision of it.

Following the position of the *ponencia*, it is observed that in such cases where a Comelec Division dismisses an election protest and the necessary majority is not reached after the rehearing of a motion for reconsideration, the Comelec *en banc*, in effect, affirms such decision by similarly dismissing the "action." Under my submission, the result is the same but what is dismissed is the "proceeding" which is the motion for reconsideration. There should be no declaration of affirmance since, as the *ponencia* concedes, there is "no conclusive result

---

[15] Concurring Opinion of Velasco, Jr., *J.*, p. 8.

[16] *BLACK'S LAW DICTIONARY* (6th Ed.), p. 1204.

[17] *Id.* at 1205.

[18] Including those automatically elevated to the *banc* for decision; *supra* note 13.

in the form of a majority vote."[19] The Comelec *en banc* should dismiss the proceeding at hand but not the action, petition or case.

The glaring difference becomes more apparent when the Comelec Division grants an election protest like that in the present case. Since a majority vote was not attained after rehearing the Motion for Reconsideration, the *ponencia* states that the Comelec *en banc* should have dismissed the election protest itself or, in effect, vacated the decision of the Division. Again I submit that it is the Motion for Reconsideration that is the "proceeding" which should be dismissed. *First*, it is absurd for a deliberating body which arrived at "no conclusive result in the form of a majority vote" to do something about a matter on the table, much less to overturn it. *Second*, the resulting tyranny of the minority is unjust for, in such cases where the Comelec *en banc* has a quorum of four, the protestee only needs to obtain the vote of just one Commissioner to frustrate the protestant's victory that was handed down by three Commissioners. *Third*, the *ponencia* incorrectly denotes that a body which *could not* pronounce a decision can effectively pronounce one and even one contrary to that of a body that *could* reach a decision. Otherwise stated, it downplays the significance of "the concurrence of a majority," which breathes life to any handiwork of the decision-making power of the Comelec. Certainly, that was not the purpose and principle envisioned by the Comelec Rules of Procedure.

Did the Comelec gravely abuse its discretion when it failed to credit petitioner's claims?

The above discussions notwithstanding, I submit that on the merits of the case, the Comelec gravely abused its discretion amounting to lack or excess of jurisdiction.

When the handwritings on the ballots are the subject matter of the election contest, the best evidence would be the ballots

[19] Decision, p. 12.

themselves as the Comelec can examine or compare these handwritings even without the assistance from handwriting experts,[20] with due consideration to the presence of assisted voters, if any is reflected in the Minutes of Voting.[21] General appearance or pictorial effect is not enough to warrant that two writings are by the same hand. The ballots cannot be invalidated on such ground if they display but a single consistent dissimilarity in any feature which is fundamental to the structure of the handwriting, and whose presence is not capable of reasonable explanation. An exegesis of the semblances or similarities and differences or variations in the master patterns governing letter design is thus imperative. I thus agree with Justice Antonio Carpio's position that the Comelec abdicated its positive duty.

The Comelec failed to consider whether there is a type of consistent dissimilarity in a fundamental feature of the handwriting structure of the entries in the ballots. The Comelec did not rebut the presumption of validity of the ballots since it did not take the position that the similarities in the class and individual characteristics do not lean more towards accidental coincidence or that the divergences in class and individual characteristics are superficial. Neither did it point out that the presence of the alleged dissimilarities could be reasonably explained by or attributed to an attempt to disguise the handwriting after examining its fluency and rhythm which may normally vary from one ballot to another but should remain consistent within each ballot.

In light of the foregoing discussions, I vote to *GRANT* the petition.

---

[20] *Delos Reyes v. Commission on Elections*, G.R. No. 170070, February 28, 2007, 517 SCRA 137, 148 citing *Bautista v. Castro*, G.R. No. 61260, February 17, 1992, 206 SCRA 305, 312.

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

CONCURRING OPINION

VELASCO, JR., *J.*:

Notwithstanding the passage of time, the clear and express provisions of the Constitution on what constitute a majority vote on actions or proceeding before the Commission on Elections (COMELEC) continue and should remain to speak the words it plainly suggests. Given this perspective, I respectfully submit this opinion.

A summary of the pertinent facts follows.

Petitioner Joselito R. Mendoza (petitioner Mendoza) and respondent Roberto M. Pagdanganan (respondent Pagdanganan) were candidates for the gubernatorial post in the province of Bulacan in the May 14, 2007 elections. With a winning margin of fifteen thousand seven hundred thirty-two (15,732) votes, COMELEC proclaimed petitioner Mendoza as the duly elected governor of Bulacan.

On June 1, 2007, respondent Pagdanganan filed an election protest with the COMELEC questioning the outcome of the elections in all the five thousand sixty-six (5,066) precincts which functioned in the thirteen (13) municipalities and three (3) cities in the province of Bulacan for massive electoral fraud purportedly committed during the elections to favor petitioner Mendoza. Raffled to the Second Division of the COMELEC, the protest was docketed as EPC No. 2007-44.

On June 18, 2007, petitioner Mendoza filed an *Answer With Counter-Protest*[1] denying petitioner Mendoza's allegations of massive electoral fraud and claimed that had it not been for the electoral fraud purportedly committed by respondent Pagdanganan in nine municipalities, petitioner Mendoza would have been credited with more votes.

Thereafter, a preliminary conference was conducted, after which the COMELEC ordered a revision of the ballots involving

---

[1] *Rollo*, pp. 947-1025.

the protested and counter-protested precincts. The revision was conducted and supervised by the COMELEC at its premises. Subsequently, on February 20, 2009, the parties submitted their respective memoranda after their respective formal offer of exhibits were admitted. The case was then submitted for resolution.

As a result of the revision proceedings, the Second Division of the COMELEC proclaimed respondent Pagdanganan as the duly elected governor of the province of Bulacan in its *Resolution*[2] dated December 1, 2009, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the election protest is hereby GRANTED. Consequently, the proclamation of Protestee Joselito R. Mendoza is ANNULLED and SET ASIDE. Accordingly, Protestant Roberto M. Pagdanganan is hereby proclaimed as the duly elected Governor of the Province of Bulacan having obtained a total of Three Hundred Forty-Two Thousand Two Hundred Ninety-Five (342,295) votes, with a winning margin of Four Thousand Three Hundred Twenty-One (4,321) votes.
>
> Protestee is ordered to IMMEDIATELY vacate the Office of the Provincial Governor of Bulacan; cease and desist from discharging functions thereof; and peacefully turn-over the said office to Protestant Pagdanganan.
>
> Let the Department of Interior and Local Government implement this resolution.[3]

Subsequently, respondent Pagdanganan filed a *Motion for Immediate Execution of Judgment Pending Motion for Reconsideration*[4] dated December 1, 2009. Petitioner Mendoza, on the other hand, filed *an Opposition to the Motion for Execution*[5] dated December 4, 2009 with the Second Division of the COMELEC and a *Motion for Reconsideration*[6] dated December 4, 2009 with the COMELEC *en banc*.

---

[2] *Id.* at 221-931.

[3] *Id.* at 930.

[4] *Id.* at 1219-1238.

[5] *Id.* at 1408-1418.

[6] *Id.* at 1239-1390.

By *Resolution* dated February 8, 2010 (the *questioned Resolution*), the COMELEC *en banc*, by a 3:3:1 vote, denied the motion for reconsideration filed by petitioner Mendoza. The dispositive portion of the *questioned Resolution* reads:

> WHEREFORE, in view of the foregoing, the Commission *En Banc* DENIES the Motion for Reconsideration for lack of merit. The Resolution of the Commission (Second Division) promulgated on December 1, 2009 ANNULLING the proclamation of JOSELITO R. MENDOZA as the duly elected Governor of Bulacan and DECLARING ROBERTO M. PAGDANGANAN as duly elected to said Office is AFFIRMED with modification.
>
> Considering the proximity of the end of the term of the office involved, this Resolution is declared immediately executory.
>
> ACCORDINGLY, the Commission *En Banc* hereby ISSUES a WRIT OF EXECUTION directing the Provincial Election Supervisor of Bulacan, in coordination with the DILG Provincial Operations Officer to implement the Resolution of the Commission (Second Division) dated December 1, 2009 and this Resolution of the Commission *En Banc* by ordering JOSELITO R. MENDOZA to CEASE and DESIST from performing the functions of Governor of the Province of Bulacan and VACATE said office in favor of ROBERTO M. PAGDANGANAN.
>
> x x x x x x x x x

On February 11, 2010, an *Urgent Motion to Recall the Resolution Promulgated on February 8, 2010*[7] (*Urgent Motion*) dated February 10, 2010 was filed by petitioner Mendoza before the COMELEC. In the said *Urgent Motion*, petitioner Mendoza contends, among others, that the desired majority, as mandated by Section 5, Rule 3 of the COMELEC Rules of Procedure, was not obtained in the COMELEC *en banc* **considering that only three commissioners voted to deny the motion for reconsideration, while one dissented, and the remaining three commissioners took no part**.

On February 12, 2010, petitioner Mendoza filed before this Court the instant petition questioning the COMELEC *Resolution* dated February 8, 2010 based on the same grounds he cited in his

---

[7] *Id.* at 5136-5145.

Urgent Motion and further disputing the appreciation and result of the revision of ballots which favored respondent Pagdanganan. This was subsequently supplemented by petitioner Mendoza with a *Supplement to the Petition with a Most Urgent Reiterating Motion for the Issuance of a Temporary Restraining Order or a Status Quo Order*[8] dated March 8, 2010 filed on even date.

In the meantime, the COMELEC *en banc*, in view of the 3:3:1 vote, issued on February 10, 2010 an Order for the rehearing of the protest. In the said rehearing, the parties agreed to submit the matter for resolution by the COMELEC *en banc* upon the submission of their respective memoranda.

Upon deliberations, the commissioners voted in the same manner, particularly: three concurred, three took no part, and one dissented from the *Resolution* dated December 1, 2009 of the Second Division of COMELEC.

As against the foregoing factual milieu, this Court is now tasked to ascertain whether the COMELEC committed grave abuse of discretion when it rendered, and even subsequently affirmed, the *questioned Resolution* notwithstanding the absence of the required majority in reaching a decision. Essentially, the issue for this Court's resolution is whether the manner and procedure by which the commissioners of COMELEC voted in the instant case was in accord with its own Rules of Procedure.

A careful examination of certain provisions of the Constitution, as well as of the laws applicable in the instant case, will reveal that since the concurrence of the majority of the members of the COMELEC *en banc* was not achieved, the COMELEC committed grave abuse of discretion in issuing the *questioned Resolution* affirming the ruling of its Second Division instead of dismissing the election protest of respondent Pagdanganan.

All election cases shall be heard and decided in divisions, provided that motions for reconsideration shall be decided by the COMELEC *en banc*

---

[8] *Id.* at 5288-5303.

Under Section 3, Article IX-C of the 1987 Constitution, the COMELEC, sitting *en banc*, does not have the authority to decide election cases in the first instance as this authority belongs to the divisions of the COMELEC. Specifically:

> Sec.3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *En Banc*.

As the Court held in *Pacificador v. COMELEC*:[9]

> Under Sec. 2, Article IV-C of the 1987 Constitution, the COMELEC exercises original jurisdiction over all contests, relating to the election, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over election contests involving elective municipal and barangay officials, and has supervision and control over the board of canvassers. **The COMELEC sitting *en banc*, however, does not have the authority to hear and decide election cases, including pre-proclamation controversies in the first instance, as the COMELEC in division has such authority.** The COMELEC *en banc* can exercise jurisdiction only on motions for reconsideration of the resolution or decision of the COMELEC in division. (Emphasis supplied)

As a matter of fact, if the COMELEC *en banc* renders a decision in an election case in the first instance, said decision is void. As held in *Municipal Board of Canvassers of Glan v. COMELEC*:[10]

> Beginning with *Sarmiento v. COMELEC* and reiterated in subsequent cases, the most recent being *Balindong v. COMELEC*, the Court has upheld this constitutional mandate and consistently ruled that the COMELEC sitting *en banc* does not have the requisite authority to hear and decide election cases in the first instance. This power pertains to the divisions of the Commission and any decision by the Commission *en banc* as regards election cases decided by it in the first instance is null and void for lack of jurisdiction.

---

[9] G.R. No. 178259, March 13, 2009, 581 SCRA 372, 384.

[10] G.R. No. 150946, October 23, 2003, 414 SCRA 273, 276.

Verily, it is only when a motion for reconsideration is filed that the COMELEC *en banc* hears the same. Nonetheless, this does not in any way mean that the filing of such a motion constitutes an appeal to the COMELEC *en banc*. As fittingly pointed out by Commissioner Rene V. Sarmiento in his *Dissenting Opinion*:

> Furthermore, no way by any stretch of imagination can this controversy be considered as an *appealed case*. Yes, it is true that the instant Motion for Reconsideration assails the Resolution of the Second Division. But this does not mean that it is an appeal from the said Second Division's ruling. Aside from the obvious legal difference between the two reliefs, to construe a Motion for Reconsideration as an appeal would defeat the purpose of the delineation made in Section 6 of Rule 18 of the COMELEC Rules of Procedure with regard to the cases *originally commenced* and those *appealed*. Take note that all controversies brought to the Commission, either originally or on appeal with the exception of election offenses, are first heard and decided in the division level. The same is elevated to the Commission *en banc* when a Motion for Reconsideration has been timely filed.

Significantly, the COMELEC, sitting *en banc* or in divisions, is just one body. By analogy, even the Court which hears and decides cases in divisions and *en banc* is composed of only one body. Decisions of any division are not appealable to the *en banc*, and decisions of each division and the *en banc* form acts of only one Supreme Court.[11]

The adjudicatory power of the COMELEC consists of both original and appellate jurisdiction

A distinction must be made as to whether an election case is brought before the COMELEC in the exercise of its original or appellate jurisdiction.

As stated in Section 2(2), Article IX-C of the 1987 Constitution, the COMELEC is vested with adjudicatory power consisting of both original and appellate jurisdictions, *to wit*:

---

[11] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, April 30, 2008, 553 SCRA 237, 248.

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

x x x x x x x x x

(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.

Concomitantly, election protests involving elective regional, provincial or city positions fall within the exclusive original jurisdiction of the COMELEC. On the other hand, election protests involving elective municipal and barangay positions fall within the exclusive original jurisdiction of the proper regional trial court and municipal trial court, respectively. The COMELEC, in turn, exercises appellate jurisdiction over the decisions of either court.[12]

While the Constitution grants COMELEC appellate jurisdiction, it is clear that such appellate jurisdiction operates as a review by the COMELEC of decisions of trial courts. There is really no appeal within the COMELEC itself. As such, it is absurd to consider the filing of a motion for reconsideration as an appeal from the COMELEC, sitting in a division, to the COMELEC, sitting *en banc*.

At best, the filing of a motion for reconsideration with the COMELEC *en banc* of a decision or resolution of the division of the COMELEC should be viewed as part of one integrated process. Such motion for reconsideration before the COMELEC *en banc* is a constitutionally guaranteed remedial mechanism for parties aggrieved by a division decision or resolution. However, at the risk of repetition, it is not an appeal from the COMELEC division to the *en banc*.

---

[12] See *Borja v. COMELEC, et al.*, G.R. No. 120140, August 21, 1996, 260 SCRA 604.

Considering the dichotomy of the jurisdiction and powers of the COMELEC, the question now arises as to how the commission *en banc* should arrive at a decision in the absence of the required majority of all its members.

A majority vote of all its members is needed in order for the COMELEC *en banc* to reach a decision

The COMELEC is an independent constitutional commission. As such, the rule set forth by the Constitution as to how constitutional commissions should arrive at a decision applies to it.

As sanctioned by Section 7, Article IX-A of the 1987 Constitution:

> Section 7. **Each Commission shall decide by a majority vote of *all* its members any case or matter brought before it** within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis supplied.)

The foregoing constitutional provision was faithfully observed by the COMELEC when it adopted the same in its own Rules of Procedure. Rule 3, Section 5(a) of the COMELEC Rules of Procedure provides:

> Section 5. Quorum; Votes Required.—(a) When sitting *en banc*, four (4) Members of the Commission shall constitute a quorum for the purpose of transacting business. The concurrence of a majority of the Members of the Commission shall be necessary for the pronouncement of a decision, resolution, order or ruling.

In reinforcing the above-quoted provision, the Court, in *Estrella v. COMELEC*,[13] prescribed that **the majority of *all***

[13] G.R. No. 160465, April 28, 2004, 428 SCRA 315, 320.

the commissioners is necessary for the pronouncement of a decision or resolution by the COMELEC *en banc*. Particularly:

Since Commissioner Lantion could not participate and vote in the issuance of the questioned order, thus leaving three (3) members concurring therewith, the necessary votes of four (4) or majority of the members of the COMELEC was not attained. The order thus failed to comply with the number of votes necessary for the pronouncement of a decision or order, as required under Rule 3, Section 5(a) of the COMELEC Rules of Procedure which provides:

> Section 5. Quorum; Votes Required. – (a) When sitting en banc, four (4) Members of the Commission shall constitute a quorum for the purpose of transacting business. **The concurrence of a majority of the Members of the Commission shall be necessary for the pronouncement of a decision, resolution, order or ruling.**

WHEREFORE, the instant petition is GRANTED. The *Status Quo Ante* Order dated November 5, 2003 issued by the COMELEC *En Banc* is hereby NULLIFIED. This Resolution is IMMEDIATELY EXECUTORY. (Emphasis in the original.)

In cases, however, where the COMELEC *en banc* is equally divided in opinion or the necessary majority vote cannot be obtained, Rule 18, Section 6 of the 1993 COMELEC Rules of Procedure applies:

SEC. 6. *Procedure if Opinion is Equally Divided.*—When the Commission *en banc* is equally divided in opinion; or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed; and in all incidental matters, the petition or motion shall be denied.

Based on the above-cited provision, if no decision is reached after the case is reheard, there are two different remedies available to the COMELEC, *to wit*: (1) dismiss the action or proceeding, if the case was originally commenced in the COMELEC; or (2) consider as affirmed the judgment or order appealed from, in appealed cases. This rule adheres to the constitutional provision that the COMELEC must decide by a majority of all its members.

Notably, it is evident that when Rule 18, Section 6 of the 1993 COMELEC Rules of Procedure speaks of cases originally commenced in the COMELEC, the reference is to election protests involving elective regional, provincial or city positions falling within its exclusive original jurisdiction. On the other hand, when the same provision mentioned appealed cases, this has reference to election protests involving elective municipal and barangay positions cognizable by the COMELEC in the exercise of its appellate jurisdiction.

In the first instance, an election protest is originally commenced before the COMELEC, which first decides by the division. If a motion for reconsideration is subsequently filed with the COMELEC *en banc* and no majority decision is reached even after a rehearing, then pursuant to Section 6, Rule 18 of the COMELEC Rules of Procedure, the election protest shall be dismissed.

In the second instance, the trial court originally decides an election protest. If the case is brought on appeal to the COMELEC, which again shall first act thru a division, the division's decision may become the subject of a motion for reconsideration filed with the COMELEC *en banc*. And if before the *en banc* a majority decision is not reached even after a rehearing, then, also pursuant to Section 6, Rule 18 of the COMELEC Rules of Procedure, the appealed decision stands affirmed.

In both cases, however, if no motion for reconsideration is filed with the COMELEC *en banc*, the decision or resolution of the division shall remain.

Verily, since the election protest in the case at bar involves an elective provincial position, specifically, the gubernatorial post in the province of Bulacan, exclusive original jurisdiction over which is vested in the COMELEC, the election protest filed by respondent Pagdanganan against petitioner Mendoza should be dismissed for lack of necessary majority vote in the COMELEC *en banc*.

On a final note, it is worthwhile to remember the Court's ruling in *Yangco v. The Division of the Court of First Instance of the City of Manila*,[14] which warns us of the dangers in making unnecessary interpretation of clear and unambiguous provisions of law:

> There is no need for interpretation or construction of the word in the case before us. Its meaning is so clear that interpretation and construction are unnecessary. Our simple duty is to leave untouched the meaning with which the English language has endowed the word; and that is the meaning which the ordinary reader would accord to it on reading a sentence in which it was found. Where language is plain, subtle refinements which tinge words so as to give them the color of a particular judicial theory are not only unnecessary but decidedly harmful. That which has caused so much confusion in the law, which has made it so difficult for the public to understand and know what the law is with respect to a given matter, is in considerable measure the unwarranted interference by judicial tribunals with English language as found in statutes and contracts, cutting out words here and inserting them there, making them fit personal ideas of what the legislature ought to have done or what parties should have agreed upon, giving them meanings which they do not ordinarily have, cutting, trimming, fitting, changing and coloring until lawyers themselves are unable to advise their clients as to the meaning of a given statute or contract until it had been submitted to some court for its 'interpretation and construction.' As we said in the case of *Lizarraga Hermanos vs. Yap Tico* (24 Phil. Rep., 504, 513):
>
> > Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them. They are the very last functions which a court should exercise. The majority of the laws need no interpretation or construction. They require only application, and if there were more application and less construction, there would be more stability in the law, and more people would know what the law is.

Accordingly, I vote to grant the petition.

---

[14] No. L-10050, January 6, 1915, 29 Phil 183.

DISSENTING OPINION

LEONARDO-DE CASTRO, *J.*:

Before the Court is a **Petition for *Certiorari* with an Urgent Prayer for the Issuance of a Temporary Restraining Order and/or a *Status Quo Ante* Order and Writ of Preliminary Injunction** filed by Joselito R. Mendoza (petitioner) against the Commission on Elections (COMELEC) and Roberto M. Pagdanganan (respondent Pagdanganan), assailing the COMELEC's ***Resolution***[1] promulgated on February 8, 2010 in **EPC NO. 2007-44**, entitled "*Roberto M. Pagdanganan versus Joselito R. Mendoza*" (the questioned Resolution).

The antecedent facts are summarized below.

Petitioner and respondent Pagdanganan were rival candidates for the gubernatorial position in the Province of Bulacan during the May 14, 2007 elections. After the COMELEC count, petitioner Mendoza ranked first and bested respondent Pagdanganan with a winning margin of Fifteen Thousand Seven Hundred Thirty-Two (15,732) votes. Thus, petitioner was proclaimed as the duly elected Governor of the Province of Bulacan.

Respondent Pagdanganan filed an ***Election Protest*** with the COMELEC on June 1, 2007 impugning the results of the elections in all the five thousand sixty-six (5,066) precincts which functioned in the thirteen (13) municipalities and three (3) cities in the province of Bulacan on the basis of massive electoral fraud allegedly committed during the elections to ensure the victory of petitioner. This election protest was raffled to the Second Division of the COMELEC and was docketed as **EPC No. 2007-44**.

On June 18, 2007, petitioner filed an ***Answer With Counter-Protest***[2] denying the allegation of massive electoral fraud and claiming that he would have been credited with more votes had

---

[1] *Rollo*, pp. 197-207.

[2] *Id.* at 947-1025.

it not been for the electoral fraud allegedly committed by respondent Pagdanganan in nine municipalities.

Then on June 5, 2008, petitioner filed a ***Manifestation and Motion for Investigation of Substitution of Ballots with Fake/ Spurious Ballots***[3] due to the alleged alarming number of fake/ spurious ballots, which were substituted for the genuine ballots after the voting and conduct of election in the different precincts of the municipalities of Bulacan and were uncovered during the revision of ballots.

After the preliminary conference, the COMELEC ordered a revision of the ballots involving the protested and counter-protested precincts, and this was conducted and supervised by the COMELEC at its premises. After their respective formal offers of exhibits were admitted, the parties submitted their respective memoranda on February 20, 2009. The case was then submitted for resolution.

On March 2, 2009, the COMELEC transferred the ballot boxes containing the ballots, election returns, and other pertinent election documents of both protested and unprotested precincts of Bulacan to the **Senate Electoral Tribunal (SET)** pursuant to **SET Resolution No. 07-54** in connection with the protest filed by Aquilino Pimentel III against Juan Miguel Zubiri. Petitioner thereafter filed a ***Motion for Suspension of Further Proceedings***. The COMELEC issued an ***Order***[4] denying petitioner's motion for lack of merit.

On July 8, 2009, petitioner went to this Court and filed a ***Petition for Prohibition & Certiorari with Urgent Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction***,[5] docketed as ***G.R. No. 188308***, to prohibit the COMELEC from proceeding with the appreciation by its personnel of ballots in the custody of the SET. On July 14,

---

[3] *Id.* at 1026-1034.

[4] *Id.* at 1117-1118.

[5] *Id.* at 1135-1155.

2009, this Court issued a ***Status Quo Order***[6] in ***G.R. No. 188308*** enjoining the COMELEC Second Division from further proceeding with the revision of the ballots until further notice from the Court. This **Order** was **lifted** subsequently and the petition was **dismissed** by the Court *En Banc* in its **Decision** dated October 15, 2009, wherein the Court ruled that, on the basis of the standards set by Section 4 of the COMELEC Rules of Procedure (the COMELEC Rules) and of the Constitution itself in the handling of election cases, the COMELEC's consideration of the provincial election contest, specifically its **appreciation of the contested ballots at the SET premises**, while the same ballots were also under consideration by the SET for another election contest, was **a valid exercise of discretion**. The Court further ruled that such COMELEC action was "a suitable and reasonable process within the exercise of its jurisdiction over provincial election contests, aimed at expediting the disposition of [the] case, and with no adverse, prejudicial or discriminatory effects on the parties to the contest that would render the rule unreasonable."[7]

The COMELEC Second Division, as a result of the revision proceedings, proclaimed respondent Pagdanganan as the duly elected Governor of the Province of Bulacan in a ***Resolution***[8] dated December 1, 2009 in **EPC No. 2007-44**, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the election protest is hereby GRANTED. Consequently, the proclamation of Protestee Joselito R. Mendoza is ANNULLED and SET ASIDE. Accordingly, Protestant Roberto M. Pagdanganan is hereby proclaimed as the duly elected Governor of the Province of Bulacan having obtained a total of Three Hundred Forty-Two Thousand Two Hundred Ninety-Five (342,295) votes, with a winning margin of Four Thousand Three Hundred Twenty-One (4,321) votes.

---

[6] *Id.* at 1156-1160.

[7] *Mendoza v. Commission on Elections*, G.R. No. 188308, October 15, 2009.

[8] *Rollo*, pp. 221-931.

Protestee is ordered to IMMEDIATELY vacate the Office of the Provincial Governor of Bulacan; cease and desist from discharging the functions thereof; and peacefully turn-over the said office to Protestant Pagdanganan.

Let the Department of Interior and Local Government implement this resolution.[9]

Petitioner filed an ***Opposition to the Motion for Execution***[10] with the COMELEC Second Division on December 7, 2009 and a ***Motion for Reconsideration***[11] with the COMELEC *En Banc* while respondent Pagdanganan filed a ***Motion for Immediate Execution of Judgment Pending Motion for Reconsideration***.[12]

After deliberations on the Motion for Reconsideration in EPC No. 2007-44, the COMELEC *En Banc* voted as follows: **Commissioners Nicodemo T. Ferrer, Lucenito N. Tagle,** and **Elias R. Yusoph** voted to **DENY** the motion for reconsideration for lack of merit;[13] Commissioner **Rene V. Sarmiento DISSENTED** and wrote a separate opinion;[14] while three Commissioners **TOOK NO PART**, namely, Chairman **Jose A. R. Melo**, Commissioner **Armando C. Velasco**, and **Commissioner Gregorio Y. Larrazabal.**

Thereafter, the COMELEC *En Banc* issued the questioned ***Resolution*** dated February 8, 2010, wherein it held:

WHEREFORE, in view of the foregoing, the Commission *En Banc* **DENIES** the Motion for Reconsideration for lack of merit. The Resolution of the Commission (Second Division) promulgated on December 1, 2009 **ANNULLING** the proclamation of **JOSELITO R. MENDOZA** as the duly elected Governor of Bulacan and

---

[9] *Id.* at 930.

[10] *Id.* at 1408-1418.

[11] *Id.* at 1239-1390.

[12] *Id.* at 1219-1238.

[13] *Id.* at 207.

[14] *Id.* at 208-217.

DECLARING ROBERTO M. PAGDANGANAN as duly elected to said Office is **AFFIRMED** with modification.

Considering the proximity of the end of the term of the office involved, this Resolution is declared immediately executory.

ACCORDINGLY, the Commission *En Banc* hereby **ISSUES** a **WRIT OF EXECUTION** directing the Provincial Election Supervisor of Bulacan, in coordination with the DILG Provincial Operations Officer to implement the Resolution of the Commission (Second Division) dated December 1, 2009 and this Resolution of the Commission *En Banc* by ordering **JOSELITO R. MENDOZA** to **CEASE** and **DESIST** from performing the functions of Governor of the Province of Bulacan and to VACATE said office in favor of **ROBERTO M. PAGDANGANAN**.

Let a copy of this Resolution be furnished the Secretary of the Department of Interior and Local Government, the Provincial Election Supervisor of Bulacan, and the DILG Provincial Operations Officer of the Province of Bulacan.[15]

On February 11, 2010, petitioner filed an ***Urgent Motion to Recall the Resolution Promulgated on February 8, 2010*** before the COMELEC and raised as grounds, among others, that: (1) the resolution was issued without the concurrence of the majority of the members of the Commission as mandated by Section 5, Rule 3 of the COMELEC Rules, and without conducting a rehearing under Section 6, Rule 18 of the same rule; (2) no notice was issued for the promulgation of the resolution as mandated by Section 5, Rule 18 of the said rule; and (3) the resolution could not be immediately executory, as the appealed case was an ordinary action, which can only become final and executory after 30 days from its promulgation under Section 13, Rule 18 of the adverted rule. Petitioner argued that the desired majority was not obtained in the voting of the COMELEC *En Banc*, considering that only three Commissioners voted to deny the Motion for Reconsideration, three Commissioners took no part, and one Commissioner dissented from the Resolution.

On February 12, 2010, petitioner filed before this Court the instant petition assailing the COMELEC Resolution dated

---

[15] *Id.* at 206.

February 8, 2010; raising the same grounds that he had cited in his ***Urgent Motion to Recall the Resolution Promulgated on February 8, 2010;*** and, in addition, disputing the appreciation and result of the revision of the ballots, which resulted in respondent Pagdanganan's proclamation as the duly elected Governor of the Province of Bulacan.

Meanwhile, on February 10, 2010, the COMELEC *En Banc* issued an **Order**[16] for the rehearing of the protest, stating as follows:

> Considering that there was **no majority vote** of the members obtained in the **Resolution of the Commission *En Banc*** promulgated on **February 8, 2010**, **the Commission hereby orders the rehearing** of the above-entitled case on Monday, February 15, 2010 at 2:00 o'clock in the afternoon.
>
> The Clerk of the Commission is directed to notify all parties and counsels concerned. (Emphases added.)

During the rehearing on February 15, 2010, the parties agreed to submit the matter for resolution by the COMELEC *En Banc* upon the submission of their respective memoranda, without further argument. After deliberation, the Commissioners voted in the same way: three concurred, three took no part, and one dissented from the Resolution of the COMELEC Second Division dated December 1, 2009.

Respondent Pagdanganan filed his ***Comment (To Petition for Certiorari)*** on February 22, 2010, while the COMELEC, represented by the Office of the Solicitor General, filed its *Comment* on March 1, 2010 before this Court. Both respondents allege that the instant petition was prematurely filed in view of the scheduled rehearing of the case on February 15, 2010, and that petitioner is guilty of forum shopping for seeking relief from the questioned Resolution simultaneously before the COMELEC and this Court.

Petitioner, in his ***Reply to Respondent Pagdanganan's Comment*** dated March 2, 2010, contends that he fully disclosed

---

[16] *Id.* at 5245.

to this Court the pendency before the COMELEC of his ***Urgent Motion to Recall the Resolution Promulgated on February 8, 2010;*** and explains that he was just compelled to file the instant petition, since the questioned resolution was already accompanied by a writ of execution directing the Provincial Election Supervisor of Bulacan and the Department of Interior and Local Government (DILG) Provincial Operations Officer to implement it despite the fact that the said ruling had not yet become final and executory under Section 13, Rule 18 of the COMELEC Rules. Petitioner further claims that the COMELEC's order for the rehearing of the case was not actually and legitimately served on his counsel, as a copy of the said order for rehearing was initially handed to a revisor while he was at the premises of the COMELEC; and a copy of the said order was received only in the "late hours of the morning of February 12, 2010" when the instant petition was already on its way to filing.

In an **Order**[17] dated March 4, 2010, the COMELEC *En Banc* denied protestee's Motion for Reconsideration and granted protestant's Motion for Immediate Execution. It also directed the Clerk of the Commission to issue a **Writ of Execution** directing the Provincial Election Supervisor of Bulacan, in coordination with the DILG Provincial Operations Officer of Bulacan, to **implement** the Resolution of the "Commission (Second Division)" dated December 1, 2009; and ordered petitioner to cease and desist from performing the functions of the Governor of the Province of Bulacan and to vacate said office in favor of respondent Pagdanganan. Pursuant to this, on March 5, 2010, the COMELEC Electoral Contests Adjudication Department (ECAD) issued a **Writ of Execution,**[18] while the COMELEC *En Banc* issued an ***Order***[19] directing the ECAD personnel to deliver by personal service copies of the March 4, 2010 Order of the COMELEC *En Banc* and the corresponding March 5, 2010 Writ of Execution to the parties. Petitioner filed on March 5, 2010 an ***Urgent Motion to Declare Null & Void***

---

[17] *Id.* at 5304-5308.

[18] *Id.* at 5313-5315.

[19] *Id.* at 5316.

and Recall Latest En Banc Resolution Dated March 4, 2010[20] and an ***Urgent Motion to Set Aside March 4, 2010 En Banc Resolution Granting Protestant's Motion for Execution Pending Motion for Reconsideration***[21] with the COMELEC *En Banc*.

On March 8, 2010, petitioner filed with the Court a ***Supplement to the Petition with a Most Urgent Reiterating Motion for the Issuance of a Temporary Restraining Order or a Status Quo Order***[22] arguing that: (1) the election protest should have been dismissed after no majority vote was obtained by respondent Pagdanganan after rehearing; (2) the Order dated March 4, 2010 and the writ of execution dated March 5, 2010 were null and void, as they pertained to a wrong Resolution of the COMELEC Second Division; (3) no valid decision could have been rendered by the COMELEC *En Banc* without the originals of the ballots having been appreciated; (4) public respondent ignored the recent ruling of the Court in *Corral v. Commission on Elections*,[23] which made the Resolutions dated December 1, 2009 and February 8, 2010 null and void; and (5) all of the above are clear revelations that there is something terribly wrong in the adjudication of the above case – both on the Division and on the *En Banc* levels – which the Honorable Court should not allow to bear any further illicit consequences through the immediate issuance of a temporary restraining order/ *status quo ante* order.

Respondent Pagdanganan filed a ***Most Respectful Urgent Manifestation*** with the Court citing petitioner's blatant forum shopping in pursuing simultaneous reliefs both before the Court and the COMELEC *En Banc*.

In a **Resolution** dated March 9, 2010, this Court resolved to grant petitioner's prayer for the issuance of a *status quo ante* order. The pertinent portion of said resolution reads as follows:

---

[20] *Id.* at 5317-5321.

[21] *Id.* at 5322-5326.

[22] *Id.* at 5288-5303.

[23] G.R. No. 190156, February 12, 2010.

Acting on Petitioner's prayer for the urgent issuance of a temporary restraining order and/or *status quo ante* order in his Petition for *Certiorari* and Supplement to the Petition, the Court **FURTHER RESOLVES** to issue a ***STATUS QUO ANTE* ORDER**, for the maintenance of the situation prevailing at the time of the filing of the instant Petition for a period of seven (7) days. Specifically, respondents and all other persons acting on their authority are enjoined from enforcing or executing the following issuances in EPC Case No. 2007-44: (1) Resolution dated December 1, 2009 issued by the COMELEC Second Division; and (2) Resolution dated February 8, 2010, Order dated March 4, 2010, and Writ of Execution dated March 5, 2010 issued by the COMELEC *En Banc*, which ordered petitioner to cease and desist from performing the functions of the Governor of the Province of Bulacan and to vacate said office in favor of respondent [Pagdanganan]. This ***STATUS QUO ANTE* ORDER** shall be effective immediately and continuing until March 16, 2010, unless otherwise ordered by this Court.

On March 16, 2010, this Court issued another Resolution extending the *status quo order* for another seven (7) days or until March 23, 2010 unless otherwise ordered by this Court.

Respondent Pagdanganan filed on March 10, 2010 a ***Manifestation and Comment to Petitioner's Supplement to the Petition with a Most Urgent Reiterating Motion for the Issuance of a Temporary Restraining Order or a Status Quo Order***. Petitioner filed a ***Manifestation with Motion to Appreciate Ballots Invalidated as Written by One Person and Marked Ballots*** on March 12, 2010.

The **issues** before the Court are:

1. WHETHER PETITIONER IS GUILTY OF FORUM SHOPPING;
2. WHETHER THE INSTANT PETITION IS PREMATURE;
3. WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE QUESTIONED RESOLUTION WITHOUT THE CONCURRENCE OF THE MAJORITY OF THE MEMBERS OF THE COMMISSION AND WITHOUT CONDUCTING A REHEARING OF THE CASE;

4. WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT FAILED TO CREDIT THE CLAIMS OF THE PETITIONER;

   4.1 WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT INVALIDATED 9,160 BALLOTS OF THE PETITIONER AS WRITTEN BY ONE PERSON IN PAIRS OR IN GROUP; and

4.2 WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT INVALIDATED THOUSANDS OF VALID BALLOTS OF THE PETITIONER AS SPURIOUS, WRITTEN BY TWO OR MORE PERSONS AND AS MARKED BALLOTS WITH NO FACTUAL AND LEGAL BASIS.[24]

DISCUSSION

1. WHETHER PETITIONER IS GUILTY OF FORUM SHOPPING

Respondent Pagdanganan and the COMELEC both claim that petitioner's act of filing on **February 11, 2010** with the COMELEC a ***Motion to Recall the Resolution Promulgated on February 8, 2010*** and praying that the questioned Resolution be immediately recalled by the latter, and thereafter filing on the following day, *i.e.*, on **February 12, 2010**, with this Court the instant ***Petition for Certiorari with Prayer for a Temporary Restraining Order and/or Status Quo Order*** asking, among others, that the questioned Resolution be set aside, **undeniably constitute forum shopping**;[25] that at the time of the filing of the case at bar, petitioner did not disclose his act of filing a Motion to Recall with the COMELEC; and that petitioner sought to have this procedural lapse cured through his ***Manifestation and Motion to Admit Further Documents for Compliance and Additional Annexes to the Petition*** filed on February 15, 2010, with a modified "Verification and Certification of Non-Forum Shopping" wherein he had

---

[24] *Rollo*, pp. 16-17.

[25] *Id.* at 5189 and 5224.

inserted a clause saying, "*[t]hat other than the Motion to Recall the Resolution Promulgated on February 8, 2010 which I filed before the Commission on Elections En Banc on February 11, 2010, I have not commenced any other action or proceeding involving the same issues* x x x."[26]

Petitioner's actions do constitute forum shopping, as this term was defined in *Santos v. Commission on Elections*,[27] cited by the COMELEC in its Comment, the pertinent portions of which read as follows:

Santos is Guilty of Forum-Shopping

Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly securing a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.

x x x x x x x x x

Santos stated in his petition before this Court that on 9 July 2004, he filed a motion for reconsideration of the COMELEC First Division's Resolution. However, he did not disclose that at the time of the filing of his petition, his motion for reconsideration was still pending before the COMELEC *En Banc*. Santos did not also bother to inform the Court of the denial of his motion for reconsideration by the COMELEC *En Banc*. Had Asistio not called this Court's attention, we would have ruled on whether the COMELEC First Division committed grave abuse of discretion in dismissing SPC No. 04-233, which is one of the issues raised by Santos in this petition. This act of Santos alone constitutes a ground for this Court's summary dismissal of his petition. (Emphasis added.)

In the case at bar, petitioner's claim that he was compelled to seek immediate redress from this Court since the questioned Resolution had already incorporated a Writ of Execution does not justify his actions, as this does not take away the fact that

---

[26] *Id.* at 5264-5273.

[27] G.R. No. 164439, January 23, 2006, 479 SCRA 487, 493-494.

he had a pending Motion to Recall with the COMELEC *En Banc* when he filed the instant petition questioning the Resolution issued by the COMELEC *En Banc* on February 8, 2010. This simultaneous filing of two actions in different fora involving the same Resolution is an act of malpractice precisely prohibited by the rules against forum shopping, since, like in this instance, it adds to the congestion of the dockets of the Court, trifles with the Court's rules, and hampers the administration of justice.

On this ground alone, this petition should be dismissed, however, considering the public interest involved in this case, specifically in the province of Bulacan where the people now eagerly await the Court's pronouncement as to who is their duly-elected governor, I have opted to discuss a few more issues below to address the concerns raised by both parties.

2. WHETHER THE INSTANT PETITION IS PREMATURE

It is clear from the events immediately succeeding the filing of this petition that it was, as correctly averred by respondents, premature. The parties do not dispute the fact that this petition was filed during the pendency of the ***Urgent Motion to Recall the Resolution Promulgated on February 8, 2010*** filed on February 11, 2010 by petitioner and the scheduled "re-hearing" of the case on February 15, 2010 before the COMELEC. Respondent COMELEC aptly pointed out that there was nothing to judicially pass upon at this time considering that, when the instant petition was filed, the COMELEC had yet to make a final ruling on the protest of respondent Pagdanganan.

In *Ambil, Jr. v. Commission on Elections*,[28] the Court held:

> In a long line of cases, this Court has held consistently that "before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within

[28] 398 Phil. 257, 282 (2000).

his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of court's intervention is *fatal* to one's cause of action."

Further proof that this petition is premature is the fact that the rehearing conducted on February 15, 2010 rendered moot and academic the primary issues raised by petitioner regarding the questioned Resolution, specifically, "whether or not [the COMELEC] gravely abused its discretion tantamount to lack of or in excess of jurisdiction when it issued the **assailed resolution without the concurrence of the majority of the members of the Commission and without conducting a rehearing of the case,"** as well as **without issuing a notice of promulgation** of the said assailed Division Resolution, and **before it had attained finality**.[29] The COMELEC Rules require that a rehearing be conducted when the necessary majority is not reached in the *En Banc* level. This was already complied with on February 10, 2010 when the COMELEC issued an Order scheduling a rehearing of the case, and fulfilled when such hearing actually took place on February 15, 2010, after which the COMELEC issued an Order dated March 4, 2010.

Petitioner's act of filing a ***Supplement to the Petition with a Most Urgent Reiterating Motion for the Issuance of a Temporary Restraining Order or a Status Quo Order*** on March 8, 2010 that dealt with the COMELEC *En Banc*'s Order dated March 4, 2010, that in effect amends the instant petition to include a new subject matter, *i.e.*, the Order dated March 4, 2010, and new issues as mentioned above, should not be allowed to take the place of a proper petition, otherwise, we would merely be condoning petitioner's acts of forum shopping, premature filing, and his overall tendency to carelessly trifle with our rules to suit his needs. What petitioner should have done after the rehearing was to file a **new petition** before this Court questioning the Order dated March 4, 2010, and not to merely "amend" his petition by filing a "Supplement," as such Order already raised new issues, *e.g.*, the alleged lack of the

---

[29] *Rollo*, pp. 16-17. Emphasis added.

necessary majority upon rehearing, the alleged erroneous dispositive portion of the Order, and other matters not anymore covered by the original petition.

Be that as it may, if we are to temporarily set aside our technical rules in the interest of justice, and we take a look into petitioner's arguments in his "*Supplement to the Petition…*" against the Order dated March 4, 2010, we would still arrive at the same conclusion that the petition should be dismissed.

As a result of the rehearing, petitioner raises a new argument before this Court, that the Order of the COMELEC *En Banc* dated March 4, 2010 referred to a wrong Resolution. The said Order provides: "the Second Division's Resolution, dated December 1, 2009 denying protestee's Motion for Reconsideration and granting protestant's Motion for Immediate Execution is hereby affirmed." Petitioner points out that the December 1, 2009 Resolution of the COMELEC Second Division neither denied petitioner's Motion for Reconsideration nor granted respondent Pagdanganan's Motion for Immediate Execution. I agree to the extent that the Order of March 4, 2010 should have referred to the February 8, 2010 Resolution of the **COMELEC *En Banc***. However, the disposition of the Motion for Reconsideration in the March 4, 2010 Order, even with such oversight, is the same, which is to affirm the Denial of protestee's motion for reconsideration and the grant of protestant's Motion for Immediate Execution.

3. WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED RESOLUTION WITHOUT THE CONCURRENCE OF THE MAJORITY OF THE MEMBERS OF THE COMMISSION AND WITHOUT CONDUCTING A REHEARING OF THE CASE

Petitioner argues that the questioned Resolution of February 8, 2010 was issued without the concurrence of the majority of the members of the COMELEC as mandated by Rule 3, Section 5 of the COMELEC Rules and without conducting a rehearing under Rule 18, Section 6 thereof. According to petitioner, since only three Commissioners concurred with the assailed Resolution, the desired majority of four concurring members for the pronouncement of a resolution was not attained, *and a rehearing should have been conducted* by the COMELEC *En Banc*.

After the rehearing, the same number of votes were cast at the COMELEC *En Banc*. The Chairman and two (2) Commissioners inhibited themselves from taking part in the case; three (3) Commissioners voted to deny the protestee's Motion for Reconsideration and to grant protestant's Motion for Immediate Execution; and one (1) Commissioner dissented.

The COMELEC Rules provide the instances when a Commissioner may be disqualified from voting or may voluntarily inhibit himself from sitting in a case, to wit:

RULE 4

Disqualification and Inhibition

SECTION 1. *Disqualification or Inhibition of Members*. — (a) No Member shall sit in any case in which he or his spouse or child is related to any party within the sixth civil degree of consanguinity or affinity, or to the counsel of any of the parties within the fourth civil degree of consanguinity or affinity, or in which he has publicly expressed prejudgment as may be shown by convincing proof, or in which the subject thereof is a decision promulgated by him while previously serving as presiding judge of an inferior court, without the written consent of all the parties, signed by them and entered in the records of the case; *Provided*, that no Member shall be the *"ponente"* of an *en banc* decision/resolution on a motion to reconsider a decision/resolution written by him in a Division.

(b) If it be claimed that a Member is disqualified from sitting as above provided, the party raising the issue may, in writing, file his objection with the Commission, stating the grounds therefor. The member concerned shall either continue to participate in the hearing or withdraw therefrom, in accordance with his determination of the

question of his disqualification. His decision thereon shall forthwith be made in writing and filed with the Commission for proper notation and with the records of the case. No appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competency until after final judgment in the case.

(c) A Member may, in the exercise of his sound discretion, inhibit himself from sitting in a case for just or valid reasons other than those mentioned above. (Emphasis ours.)

The three Commissioners who did not take part when the COMELEC *En Banc* deliberated on petitioner's Motion for Reconsideration in EPC No. 2007-44 gave their respective reasons for their inhibition. **Chairman Jose A. R. Melo** cited his relationship with the parties and their respective counsel; Commissioner **Armando C. Velasco** stated in his ***Explanation***[30] dated February 8, 2010 that he could not take part in the deliberation because a proper re-examination of the original ballots subject of the case was not feasible at that time, considering that the same were under the custody of the Senate Electoral Tribunal (SET); while **Commissioner Gregorio Y. Larrazabal** wrote in his ***Explanation***[31] likewise dated February 8, 2010, that from February 2004 to January 2008, he was the Provincial Election Supervisor (PES) IV in the Province of Bulacan and had related to the parties in such capacity. Furthermore, he had served as the PES during the 2007 elections, the results of which were being questioned before the COMELEC, and he concluded that considering the foregoing, his moral and ethical beliefs had constrained him from participating so as to secure the people's faith and confidence in the COMELEC's impartiality and fairness.[32]

It appears that the inhibition by the three Commissioners was proper and in accordance with the COMELEC Rules. The said Commissioners used their sound discretion, which they were allowed to do under the present COMELEC rules.

---

[30] *Id.* at 218.

[31] *Id.* at 219-220.

[32] *Id.*

Notwithstanding their voluntary inhibition, there still was a *quorum* when the COMELEC *En Banc* deliberated on petitioner's Motion for Reconsideration with the participation of the remaining four out of the seven Commissioners.

Moreover, with regard to the February 8, 2010 Resolution, the issue of lack of necessary majority had become moot because the COMELEC *En Banc* subsequently issued an Order for the rehearing of petitioner's Motion for Reconsideration and respondent Pagdanganan's Motion for Execution of the Resolution issued by its Second Division, as required by the COMELEC Rules. The rehearing was actually conducted on February 15, 2010. After the matter was submitted for resolution, the COMELEC *En Banc* issued an **Order**[33] dated March 4, 2010, stating as follows:

> There is no issue on the presence of a quorum when the foregoing voting was conducted, as the seven (7) members of the Commission were present when the case was deliberated on, and they announced their respective votes. Nevertheless, the voting on the twin motions as indicated above wherein three (3) commissioners voted to deny protestee's Motion for Reconsideration and grant the protestant's Motion for Immediate Execution Pending Motion for Reconsideration, and one (1) commissioner dissenting, clearly shows that at least four (4) commissioners participated, and, hence, there was a quorum. The case of *Estrella vs. COMELEC* is applicable.
>
> In *Estrella* the Supreme Court laid down the rule that the COMELEC *en banc* shall decide a case on matter[s] brought before it by a majority vote of "all its members," and NOT majority of the members who deliberated and voted thereon. In the present case, the **majority of four (votes)** was not attained as only three (3) commissioners concurred in the aforesaid Resolution denying protestee's Motion for Reconsideration and granting protestant's Motion for Immediate Execution pending the protestee's Motion for Reconsideration. Hence, the subject Resolution may not yet be promulgated. It is by virtue of this *impasse* that the Commission *en banc* scheduled a rehearing of the case as mandated by the Rules.

---

[33] *Id.* at 5304-5308.

At the rehearing conducted on February 15, 2010, the parties agreed to submit the matter for resolution by the Commission *en banc* upon the submission of their respective memoranda, without further argument.

The parties having submitted their respective memoranda, the matter was deliberated on by the Commission *en banc* and the seven (7) members maintained their respective stands (3 votes concurring-1 vote dissenting-3 stating "no part") on the Resolution of the Second Division dated December 1, [2009]. Hence, pursuant to Section 6, Rule 18, COMELEC Rules of Procedure, the latter is deemed affirmed.

WHEREFORE, premises considered, and, applying the provision of Rule 18, Section 6 of the COMELEC Rules of Procedure, the Second Division's Resolution, dated December 1, 2009, denying protestee's Motion for Reconsideration and granting protestant's Motion for Immediate Execution is herby AFFIRMED.

ACCORDINGLY, the Clerk of the Commission, ECAD, is hereby ordered to forthwith **ISSUE a WRIT OF EXECUTION** directing the Provincial Election Supervisor of Bulacan, in coordination with the DILG Provincial Operations Officer of Bulacan, to implement the Resolution of the Commission (Second Division) dated December 1, 2009, and this Order of the Commission by ordering **JOSELITO R. MENDOZA** to **CEASE AND DESIST** from performing the functions of the Governor of the Province of Bulacan and to **VACATE said office** in favor of **ROBERTO M. PAGDANGANAN.**

Let a copy of this Order be furnished the Secretary of the Department of Interior and Local Government, the Provincial Election Supervisor of Bulacan and the DILG Provincial Operations Officer of the Province of Bulacan.[34]

What is left for determination regarding this issue is the validity of the Order dated March 4, 2010, because a majority of four votes was still not reached even after rehearing.

To do this, it is necessary to look into the COMELEC Rules, as amended, wherein the manner by which the COMELEC shall transact business is spelled out, and we quote the relevant portions below:

---

[34] *Id.* at 5306-5307.

RULE 3
How the Commission Transacts Business

x x x x x x x x x

SECTION 3. **The Commission Sitting in Divisions**. – **The Commission shall sit in two (2) Divisions to hear and decide protests** or petitions in ordinary actions, special actions, special cases, provisional remedies, contempt and special proceedings except in accreditation of citizens' arms of the Commission.

RULE 18
Decisions

x x x x x x x x x

SECTION 6. *Procedure if Opinion is Equally Divided*. — **When the Commission *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed; and in all incidental matters, the petition or motion shall be denied.** (Emphasis ours.)

The lone dissenter in both the questioned Resolution and the March 4, 2010 Order, Commissioner Rene V. Sarmiento, wrote that Rule 18, Section 6 of the COMELEC Rules should be read to mean that "*in the event that even after a rehearing there is still an impasse as regards the opinion of the Commission En Banc, two different remedies are recognized; first, the case shall be dismissed if it was originally commenced in the Commission; and second, in appealed cases, the judgment or order appealed from shall be affirmed.*"[35] Commissioner Sarmiento opined that an election protest case is originally commenced in the Commission *En Banc* and should therefore be dismissed if the majority of four votes is not obtained. Adverting to Section 2(2), Article IX(C) of the Constitution, he ratiocinated as follows:

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

---

[35] *Id.* at 5310.

x x x x x x x x x

(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.

x x x x x x x x x

In the case at bar, considering that the contested position is provincial governor, undoubtedly, exclusive original jurisdiction lies with the Commission on Elections. Correlatively, the protest should be and, indeed, was filed before the Commission at the first instance. It goes without saying therefore that the present case falls under the category *originally commenced in the Commission.*

Furthermore, no way by any stretch of imagination can this controversy be considered as an *appealed case*. Yes, it is true that the instant Motion for Reconsideration assails the Resolution of the Second Division. But this does not mean that it is an appeal from the said Second Division's ruling. Aside from the obvious legal difference between the two reliefs, to construe a Motion for Reconsideration as an appeal would defeat the purpose of the delineation made in Section 6 of Rule 18 of the COMELEC Rules of Procedure with regard to the cases *originally commenced* and those *appealed*. Take note that all controversies brought to the Commission, either originally or on appeal with the exception of election offenses, are first heard and decided in the division level. The same is elevated to the Commission *en banc* when a Motion for Reconsideration has been timely filed.

Having duly determined that this case falls under the category *originally commenced,* it is mandated therefore that the election protest filed by protestant Roberto Pagdanganan be dismissed.[36]

Similarly, petitioner, in his ***Supplement to the Petition with a Most Urgent Reiterating Motion for the Issuance of a Temporary Restraining Order or a Status Quo Order***, avers that the election protest should have been dismissed after no majority vote was obtained after rehearing, citing the above discussion of Commissioner Sarmiento in his dissent.

---

[36] *Id.* at 5310-5311.

I do not agree. The COMELEC Rules should be interpreted in harmony with the Constitution, to give meaning to, and fulfill the purpose of, its framers.

The COMELEC is a constitutionally-created body that is primarily an administrative agency, which also possesses quasi-judicial and quasi-legislative functions. Article IX(A) of the 1987 Constitution contains the provisions common to all Constitutional Commissions, and Sections 1 and 7 thereof read:

> SECTION 1. The Constitutional Commissions, **which shall be independent**, are the Civil Service Commission, **the Commission on Elections**, and the Commission on Audit.
>
> x x x x x x x x x
>
> SECTION 7. **Each Commission shall decide by a majority vote of all its Members any case or matter brought before it** within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis ours.)

Specifically, Article IX(C) of the Constitution covers the COMELEC, Section 3 of which provides:

> SECTION 3. The Commission on Elections may sit ***En Banc*** or **in two divisions**, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. **All such election cases shall be heard and decided in division**, provided that **motions for reconsideration of decisions shall be decided by the Commission *En Banc***. (Emphases supplied.)

It is clear from the above that the framers of the Constitution intended the COMELEC to be an independent body. It appears that a **division** of the COMELEC is vested with constitutional authority to hear and decide election cases subject to the filing of a motion for reconsideration with the COMELEC *En Banc.*

Thus, before a case is elevated to the COMELEC *En Banc*, there exists a decision of a division of the COMELEC, which it has rendered in accordance with its constitutionally vested jurisdiction to hear and decide election cases.

Furthermore, under the COMELEC Rules, a COMELEC division can validly decide election cases upon the concurrence of *at least two* Members. Rule 3, Section 5 provides:

SECTION 5. **Quorum Votes Required**. –

(a) When sitting *En Banc*, four (4) members of the Commission shall constitute a quorum for the purpose of transacting business. The Concurrence of a majority of the Members of the Commission shall be necessary for the pronouncement of a decision or resolution.

(b) When sitting in Division, two (2) Members of a Division shall constitute a quorum to transact business. The concurrence of at least two (2) Members of a Division shall be necessary to reach a decision, resolution, order or ruling. **If this required number is not obtained, the case shall be automatically elevated to the Commission *En Banc* for decision or resolution.**

(c) **Any motion to reconsider a decision, resolution, or order of ruling of a Division shall be resolved by the Commission *En Banc*** except motions on interlocutory orders of the division which shall be resolved by the division which issued the order.

It appears that this Rule contemplates two distinct situations when a case originally heard before a Division reaches the COMELEC *En Banc*. Under paragraph (b), when the required number of two (2) Members is not obtained in the Division, **the case** shall be *automatically elevated* to the COMELEC *En Banc*, and in that situation, what is before the latter is the *original election protest*. On the other hand, under paragraph (c), when the required number is in fact obtained and a decision, resolution, order, or ruling is duly reached by the Division, the ***motion for reconsideration* of such decision, resolution, order, or ruling** shall be resolved by the COMELEC *En Banc*, and **NOT** the original election protest.

Applying Section 6, Rule 18, quoted above, the effect of the lack of the necessary majority of four (4) votes in the COMELEC *En Banc*, which results in the inability of the COMELEC *En Banc* to reach a decision either to grant or deny the protest or a motion for reconsideration, is as follows: (i) the original election protest is dismissed, in cases falling under **paragraph (b)**; while (ii) the decision of the division sought to be reconsidered must be deemed affirmed, in cases falling under **paragraph (c)**.

Furthermore, even if we consider the proceeding before the *En Banc* as a continuation of the election protest heard and decided by the division, the motion for reconsideration will be but an incident of the original election protest. Utilizing the provisions of the COMELEC Rules (Sec. 6, Rule 18) cited by Commissioner Sarmiento, the Motion for Reconsideration, not being an appeal but only an incidental motion, should be denied.

To construe Section 6, Rule 18 as providing for the dismissal of the original action that was decided upon by a division, as suggested by petitioner as well as Commissioner Sarmiento, would make the rule objectionable on constitutional grounds because, as discussed above, the Constitution gives the COMELEC divisions the jurisdiction to **hear and decide** election cases; and the COMELEC *En Banc* the authority to hear and resolve **motions for reconsideration**. To adopt petitioner's as well as Commissioner Sarmiento's interpretation of the COMELEC Rules would render nugatory said Constitutional mandate vesting the said jurisdiction on a division of the COMELEC. In other words, the COMELEC Rules as so interpreted would be vulnerable to objection on the ground of unconstitutionality.

Therefore, construing Section 6, Rule 18 in relation to Section 5(b) and (c) of the same COMELEC Rules, in harmony with the pertinent provisions of the Constitution, the rule providing for dismissal of the original protest action upon failure to reach the necessary majority before the COMELEC *En Banc* should only apply in a case where there was NO decision reached by the Division, because in such situation, the COMELEC *En Banc* would be acting not on the motion for reconsideration but

on the original election protest. But if the COMELEC *En Banc* acts on a motion for reconsideration of a decision or resolution of a Division, then the failure to reach the necessary majority of four should result to the DENIAL of the motion for reconsideration. Otherwise, the motion for reconsideration would be accorded greater weight than the decision rendered by the Division, which was arrived at in the exercise of its constitutionally vested jurisdiction over election protests.

As it stands, when the subject election protest was elevated through a Motion for Reconsideration to the COMELEC *En Banc*, the decision of all three Members of the Second Division could have only been set aside by the majority of ALL Members of the COMELEC *En Banc*, meaning four out of seven votes. I agree with petitioner as well as Commissioner Sarmiento that under the Rules and *Estrella v. COMELEC*,[37] the necessary majority was **not** reached in order to decide on the Motion for Reconsideration. However, since no decision was reached by the COMELEC *En Banc* on the Motion for Reconsideration, what remains is the decision of the Second Division, which was validly rendered in consonance with the provisions of the Constitution and the COMELEC Rules. The protestant, who was proclaimed the winner and who already took his oath subsequent to such proclamation, cannot be removed by protestee's failure to obtain the necessary votes from the COMELEC *En Banc* to sustain his Motion for Reconsideration.

---

[37] G.R. No. 160465, May 27, 2004, 429 SCRA 789, 792-793. In *Estrella* we held:

> The provision of the Constitution is clear that it should be the majority vote of **all its members** and not only those who participated and took part in the deliberations. Under the rules of statutory construction, it is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. Since the above-quoted constitutional provision states "all of its members," without any qualification, it should be interpreted as such.
>
> x x x x x x x x x
>
> For the foregoing reasons then, this Court hereby abandons the doctrine laid down in *Cua* and holds that the COMELEC *En Banc* **shall decide a case or matter brought before it by a majority vote of *"all its members," and NOT majority of the members who deliberated and voted thereon***.

As regards petitioner's averment that the questioned Resolution dated February 8, 2010, as well as the Resolution dated December 1, 2009 of the COMELEC Second Division, was issued when the original ballots subject of the election protest were still in the custody of the SET, I see no reason to take this matter up again, as this Court had already passed upon this with finality in **G.R. No. 188308**.[38] I quote relevant portions of the Court's **Decision** in said case, which is clear and requires no further explanation:

> Allegedly alarmed by information on COMELEC action on the provincial election contest *within the SET premises without notice to him and without his participation,* the petitioner's counsel wrote the SET Secretary, Atty. Irene Guevarra, a letter dated June 10, 2009 to confirm the veracity of the reported conduct of proceedings. The SET Secretary responded on June 17, 2009 as follows:
>
> > . . . please be informed that the conduct of proceedings in COMELEC EPC No. 2007-44 *(Pagdanganan vs. Mendoza)* within the Tribunal Premises was authorized by then Acting Chairman of the Tribunal, Justice Antonio T. Carpio, upon formal request of the Office of Commissioner Lucenito N. Tagle.
> >
> > Basis of such grant is Section 3, Comelec Resolution No. 2812 dated 17 October 1995, stating that "(t)he Tribunals, the Commission and the Courts shall coordinate and make arrangement with each other so as not to delay or interrupt the revision of ballots being conducted. The synchronization of *revision of ballots* shall be such that the expeditious disposition of the respective protest case shall be the primary concern." *While the said provision speaks only of revision, it has been the practice of the Tribunal to allow the conduct of other proceedings in local election protest cases within its premises as may be requested.* x x x.
>
> x x x x x x x x x
>
> The petition is anchored on the alleged conduct of proceedings in the election protest — following the completed revision of ballots — at the SET premises without notice to and without the participation of the petitioner. Significantly, "the conduct of proceedings" is

---

[38] *Mendoza v. Commission on Elections, supra* note 7.

confirmed by the SET Secretary in the letter we quoted above. As the issues raised show — the petitioner's focus is not really on the COMELEC Orders denying the suspension of proceedings when the ballot boxes and other election materials pertinent to the election contest were transferred to the SET; *the focus is on what the COMELEC did after to the issuance of the Resolutions*. We read the petition in this context as these COMELEC Orders are now unassailable as the period to challenge them has long passed.

x x x x x x x x x

To conclude, the rights to notice and to be heard are not material considerations in the COMELEC's handling of the Bulacan provincial election contest after the transfer of the ballot boxes to the SET; no proceedings at the instance of one party or of COMELEC has been conducted at the SET that would require notice and hearing because of the possibility of prejudice to the other party. The COMELEC is under no legal obligation to notify either party of the steps it is taking in the course of deliberating on the merits of the provincial election contest. In the context of our standard of review for the petition, we see no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the COMELEC in its deliberation on the Bulacan election contest and the appreciation of ballots this deliberation entailed.

x x x x x x x x x

On the basis of the standards set by Section 4 of the COMELEC Rules of Procedure, and of the Constitution itself in the handling of election cases, we rule that the COMELEC action is a valid exercise of discretion as it is a suitable and reasonable process within the exercise of its jurisdiction over provincial election contests, aimed at expediting the disposition of this case, and with no adverse, prejudicial or discriminatory effects on the parties to the contest that would render the rule unreasonable.

4. WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT FAILED TO CREDIT THE CLAIMS OF THE PETITIONER

I register my dissent to the *ponencia's* finding that there was grave abuse of discretion on the part of the COMELEC *En Banc*.

Based on petitioner's contentions, the following are the sub-issues to be resolved:

4.1 WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT INVALIDATED 9,160 BALLOTS OF THE PETITIONER AS WRITTEN BY ONE PERSON IN PAIRS OR IN GROUP; and

4.2 WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT INVALIDATED THOUSANDS OF VALID BALLOTS OF THE PETITIONER AS SPURIOUS, WRITTEN BY TWO OR MORE PERSONS AND AS MARKED BALLOTS WITH NO FACTUAL AND LEGAL BASIS.

The numerous allegations of petitioner under these sub-issues go into the manner of appreciation of ballots conducted by the COMELEC, and are factual in nature, requiring a thorough physical examination of the original ballots if a proper review is to be made.

As this Court has have held in *Balingit v. Commission on Elections*:[39]

The appreciation of the contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country, as it is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and *barangay* officials. **In the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings, and decisions rendered by the said Commission on matters falling within its competence shall not be interfered with by this Court**. (Emphases supplied.)

---

[39] G.R. No. 170300, February 9, 2007, 515 SCRA 404, 410.

Even if the Court were to entertain petitioner's assertions regarding the alleged erroneous invalidation by the COMELEC Second Division of petitioner's 9,160 ballots on the ground that they were written by one person in pairs or in a group on the basis of photocopies of said ballots submitted by petitioner as Annexes "II"- "II-3000" to the instant petition, a meticulous examination of the said copies reveals that the COMELEC Second Division was correct in declaring them invalid on the aforesaid ground.

The *ponencia* holds that the COMELEC *En Banc* gravely abused its discretion in justifying the invalidation of 9,160 ballots in the assailed December 1, 2009 COMELEC Second Division Resolution by mere generalizations bereft of specific details, in contravention of Rule 14, Section 1(d) of the new **Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials**,[40] which petitioner claims is applicable by analogy. However, I find that this rule cited by petitioner is **inapplicable** to the case at bar, as what is involved here is the appreciation of ballots in an election contest involving **provincial officials**. It is not difficult to understand that the said rule cannot be applied to provincial election contests, owing to the large number of ballots usually involved that would result in an extremely voluminous and unwieldy Resolution containing very specific details on why each and every contested ballot is deemed as written by one person in pairs or in a group. Conversely, petitioner did not present to this Court specific and detailed allegations for each and every

[40] "(d) On Pair or Group of Ballots Written by One or Individual Ballots Written by Two – When ballots are invalidated on the ground of written by one person, the court must clearly and distinctly specify why the pair or group of ballots has been written by only one person. The specific strokes, figures or letter indicating that the ballots have been written by one person must be specified. A simple ruling that a pair or group of ballots has been written would not suffice. The same is true when ballots are excluded on the ground of having been written by two persons. The court must likewise take into consideration the entries of the Minutes of Voting and Counting relative to illiterate or disabled voters, if any, who cast their votes through assistors, in determining the validity of the ballots found to be written by one person, whether the ballots are in pairs or in groups…"

ballot which he argues should not have been declared invalid for having been written by one.

After meticulously examining Annexes "JJ"-"JJ-577", which are uncertified photocopies of ballots that petitioner alleges were erroneously invalidated as marked ballots, it appears that only 510 of these ballots may have been mistakenly invalidated as marked. Nevertheless, I cannot attribute grave abuse of discretion on the part of the COMELEC Second Division on this point on account of the complicated rules on what constitutes a mark on a ballot that would render it invalid. Besides, the aforesaid number does not suffice to overturn the results of the final count of the ballots.

Regarding petitioner's contention that the COMELEC Second Division erroneously invalidated ballots in his favor as spurious, made erroneous computations, and did not take into account the fact that illiterate voters requiring voting assistance actually voted in the precincts in which COMELEC found ballots as written by one, our assessment of such **generalized** claims would require the appreciation of election documents, *i.e.*, original ballots, Minutes of Voting, *etc*., which neither party submitted to the Court. Absent the presentation of such vital documents, petitioner cannot expect this Court to uphold his bare assertions.

In determining whether the COMELEC *en banc* acted with grave abuse of discretion in this case as asserted by petitioner, the standard used by the Court in *Mendoza v. Commission on Elections*[41] is as follows:

> Thus, our standard of review is "grave abuse of discretion," a term that defies exact definition, but generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Mere abuse of discretion is not enough; the abuse must be grave to merit our positive action.

---

[41] *Supra* note 7.

I maintain the presumption that the COMELEC regularly performed its official duties in relation to the revision of ballots in this election case, absent a clear showing that it acted in an arbitrary, whimsical, capricious, or despotic manner. Records show that the COMELEC ordered the respective Election Officers and City/Municipal Treasurers of the various cities and municipalities of Bulacan to undertake all the necessary security measures to preserve and secure the ballot boxes and their contents.[42] In addition, the COMELEC granted the requests of both petitioner and respondent Pagdanganan for the designation of their respective security personnel in the storage facility where the ballot boxes were kept.[43] Its findings that some ballots were written by one or by two or more persons, or marked, or spurious were supported by laws and jurisprudence regarding the appreciation of ballots.[44]

Time and again, it has been held that this Court is not a trier of facts. To conclude, I quote from *Juan v. Commission on Elections*,[45] wherein the Court said:

> The Court's jurisdiction to review decisions and orders of the COMELEC on this matter operates only upon a showing of grave abuse of discretion on the part of the COMELEC. Verily, only where grave abuse of discretion is clearly shown shall the Court interfere with the COMELEC's judgment.
>
> x x x The office of a petition for *certiorari* is not to correct simple errors of judgment; any resort to the said petition under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure is **limited to the resolution of jurisdictional issues.** Thus, it is imperative for the petitioner to show caprice and arbitrariness on the part of the COMELEC whose exercise of discretion is being assailed.
>
> Proof of such grave abuse of discretion is found wanting in this case.

---

[42] *Rollo*, p. 238.

[43] *Id.* at 199.

[44] *Id.* at 200.

[45] G.R. No. 166639, April 24, 2007, 522 SCRA 119, 128-129.

The COMELEC'S conclusion on a matter decided within its competence is entitled to utmost respect. It is not sufficient to allege that the COMELEC gravely abused its discretion. Such allegation should also be justified. In this case, petitioner failed to justify his assertion of grave abuse of discretion against the COMELEC. x x x Moreover, the COMELEC's proceedings were conducted in accordance with the prevailing laws and regulations.

WHEREFORE, premises considered, I vote to dismiss the instant Petition for *Certiorari*.

DISSENTING OPINION

ABAD, *J.*:

Challenged in this Petition for *Certiorari* is the Resolution dated February 8, 2010 of the Commission on Elections (COMELEC) in EPC 2007-44 entitled *Roberto M. Pagdanganan v. Joselito R. Mendoza*.

Brief Antecedents

Petitioner Joselito R. Mendoza was proclaimed winner in the May 14, 2007 gubernatorial race in the Province of Bulacan. Respondent Roberto M. Pagdanganan who opposed him filed an election protest with the COMELEC questioning the election results in all the 5,066 precincts in the province due to massive electoral fraud that Mendoza allegedly committed.

On December 1, 2009 the COMELEC Second Division decided the election protest and proclaimed Pagdanganan as the duly elected Governor of Bulacan. Mendoza opposed Pagdanganan's motion for execution of the decision before the Second Division and filed a motion for reconsideration of that decision with the COMELEC *En Banc*.

On February 8, 2010 the COMELEC *En Banc* denied Mendoza's motion for reconsideration. Reacting to it, he filed an urgent motion to recall the February 8 resolution on the ground, among others, that the *En Banc* issued such resolution (a) without the concurrence of the majority of its members and (b) without conducting a rehearing under Section 6, Rule 18 of

the COMELEC rules of procedure. Only three Commissioners voted to deny his motion for reconsideration. A commissioner dissented while three others took no part.

On February 10, 2010 the COMELEC *En Banc* issued an Order for the rehearing of the motion for reconsideration on February 15, 2010. Meanwhile, on February 12 Mendoza filed with this Court the present petition, raising the same grounds which he cited in the urgent motion to recall that he earlier filed with the COMELEC *En Banc*.

Following its February 15 rehearing, the members of the COMELEC *En Banc* maintained their votes. On March 4, 2010 the *En Banc* issued an order directing the immediate execution of the Second Division's decision. This prompted Mendoza to file a supplement to his petition before this Court, bringing up the recent developments in the case.

Issue Subject of Concurring Opinion

I join the dissent of Justice Teresita J. Leonardo-De Castro and in addition would like to add my thoughts on a key issue in this case, namely:

Whether or not the failure of the COMELEC *En Banc* to muster the majority vote required for denying petitioner Mendoza's motion for reconsideration would effectively result in the abandonment or reversal of the Second Division's decision against him.

Discussion

The dissenting opinion of Justice Teresita J. Leonardo-De Castro holds that, since the majority votes of four Commissioners in the COMELEC *En Banc* needed for **granting** Mendoza's motion for reconsideration of the decision of the Second Division could not be had, the Division's decision should be deemed **affirmed**.

But, adopting petitioner Mendoza's position, the majority opinion penned by Justice Perez's submits that the result of a failure of vote in the *En Banc* should be **to set aside** the Second Division's decision and **dismiss** Pagdanganan's election protest. Quite frankly, this view is supported by the literal application

of Section 6, Rule 18 of the COMELEC Rules of Procedure which reads:

Sec. 6. *Procedure if Opinion is Equally Divided*. - When the Commission *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed; and in all incidental matters, the petition or motion shall be denied.

Here, Pagdanganan filed his election protest, an original action, directly with the COMELEC. The Second Division to which the case was raffled heard the parties and their evidence and rendered a decision in Pagdanganan's favor. On Mendoza's motion for reconsideration filed with the *En Banc*, the latter voted twice with the same result: three votes for denying the motion for reconsideration, one dissenting vote for granting it, and three abstentions. The reasoning is that, since the necessary majority of four votes cannot be had, the election protest originally commenced in the COMELEC should be dismissed.

If the issue were to be decided based solely on Section 6, Rule 18 of the COMELEC rules of procedure, Justice Perez's dissent could hardly be debatable. But this is not the case. The COMELEC rules are inferior to and cannot modify what the Constitution prescribes. Thus:

One. Section 3, Article IX-C, of the 1987 Constitution empowers every COMELEC Division to decide election cases for the COMELEC as a body, not to act as commissioners with mere recommendatory powers. Section 3 reads:

Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*. (Underscoring supplied)

Actually, although the COMELEC "may sit *en banc* or in two divisions," the COMELEC *en banc* has no power to decide election cases. "**All such election cases**," says Section 3 above, "**shall be heard and decided in division**."

The majority opinion's theory that the Division's decisions in original actions are **not decisions** if, on motion for reconsideration, the required vote of the *En Banc* cannot be had, contravenes Section 3. Nothing in the provisions of the Constitution implies a proposition that the decision-making process it prescribed for the COMELEC is integrated in that the decision of the Division is a half-decision in original election cases and needs to be approved by the *En Banc*.

Two. The COMELEC cannot pass a rule that, when the *En Banc* fails to muster the majority vote required for denying the losing party's motion for reconsideration, the decision of the Division shall be deemed vacated or reversed.

Such rule will alter the scope of the power of the *En Banc*. The latter's power with respect to all kinds of election cases is **limited to deciding motions for reconsideration**. Thus, the pertinent portion of Section 3, Article IX-C, of the 1987 Constitution, provides:

> **Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.** (Underscoring supplied)

The reconsideration of a decision implies reexamination, and possibly a different decision by the entity which initially decided it.[1] Since the *En Banc* needs four votes to reconsider and set aside a Division's decision, its failure to muster such votes means that it is unable to exercise its power to decide the motion for reconsideration before it. This also means that it

---

[1] *Black's Law Dictionary,* Sixth Edition, p. 1272.

cannot grant the reconsideration asked of it by the losing party. Correct? Consequently, a COMELEC-generated rule which says that such failure to grant reconsideration is the equivalent of actually granting the reconsideration is absurd. It also contravenes the Constitution.

Three. The Constitution does not make a distinction between election cases brought to the COMELEC by appeal and those originally filed with it. The same Section 3 provides that "**all** such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*." There cannot be one way of disposing of motions for reconsideration in original cases and another way of disposing of motions for reconsideration in appealed cases. The distinction made by Section 6, Rule 18, of the COMELEC rules is unwarranted.

As stated above, it is to the Divisions that the Constitution gave the power to decide all election cases, not to the *En Banc*. It can be granted that the procedure that the Division may follow in hearing and deciding appealed cases might differ from the procedure it will follow in hearing and deciding original cases. But is there a significant difference between these two kinds of cases that will justify a divergence in results when, on motions for reconsideration, the *En Banc* is unable to muster the required vote for denying such motions?

There is none. Indeed, the Supreme Court hears and decides both appealed and original cases but it has never crossed its mind to decree that, in original cases filed with it as distinguished from appealed cases, a failure to muster the required vote for acting on a motion for reconsideration shall result in the reversal of its decision. Such a rule would be an outrage to the principle of fairness and to the Constitutional guarantee of due process.

The resolution of the COMELEC *en banc* being in harmony with both constitutional and statutory provisions, I vote to *DENY* the petition.

SECOND DIVISION

[A.C. No. 5768. March 26, 2010]

ATTY. BONIFACIO T. BARANDON, JR., *complainant, vs.* **ATTY. EDWIN Z. FERRER, SR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; PROHIBITION AGAINST USE OF OFFENSIVE AND ABUSIVE LANGUAGE IN THE PLEADINGS; DISREGARDED IN CASE AT BAR.— The practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality. Any violation of these standards exposes the lawyer to administrative liability. Canon 8 of the Code of Professional Responsibility commands all lawyers to conduct themselves with courtesy, fairness and candor towards their fellow lawyers and avoid harassing tactics against opposing counsel. Specifically, in Rule 8.01, the Code provides: **"Rule 8.01. – A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper."** Atty. Ferrer's actions do not measure up to this Canon. The evidence shows that he imputed to Atty. Barandon the falsification of the *Salaysay Affidavit* of the plaintiff in Civil Case 7040. He made this imputation with pure malice for he had no evidence that the affidavit had been falsified and that Atty. Barandon authored the same. Moreover, Atty. Ferrer could have aired his charge of falsification in a proper forum and without using offensive and abusive language against a fellow lawyer. x x x The Court has constantly reminded lawyers to use dignified language in their pleadings despite the adversarial nature of our legal system.

2. ID.; ID.; ID.; DUTY TO UPHOLD THE DIGNITY AND INTEGRITY OF THE LEGAL PROFESSION; VIOLATED IN CASE AT BAR.— Atty. Ferrer had likewise violated Canon 7 of the Code of Professional Responsibility which enjoins lawyers to uphold the dignity and integrity of the legal profession at all times. Rule 7.03 of the Code provides: **"Rule 7.03. – A lawyer shall not engage in conduct that adversely reflect on his fitness**

to practice law, nor shall he, whether in public or private life behave in scandalous manner to the discredit of the legal profession." Several disinterested persons confirmed Atty. Ferrer's drunken invectives at Atty. Barandon shortly before the start of a court hearing. Atty. Ferrer did not present convincing evidence to support his denial of this particular charge. He merely presented a certification from the police that its blotter for the day did not report the threat he supposedly made. Atty. Barandon presented, however, the police blotter on a subsequent date that recorded his complaint against Atty. Ferrer.

3. ID.; ID.; LAWYER'S LANGUAGE IS REQUIRED TO BE DIGNIFIED AND RESPECTFUL AT ALL TIMES.— Atty. Ferrer said, "*Laban kung laban, patayan kung patayan, kasama ang lahat ng pamilya. Wala na palang magaling na abogado sa Camarines Norte, ang abogado na rito ay mga taga-Camarines Sur, umuwi na kayo sa Camarines Sur, hindi kayo taga-rito*." Evidently, he uttered these with intent to annoy, humiliate, incriminate, and discredit Atty. Barandon in the presence of lawyers, court personnel, and litigants waiting for the start of hearing in court. These language is unbecoming a member of the legal profession. The Court cannot countenance it. Though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum. Atty. Ferrer ought to have realized that this sort of public behavior can only bring down the legal profession in the public estimation and erode public respect for it. Whatever moral righteousness Atty. Ferrer had was negated by the way he chose to express his indignation.

4. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; ESSENCE.— Contrary to Atty. Ferrer's allegation, the Court finds that he has been accorded 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 one's defense. So long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with. Here, the IBP Investigating Commissioner gave Atty. Ferrer all the opportunities to file countless pleadings and refute all the allegations of Atty. Barandon.

D E C I S I O N

ABAD, *J.*:

This administrative case concerns a lawyer who is claimed to have hurled invectives upon another lawyer and filed a baseless suit against him.

The Facts and the Case

On January 11, 2001 complainant Atty. Bonifacio T. Barandon, Jr. filed a complaint-affidavit[1] with the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD) seeking the disbarment, suspension from the practice of law, or imposition of appropriate disciplinary action against respondent Atty. Edwin Z. Ferrer, Sr. for the following offenses:

1. On November 22, 2000 Atty. Ferrer, as plaintiff's counsel in Civil Case 7040, filed a reply with opposition to motion to dismiss that contained abusive, offensive, and improper language which insinuated that Atty. Barandon presented a falsified document in court.

2. Atty. Ferrer filed a fabricated charge against Atty. Barandon in Civil Case 7040 for alleged falsification of public document when the document allegedly falsified was a notarized document executed on February 23, 1994, at a date when Atty. Barandon was not yet a lawyer nor was assigned in Camarines Norte. The latter was not even a signatory to the document.

3. On December 19, 2000, at the courtroom of Municipal Trial Court (MTC) Daet before the start of hearing, Atty. Ferrer, evidently drunk, threatened Atty. Barandon saying, "*Laban kung laban, patayan kung patayan, kasama ang lahat ng pamilya. Wala na palang magaling na abogado sa Camarines Norte, ang abogado na rito ay mga taga-Camarines Sur, umuwi na kayo sa Camarines Sur, hindi kayo taga-rito.*"

4. Atty. Ferrer made his accusation of falsification of public document without bothering to check the copy with the Office

[1] *Rollo*, pp. 2-9.

of the Clerk of Court and, with gross ignorance of the law, failed to consider that a notarized document is presumed to be genuine and authentic until proven otherwise.

5. The Court had warned Atty. Ferrer in his first disbarment case against repeating his unethical act; yet he faces a disbarment charge for sexual harassment of an office secretary of the IBP Chapter in Camarines Norte; a related criminal case for acts of lasciviousness; and criminal cases for libel and grave threats that Atty. Barandon filed against him. In October 2000, Atty. Ferrer asked Atty. Barandon to falsify the daily time record of his son who worked with the Commission on Settlement of Land Problems, Department of Justice. When Atty. Barandon declined, Atty. Ferrer repeatedly harassed him with inflammatory language.

Atty. Ferrer raised the following defenses in his answer with motion to dismiss:

1. Instead of having the alleged forged document submitted for examination, Atty. Barandon filed charges of libel and grave threats against him. These charges came about because Atty. Ferrer's clients filed a case for falsification of public document against Atty. Barandon.

2. The offended party in the falsification case, Imelda Palatolon, vouchsafed that her thumbmark in the waiver document had been falsified.

3. At the time Atty. Ferrer allegedly uttered the threatening remarks against Atty. Barandon, the MTC Daet was already in session. It was improbable that the court did not take steps to stop, admonish, or cite Atty. Ferrer in direct contempt for his behavior.

4. Atty. Barandon presented no evidence in support of his allegations that Atty. Ferrer was drunk on December 19, 2000 and that he degraded the law profession. The latter had received various citations that speak well of his character.

5. The cases of libel and grave threats that Atty. Barandon filed against Atty. Ferrer were still pending. Their mere filing

did not make the latter guilty of the charges. Atty. Barandon was forum shopping when he filed this disbarment case since it referred to the same libel and grave threats subject of the criminal cases.

In his reply affidavit,[2] Atty. Barandon brought up a sixth ground for disbarment. He alleged that on December 29, 2000 at about 1:30 p.m., while Atty. Ferrer was on board his son's taxi, it figured in a collision with a tricycle, resulting in serious injuries to the tricycle's passengers.[3] But neither Atty. Ferrer nor any of his co-passengers helped the victims and, during the police investigation, he denied knowing the taxi driver and blamed the tricycle driver for being drunk. Atty. Ferrer also prevented an eyewitness from reporting the accident to the authorities.[4]

Atty. Barandon claimed that the falsification case against him had already been dismissed. He belittled the citations Atty. Ferrer allegedly received. On the contrary, in its Resolution 00-1,[5] the IBP-Camarines Norte Chapter opposed his application to serve as judge of the MTC of Mercedes, Camarines Sur, on the ground that he did not have "the qualifications, integrity, intelligence, industry and character of a trial judge" and that he was facing a criminal charge for acts of lasciviousness and a disbarment case filed by an employee of the same IBP chapter.

On October 10, 2001 Investigating Commissioner Milagros V. San Juan of the IBP-CBD submitted to this Court a Report, recommending the suspension for two years of Atty. Ferrer. The Investigating Commissioner found enough evidence on record to prove Atty. Ferrer's violation of Canons 8.01 and 7.03 of the Code of Professional Responsibility. He attributed to Atty. Barandon, as counsel in Civil Case 7040, the falsification of the plaintiff's affidavit despite the absence of evidence that

---

[2] *Id.* at 71.

[3] *Id.* at 73.

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

[5] *Id.* at 120.

the document had in fact been falsified and that Atty. Barandon was a party to it. The Investigating Commissioner also found that Atty. Ferrer uttered the threatening remarks imputed to him in the presence of other counsels, court personnel, and litigants before the start of hearing.

On June 29, 2002 the IBP Board of Governors passed Resolution XV-2002-225,[6] adopting and approving the Investigating Commissioner's recommendation but reduced the penalty of suspension to only one year.

Atty. Ferrer filed a motion for reconsideration but the Board denied it in its Resolution[7] of October 19, 2002 on the ground that it had already endorsed the matter to the Supreme Court. On February 5, 2003, however, the Court referred back the case to the IBP for resolution of Atty. Ferrer's motion for reconsideration.[8] On May 22, 2008 the IBP Board of Governors adopted and approved the Report and Recommendation[9] of the Investigating Commissioner that denied Atty. Ferrer's motion for reconsideration.[10]

On February 17, 2009, Atty. Ferrer filed a Comment on Board of Governors' IBP Notice of Resolution No. XVIII-2008.[11] On August 12, 2009 the Court resolved to treat Atty. Ferrer's comment as a petition for review under Rule 139 of the Revised Rules of Court. Atty. Barandon filed his comment,[12] reiterating his arguments before the IBP. Further, he presented certified copies of orders issued by courts in Camarines Norte that warned Atty. Ferrer against appearing in court drunk.[13]

---

[6] *Id.* at 137.

[7] *Id.* at 164.

[8] *Id.* at 203.

[9] *Id.* at 585-600.

[10] *Id.* at 584.

[11] *Id.* at 601-606.

[12] *Id.* at 728-734.

[13] *Id.* at 740-741.

The Issues Presented

The issues presented in this case are:

1. Whether or not the IBP Board of Governors and the IBP Investigating Commissioner erred in finding respondent Atty. Ferrer guilty of the charges against him; and

2. If in the affirmative, whether or not the penalty imposed on him is justified.

The Court's Ruling

We have examined the records of this case and find no reason to disagree with the findings and recommendation of the IBP Board of Governors and the Investigating Commissioner.

The practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality. Any violation of these standards exposes the lawyer to administrative liability.[14]

Canon 8 of the Code of Professional Responsibility commands all lawyers to conduct themselves with courtesy, fairness and candor towards their fellow lawyers and avoid harassing tactics against opposing counsel. Specifically, in Rule 8.01, the Code provides:

Rule 8.01. – A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

Atty. Ferrer's actions do not measure up to this Canon. The evidence shows that he imputed to Atty. Barandon the falsification of the *Salaysay Affidavit* of the plaintiff in Civil Case 7040. He made this imputation with pure malice for he had no evidence that the affidavit had been falsified and that Atty. Barandon authored the same.

Moreover, Atty. Ferrer could have aired his charge of falsification in a proper forum and without using offensive and abusive language against a fellow lawyer. To quote portions of what he said in his reply with motion to dismiss:

---

[14] *Garcia v. Bala*, A.C. No. 5039, November 25, 2005, 476 SCRA 85, 91.

1. That the answer is fraught with grave and culpable misrepresentation and "FALSIFICATION" of documents, committed to mislead this Honorable Court, but with concomitant grave responsibility of counsel for Defendants, for distortion and serious misrepresentation to the court, for presenting a grossly "FALSIFIED" document, in violation of his oath of office as a government employee and as member of the Bar, for the reason, that, Plaintiff, IMELDA PALATOLON, has never executed the "SALAYSAY AFFIDAVIT," wherein her fingerprint has been falsified, in view whereof, hereby DENY the same including the affirmative defenses, there being no knowledge or information to form a belief as to the truth of the same, from pars. (1) to par. (15) which are all lies and mere fabrications, sufficient ground for "DISBARMENT" of the one responsible for said falsification and distortions."[15]

The Court has constantly reminded lawyers to use dignified language in their pleadings despite the adversarial nature of our legal system.[16]

Atty. Ferrer had likewise violated Canon 7 of the Code of Professional Responsibility which enjoins lawyers to uphold the dignity and integrity of the legal profession at all times. Rule 7.03 of the Code provides:

Rule 7.03. – A lawyer shall not engage in conduct that adversely reflect on his fitness to practice law, nor shall he, whether in public or private life behave in scandalous manner to the discredit of the legal profession.

Several disinterested persons confirmed Atty. Ferrer's drunken invectives at Atty. Barandon shortly before the start of a court hearing. Atty. Ferrer did not present convincing evidence to support his denial of this particular charge. He merely presented a certification from the police that its blotter for the day did not report the threat he supposedly made. Atty. Barandon presented, however, the police blotter on a subsequent date that recorded his complaint against Atty. Ferrer.

---

[15] *Rollo*, p. 12.

[16] *Saberon v. Larong*, A.C. No. 6567, April 16, 2008, 551 SCRA 359, 368.

Atty. Ferrer said, "*Laban kung laban, patayan kung patayan, kasama ang lahat ng pamilya. Wala na palang magaling na abogado sa Camarines Norte, ang abogado na rito ay mga taga-Camarines Sur, umuwi na kayo sa Camarines Sur, hindi kayo taga-rito*." Evidently, he uttered these with intent to annoy, humiliate, incriminate, and discredit Atty. Barandon in the presence of lawyers, court personnel, and litigants waiting for the start of hearing in court. These language is unbecoming a member of the legal profession. The Court cannot countenance it.

Though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum.[17] Atty. Ferrer ought to have realized that this sort of public behavior can only bring down the legal profession in the public estimation and erode public respect for it. Whatever moral righteousness Atty. Ferrer had was negated by the way he chose to express his indignation.

Contrary to Atty. Ferrer's allegation, the Court finds that he has been accorded 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 one's defense.[18] So long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.[19] Here, the IBP Investigating Commissioner gave Atty. Ferrer all the opportunities to file countless pleadings and refute all the allegations of Atty. Barandon.

All lawyers should take heed that they are licensed officers of the courts who are mandated to maintain the dignity of the legal profession, hence they must conduct themselves honorably and fairly.[20] Atty. Ferrer's display of improper attitude, arrogance,

---

[17] *De la Rosa v. Court of Appeals Justices*, 454 Phil. 718, 727 (2003).

[18] *Batongbakal v. Zafra*, 489 Phil. 367, 378 (2005).

[19] *Calma v. Court of Appeals*, 362 Phil. 297, 304 (1999).

[20] *Atty. Reyes v. Atty. Chiong, Jr.*, 453 Phil. 99, 104 (2003).

misbehavior, and misconduct in the performance of his duties both as a lawyer and officer of the court, before the public and the court, was a patent transgression of the very ethics that lawyers are sworn to uphold.

ACCORDINGLY, the Court *AFFIRMS* the May 22, 2008 Resolution of the IBP Board of Governors in CBD Case 01-809 and *ORDERS* the suspension of Atty. Edwin Z. Ferrer, Sr. from the practice of law for one year effective upon his receipt of this Decision.

Let a copy of this Decision be entered in Atty. Ferrer's personal record as an attorney with the Office of the Bar Confidant and a copy of the same be served to the IBP and to the Office of the Court Administrator for circulation to all the courts in the land.

SO ORDERED.

Carpio, Brion, Del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[A.M. No. MTJ-07-1663. March 26, 2010]

ROLAND ERNEST MARIE JOSE SPELMANS, *complainant, vs.* **JUDGE GAYDIFREDO T. OCAMPO, Municipal Trial Court, Polomolok, South Cotabato,** *respondent.*

SYLLABUS

LEGAL ETHICS; JUDGES; GROSS MISCONDUCT; JUDGE'S ACT OF KEEPING PERSONAL PROPERTIES OF LITIGANTS IN HIS COURT, A CASE OF.— Respondent judge should be made accountable for gross misconduct constituting violations of the New Code of Judicial Conduct, specifically Section 6 of Canon 1, Section 1 of Canon 2, and

> Section 1 of Canon 4. From the circumstances, his acts were motivated by malice. He was not a warehouseman for personal properties of litigants in his court. He certainly would have kept Spelmans' properties had the latter not filed a complaint against him. He was guilty of covetousness. It affected the performance of his duties as an officer of the court and tainted the judiciary's integrity. He should be punished accordingly.

D E C I S I O N

ABAD, *J.*:

This is a case about the improper conduct of an MTC judge who kept properties owned by the complainant while conducting a preliminary investigation.

The Facts and the Case

On April 8, 2006 complainant Roland Ernest Marie Jose Spelmans (Spelmans), a Belgian, filed before the Office of the Ombudsman, Mindanao, a complaint for theft and graft and corruption against respondent Municipal Trial Court (MTC) Judge Gaydifredo Ocampo (Judge Ocampo) of Polomolok, South Cotabato.[1]

Spelmans alleged in his affidavit that in 2002 his wife, Annalyn Villan (Villan), filed a complaint for theft against Joelito Rencio (Rencio) and his wife from whom Spelmans rented a house in Polomolok, South Cotabato. Spelmans claimed, however, that this complaint was but his wife's scheme for taking out his personal properties from that house. In the course of the investigation of the complaint, Judge Ocampo, together with the parties, held an ocular inspection of that rented house and another one where Spelmans kept some of the personal belongings of his late mother.

During the ocular inspection, Judge Ocampo allegedly took pieces of antique, including a marble bust of Spelmans' mother, a flower pot, a statue, and a copper scale of justice. A week

---

[1] *Rollo*, pp. 4-10.

later, Judge Ocampo went back and further took six Oakwood chairs and its table, four gold champagne glasses, and a deer horn chandelier.[2] In the meantime, the Bureau of Immigration happened to detain Spelmans in Manila and let him free only on January 28, 2003.[3]

The Ombudsman, Mindanao, referred Spelmans' complaint against Judge Ocampo to the Office of the Court Administrator (OCA). In his comment of August 8, 2006[4] Judge Ocampo denied the charge, pointing out that Spelmans' wife, Villan (the complainant in that theft case), gave him certain household items for safekeeping before she filed the case of theft against Rencio. On August 28, 2002, however, after conducting a preliminary investigation in the case, Judge Ocampo dismissed Villan's complaint.

Only in 2006, according to Judge Ocampo, when he received a copy of Spelmans' complaint for grave misconduct did he learn of the couple's separation and his unwitting part in their legal battles. As a last note, Judge Ocampo said that instead of hurling baseless accusations at him, Spelmans should have thanked him because he kept his personal properties in good condition.

In a supplemental complaint dated August 30, 2006[5] Spelmans further alleged that Judge Ocampo requested him to sign an affidavit which cleared the Judge and prayed for the dismissal of the administrative complaint.[6]

On October 17, 2006 OCA found Judge Ocampo guilty of committing acts of impropriety and maintaining close affinity with a litigant in violation of Canons 1 and 4 of the New Code of Judicial Conduct for the Philippine Judiciary.[7] Since, under

---

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

[3] *Id.* at 44.

[4] *Id.* at 21-22.

[5] *Id.* at 37-38.

[6] *Id.* at 40.

[7] Effective as of June 1, 2004.

Rule 140 of the Revised Rules of Court, as amended, a violation of Supreme Court rules, directives, and circulars constitutes a less serious charge, punishable either with suspension or fine, the OCA recommended the imposition of a fine of ₱5,000.00 on Judge Ocampo with a stern warning that a repetition of the same or similar act shall be dealt with more severely.[8]

The Issue

The issue in this case is whether or not Judge Ocampo's taking and keeping of the personal items belonging to Spelmans but supposedly given to him by the latter's wife for safekeeping constitutes a violation of the New Code of Judicial Conduct.

The Court's Ruling

The evidence of Spelmans is that his wife, Villan, made it appear that she filed a complaint for theft against Rencio, the lessor or caretaker of the rented house, before Judge Ocampo's court but that this was a mere ploy. Her true purpose was to get certain properties belonging to Spelmans from that house. During the preliminary investigation of the case, Judge Ocampo held an ocular inspection of the house and another one that also belonged to Spelmans and took some of the personal properties from these places.

On the other hand, Judge Ocampo insists that Villan gave him the personal items mentioned by Spelmans for safekeeping before she filed in his court the complaint for theft against Rencio. This did not influence him, however, since he eventually ordered the dismissal of that complaint. But this explanation is quite unsatisfactory.

First. Judge Ocampo did not explain why, of all people in Polomolok, South Cotabato, Spelmans' wife, Villan, would entrust to him, a municipal judge, certain personal items for safekeeping. This is essentially suspect because she would subsequently file, according to Judge Ocampo, a case of theft of personal items that Rencio supposedly took from Spelmans' houses.

---

[8] *Rollo,* pp. 1-3.

Second. Judge Ocampo does not deny that he conducted an ocular inspection of the houses that Spelmans used in Polomolok. But the purpose of this ocular inspection is suspect. Judge Ocampo did not explain what justified it. The charge was not robbery where he might have an interest in personally looking at where and how the break-in took place. It was a case of theft where it would be sufficient for the complainant to simply state in her complaint-affidavit where the alleged theft took place.

Third. If Judge Ocampo received the pieces of antique from Villan for safekeeping, this meant that a relation of trust existed between them. Consequently, Judge Ocampo had every reason to inhibit himself from the case from the beginning. He of course claims that he dismissed the case against Rencio eventually but this is no excuse since his ruling could have gone the other way. Besides, Spelmans claims that the complaint was just a scheme to enable Villan to steal his personal properties from the two houses. This claim seems believable given the above circumstances.

Fourth. By his admission, Judge Ocampo returned the items only after four years when Spelmans already filed a complaint against him. He makes no claim that he made a previous effort to return those supposedly entrusted items either to Villan or to Spelmans. His years of possession obviously went beyond mere safekeeping.

For the above reasons, the OCA erred in regarding Judge Ocampo's offense as falling merely under Section 11(B), in relation to Section 9(4) of Rule 140, as amended, which is a less serious charge of violation of Supreme Court rules, punishable by either suspension from office without salary and other benefits for not less than one nor more than three months or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[9] On the other hand, impropriety is treated as a light charge and is punishable by a fine of not less than ₱1,000.00 but not exceeding ₱10,000.00 or by censure, reprimand, or admonition with warning.[10]

---

[9] RULES OF COURT, Rule 140, Section 11(B) as amended by A.M. No. 01-8-10-SC.

[10] *Id.*, Section 11(C).

Respondent judge should be made accountable for gross misconduct[11] constituting violations of the New Code of Judicial Conduct, specifically Section 6 of Canon 1,[12] Section 1 of Canon 2,[13] and Section 1 of Canon 4.[14] From the circumstances, his acts were motivated by malice.[15] He was not a warehouseman for personal properties of litigants in his court. He certainly would have kept Spelmans' properties had the latter not filed a complaint against him. He was guilty of covetousness. It affected the performance of his duties as an officer of the court[16] and tainted the judiciary's integrity. He should be punished accordingly.

WHEREFORE, the Court finds respondent Judge Gaydifredo Ocampo *GUILTY* of gross misconduct and *IMPOSES* on him

---

[11] *Santos v. Arcaya-Chua*, A.M. No. RTJ-07-2093, February 13, 2009, 579 SCRA 17, 30: As defined, misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior; while "gross," has been defined as "out of all measure; beyond allowance; flagrant; shameful; such conduct as is not to be excused.

[12] Canon 1. *Independence.* Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects. Section 6. Judges shall be independent in relation to society in general and in relation to the particular parties to a dispute which he or she has to adjudicate.

[13] Canon 2. *Integrity.* Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges. Section 1. Judges shall ensure that not only is their conduct above reproach, but that is perceived to be so in the view of a reasonable observer.

[14] Canon 4. *Propriety.* Propriety and the appearance of propriety are essential to the performance of all the activities of a judge. Section 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

[15] See *Hallasgo v. Commission on Audit*, G.R. No. 171340, September 11, 2009, citing *Malabanan v. Metrillo*, A.M. No. P-04-1875, February 6, 2008, 544 SCRA 1, 7-8 and *Rodriguez v. Eugenio*, A.M. No. RTJ-06-2216, April 20, 2007, 521 SCRA 489, 505-506.

[16] *Abadesco, Jr. v. Rafer*, A.M. No. MTJ-06-1622, January 27, 2006, 480 SCRA 228, 234.

the penalty of *SUSPENSION* from office without salary and other benefits for six (6) months.[17] He is *STERNLY WARNED* that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Carpio, Brion, Del Castillo, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 158104. March 26, 2010]

ANGELITA DE GUZMAN, *petitioner, vs.* **EMILIO A. GONZALEZ III, then Officer-In-Charge, Office of the Deputy Ombudsman for Luzon, ADORACION A. AGBADA, Graft Investigator, and COMMISSION ON AUDIT REGION II CAGAYAN, represented by ERLINDA F. LANGCAY, HON. LEO REYES, Presiding Judge of Regional Trial Court of Sanchez Mira, Cagayan,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DOES NOT INCLUDE REVIEW OF FACTUAL AND

---

[17] Under Section 11(A) in relation to Section 8(3) of Rule 140, as amended by A.M. No. 01-08-10-SC, effective October 1, 2001: SEC. 11. *Sanctions.* – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

EVIDENTIARTY MATTERS; CASE AT BAR.— [W]e find the matters raised by petitioner in her argumentation to be mainly questions of fact which are not proper in a petition of this nature. Petitioner is basically questioning the assessment and evaluation made by the Office of the Ombudsman of the pieces of evidence submitted at the reinvestigation. The Office of the Ombudsman found that the evidence on hand is sufficient to justify a probable cause to indict petitioner. Relying on the Report of Prosecutor Bayag, Jr., petitioner contended otherwise. At this juncture, it is worth emphasizing that where what is being questioned is the sufficiency of evidence, it is a question of fact. A petition for *certiorari* under Rule 65 does not include review of the correctness of a board or tribunal's evaluation of the evidence but is confined to issues of jurisdiction or grave abuse of discretion. Moreover, the allegations of petitioner are also defenses that must be presented as evidence in the hearing of the criminal case. They are essentially evidentiary matters that negate misappropriation which require an examination of the parties' evidence. As such, they are inappropriate for consideration in a petition for *certiorari* before us inasmuch as they do not affect the jurisdiction of the public respondents. In petitions for *certiorari*, evidentiary matters or matters of fact raised in the court below are not proper grounds nor may such be ruled upon in the proceedings.

2. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; PROSECUTORIAL POWER; NOT A SUBJECT OF JUDICIAL REVIEW IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION.— The Constitution and Republic Act (RA) No. 6770 (the Ombudsman Act of 1989) confer on the Office of the Ombudsman the power to investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency when such act or omission appears to be illegal, unjust or improper. x x x [T]he discretion to determine whether a case should be filed or not lies with the Ombudsman. Unless grave abuse of discretion amounting to lack or excess of jurisdiction is shown, judicial review is uncalled for as a policy of non-interference by the courts in the exercise of the Ombudsman's constitutionally mandated powers.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; NEEDS ONLY TO REST ON EVIDENCE SHOWING THAT MORE LIKELY THAN NOT A CRIME HAS BEEN COMMITTED AND WAS COMMITTED BY THE SUSPECT.— A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.

APPEARANCES OF COUNSEL

Baterina Baterina & Nerpio-Casals for petitioner.
The Solicitor General for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The filing of the Information against petitioner Angelita de Guzman notwithstanding the lack of certification on her cashbook examination could not in any manner be said to be premature much less whimsical or arbitrary. Public respondents cannot be said to have gravely abused their discretion amounting to lack or excess of jurisdiction.

This petition for *certiorari*[1] with plea for temporary restraining order and writ of preliminary injunction seeks to annul the Order[2] dated December 23, 2002 of the Office of the Deputy Ombudsman for Luzon in Criminal Case No. 2908-S(02) (OMB-1-01-0905-J), disapproving the recommendation of Trial Prosecutor Bonifacio J. Bayag, Jr. (Prosecutor Bayag, Jr.) to dismiss the case for lack of sufficient evidence to establish probable cause for the charge of Malversation of

---

[1] *Rollo,* pp. 3-25.

[2] *Id.* at 189-190.

Public Funds. Also subject of the present petition is the Order[3] dated February 26, 2003 which denied the Motion for Reconsideration of the earlier resolution.

Factual Antecedents

Petitioner Angelita de Guzman, in her official capacity as the Municipal Treasurer of Claveria, Cagayan, was audited of her cash and accounts covering the period from January 26, 1999 to May 25, 2000. Per affidavit of State Auditor II Erlinda F. Langcay, the audit examination revealed a shortage in the aggregate amount of ₱368,049.42. In a letter dated October 30, 2000, the audit team demanded petitioner to produce the missing funds and submit her written explanation about the occurrence of the shortage within 72 hours. The letter was received on November 13, 2000 but no compliance was made. Consequently, petitioner was indicted for malversation of public funds before the Regional Trial Court of Sanchez, Mira, Cagayan based on the Resolution[4] of the Ombudsman on November 27, 2001.

Alleging that she was not able to participate during the preliminary investigation as she was then out of the country, petitioner moved[5] for and was granted a reinvestigation by the court on May 29, 2002.[6] As ordered, petitioner submitted her counter-affidavit, those of her witnesses and other controverting evidence.

Report and Recommendation of Prosecutor Bayag, Jr.

After the reinvestigation, Prosecutor Bayag, Jr. submitted his Report[7] dated November 15, 2002 recommending the dismissal of the case for insufficiency of evidence to establish a probable cause. Pertinent portions of the Report read:

---

[3] *Id.* at 191-192.

[4] *Id.* at 153-155.

[5] *Id.* at 158-159.

[6] *Id.* at 191-192.

[7] *Id.* at 184-188.

The defense's pieces of evidence negate the existence of a shortage. The audit conducted was not yet completed or terminated for the reason that the requisite certification on the accused's cash book was not yet accomplished, thereby leaving the cash book open. The deposits made in November 2000 and January 2001 which correspond to the amount of the alleged missing funds were duly recorded and reflected on the cash book as adjusting entries.

x x x x x x x x x

[Based on] analytical and judicious evaluation of the evidence adduced by and arguments raised by both parties, we find the *prima facie* presumption of misappropriation of public funds having been fully controverted and contradicted by the accused's evidence which warrant her exoneration and dismissal of the instant case.[8]

Report and Recommendation of Graft Investigation Officer II Agbada

Upon review of the Report of Prosecutor Bayag, Jr., Graft Investigation Officer II Adoracion A. Agbada (Agbada) recommended on December 23, 2002 the disapproval of the Report and, instead, to proceed with the prosecution of the case. Agbada anchored her findings of probable cause on the following circumstances:

Firstly, the non-accomplishment by the auditors of the Commission on Audit (COA) of the certification on the petitioner's cash book leaving the same open, would not negate the existence of shortage of the amount of ₱368,049.42. The certification is a mere formal requirement of the audit. It does not refer to a substantive aspect of the audit. Thus, even granting that the certification has not been accomplished by the COA auditors, it is immaterial as far as the finding of shortage is concerned.

Secondly, the petitioner was given sufficient time by the COA to comment or respond to its findings. She received on November 13, 2000 a demand letter from COA but failed to comply with the said directive. Instead, on December 4, 2000

---

[8] *Id.* at 187.

and January 12, 2001, she transmitted to the COA a total of 10 deposit slips showing that the total amount of ₱368,049.42 was credited to the account of the Municipality of Claveria. This was a clear case of restitution of funds. As held in several cases, restitution of funds is a mere mitigating circumstance. It does not obliterate the criminal liability of the accused for malversation of public funds.

Thirdly, there is *prima facie* presumption of misappropriation of funds by the petitioner because she failed to have duly forthcoming the amount of ₱368,049.42 with which she is chargeable. This presumption was not overturned by the evidence of the petitioner. It must be noted that the deposit of the amount was made by the petitioner only on November 20 and 27, 2000 and January 8 and 12, 2001. Said deposit was made after the petitioner had received on November 13, 2000 the demand letter issued by the audit team. In effect, the restitution was not made immediately. Thus, the presumption that the petitioner used the money for her personal use and benefit was not duly controverted.

Ruling of the Office of the Deputy Ombudsman for Luzon

Emilio A. Gonzalez III (Gonzalez), the Officer-in Charge of the Office of the Deputy Ombudsman for Luzon approved on January 6, 2003 the recommendation of Agbada.

Petitioner filed a Motion for Reconsideration but Agbada recommended its denial on February 26, 2003. Gonzalez approved Agbada's recommendation on February 27, 2003.

Issues

On May 23, 2003, petitioner filed the instant petition for *certiorari* raising the following errors:

A. PUBLIC RESPONDENTS GONZALEZ AND AGBADA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN THEY RECOMMENDED THE CONTINUATION OF THE PROSECUTION OF THE CASE AGAINST PETITIONER DESPITE FINDINGS OF THE REINVESTIGATING PROSECUTOR THAT THERE WAS NO SUFFICIENT

EVIDENCE TO ESTABLISH PROBABLE CAUSE AS THE AUDIT IS NOT YET COMPLETE AND/OR TERMINATED.

B. PUBLIC RESPONDENT LANGCAY GRAVELY ABUSED HER DISCRETION IN FILING THE CRIMINAL COMPLAINT *A QUO* DESPITE THE NON-COMPLETION OF THE CASH AUDIT.[9]

Petitioner argues that there was no sufficient evidence to establish probable cause since the audit examination was not completely terminated in view of the non-accomplishment of the certification of cashbook examination. She asserts that the accomplishment of the certificate is mandatory and not a mere formal requirement. She claims that since the audit examination sans the accompanying certificate was deemed not complete, the Office of the Ombudsman gravely abused its discretion in filing the criminal information for malversation of public funds against her.

Our Ruling

The petition lacks merit.

Parenthetically, we find the matters raised by petitioner in her argumentation to be mainly questions of fact which are not proper in a petition of this nature. Petitioner is basically questioning the assessment and evaluation made by the Office of the Ombudsman of the pieces of evidence submitted at the reinvestigation.The Office of the Ombudsman found that the evidence on hand is sufficient to justify a probable cause to indict petitioner. Relying on the Report of Prosecutor Bayag, Jr., petitioner contended otherwise. At this juncture, it is worth emphasizing that where what is being questioned is the sufficiency of evidence, it is a question of fact.[10] A petition for *certiorari* under Rule 65 does not include review of the correctness of a board or tribunal's evaluation of the evidence but is confined to issues of jurisdiction or grave abuse of discretion.[11]

---

[9] *Id.* at 13.

[10] *Paterno v. Paterno*, G.R. No. 63680, March 23, 1990, 183 SCRA 630, 636.

[11] *Ang Biat Huan Sons Industries, Inc. v. Court of Appeals*, G.R. No. 154837, March 22, 2007, 518 SCRA 697, 702.

Moreover, the allegations of petitioner are also defenses that must be presented as evidence in the hearing of the criminal case. They are essentially evidentiary matters that negate misappropriation which require an examination of the parties' evidence. As such, they are inappropriate for consideration in a petition for *certiorari* before us inasmuch as they do not affect the jurisdiction of the public respondents. In petitions for *certiorari*, evidentiary matters or matters of fact raised in the court below are not proper grounds nor may such be ruled upon in the proceedings.[12]

Granting that we dispense with the technicalities and regard the submissions of petitioner as matters tendering an issue of law, we still find no reason to reverse the finding of probable cause by the Office of the Ombudsman.

The Constitution and Republic Act (RA) No. 6770 (the Ombudsman Act of 1989) confer on the Office of the Ombudsman the power to investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency when such act or omission appears to be illegal, unjust or improper. Sections 12 and 13, Article XI of the Constitution provide:

> Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporation and shall, in appropriate cases, notify the complainants of the action taken and results thereof.
>
> Sec. 13. The Office of the Ombudsman shall have the following powers, function and duties:
>
> (1.) Investigate on its own or on complaint by any person, any act or omission of any public official, employee, officer or agency, when such act or omission appears to be illegal, unjust, improper or inefficient.

---

[12] *Republic v. Express Telecommunication,* 424 Phil. 372, 402.

Section 15 of the Ombudsman Act of 1989 states:

> Sec. 15. Powers, Functions and Duties- The Office of the Ombudsman shall have the following powers, functions and duties:
>
> (1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of the government, the investigation of such cases.

Petitioner ascribes grave abuse of discretion amounting to lack or excess of jurisdiction on public respondents Gonzalez and Agbada when they reversed a prior finding of lack of probable cause by Prosecutor Bayag, Jr. She maintains that when the Information was filed in court, the audit examination was not yet complete as the State Auditors have not executed the corresponding certification on the cash book examination. Otherwise stated, the information was filed prematurely.

We cannot subscribe to petitioner's proposition.

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.[13] In disapproving the recommendation of Prosecutor Bayag, Jr. and adopting instead that of Agbada, respondent Gonzalez as Deputy Ombudsman for Luzon was merely exercising his power and discharging his duty as mandated by the Constitution and by-laws. It is discretionary upon him whether or not he would rely mainly on the findings of fact of Prosecutor Bayag, Jr. in making a review of the latter's report and recommendation. He can very well make his own findings

---

[13] *Webb v. Hon. De Leon*, 317 Phil. 758, 789 (1995).

of fact.[14] Thus, given this vast power and authority, he can conduct a preliminary investigation with or without the report from COA. The findings in the COA report or the finality or lack of finality of such report is irrelevant to the investigation of the Office of the Ombudsman in its determination of probable cause, as we declared in *Dimayuga v. Office of the Ombudsman*.[15] Thus, the filing of the Information against petitioner notwithstanding the lack of certification on her cashbook examination could not in any manner be said to be premature much less whimsical or arbitrary. Public respondents cannot be said to have gravely abused their discretion amounting to lack or excess of jurisdiction.

To recapitulate, the discretion to determine whether a case should be filed or not lies with the Ombudsman. Unless grave abuse of discretion amounting to lack or excess of jurisdiction is shown, judicial review is uncalled for as a policy of non-interference by the courts in the exercise of the Ombudsman's constitutionally mandated powers.

WHEREFORE, the instant petition for *certiorari* is *DISMISSED* for lack of merit. The Order dated December 23, 2002 of the Office of the Deputy Ombudsman for Luzon finding probable cause against petitioner Angelita de Guzman for Malversation of Public Funds and the Order dated February 26, 2003 denying petitioner's Motion for Reconsideration are hereby *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

---

[14] *Cruz, Jr. v. People,* G.R. No. 110436, June 27, 1994, 233 SCRA 439, 451.

[15] G.R No. 129099, July 20, 2006, 495 SCRA 461, 467.

SECOND DIVISION

[G.R. No. 159381. March 26, 2010]

DANILO D. ANSALDO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA UNDER ARTICLE 315, PARAGRAPH 2(A) OF THE REVISED PENAL CODE; REQUISITES; PRESENT IN CASE AT BAR.— To secure a conviction for estafa under Article 315, paragraph 2(a) of the Revised Penal Code (RPC), the following requisites must concur: "(1) The accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (2) The false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud; (3) The false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property; (4) That as a result thereof, the offended party suffered damage." It is undisputed that petitioner committed estafa. He and his wife falsely represented to Ramirez that they had the influence and capability to cause the subdivision of the lot. In view of said false representation, Ramirez was induced to part with the owner's copy of her TCT on the condition that the same would be returned after a month as evidenced by the Acknowledgment Receipt. However, petitioner and his wife never complied with their obligations. It is also on record that Ramirez made a formal demand for the return of the TCT but petitioner and his wife failed to comply. Their failure to return the said title despite demand is evidence of deceit that resulted in damages to Ramirez. It was also established that the property covered by TCT No. 188686 was eventually mortgaged for ₱300,000.00 to a third person without the knowledge and consent of Ramirez.

2. ID.; FALSIFICATION OF PUBLIC DOCUMENT UNDER ARTICLE 172 OF THE REVISED PENAL CODE; REQUISITES; NOT DULY ESTABLISHED IN CASE AT

BAR.— [W]e find that we cannot convict petitioner of the crime of falsification of a public document penalized under Article 172 of the RPC. The following requisites must concur, to wit: "(1) That the offender is a private individual or a public officer or employee who took advantage of his official position; (2) That he committed any of the acts of falsification enumerated in article 171 of the Revised Penal Code (which in this case involves forging a signature); (3) That the falsification was committed in a public or official or commercial document." There is no doubt that petitioner is a private individual, being a businessman. It is likewise not disputed that the Deed of Mortgage is a public document, having been notarized by a notary public with the solemnities required by law. However, we find no evidence on record showing that the petitioner and his wife falsified the subject Deed of Mortgage. There is simply no evidence showing that petitioner had any participation in the execution of the mortgage document. There is no proof at all that he was the one who signed the Deed of Mortgage.

3. ID.; ESTAFA; PENALTY; CASE AT BAR.— For committing the offense of estafa against Ramirez, the petitioner must be penalized in the manner provided by law. In this regard, Article 315 of the RPC states that the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period shall be imposed if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00. Should the amount exceed the latter sum, the penalty provided shall be imposed in its maximum period, adding one year for each additional ₱10,000.00. However, the total penalty that may be imposed should not exceed 20 years. In such cases, the penalty shall be referred to as *prision mayor* or *reclusion temporal*. Under the Indeterminate Sentence Law (ISL), whenever an offense is punished by the RPC or its amendments, the accused shall be sentenced by the court to an indeterminate penalty, the maximum term of which, in view of the attending circumstances, can properly be imposed under the RPC, while the minimum term of which shall be within the range of the penalty next lower to that prescribed for the offense. The amount defrauded in this case is ₱300,000.00 which is the mortgage amount. Thus, the maximum imposable penalty shall be 20 years of *reclusion temporal*. Applying the ISL, the minimum penalty is *prision correccional* in its minimum and

medium periods with a range of six (6) months and one (1) day to four (4) years and two (2) months.

APPEARANCES OF COUNSEL

*Arellano & Arellano Law Office*s for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

For a complex crime of estafa through falsification of a public document to prosper, all the elements of both the crimes of estafa and falsification of a public document must exist. In this case, not all the elements of the crime of falsification of a public document are present. Consequently, petitioner can only be found guilty of estafa.

This petition for review on *certiorari* assails the Decision[1] of the Court of Appeals (CA) dated March 20, 2003 in CA-G.R. CR. No. 25122 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 21 in Criminal Case No. 97-156477, finding petitioner Danilo D. Ansaldo guilty beyond reasonable doubt of the complex crime of estafa through falsification of public/official document. Likewise assailed is the Resolution dated July 24, 2003 which denied the Motion for Reconsideration.

Factual Antecedents

The Information against the petitioner and his wife, Rosalinda Ansaldo, contained the following accusatory allegations:

That [on] or about February 15, 1995 or sometime prior and subsequent thereto, in the City of Manila, Philippines, the said accused, conspiring and confederating together, and mutually helping each

---

[1] *Rollo*, pp. 51-65; penned by Associate Justice Josefina Guevara Salonga and concurred in by Associate Justices Marina L. Buzon and Danilo B. Pine.

[2] *Id.* at 73-79; penned by Acting Presiding Judge Romulo A. Lopez.

other, being private individuals, did then and there willfully, unlawfully and feloniously commit estafa thru falsification of public/official document, in the following manner, to wit: the said accused, with intent to defraud and cause damage, forged and falsified a Deed of Real Estate Mortgage which was subsequently notarized by Notary Public Juan N. Domingo and entered in his Notarial Register as Doc. No. 47; Page No. 59; Book No. VI; Series of 1995 and therefore a public and/or official document, by then and there misrepresenting that they are the real spouses Nina Z. Ramirez and Mariano Ramirez, the registered and absolute owners of a piece of land described as TCT No. 188686 situated in Barrio Bagbagan, Municipality of Muntinlupa, Province of Rizal valued at ₱500,000.00 by signing, feigning or simulating or causing to be signed, feigned and simulated the signatures of spouses Niña Z. Ramirez and Mariano Z. Ramirez, thereby making it appear as it did appear that spouses Niña Z. Ramirez & Mariano Ramirez participated and intervened in the preparation and execution of the aforesaid Deed of Real Estate Mortgage, said accused well knowing that such was not the case, in that said spouses did not participate and execute the same, much less signed the said document, nor did they authorized [sic] herein accused or anybody else for that matter to sign and affix their signatures in said document, which is an outright forgery and falsification; that after the said Deed of Real Estate Mortgage was forged and falsified in the manner above set-forth, accused presented the same to one Nora L. Herrera, who, believing in the authenticity and genuineness of the same as represented to her by the said accused, gave and delivered the mortgage consideration in the amount of ₱300,000.00 to the said accused, who, once in their possession thereof, with abuse of trust and confidence and with intent to defraud, willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to their own personal use and benefit, to the damage and prejudice of Niña Z. Ramirez in the amount of ₱500,000.00, the value of the property in question.[3]

On arraignment, petitioner entered a plea of not guilty. However, his wife and co-accused, remains at large. Thereafter, trial ensued.

The Version of the Prosecution

Niña Z. Ramirez (Ramirez) wanted to subdivide her lot in Muntinlupa City. In 1993, her niece, Edna Tadeo introduced

[3] Records, pp. 1-2.

the petitioner and his wife while they were inside her store in 509 Plaza Sta. Cruz, Manila, as the people who could help with her problem. Petitioner and his wife represented themselves as having direct connections with the Land Registration Authority (LRA) and assured Ramirez that they could have her property subdivided. Ramirez thus entrusted to them her owner's duplicate copy of Transfer Certificate of Title (TCT) No. 188686, which covered the said lot, on condition that it would be returned after a month. This prerequisite is evidenced by an Acknowledgment Receipt dated January 5, 1995.[4]

The one-month period agreed upon elapsed with the petitioner and his wife failing to inform Ramirez of the status of the anticipated subdivision. Ramirez repeatedly demanded them to return her owner's duplicate title of the land to no avail. Ramirez was later surprised to find out that the land covered by her TCT was the subject of a document in which it appeared that she mortgaged the same to a certain Nora Herrera. The deed was even annotated at the back of the TCT. However, Ramirez claimed that her signature in the document was a forgery. At the time of the mortgage, there were no other persons other than the petitioner and his wife to whom she entrusted her TCT.

The Version of the Petitioner

Petitioner denied that he was introduced to Ramirez in 1993. He claimed that in the early morning of January 5, 1995, he was in his house when he saw Ramirez talking to his wife. He had no knowledge of the topic of their conversation. He later signed a piece of paper without reading the contents thereof since Ramirez assured him that it was merely for formality. The paper turned out to be the Acknowledgment Receipt.

Petitioner denied participation in the preparation, execution and registration of the deed of real estate mortgage. He also denied residing at the address where Ramirez sent a demand letter for the return of her TCT. However, he admitted that his wife was engaged in the registration and follow-up of documents covering real property.

---

[4] *Id.* at 54-55.

According to the petitioner, he went to Japan with his wife on June 7, 1998. He came home but his wife stayed behind. Upon his arrival, he was apprehended.

Ruling of the Regional Trial Court

On December 6, 2000, the trial court rendered a Decision convicting the petitioner of falsification. The dispositive portion reads:

> WHEREFORE, in view of the above observations and findings, accused Danilo Ansaldo is hereby convicted of the crime charged in the information, defined and punished under Article 172 paragraph 1 without any mitigating nor aggravating circumstances attendant in its commission, granting the accused the benefit of the Indeterminate Sentence Law, he is hereby sentenced to suffer an indeterminate prision (sic) term from six (6) months of *arresto mayor* maximum as minimum to four (4) years, two (2) months of *prision correccional* medium as maximum and to pay a fine of ₱5,000.00 and to indemnify the complainant the sum of ₱300,000.00 representing the amount received by the Ansaldos in mortgaging the property.
>
> Accused Danilo Ansaldo shall be credited with the full extent of his preventive imprisonment under Article 29 of the Revised Penal Code. The bond posted for his provisional liberty is hereby cancelled.
>
> Danilo Ansaldo's body is hereby committed to the custody of the Director of the Bureau of Corrections, National Penitentiary, Muntinlupa City through the City Jail Warden of Manila.
>
> The charge against Rosalinda Ansaldo is hereby archived to be brought back to the active calendar of the court upon her apprehension. Let warrant of arrest be issued for that purpose.
>
> The complainant is hereby ordered to pay the docket fee corresponding to the civil damages awarded.
>
> SO ORDERED.[5]

In finding petitioner guilty of falsification, the trial court noted that no other person was in possession of the TCT prior to the falsification other than petitioner and his wife. Based thereon,

---

[5] *Id.* at 125-126.

the court *a quo* concluded that petitioner and his wife were the ones who mortgaged the property by pretending to be the spouses Ramirez.

The Decision of the Court of Appeals

Petitioner appealed his conviction to the CA which affirmed with modification the Decision of the RTC. The appellate court found petitioner guilty of the complex crime of estafa thru falsification of a public document. The dispositive portion reads as follows:

> WHEREFORE, the Decision of the court *a quo* finding accused-appellant guilty of the crime of Estafa through Falsification of a Public Document and ordering him to pay the fine in the amount of ₱5,000.00 are hereby AFFIRMED with MODIFICATION as to the penalty imposed upon him. Accordingly, there being no mitigating or aggravating circumstance to consider, accused-appellant is hereby sentenced to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of *Prision Correccional* maximum as Minimum, to ten (10) years of *Prision Mayor* medium as Maximum. He is further ordered to cause the release/discharge of the mortgage constituted on the property in the amount of ₱300,000.00 and return to private complainant Transfer Certificate of Title No. 188686 free from liens and encumbrances. No costs.
>
> SO ORDERED.[6]

Petitioner filed a Motion for Reconsideration but it was denied by the CA in its Resolution[7] dated July 24, 2003.

Issues

Hence, this petition for review raising the following issues:

> 1.) Whether x x x the trial court's ruling, as affirmed by [the] court *a quo* erroneously applied the legal presumption that "*the possessor or user of a forged document is the author of the forgery*" in arriving at its findings that the petitioner (and his wife) committed the complex crime of *Estafa* by the act of falsifying the subject "*Deed of Real Estate Mortgage*."

---

[6] CA *rollo*, p. 128.

[7] *Rollo*, p. 67.

2.) Whether x x x the court *a quo*, seriously erred in affirming [the] trial court's ruling which accorded probative value to a mere certified true copy of a document entitled "*Deed of Real Estate Mortgage*" in support of the latter's factual conclusion that the signatures respectively written above the printed names of Niña Z. Ramirez and that of her husband (which appear therein as the parties-mortgagors) were "*forged*."

3.) Whether x x x the court *a quo* committed serious error in its assailed Decision in affirming the factual findings and rulings of the trial court, and in further modifying the latter's decision by increasing the original sentence from an imprisonment of "six (6) months of *arresto mayor* maximum as minimum to four (4) years two (2) months of *prision correctional* (sic) medium as maximum" to a longer prison term of "[four] (4) years, two (2) months and one (1) day of *Prision Correctional* (sic) maximum as Minimum, to ten (10) years of *Prision Mayor* medium as Maximum" (and also in further ordering the petitioner "to cause the release/discharge of the mortgage constituted on the property in the amount of ₱300,000.00 and to return to private complainant Transfer Certificate of Title No. 188686 free from liens and encumbrances") declaring the conviction of the petitioner for complex crime of *Estafa through Falsification of a Public Document* despite the fact that the appealed decision of the trial court clearly shows that the petitioner was found guilty of committing only the simple crime of *Falsification of a Public Document* penalized under paragraph 1 of Article 172 of the Revised Penal Code.

4.) Whether x x x the court *a quo* has departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by the trial court, as to call for an exercise of the power of supervision, when it — failed to carefully evaluate and weigh the evidence presented by prosecution which clearly does not support the judgment of conviction against the petitioner; — overlooked certain facts of substance and value that, if properly considered, would certainly affect the outcome of the case; — based its findings on misapprehension of facts, from erroneous inferences, and surmises or conjectures; and — rendered its rulings contrary to law, the rules on evidence, and existing jurisprudence in violation of the petitioner's constitutional rights to due process and to be presumed innocent.

5.) Whether x x x the court *a quo* has also departed from the accepted and usual course of judicial proceedings when it failed to

squarely resolve or pass upon each and every assignment of error and properly consider supporting arguments set forth by the petitioner herein in his *Appellant's Brief*, as well as the specific grounds and corresponding arguments set forth in his *Motion for Reconsideration*.[8]

Our Ruling

The petition is partly granted.

For petitioner to be convicted of the complex crime of estafa through falsification of public document committed in the manner described in the Information, all the elements of the two crimes of estafa and falsification of public document must exist.[9]

To secure a conviction for estafa under Article 315, paragraph 2(a) of the Revised Penal Code (RPC), the following requisites must concur:

(1) The accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions;

(2) The false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud;

(3) The false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property;

(4) That as a result thereof, the offended party suffered damage.[10]

It is undisputed that petitioner committed estafa. He and his wife falsely represented to Ramirez that they had the influence and capability to cause the subdivision of the lot. In view of said false representation, Ramirez was induced to part with the owner's copy of her TCT on the condition that the same would be returned after a month as evidenced by the Acknowledgment Receipt.

---

[8] *Id.* at 24-25.

[9] *Gonzaludo v. People*, G.R. No. 150910, February 6, 2006, 481 SCRA 569, 577.

[10] *Id.*

However, petitioner and his wife never complied with their obligations. It is also on record that Ramirez made a formal demand for the return of the TCT but petitioner and his wife failed to comply. Their failure to return the said title despite demand is evidence of deceit that resulted in damages to Ramirez. It was also established that the property covered by TCT No. 188686 was eventually mortgaged for ₱300,000.00 to a third person without the knowledge and consent of Ramirez.

The following testimony of Ramirez clearly established that petitioner falsely represented that he has the capacity to cause the subdivision of the property; that false pretenses induced her (Ramirez) to entrust her TCT to petitioner; and that as a result thereof, Ramirez suffered damage to the extent of ₱300,000.00, thus:

Q Tell us when did you come to meet both Rosalinda and Danilo Ansaldo?
A In 1993.

Q Where did you meet these people?
A They went to my stall.

Q Where is your stall located?
A 509 Plaza Sta. Cruz, Manila.

Q How did it happen that the accused came to meet you?
A She was introduced to me by my niece.

Q What is the name of your niece?
A Edna Tadeo.

Q And why [were] these persons introduced to you by your niece?
A I might need the help of the spouses, I can trust them.

Q Help is a general term would you be more specific?
A According to my niece if I have problems about land I can ask the help of these spouses.

Q What about the spouses did they tell you anything?
A According to them they can help regarding [my problem with my lot].

Q Did you not elaborate to them the kind of problem you [were] having with the lot?

A If they can help me subdivide my lot in Muntinlupa with title no. 188686.

Q In whose name is the title?
A In our name, the two of us.

PROS GLORIOSO:
Witness producing a certified Xerox copy of Transfer Certificate of Title 188686 in the name of Niña Ramirez which we request that this be marked Exhibit B, the second page Exhibit B-1.

COURT:
Mark them.

PROS GLORIOSO:
Q Did you believe in their representations?
A Yes, sir, because of their good words.

Q Immediately on that first meeting you believe in them?
A Yes, sir.

Q And so after that what did you do?
A I endorsed to them the title of my land because according to them they can help me.

Q On that first meeting you endorsed to them the title?
A We first talked with each other.

Q In other words you are telling us there [were] so many things that transpired before you finally surrendered to them the title?
A Yes, sir.

Q How long [after . . .] from that first meeting up to the time that you gave the title to them?
A About two years.

Q What kind of copy did you give to them?
A The original owner's copy.

Q When did you give it to them?
A January 5, 1995.

Q Why do you say that it was on January 5, 1995 that this original copy was given to them?
A They signed an acknowledgement receipt
(witness producing a document and handing the same to the prosecutor).

PROS GLORIOSO:
Witness producing a receipt which she handed to this representation.

Q There are signatures appearing at the bottom portion like received by a certain Ansaldo who is this?
A Rosalinda Ansaldo.

Q Why did you say that?
A She signed in my presence.

Q And there is another signature contained on the left portion whose is this?
A Danilo Ansaldo.

Q Why did you say that?
A He signed in [my] presence.

Q They were together when they signed this acknowledgement receipt?
A Yes, sir.[11]

Petitioner did not deny his signature on the Acknowledgement Receipt.[12] On the contrary he claimed that he merely affixed his signature without reading the contents thereof[13] and that he did not bother to inquire from his wife the contents of the Acknowledgement Receipt,[14] which we find not worthy of credence. However, he admitted that his wife was engaged in facilitating the registration of documents involving real property.[15]

On the other hand, we find that we cannot convict petitioner of the crime of falsification of a public document penalized under Article 172 of the RPC. The following requisites must concur, to wit:

---

[11] TSN, May 19, 1998, pp. 6-10.

[12] See TSN, March 17, 2000, p. 14.

[13] *Id.*

[14] *Id.* at 10.

[15] *Id.* at 9.

(1) That the offender is a private individual or a public officer or employee who took advantage of his official position;

(2) That he committed any of the acts of falsification enumerated in article 171 of the Revised Penal Code (which in this case involves forging a signature);

(3) That the falsification was committed in a public or official or commercial document.[16]

There is no doubt that petitioner is a private individual,[17] being a businessman. It is likewise not disputed that the Deed of Mortgage is a public document, having been notarized by a notary public with the solemnities required by law. However, we find no evidence on record showing that the petitioner and his wife falsified the subject Deed of Mortgage. There is simply no evidence showing that petitioner had any participation in the execution of the mortgage document. There is no proof at all that he was the one who signed the Deed of Mortgage. The testimony of Ramirez consisted only of the following:

Q How did you come to know that the property was mortgaged?
A A woman came to me named Lina Santos and showed me the document, a mortgage document.

Q And when was that?
A That same year.

Q Before this Lina Santos came to you were you not bothered when they did not return to you your title after one month?
A At first I was not bothered because we have an agreement but I [got] worried when this Lina Santos came to me.

Q What proof can you show us that this lot was mortgaged instead of subdivided as promised by the accused?
A There is an entry at the back an encumbrance.

PROS GLORIOSO:
We request that this be encircled and marked Exhibit B-2.

---

[16] Luis B. Reyes, *THE REVISED PENAL CODE, BOOK II*, 17th Edition (2008), p. 232.

[17] TSN, March 17, 2000, p. 2.

COURT:
Mark it.

PROS GLORIOSO:
Q What else aside from this encumbrance?

A Real estate mortgage document.

PROS GLORIOSO:
Witness producing a real estate mortgage consisting of four pages which we request to be marked Exhibits D, D-1, D-2 and D-3, wherein the mortgagors are the spouses Niña Ramirez and Mariano Ramirez and the mortgagee is one Nora Herrera.

COURT:
Mark them.

PROS GLORIOSO:
Q I noticed that this Exhibit D-2 signatures appearing atop the typewritten name Niña Ramirez will you tell us whose signature is that?
A I do not know but this is not my signature.

Q What about the signature appearing atop the typewritten name Mariano Ramirez whose signature is that?
A I do not know but definitely this is not the signature of my husband.

Q You deny these are your signatures, will you please show to us your actual signature?
A (Witness signing on a piece of paper handed to her by the prosecutor.)[18]

On cross-examination, Ramirez also narrated that:

Q And due to the alleged failure of both accused to deliver to you the subdivision of the lot that was the time that you made an inquiry and found out that your lot was already mortgaged, is it not?
A A woman informed me about it.

Q After informing you what you did was to verify your title at the office of the Register of Deeds, is it not?
A Yes, sir.

---

[18] TSN, May 19, 1998, pp.11-13.

Q And you found out that your lot was actually mortgaged?
A Yes, sir.

Q Did you secure a copy, - and [did] you know from that very moment the name in whose favor your lot was mortgaged?
A Yes, sir.

Q Did you secure a copy of the deed of mortgage of your lot?
A It is there.

Q And you noticed the residence of the person in whose favor your lot was mortgaged?
A Yes, sir.

Q The name of the mortgagee was a certain Nora Herrera?
A Yes, sir.

Q Did you go to the residence of Nora Herrera?
A No, sir.

Q Did it not occur to your mind to do that in order to tell Nora Herrera that [you were] not the person who mortgaged the land in her favor?
A Nora Herrera was already informed by somebody that I was not the same person who mortgaged the lot to her.

Q From the date you discovered that the lot was already mortgaged to Nora Herrera did you see personally Nora Herrera?
A No, sir, no more.[19]

Based on the foregoing, we cannot conclude beyond reasonable doubt that it was petitioner and his wife who committed the forgery. In the first place, Lina Santos (Santos) was not presented to corroborate the testimony of Ramirez that she was the one who informed the latter regarding the mortgage or she could shed light on the circumstances leading to her alleged discovery that the subject property had been mortgaged. Moreover, as narrated by Ramirez, Santos did not categorically point to herein petitioner as the author of the forgery. If at all, Santos only claimed that the property of Ramirez had been mortgaged but did not mention the personalities involved therein. Likewise, the failure to present the so-called mortgagee, Nora Herrera,

[19] *Id.* at 19-21.

casts doubt as to the participation of the petitioner in the execution of the mortgage instrument. Undoubtedly, Nora Herrera could have testified on the persons she dealt with relative to the mortgage.

The denial of Ramirez that she affixed her signature on the Deed of mortgage does not prove that it was petitioner and his wife who signed in her behalf. Neither could it be considered as proof that petitioner, together with his wife, falsely represented themselves as the spouses Ramirez.

For committing the offense of estafa against Ramirez, the petitioner must be penalized in the manner provided by law. In this regard, Article 315 of the RPC states that the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period shall be imposed if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00. Should the amount exceed the latter sum, the penalty provided shall be imposed in its maximum period, adding one year for each additional ₱10,000.00. However, the total penalty that may be imposed should not exceed 20 years. In such cases, the penalty shall be referred to as *prision mayor* or *reclusion temporal*.

Under the Indeterminate Sentence Law (ISL), whenever an offense is punished by the RPC or its amendments, the accused shall be sentenced by the court to an indeterminate penalty, the maximum term of which, in view of the attending circumstances, can properly be imposed under the RPC, while the minimum term of which shall be within the range of the penalty next lower to that prescribed for the offense.

The amount defrauded in this case is ₱300,000.00 which is the mortgage amount. Thus, the maximum imposable penalty shall be 20 years of *reclusion temporal*. Applying the ISL, the minimum penalty is *prision correccional* in its minimum and medium periods with a range of six (6) months and one (1) day to four (4) years and two (2) months.

WHEREFORE, the petition is *PARTLY GRANTED*. The Decision of the Court of Appeals is *MODIFIED*. Petitioner Danilo D. Ansaldo is hereby found guilty of the crime of estafa

and is sentenced to suffer an indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 160825. March 26, 2010]

VOLTAIRE I. ROVIRA, *petitioner, vs.* **HEIRS OF JOSE C. DELESTE, namely Josefa L. Deleste, Jose Ray L. Deleste, Raul Hector L. Deleste and Ruben Alex L. Deleste,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ORDINARY APPEAL; MULTIPLE APPEALS; WHEN ALLOWED; RATIONALE.— Multiple appeals are allowed in special proceedings, in actions for partition of property with accounting, in the special civil actions of eminent domain and foreclosure of mortgage. The rationale behind allowing more than one appeal in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final. In such a case, the filing of a record on appeal becomes indispensable since only a particular incident of the case is brought to the appellate court for resolution with the rest of the proceedings remaining within the jurisdiction of the trial court.

2. ID.; ID.; ID.; ID.; PERFECTION OF APPEAL; NOTICE OF APPEAL; REQUIRED IN CASE AT BAR.— The main action involved herein, being a suit for recovery of ownership and

possession, is not one where multiple appeals can be taken or are necessary. The choice of asserting a claim for attorney's fees in the very action in which the services in question have been rendered, as done by the petitioner herein, will not convert a regular case into one falling under the category of "other cases of multiple or separate appeals where the law or these Rules so require." The main case handled by petitioner lawyer has already been decided with finality up to the appeal stage and is already in the execution stage. The trial court has also already resolved the incident of attorney's fees. Hence, there is no reason why the original records of the case must remain with the trial court. There was also no need for respondents to file a record on appeal because the original records could already be sent to the appellate court for the resolution of the appeal on the matter of the attorney's fees. To repeat, since the case has not been made out for multiple appeals, a record on appeal is unnecessary to perfect the appeal. The only requirement to perfect the appeal in the present case is the filing of a notice of appeal in due time. This the respondents did. x x x The appeal of respondents having been perfected by the filing of the notice of appeal in due time and the time to appeal of petitioner having expired, the CA correctly found that the trial court had already lost jurisdiction over the case at the time it rendered its October 17, 2001 Order.

3. ID.; ID.; FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS; RULES ON SERVICE, PROPERLY RELAXED IN CASE AT BAR.— Concededly, the respondents did not strictly follow Rule 13, Sec. 11 on priorities on modes of service. However, since rules of procedure are mere tools designed to facilitate the attainment of justice, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided. The relaxation of the rules on service is all the more proper in the present case, where petitioner had already received his copy of the notice of appeal by registered mail, since the Court has previously ruled that a litigant's failure to furnish his opponent with a copy of his notice of appeal is not a sufficient cause for dismissing it and that he could simply have been ordered to furnish appellee with a copy of his appeal.

4. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; SUFFICIENCY THEREOF IS DETERMINED BY THE COURT BEFORE WHICH THE PETITION IS FILED; CASE AT BAR.— The discretion on initially determining the sufficiency of a petition for *certiorari* lies with the court before which the petition was filed. In this matter, the CA determined the petition filed before it to be sufficient. We sustain the CA's determination for the reasons specified below. First, the failure to comply with the rule on a statement of material dates in the petition may be excused since the dates are evident from the records. In the case at bar, the petition for *certiorari* filed before the CA contained a statement of material dates. Although the date of filing of the motion for reconsideration was not stated, it is nevertheless evident from the records that the said motion for reconsideration was filed on time on December 10, 2001. Second, "the Rules do not specify the precise documents, pleadings or parts of the records that should be appended to the petition other than the judgment, final order, or resolution being assailed. The Rules only state that such documents, pleadings or records should be relevant or pertinent to the assailed resolution, judgment or orders; as such, the initial determination of which pleading, document or parts of the records are relevant to the assailed order, resolution or judgment, falls upon the petitioner. The CA will ultimately determine if the supporting documents are sufficient to even make out a *prima facie* case." The CA, having given due course to the petition, must have found the documents sufficient. We find no sufficient reason to reverse the Decision of the CA. Third, the caption of the petition filed with the CA may not have specified the individual names of the heirs of Dr. Deleste but the verification contained all the names and signatures of the four heirs. The petition sufficiently contains the full names of the petitioners therein, thus substantially complying with the requirement of the Rules of Court.

APPEARANCES OF COUNSEL

Cristina Milagros Rubin-Deleste for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

A trial court's ruling on the matter of attorney's fees initiated through a motion, in a suit for recovery of ownership and possession of land, may be appealed by a mere notice of appeal. Since the suit is not one where multiple appeals are taken, a record on appeal is not necessary.

This Petition for Review on *Certiorari* assails the June 30, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 69383 which set aside and vacated the Orders of the Regional Trial Court (RTC) of Iligan City, Branch 01 dated October 17, 2001[2] and January 17, 2002.[3] Also assailed is the October 20, 2003 Resolution[4] denying the motion for reconsideration. The CA found that the RTC gravely abused its discretion amounting to lack or excess of jurisdiction when it recalled its Order granting the notice of appeal despite having been already divested of its jurisdiction.

Factual Antecedents

In 1963, a suit for recovery of ownership and possession of 34 hectares of land was instituted before the Court of First Instance of Lanao del Norte. Originally entitled *Edilberto Noel as Administrator of the Intestate Estate of Gregorio Nanaman and Hilaria Tabuclin versus Dr. Jose C. Deleste*, this was docketed as Civil Case No. 698. This case was decided with finality in 1995 by the Supreme Court which declared the parties as co-owners of the land and ordered defendant Dr. Jose C. Deleste (Dr. Deleste) to return half of it to the plaintiffs.

---

[1] *Rollo*, pp. 21-27; penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Elvi John S. Asuncion and Edgardo F. Sundiam.

[2] *Id.* at 60-61; penned by Judge Mamindiara P. Mangotara.

[3] CA *rollo*, p. 23.

[4] *Rollo*, pp. 45-46.

On May 24, 2000, herein petitioner Atty. Voltaire Rovira (Atty. Rovira) filed as an incident to the said Civil Case No. 698 a motion to resolve his claim for attorney's fees for services rendered to Dr. Deleste. The respondents filed their opposition to the said motion.

Ruling of the Regional Trial Court

On April 16, 2001, the RTC of Iligan City, Branch 01, issued an Order granting the motion of Atty. Rovira and awarded him attorney's fees of 25% of the 17-hectare portion adjudicated to Dr. Deleste.

On July 5, 2001, the respondents filed a Notice of Appeal. On August 16, 2001, Atty. Rovira filed a Motion for Writ of Execution and to Dismiss Appeal to which the respondents filed their opposition. In the Order of September 4, 2001, the RTC granted the Notice of Appeal of the respondents and further instructed: "Let the order of this Court granting attorney's fees to Atty. Rovira, dated April 16, 2001 together with his testimony be transmitted to the CA." However, Atty. Rovira filed a motion for reconsideration alleging among others that the respondents' notice of appeal failed to comply with the requirements of Rule 13 of the Rules of Court.

On October 17, 2001, the RTC issued an Order, the dispositive portion of which reads:

> In view of this new development, this Court hereby sets aside its order of September 4, 2001 and hereby dismisses the appeal filed by the defendants. Let therefore a writ of execution [be issued] to implement the order of this Court entered on April 16, 2001.
>
> As the Clerk of Court prematurely and before the lapse of the fifteen day period within which movant may file a motion for reconsideration transmitted to the Court of Appeals the order of April 16, 2001 together with the testimony of Atty. Voltaire Rovira, he is hereby directed to request the Clerk of Court of the Court of Appeals to return the same to this Court.
>
> SO ORDERED.[5]

---

[5] *Id.* at 61.

Respondents filed a motion for reconsideration of the aforesaid Order but this was denied in the January 17, 2002 Order. Hence, the respondents filed a petition for *certiorari* with the CA.

Ruling of the Court of Appeals

The CA found the trial court to have committed grave abuse of discretion. It found that the trial court was already divested of jurisdiction when it recalled its Order granting the notice of appeal because respondents' appeal had already been perfected and there was the ensuing elevation of its records. As previously mentioned, the CA set aside and vacated the two Orders of the RTC and disposed as follows:

> WHEREFORE, the petition is GIVEN DUE COURSE and GRANTED. The assailed orders dated October 17, 2001 and January 17, 2002 are SET ASIDE and VACATED. Accordingly the preliminary injunction earlier issued is hereby made PERMANENT, and the respondent Judge is ordered to give due course to the appeal of the petitioners.
>
> SO ORDERED.[6]

Petitioner filed a motion for reconsideration which the CA denied in its October 20, 2003 Resolution.[7]

Issues

Petitioner raises the following issues:

I

WHETHER RESPONDENTS PERFECTED THEIR APPEAL [THEREBY DIVESTING] THE TRIAL COURT OF JURISDICTION OVER PETITIONER'S CLAIM FOR ATTORNEY'S FEES

II

WHETHER THE COURT OF APPEALS HAD JURISDICTION OVER CA- G.R. SP. NO. 59393, RESPONDENTS' PETITION FOR *CERTIORARI* WITH THE COURT OF APPEALS which

---

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

[7] *Id.* at 46.

(a) Did not mention in the statement of material dates when respondents filed their motion for reconsideration to the assailed RTC order of October 16, 2001;

(b) Contained deliberate suppressions and omissions of material portions of the record and other documents relevant or pertinent thereto as are referred to in the petition, as required in Section 3, Rule 46 of the Rules of Court in relation with Rule 65;

(c) Did not contain the full names of the petitioners as required in Section 3, Rule 46 in relation with Section 1, Rule 3 of the Rules of Court. [Furthermore,] "Heirs of Jose C. Deleste" is not a natural or juridical person or one authorized by law to institute an action in Court.[8]

Petitioner's Arguments

Petitioner contends that respondents' appeal was not perfected for their failure to file a record on appeal to elevate the incident to the CA during the execution process in Civil Case No. 698 and for failure of their notice of appeal to comply with the mandatory provisions of Rule 13 of the Rules of Court. He also contends that a petition for *certiorari* being a remedy in equity must strictly comply with Section 1, Rule 65 in relation with Section 3, Rule 46 of the Rules of Court otherwise the appellate court does not acquire jurisdiction over the petition.

Respondents' Arguments

Respondents, on the other hand, contend that the intent of the rules for the preferred mode of service had been met considering that their notice of appeal, although served by registered mail, was immediately received by the petitioner. They argue that lapses in compliance with technical rules can be disregarded so as not to override substantial justice. Respondents also contend that the case subject of the petition is not one falling under the category of "special proceedings or other cases of multiple or separate appeals where the law or the rules require the filing of a record on appeal." They also submit that they substantially complied with the rules and that

---

[8] *Id.* at 218.

the CA correctly ruled in not dismissing the petition and in ordering the RTC to give due course to the appeal considering respondents' strong and substantial points in their opposition to petitioner's motion to resolve attorney's fees.

Our Ruling

The petition has no merit.

Perfection of Appeal

Rule 41 of the Rules of Court provides:

Sec.2. *Modes of appeal*. –

(a) *Ordinary appeal*. – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

Multiple appeals are allowed in special proceedings, in actions for partition of property with accounting, in the special civil actions of eminent domain and foreclosure of mortgage.[9] The rationale behind allowing more than one appeal in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final.[10] In such a case, the filing of a record on appeal becomes indispensable since only a particular incident of the case is brought to the appellate court for resolution with the rest of the proceedings remaining within the jurisdiction of the trial court.[11]

---

[9] *Roman Catholic Archbishop of Manila v. Court of Appeals*, 327 Phil. 810, 819 (1996).

[10] *Id*.

[11] *Marinduque Mining and Industrial Corporation v. Court of Appeals*, G.R. No. 161219, October 6, 2008, 567 SCRA 483, 493.

The main action involved herein, being a suit for recovery of ownership and possession, is not one where multiple appeals can be taken or are necessary. The choice[12] of asserting a claim for attorney's fees in the very action in which the services in question have been rendered, as done by the petitioner herein, will not convert a regular case into one falling under the category of "other cases of multiple or separate appeals where the law or these Rules so require." The main case handled by petitioner lawyer has already been decided with finality up to the appeal stage and is already in the execution stage. The trial court has also already resolved the incident of attorney's fees. Hence, there is no reason why the original records of the case must remain with the trial court. There was also no need for respondents to file a record on appeal because the original records could already be sent to the appellate court[13] for the resolution of the appeal on the matter of the attorney's fees.

To repeat, since the case has not been made out for multiple appeals, a record on appeal is unnecessary to perfect the appeal. The only requirement to perfect the appeal in the present case is the filing of a notice of appeal[14] in due time. This the respondents did. Concededly, the respondents did not strictly follow Rule 13, Sec. 11[15] on priorities on modes of service. However, since rules of procedure are mere tools designed to facilitate the attainment of justice, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote

---

[12] A claim for attorney's fees may be asserted either in the very action in which the services in question have been rendered, or in a separate action. *Quirante v. Intermediate Appellate Court*, 251 Phil. 704, 708 (1989).

[13] *Marinduque Mining and Industrial Corporation v. Court of Appeals*, *supra* note 11 at 494.

[14] See *Cortes v. Court of Appeals*, 443 Phil. 42 (2003).

[15] Sec. 11. *Priorities in modes of service and filing*. – Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

substantial justice must be avoided.[16] The relaxation of the rules on service is all the more proper in the present case, where petitioner had already received his copy of the notice of appeal by registered mail, since the Court has previously ruled that a litigant's failure to furnish his opponent with a copy of his notice of appeal is not a sufficient cause for dismissing it and that he could simply have been ordered to furnish appellee with a copy of his appeal.[17]

The appeal of respondents having been perfected by the filing of the notice of appeal in due time and the time to appeal of petitioner having expired,[18] the CA correctly found that the trial court had already lost jurisdiction over the case at the time it rendered its October 17, 2001 Order.

Also, the April 16, 2001 Order of the RTC granting attorney's fees to Atty. Rovira together with his testimony are in fact pertinent records of the case, though very incomplete. Since these records were transmitted to the CA, the statement of the

---

[16] *Ace Navigation Co., Inc. v. Court of Appeals*, 392 Phil. 606, 613 (2000).

[17] *Precision Electronics Corporation v. National Labor Relations Commission*, G.R. No. 86657, October 23, 1989, 178 SCRA 667, 670.

[18] Sec. 9. *Perfection of appeal; effect thereof.* – A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

A party's appeal by record on appeal is deemed perfected with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties.

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal. (Underscoring supplied)

CA holding that the records of Civil Case No. 698 were elevated to it by virtue of the September 4, 2001 Order of the RTC is not without basis, contrary to the contention of petitioner.

Jurisdiction of the CA over the Petition for Certiorari

The discretion on initially determining the sufficiency of a petition for *certiorari* lies with the court before which the petition was filed. In this matter, the CA determined the petition filed before it to be sufficient. We sustain the CA's determination for the reasons specified below.

First, the failure to comply with the rule on a statement of material dates in the petition may be excused since the dates are evident from the records.[19] In the case at bar, the petition for *certiorari* filed before the CA contained a statement of material dates. Although the date of filing of the motion for reconsideration was not stated, it is nevertheless evident from the records that the said motion for reconsideration was filed on time on December 10, 2001.[20]

Second, "the Rules do not specify the precise documents, pleadings or parts of the records that should be appended to the petition other than the judgment, final order, or resolution being assailed. The Rules only state that such documents, pleadings or records should be relevant or pertinent to the assailed resolution, judgment or orders; as such, the initial determination of which pleading, document or parts of the records are relevant to the assailed order, resolution or judgment, falls upon the petitioner. The CA will ultimately determine if the supporting documents are sufficient to even make out a *prima facie* case."[21] The CA, having given due course to the petition, must have found the documents sufficient. We find no sufficient reason to reverse the Decision of the CA.

---

[19] *Great Southern Maritime Services Corp. v. Acuña*, 492 Phil. 518, 527 (2005).

[20] CA *rollo*, p. 16.

[21] *Quintano v. National Labor Relations Commission*, 487 Phil. 412, 424-425 (2004).

Third, the caption of the petition filed with the CA may not have specified the individual names of the heirs of Dr. Deleste but the verification contained all the names and signatures of the four heirs. The petition sufficiently contains the full names of the petitioners therein, thus substantially complying with the requirement of the Rules of Court.

Technicalities that impede the cause of justice must be avoided. In *Heirs of Generoso A. Juaban v. Bancale*,[22] which also finds application to the present case, the Court elaborated:

> The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case. Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice.
>
> Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.

WHEREFORE, the petition is *DENIED*. The June 30, 2003 Decision of the Court of Appeals in CA-G.R. SP No. 69383 and its October 20, 2003 Resolution are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.*, concur.

---

[22] G.R. No. 156011, July 3, 2008, 557 SCRA 1, 14, citing *Great Southern Maritime Services Corp. v. Acuña, supra* note 19.

EN BANC

[G.R. No. 169449. March 26, 2010]

TERESITA G. NARVASA, *petitioner, vs.* **BENJAMIN A. SANCHEZ, JR.,**[1] *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SIMPLE MISCONDUCT DISTINGUISHED FROM GRAVE MISCONDUCT.— Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of an established rule must be manifest.

2. ID.; ID.; ID.; GRAVE MISCONDUCT; CLEAR INTENT TO VIOLATE A LAW OR STANDARD OF BEHAVIOR, DULY ESTABLISHED IN CASE AT BAR.— We disagree with the CA that neither corruption, clear intent to violate the law or flagrant disregard of an established rule attended the incident in question. RA 7877, the Anti-Sexual Harassment Act of 1995, took effect on March 5, 1995. Respondent was charged with knowledge of the existence of this law and its contents, more so because he was a public servant. His act of grabbing petitioner and attempting to kiss her without her consent was an unmistakable manifestation of his intention to violate laws that specifically prohibited sexual harassment in the work environment. Assuming *arguendo* that respondent never intended to violate RA 7877, his attempt to kiss petitioner was a flagrant disregard of a customary rule that had existed since time immemorial – that intimate physical contact between individuals must be consensual. Respondent's defiance

---

[1] The Court of Appeals was originally impleaded as public respondent; however, it was excluded pursuant to Rule 45, Section 4 of the Rules of Court.

of custom and lack of respect for the opposite sex were more appalling because he was a married man. Respondent's act showed a low regard for women and disrespect for petitioner's honor and dignity.

3. ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES; DETERMINATION OF IMPOSABLE PENALTY; LENGTH OF SERVICE; APPRECIATED AS AGGRAVATING CIRCUMSTANCE IN CASE AT BAR.— Length of service as a factor in determining the imposable penalty in administrative cases is a double-edged sword. In fact, respondent's long years of government service should be seen as a factor which aggravated the wrong that he committed. Having been in the government service for so long, he, more than anyone else, should have known that public service is a public trust; that public service requires utmost integrity and strictest discipline, and, as such, a public servant must exhibit at all times the highest sense of honesty and integrity. Sadly, respondent's actions did not reflect the integrity and discipline that were expected of public servants. He failed to live up to the image of the outstanding and exemplary public official that he was. He sullied government service instead. Furthermore, we note that this is the third time that respondent is being penalized for acts of sexual harassment. We are also alarmed by the increasing boldness in the way respondent displayed his unwelcome affection for the women of his fancy. He is a perverted predator preying on his female colleagues and subordinates. Respondent's continued misbehavior cannot, therefore, be allowed to go unchecked.

APPEARANCES OF COUNSEL

Artemio R. Villaluz, Jr. for petitioner.
ASSA Law and Associates for respondent.

R E S O L U T I O N

***PER CURIAM*:**

This is a petition for review on *certiorari*[2] of the April 25, 2005 decision[3] and August 4, 2005 resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 81107.

The parties to this case are employees of the Municipality of Diadi, Nueva Vizcaya (the LGU). Petitioner Teresita G. Narvasa is a senior bookkeeper while respondent Benjamin A. Sanchez, Jr. is the municipal assessor.

The instant case stemmed from three cases of sexual harassment filed separately against respondent by petitioner along with Mary Gay P. de la Cruz and Zenaida M. Gayaton, who are also employees of the LGU.

In her affidavit-complaint, De la Cruz claimed[5] that, sometime in February 2000, respondent handed her a note saying, "Gay, I like you." Offended by respondent's inappropriate remark, de la Cruz admonished him for giving her such a note and told him that she would give the note to his wife. Respondent then grabbed the note from her and tore it into pieces. However, this first incident was followed by a message sent to De la Cruz sometime in March 2002 in which he said, "*Ka date ko si Mary Gay… ang tamis ng halik mo*."

On the other hand, Gayaton narrated[6] that, on April 5, 2002, respondent whispered to her during a retirement program, "*Oy*

---

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

[3] Penned by Associate Justice Delilah Vidallon-Magtolis (retired) and concurred in by Associate Justices Bienvenido L. Reyes and Rosalinda Asuncion-Vicente of the former Sixth Division of the Court of Appeals. *Rollo*, pp. 26-42.

[4] *Id.*, p. 43.

[5] *Rollo*, p. 46.

[6] Affidavit-Complaint of Zenaida M. Gayaton. *Rollo*, p. 48.

flawless, *pumanaw ka met ditan*"[7] while twice pinching her upper left arm near the shoulder in a slow manner.

A few days later, Gayaton received a text message while she was passing respondent's car in front of the municipal hall. The message said, "*Pauwi ka na ba* sexy?" Gayaton later verified through respondent's clerk, Alona Agas, that the sender of the message was respondent.

On or about April 22 to 25, 2002, Gayaton received several messages from respondent stating: (1) "I like you"; (2) "Have a date with me"; (3) "Don't tell to *(sic)* others that I told that I like you because *nakakahiya*"; (4) "*Puso mo to pag bigay moto sakin*, I would be very happy" and (5) "I slept and dreamt nice things about you."

Finally, as far as petitioner's complaint was concerned, she asserted[8] that, on November 18, 2000, during a field trip of officers and members of the St. Joseph Multi-Purpose Cooperative to the Grotto Vista Resort in Bulacan, respondent pulled her towards him and attempted to kiss her. Petitioner resisted and was able to escape the clutches of respondent to rejoin the group that they were travelling with. Respondent apologized to petitioner thrice regarding that incident.

Based on the investigation conducted by the LGU's Committee on Decorum and Investigation (CODI), respondent was found guilty of all three charges by Municipal Mayor Marvic S. Padilla. For the offenses committed against De la Cruz and Gayaton, respondent was meted the penalties of reprimand for his first offense of light harassment and 30 days' suspension for his first offense of less grave sexual harassment. His transgression against petitioner, however, was deemed to be grave sexual harassment for which he was dismissed from the government service.

On appeal, the Civil Service Commission (CSC) passed only on the decision in the case filed by petitioner since, under the

---

[7] "Hey, flawless, get away from there."

[8] Affidavit-Complaint of Teresita G. Narvasa. *Rollo*, p. 44.

CSC rules, the penalty of reprimand and/or suspension of not more than 30 days cannot be appealed. The CSC dismissed the appeal but modified Mayor Padilla's order by holding respondent guilty of grave misconduct instead of grave sexual harassment.[9] The same penalty of dismissal from the service, however, was meted out to respondent.

Respondent's next recourse was to the CA which partially granted his appeal. The CA modified the CSC resolution, finding respondent guilty only of simple misconduct.[10] Accordingly, the penalty was lowered to suspension for one month and one day.

Petitioner comes to this Court to appeal the downgrading of respondent's offense to simple misconduct.

The core issue for our resolution is whether the acts committed by respondent against petitioner (since the CSC resolution only touched upon petitioner's complaint) constitute simple misconduct or grave misconduct.

Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior.[11] To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.[12] In grave misconduct, as distinguished

---

[9] Respondent was held administratively liable under CSC Memorandum Circular No. 19 series of 1994 which cites sexual harassment as a ground for administrative disciplinary action under the offense of grave misconduct.

Sec. 3 of Memorandum Circular No. 19 states:

(a) Sexual harassment is one or a series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of sexual nature, made directly, indirectly and impliedly when

1) Such conduct might reasonable be expected to cause insecurity, discomfort, offense or humiliation to another person or group; or

x x x x x x x x x

[10] Also under CSC Memorandum Circular No. 19 series of 1994.

[11] *Salazar v. Barriga*, A.M. No. P-05-2016, 19 April 2007, 521 SCRA 449, 453.

[12] *CSC v. Belagan*, 483 Phil. 601, 623 (2004).

from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of an established rule must be manifest.[13]

Respondent's acts of grabbing petitioner and attempting to kiss her were, no doubt, intentional. Worse, the incident occurred months after he had made similar but subtler overtures to De la Cruz, who made it clear that his sexual advances were not welcome. Considering that the acts respondent committed against petitioner were much more aggressive, it was impossible that the offensive nature of his actions could have escaped him. It does not appear that petitioner and respondent were carrying on an amorous relationship that might have justified his attempt to kiss petitioner while they were separated from their companions. Worse, as petitioner and respondent were both married (to other persons), respondent not only took his marital status lightly, he also ignored petitioner's married state, and good character and reputation.

We disagree with the CA that neither corruption, clear intent to violate the law or flagrant disregard of an established rule attended the incident in question. RA[14] 7877, the Anti-Sexual Harassment Act of 1995, took effect on March 5, 1995. Respondent was charged with knowledge of the existence of this law and its contents, more so because he was a public servant. His act of grabbing petitioner and attempting to kiss her without her consent was an unmistakable manifestation of his intention to violate laws that specifically prohibited sexual harassment in the work environment. Assuming *arguendo* that respondent never intended to violate RA 7877, his attempt to kiss petitioner was a flagrant disregard of a customary rule that had existed since time immemorial – that intimate physical contact between individuals must be consensual. Respondent's defiance of custom and lack of respect for the opposite sex were more appalling because he was a married man. Respondent's act showed a low regard for women and disrespect for petitioner's honor and dignity.

---

[13] *CSC v. Lucas*, 361 Phil. 486 (1999).

[14] Republic Act.

The CA, however, interpreted respondent's repeated apologies to petitioner as an indication of the absence of intention on his part to commit so grave a wrong as that committed. On the contrary, such persistent attempts to make peace with petitioner indicated how well respondent was aware of the gravity of the transgression he had committed. Respondent certainly knew of the heavy penalty that awaited him if petitioner complained of his aggressive behavior, as she, in fact, did.

Section 53 of Rule IV of the Uniform Rules on Administrative Cases provides a list of the circumstances which may be considered in the determination of penalties to be imposed.[15] The CA considered respondent's more than ten years of government service and claim of being awarded Most Outstanding Municipal Assessor of Region II for three years as mitigating circumstances. Again, we disagree.

Length of service as a factor in determining the imposable penalty in administrative cases is a double-edged sword.[16] In fact, respondent's long years of government service should be seen as a factor which aggravated the wrong that he committed. Having been in the government service for so long, he, more than anyone else, should have known that public service is a public trust;[17] that public service requires utmost integrity and strictest discipline, and, as such, a public servant must exhibit at all times the highest sense of honesty and

---

[15] Section 53. *Extenuating, Mitigating, Aggravating, or Alternative Circumstances.* — In the determination of the penalties imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

x x x x x x x x x

g. Habituality

x x x x x x x x x

j. Length of service in the government

[16] *Mariano v. Nacional*, A.M. No. MTJ-07-1688, 10 February 2009, 578 SCRA 181, 188.

[17] *Civil Service Commission v. Ledesma*, G.R. No. 154521, 30 September 2005, 471 SCRA 589, 611.

integrity.[18] Sadly, respondent's actions did not reflect the integrity and discipline that were expected of public servants. He failed to live up to the image of the outstanding and exemplary public official that he was. He sullied government service instead.

Furthermore, we note that this is the third time that respondent is being penalized for acts of sexual harassment. We are also alarmed by the increasing boldness in the way respondent displayed his unwelcome affection for the women of his fancy. He is a perverted predator preying on his female colleagues and subordinates. Respondent's continued misbehavior cannot, therefore, be allowed to go unchecked.

WHEREFORE, the petition is hereby *GRANTED*. Resolution No. 031176 issued by the Civil Service Commission finding respondent Benjamin A. Sanchez, Jr. guilty of grave misconduct is *REINSTATED*. Respondent Benjamin A. Sanchez, Jr. is ordered *DISMISSED* from the service with forfeiture of retirement benefits except accrued leave credits, if any, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations. This is without prejudice to any criminal complaints that may be filed against him.

No costs.

SO ORDERED.

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

Puno, C.J., on official leave.

---

[18] *Retazo v. Verdon,* A.M. Nos. P-04-1807 and P-02-1653, 23 December 2008, 575 SCRA 1, 7.

THIRD DIVISION

[G.R. No. 172960. March 26, 2010]

MACTAN ELECTRIC COMPANY, INC., *petitioner, vs.* **NATIONAL POWER CORPORATION, MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY and NATIONAL TRANSMISSION CORPORATION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; ENERGY REGULATORY COMMISSION; ORIGINAL AND EXCLUSIVE JURISDICTION.— Section 43 (v) [of RA 9136] confers on ERC original and exclusive jurisdiction over two kinds of cases: 1) all cases contesting rates, fees, fines and penalties imposed by ERC in the exercise of its powers, functions and responsibilities under Section 43 (a) through (u); and 2) all cases involving disputes between and among participants or players in the energy sector.

2. ID.; ID.; ID.; ID.; ADMINISTRATIVE INTERPRETATION ON THE SCOPE OF SECTION 43(V) OF RA 9136.— Section 4 (n), Rule 3 of the Rules and Regulations to Implement RA 9136 (implementing rules) provides an administrative interpretation of the scope of Section 43 (v) of RA 9136, to wit: "Section 4. Responsibilities of the ERC. x x x (n) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed in the exercise of its powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector *relating to the foregoing powers, functions and responsibilities*." Disputes between and among participants or players in the energy sector which may possibly be related to the powers, functions and responsibilities of ERC are those arising from cross-ownership, abuse of market power, cartelization and anti-competitive or discriminatory behavior by any electric power industry participant as defined and penalized under Section 45 of RA 9136 and Sections 3, 4, 5 and 8, Rule 11 of the implementing rules. It is ERC which is

authorized to monitor and penalize these prohibited acts and to stop and redress the same through such remedial measures as the issuance of injunction.

3. ID.; ID.; ID.; DEPARTMENT OF ENERGY; HAS REGULATORY AUTHORITY OVER MATTERS INVOLVING MARKETING AND DISTRIBUTION OF ENERGY RESOURCES.— In *Energy Regulatory Board and Iligan Light & Power, Inc. v. Court of Appeals, et al.,* we declared that jurisdiction over the regulation of the marketing and distribution of energy resources is vested in the DOE. In the consolidated cases *National Power Corp. v. Court of Appeals and Cagayan Electric Power and Light Co.* and *Phividec Industrial Authority v. Court of Appeals and Cagayan Electric Power and Light Co.,* the Court traced the history of this regulatory function of DOE x x x. In *Batelec II Electric Cooperative Inc. v. Energy Industry Administration Bureau (EIAB), et al.,* the Court further reiterated that the DOE had regulatory authority over matters involving the marketing and distribution of energy resources. DOE has retained such regulatory authority even with the enactment of RA 9136. Section 80 thereof provides that "[t]he applicable provisions of x x x Republic Act 7638, otherwise known as the 'Department of Energy Act of 1992' x x x shall continue to have full force and effect except in so far as inconsistent" with RA 9136. Corollary to Section 80, Section 37 assigned to DOE certain powers and functions in the supervision of the restructuring of the electricity industry, but these are "[i]n addition to its existing powers and functions." Among the existing powers and functions of DOE is the regulation of the marketing and distribution of energy resource as provided in Section 18 of RA 7638, amending Section 3 of EO 172.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
The Solicitor General for respondents.
The Government Corporate Counsel for National Transmission Corporation.

D E C I S I O N

CORONA, *J.*:

Mactan Electric Company, Inc. (MECO) posed the purely legal question of whether paragraph (v), Section 43 of RA 9136:[1]

> Sec. 43. *Functions of the ERC.* — The ERC shall promote competition, encourage market development, ensure customer choice and discourage/penalize abuse of market power in the restructured electricity industry. Towards this end, it shall be responsible for the following key functions in the restructured industry:
>
> x x x x x x x x x
>
> (v) **The ERC shall have the original and exclusive jurisdiction** over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities and **over all cases involving disputes between and among participants or players in the energy sector.** All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at least twice for two successive weeks in two (2) newspapers of nationwide circulation.(emphasis supplied)

clothed the Energy Regulatory Commission (ERC) with jurisdiction to resolve disputes involving MECO as an energy distribution company with a public franchise, National Power Corporation (NPC) as an energy generation company, National Transmission Corporation (TRANSCO) as a transmission and sub-transmission company and Mactan Cebu International Airport Authority (MCIAA) as an energy end-user.

The facts are not disputed.

MECO holds a franchise to operate an electric light and power service in the areas comprising Lapu-Lapu City and the Municipality of Cordova.[2] It has a contract with NPC for the

---

[1] Republic Act No. 9136 or the "Electric Power Industry Reform Act of 2001"; effective June 26, 2001.

[2] *Rollo*, p. 75.

supply of "contract energy"[3] from September 26, 2005 to September 25, 2015.[4] It is charged a minimum rate based on the contract energy per billing period, regardless of whether it fails to consume the contract energy allocated to it.[5] However, it may apply for reduction of its contract energy upon payment of a buy-out fee[6] except under the following circumstances:

> 4.7.1. The reduction is caused by the transfer by a consumer of its power and energy source from [MECO] to [NPC] or, to another customer of [NPC] located within the same grid prompting the other customer to correspondingly increase its electric supply requirement with [NPC], notwithstanding that [MECO] may have itself imposed penalties or buy-out provisions to such transferring consumer. [MECO] shall have sixty (60) days from transfer within which to request the appropriate reduction and the decrease shall be deemed effective from such date of transfer. Provided further that [MECO] and [NPC] shall ensure that the transfer shall not disadvantage any assignee(s) of [NPC].
>
> 4.7.2. Expected reduction in the Contracted Energy by the [MECO] with the [NPC] caused or initiated by the industrial customers of the [MECO] as listed in Annex 1a shall be excused by the SUPPLIER. To be able to avail of this exemption, [MECO] must inform [NPC] in writing sixty (60) days prior to the effectivity of the reduction in the Contracted Energy. It is understood that the expected reduction is neither due to self-generation nor transfer to another power SUPPLIER.[7]

MCIAA was listed as an industrial costumer of MECO in Annex 1a of the supply contract.[8] MCIAA and MECO had a

---

[3] Section 2.1 of the MECO-NPC contract defines "contract energy" as "energy in kilowatt-hour (kWh), whether monthly or hourly (in case of Time of Use Rate) allocated by [NPC] to [MECO] within the contract period, as stated in 'Annex I' of the Contract." *Rollo*, p. 79.

[4] Sec. 3.1 of MECO-NPC contract, *rollo*, p. 78.

[5] Section 6.2, *rollo*, p. 82.

[6] Section 4.6, *rollo*, p. 79.

[7] *Id.*

[8] *Rollo*, pp. 100-109.

contract for electric power service connection[9] for a period of one year, subject to automatic renewal, unless either party desired to terminate the contract, in which case said party must serve a 30-day written notice upon the other for the termination or amendment to take effect.[10] Their contract began on September 19, 1995 and was renewed every year thereafter. On April 24, 2006, MECO received notice from MCIAA that it was terminating their contract effective May 24, 2006.[11]

MECO filed with the Regional Trial Court (RTC), Branch 54, Lapu-Lapu City, a complaint for damages with prayer for temporary restraining order and/or writ of preliminary injunction against MCIAA, NPC and TRANSCO.[12] The material allegations in the complaint are reproduced below, for they are determinative of the question of law raised herein:

> 2.19 Although the MCIAA letter of termination does not indicate from whom MCIAA will get its electric power supply after May 24, 2006, there are strong indications as shown by the following circumstances recently validated, and thus reasonable grounds to believe that NPC will directly supply electric power to MCIAA and the latter will directly source and buy such electric power from the NPC without passing through the distribution system of MECO x x x.
>
> x x x x x x x x x
>
> All these were done notwithstanding the validity, enforceablity and existence of the "MECO-MCIAA Connection Contract" on one hand, and the validity, enforceability and existence of the "NPC-MECO Supply Contract" on the one hand.
>
> 2.20 It must be stressed that with the advent of the EPIRA of 2001, NPC is now without authority to sell electric energy directly to end-users including MCIAA.
>
> x x x x x x x x x

---

[9] *Id.*, p. 112.

[10] Section 21 of the MECO-MCIAA contract. *Rollo*, p. 115.

[11] *Id.*, p. 118.

[12] *Id.*, p. 50.

CAUSES OF ACTION
FIRST CAUSE OF ACTION AGAINST DEFENDANT NPC
(For Injunctive Relief)

x x x x x x x x x

3.1 NPC is now without authority in law to directly sell electric energy to end users including MCIAA. Such being the case, MECO has a clear and unmistakable right to secure an injunctive relief against NPC to enjoin the latter from committing an illegal act.

FIRST ALTERNATIVE CAUSE OF ACTION TO THE FIRST CAUSE OF ACTION

3.2 Granting without conceding that NPC has authority to directly sell electric energy to end-users, NPC cannot lawfully do so to MCIAA without prior approval from the appropriate government regulatory agencies such as the ERC and DOE. The intended sale of electric energy by NPC to MCIAA [not] having [the approval of] ERC and DOE, plaintiff has a clear and unmistakable right to an injunctive relief to enjoin NPC from committing such unauthorized act.

SECOND ALTERNATIVE CAUSE OF ACTION TO THE FIRST CAUSE OF ACTION

3.3 Granting without conceding that NPC has authority to directly sell electric energy to end-users MECO has a clear, positive and unmistakable property right as a franchise holder, guaranteed by the due process protection of the constitution, to be heard first before the NPC can directly supply electric energy to any end user within MECO's franchise area.

3.4 MECO likewise enjoys the priority in right to distribute electricity to any existing or prospective enterprises within its franchise area to the exclusion of any person or entity including the NPC.

3.5 MECO furthermore enjoys the constitutional right to free enterprise as well as the protective mantle of P.D. 2029 from competition with government-owned or controlled corporation including the NPC in various economic activities like the distribution of services in which MECO is primarily engaged.

3.6 The acts of NPC in directly supplying electric energy to MCIAA grossly violate the foregoing constitutional rights of MECO and seriously impair the franchise of MECO to exclusively operate

a distribution system in the whole Island of Mactan and to directly convey electric power to end-users in that area of coverage.

3.7 The acts complained of against NPC will result in MECO breaching the NPC-MECO Supply Contract and be penalized by NPC under the said contract MECO will not be able to fully consume or take out the level of electrical energy contracted for a particular period.

3.8 The acts complained of against NPC also constitute an unlawful contractual interference by NPC with the contractual obligation of MCIAA to MECO as evidenced by the existing MECO-MCIAA Connection Contract which is valid until September 19, 2006.

x x x x x x x x x

3.11 As a matter of law, MECO is therefore entitled to a writ of prohibitory injunction against NPC, enjoining the latter from directly supplying electric energy to MCIAA.

In the event, however, that NPC is now directly supplying electric energy to MCIAA, MECO is as a matter of law entitled to a writ of mandatory injunction against NPC, directing the latter to discontinue directly supplying electric energy to MCIAA.

FIRST CAUSE OF ACTION AGAINST DEFENDANT MCIAA
(For Specific Performance & Injunctive Relief)

x x x x x x x x x

4.1 MECO has a clear and unmistakable right to demand from MCIAA to honor and faithfully comply with the terms and conditions of the MECO-MCIAA Connection Contract which is valid, enforceable and existing until September 19, 2006.

x x x x x x x x x

4.3 Even assuming without conceding that MCIAA is given the right to terminate the said contract, the circumstances would show that such exercise of right by MCIAA was arbitrary amounting to bad faith, and grossly abused by MCIAA to the prejudice and damage of MECO, aware as it was that such termination would expose MECO to liability under the latter's "NPC-MECO Supply Contract" which is valid until September 25, 2015.

x x x x x x x x x

CAUSE OF ACTION AGAINST DEFENDANT TRANSCO
(For Injunctive Relief)

x x x x x x x x x

5.1 In the commission or performance of the acts complained of by NPC and MCIAA, NPC and MCIAA will unavoidably and consequently use the electrical transmission and sub-transmission facilities of TRANSCO and all other assets related to transmission operations.

5.2 In order not to allow the commission by NPC and MCIAA of illegal acts, TRANSCO should be enjoined from allowing the use of its electrical transmission and sub-transmission facilities

COMMON CAUSES OF ACTION AGAINST DEFENDANTS NPC and MCIAA
(For Damages)

x x x x x x x x x

6.2 These acts likewise constitute an abuse of right under Articles 19 and 20 of the Civil Code which requires every person to act with justice, give everyone his due and observe honesty and good faith in the exercise of his rights and in the performance of his duties. Furthermore, the commission of the acts complained of will willfully cause loss or injury to MECO in a manner that is contrary to morals, good customs or public policy in violation of Article 21 of the Civil Code.

6.3 More importantly, the acts complained of against NPC constitute an inducement by a third party to MCIAA to violate its existing contract with MECO which contract is valid until September 19, 2006 amounting to contract interference which is prohibited by Article 1311 of the Civil Code.[13]

The RTC issued a 72-hour temporary restraining order[14] and later, a status quo order effective until June 11, 2006.[15]

---

[13] Complaint, *rollo*, pp. 57-64.

[14] *Rollo*, p. 127.

[15] *Id.*, p. 128.

MCIAA,[16] NPC[17] and TRANSCO[18] each filed a motion to dismiss on the grounds of lack of jurisdiction and improper venue. They argued that, under Section 43 of RA 9136, ERC had the primary administrative jurisdiction over the dispute as it involved players in the energy sector. MCIAA further pointed out a stipulation in its contract with MECO that in case of suit, the same should be filed in Cebu City, not Lapu-Lapu City.[19]

NPC[20] and MCIAA[21] filed oppositions to the application of MECO for preliminary injunction. They disclosed that, in compliance with the requirements set forth in *Cagayan Electric Power and Light Company v. National Power Corporation*[22] (*i.e.*, that an electric franchisee must be given the opportunity to be heard before NPC may provide direct service to enterprises within the franchise area), NPC and MCIAA disclosed to MECO on February 3, 2001,[23] August 20, 2001[24] and October 2, 2001[25] their planned direct sale of bulk power and invited it to make a better offer, but MECO did not heed the invitation.

The RTC dismissed the case on the following ground:

> After a judicious review of the records and on the basis of the hearings conducted on June 05 and 08, 2006 the court is convinced and hereby concludes that the ERC, the government regulatory agency that has original and exclusive jurisdiction to try disputes between and among players in the energy sector. This is clear under Sec. 43 (u) of Republic Act No. 9136, x x x.

---

[16] *Id.*, p. 129.

[17] *Id.*, p. 133.

[18] *Id.*, p. 140.

[19] *Id.*, p. 130.

[20] *Id.*, p. 215.

[21] *Id.*, p. 231.

[22] 180 SCRA 628.

[23] *Rollo*, p. 227.

[24] *Id.*, p. 228.

[25] *Id.*, p. 229.

x x x x x x x x x

While it is true that the plaintiff and defendants MCIAA, NPC and NTC had forged contractual relations with each other involving or affecting electricity and that disputes arising therefrom may involve provisions in the Civil Code of the Philippines and may even involve contractual interference, yet the indubitable fact remains that the controversy in its entirety necessarily involves, affects and/or pertains to the generation, transmission, distribution, and consumption of electricity – matters that are within the jurisdiction and competence of the ERC to adjudicate as an independent, quasi-judicial regulatory body. Notably, as admitted by the plaintiff, technical words and phrases will be utilized in the course of the proceedings; this is precisely the reason why the ERC has been tasked to hear and adjudicate disputes involving participants in the energy sector, it has the technical expertise and experience to deal with technical matters.

The doctrine of primary jurisdiction also comes into play in that courts will not resolve a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge and experience of the said tribunal in determining technical and intricate matters of fact. x x x[26]

MECO filed the instant petition for this Court to declare that the RTC and not ERC had jurisdiction over its dispute with NPC, MCIAA and TRANSCO because the dispute was purely civil in nature. It arose from a mere violation of its (MECO's) rights under the Constitution and the Civil Code, and required for the resolution thereof an interpretation and application of said laws. No technical matter was involved and no expertise of ERC was needed.[27]

MECO further argued that not all the parties to the dispute were players in the energy sector. MCIAA was neither a generation company, nor a transmission utility, nor a supplier

---

[26] *Id.*, pp. 48-49.

[27] Petition, *id.*, pp. 24-25.

of energy, nor a distributor thereof, but a mere end-user. Thus, the dispute was not "between and among participants or players in the energy sector" which would have brought it within the ambit of Section 43 (v) of RA 9136.[28]

In their respective memoranda, NPC, MCIAA and TRANSCO maintain that the case arose from a dispute among energy players over electric power connection and distribution; hence, it fell within the primary administrative jurisdiction of ERC under Section 43 (v) of RA 9136.

On July 11, 2007, MCIAA filed a manifestation with motion to dismiss, informing the Court that, pursuant to RA 6395,[29] it filed with ERC an application for direct electric connection[30] with NPC and TRANSCO under Section 3 (g)[31] of said law. MCIAA urges the Court to dismiss the instant petition for having been rendered moot and academic by the filing of its application with ERC.[32]

---

[28] Supplement to Memorandum for Petitioner, *id.*, pp. 445-451.

[29] An Act Revising the Charter of the National Power Corporation, effective September 10, 1971.

[30] *Rollo,* p. 471.

[31] Sec. 3. Powers and General Functions of the Corporation. The powers, functions, rights and activities of the Corporation shall be the following: xx xx xx (g) x x x to sell electric power in bulk to (1) industrial enterprises, (2) city, municipal or provincial systems and other government institutions, (3) electric cooperatives, (4) franchise holders, and (5) real estate subdivisions: Provided, That the sale of power in bulk to industrial enterprises and real estate subdivisions may be undertaken by the corporation when the power requirement of such enterprises or real estate subdivision is not less than 100 kilowatts, when in the judgment of the Public Service Commission the franchise holder is not in a position or fails or refuses to adequately supply such power requirement, unless the franchise holder consents thereto: Provided, further, That the Corporation shall continue to sell electricity to industrial enterprises under existing contracts; and provide for the collection of the charges for any service rendered x x x.

[32] *Supra* at 30, p. 468.

The question of law before the Court is: was it the RTC or the ERC which had jurisdiction over the dispute involving MECO, on one hand, and MCIAA, NPC and TRANSCO, on the other? The issue is not hypothetical even as MCIAA has filed a petition with ERC for direct electrical connection with NPC and TRANSCO. Jurisdiction is not conferred on ERC by the mere filing of a petition with it. Its jurisdiction is bestowed by law, specifically RA 9136.

There is, however, nothing in either RA 9136 or its implementing rules which grants ERC jurisdiction over the dispute.

Section 43 (v) confers on ERC original and exclusive jurisdiction over two kinds of cases:

1) all cases contesting rates, fees, fines and penalties imposed by ERC in the exercise of its powers, functions and responsibilities under Section 43 (a) through (u); and

2) all cases involving disputes between and among participants or players in the energy sector.

Section 4 (n), Rule 3 of the Rules and Regulations to Implement RA 9136 (implementing rules) provides an administrative interpretation of the scope of Section 43 (v) of RA 9136, to wit:

Section 4. Responsibilities of the ERC.

x x x x x x x x x

(n) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed in the exercise of its powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector *relating to the foregoing powers, functions and responsibilities*. (emphasis supplied)

Disputes between and among participants or players in the energy sector which may possibly be related to the powers, functions and responsibilities of ERC are those arising from cross-ownership, abuse of market power, cartelization and anti-competitive or discriminatory behavior by any electric power industry participant as defined and penalized under Section 45

of RA 9136 and Sections 3, 4, 5 and 8, Rule 11 of the implementing rules. It is ERC which is authorized to monitor and penalize these prohibited acts and to stop and redress the same through such remedial measures as the issuance of injunction.[33]

The subject matter of the dispute between the parties is neither cross-ownership, nor abuse of market power, nor cartelization, nor anti-competitive or discriminatory behavior. Based on the allegations of MECO in its complaint and the essence of the relief it sought, the subject matter of its dispute with MCIAA, NPC and TRANSCO involved the distribution of energy resource, specifically the direct supply of electricity by NPC through TRANSCO to MCIAA, without passing through the distribution system of MECO as the franchise holder in the area. Therefore, their dispute was not within the authority of ERC to resolve.

But neither did the RTC have jurisdiction over the dispute. That power belonged to the Department of Energy (DOE).

In *Energy Regulatory Board and Iligan Light & Power, Inc. v. Court of Appeals, et al.*,[34] we declared that jurisdiction over the regulation of the marketing and distribution of energy resources is vested in the DOE. In the consolidated cases *National Power Corp. v. Court of Appeals and Cagayan Electric Power and Light Co.*[35] and *Phividec Industrial Authority v. Court of Appeals and Cagayan Electric Power and Light Co.*,[36] the Court traced the history of this regulatory function of DOE:

The ERB, which used to be the Board of Energy, is tasked with the following powers and functions by Executive Order No. 172 which took effect immediately after its issuance on May 8, 1987:

---

[33] Section 45, par. 7, RA 9136. See also Sec. 7, Article III, Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of Republic Act No. 9136.

[34] G.R. No. 127373, 25 March 1999, 364 Phil. 811.

[35] G.R. No. 112702, 26 September 1997, 279 SCRA 506.

[36] G.R. No. 113613, *ibid.*

> "SEC. 3. **Jurisdiction, Powers and Functions of the Board.** — When warranted and only when public necessity requires, the Board may regulate the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, marketing and **distributing** energy resources. x x x.
>
> x x x x x x x x x

As may be gleaned from said provisions, the ERB is basically a price or rate-fixing agency.Apparently recognizing this basic function, Republic Act No. 7638 (An Act Creating the Department of Energy, Rationalizing the Organization and Functions of Government Agencies Related to Energy, and for Other Purposes), which was approved on December 9, 1992 and which took effect fifteen days after its complete publication in at least two (2) national newspapers of general circulation, specifically provides as follows:

> "SEC. 18. **Rationalization or Transfer of Functions of Attached or Related Agencies.**- *The non-price regulatory jurisdiction, powers, and functions of the Energy Regulatory Board as provided for in Section 3 of Executive Order No. 172 are hereby transferred to the Department.*

In *Batelec II Electric Cooperative Inc. v. Energy Industry Administration Bureau (EIAB), et al.*,[37] the Court further reiterated that the DOE had regulatory authority over matters involving the marketing and distribution of energy resources.

DOE has retained such regulatory authority even with the enactment of RA 9136. Section 80 thereof provides that "[t]he applicable provisions of x x x Republic Act 7638, otherwise known as the 'Department of Energy Act of 1992' x x x shall continue to have full force and effect except in so far as inconsistent" with RA 9136. Corollary to Section 80, Section 37 assigned to DOE certain powers and functions in the supervision of the restructuring of the electricity industry, but these are "[i]n addition to its existing powers and functions." Among the existing powers and functions of DOE is the regulation of the marketing and distribution of energy resource as provided in Section 18 of RA 7638, amending Section 3 of EO 172.

---

[37] G.R. No. 135925, 22 December 2004, 447 SCRA 482.

In fine, the RTC was correct when it dismissed the complaint of MECO for lack of jurisdiction. However, it erred in referring the parties to ERC because the agency with authority to resolve the dispute was the Department of Energy.

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 176006. March 26, 2010]

NATIONAL POWER CORPORATION, *petitioner, vs.* **PINATUBO COMMERCIAL, represented by ALFREDO A. DY,** *respondent.*

SYLLABUS

1. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; PUBLICATION OF LAWS AS CONDITION FOR THEIR EFFECTIVITY; DOES NOT APPLY TO AN INTERNAL RULE OR REGULATION; CASE AT BAR.— *Tañada v. Tuvera* stressed the need for publication in order for statutes and administrative rules and regulations to have binding force and effect x x x. *Tañada*, however, qualified that: "Interpretative regulations and those **merely internal in nature**, that is, regulating only the personnel of the administrative agency and not the public, need not be published." x x x In this case, NPC Circular

---

[*] Additional member per raffle dated March 24, 2010 in lieu of Justice Antonio Eduardo B. Nachura.

No. 99-75 did not have to be published since it was merely an internal rule or regulation. It did not purport to enforce or implement an existing law but was merely a directive issued by the NPC President to his subordinates to regulate the proper and efficient disposal of scrap ACSRs to qualified bidders. Thus, NPC Circular No. 99-75 defined the responsibilities of the different NPC personnel in the disposal, pre-qualification, bidding and award of scrap ACSRS. It also provided for the deposit of a proposal bond to be submitted by bidders, the approval of the award, mode of payment and release of awarded scrap ACSRs. All these guidelines were addressed to the NPC personnel involved in the bidding and award of scrap ACSRs. It did not, in any way, affect the rights of the public in general or of any other person not involved in the bidding process. Assuming it affected individual rights, it did so only remotely, indirectly and incidentally.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE; GOVERNMENT CONTRACTS; BIDDING PROCESS; ELUCIDATED.— *Bidding*, in its comprehensive sense, means making an offer or an invitation to prospective contractors whereby the government manifests its intention to invite proposals for the purchase of supplies, materials and equipment for official business or public use, or for public works or repair. Bidding rules may specify other conditions or require that the bidding process be subjected to certain reservations or qualifications. Since a *bid* partakes of the nature of an offer to contract with the government, the government agency involved may or may not accept it. Moreover, being the owner of the property subject of the bid, the government has the power to determine who shall be its recipient, as well as under what terms it may be awarded. In this sense, participation in the bidding process is a privilege inasmuch as it can only be exercised under existing criteria imposed by the government itself. As such, prospective bidders, including Pinatubo, cannot claim any demandable right to take part in it if they fail to meet these criteria. Thus, it has been stated that under the traditional form of property ownership, recipients of privileges or largesse from the government cannot be said to have property rights because they possess no traditionally recognized proprietary interest therein.

3. ID.; ID.; ID.; ID.; ID.; DISCRETION TO ACCEPT OR REJECT BIDS CANNOT BE DISTURBED BY COURTS UNLESS IT IS EXERCISED ARBITRARILY.— [A]s the discretion to accept or reject bids and award contracts is of such wide latitude, courts will not interfere, unless it is apparent that such discretion is exercised arbitrarily, or used as a shield to a fraudulent award. The exercise of that discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation. This task can best be discharged by the concerned government agencies, not by the courts. Courts will not interfere with executive or legislative discretion exercised within those boundaries. Otherwise, they stray into the realm of policy decision-making. Limiting qualified bidders in this case to partnerships or corporations that directly use aluminum as the raw material in producing finished products made purely or partly of aluminum was an exercise of discretion by the NPC. Unless the discretion was exercised arbitrarily or used as a subterfuge for fraud, the Court will not interfere with the exercise of such discretion.

4. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; DOES NOT PRECLUDE VALID CLASSIFICATION.— The equal protection clause means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances." The guaranty of the equal protection of the laws is not violated by a legislation based on a reasonable classification. The equal protection clause, therefore, does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is reasonable and not arbitrary.

5. ID.; ID.; ID.; ID.; ID.; VALID CLASSIFICATION; PRESENT IN CASE AT BAR.— Items 3 and 3.1 met the standards of a valid classification. Indeed, as juxtaposed by the RTC, the purpose of NPC Circular No. 99-75 was to dispose of the ACSR wires. As stated by Pinatubo, it was also meant to earn income for the government. Nevertheless, the disposal and revenue-generating objective of the circular was not an end in itself and could not bar NPC from imposing conditions for the proper disposition and ultimately, the legitimate use of the scrap ACSR wires. In giving preference to direct manufacturers and

producers, it was the intent of NPC to support RA 7832, which penalizes the theft of ACSR in excess of 100 MCM. x x x Items 3 and 3.1 clearly did not infringe on the equal protection clause as these were based on a reasonable classification intended to protect, not the right of any business or trade but the integrity of government property, as well as promote the objectives of RA 7832. Traders like Pinatubo could not claim similar treatment as direct manufacturers/processors especially in the light of their failure to negate the rationale behind the distinction.

6. ID.; ADMINISTRATIVE LAW; REPUBLIC ACT 9184 (GOVERNMENT PROCUREMENT REFORM ACT); BIDDING PROCESS; PRINCIPLE OF COMPETITIVENESS; PRESUPPOSES THE ELIGIBILITY AND QUALIFICATION OF A CONTRACTING PARTY.— Pinatubo contends that the condition imposed by NPC under items 3 and 3.1 violated the principle of competitiveness advanced by RA 9184 (Government Procurement Reform Act) which states: "*SEC. 3. Governing Principles on Government Procurement.* x x x b) Competitiveness by extending equal opportunity to enable private contracting parties who are **eligible** and **qualified** to participate in public bidding." The foregoing provision imposed the precondition that the contracting parties should be *eligible* and *qualified*. It should be emphasized that the bidding process was not a "free-for-all" where any and all interested parties, qualified or not, could take part. Section 5(e) of RA 9184 defines competitive bidding as a "method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, **eligibility screening of prospective bidders**, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract x x x." The law categorically mandates that prospective bidders are subject to eligibility screening, and as earlier stated, bidding rules may specify other conditions or order that the bidding process be subjected to certain reservations or qualifications. Thus, in its pre-qualification guidelines issued for the sale of scrap ACSRs, the NPC reserved the right to pre-disqualify any applicant who did not meet the requirements for pre-qualification. Clearly, the competitiveness policy of a bidding process presupposes the eligibility and qualification of a contestant; otherwise, it defeats the principle that only

"responsible" and "qualified" bidders can bid and be awarded government contracts.

7. ID.; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; FREE ENTERPRISE SYSTEM; NATURE.— Our free enterprise system is not based on a market of pure and unadulterated competition where the State pursues a strict hands-off policy and follows the let-the-devil-devour-the-hindmost rule. x x x [T]he mere fact that incentives and privileges are granted to certain enterprises to the exclusion of others does not render the issuance unconstitutional for espousing unfair competition. While the Constitution enshrines free enterprise as a policy, it nonetheless reserves to the government the power to intervene whenever necessary to promote the general welfare. In the present case, the unregulated disposal and sale of scrap ACSR wires will hamper the government's effort of curtailing the pernicious practice of trafficking stolen government property. This is an evil sought to be prevented by RA 7832 and certainly, it was well within the authority of the NPC to prescribe conditions in order to prevent it.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rommel V. Oliva for respondent.

D E C I S I O N

CORONA, *J.*:

The National Power Corporation (NPC)[1] questions the decision dated June 30, 2006 rendered by the Regional Trial Court (RTC) of Mandaluyong City, Branch 213 declaring items 3 and 3.1 of NPC Circular No. 99-75 unconstitutional. The dispositive portion of the decision provides:

WHEREFORE then, in view of the foregoing, judgment is hereby rendered declaring item[s] 3 and 3.1 of NAPOCOR Circular

[1] Represented by the Office of the Solicitor General.

No. 99-75, which [allow] only partnerships or corporations that directly use aluminum as the raw material in producing finished products either purely or partly out of aluminum, to participate in the bidding for the disposal of ACSR wires as unconstitutional for being violative of substantial due process and the equal protection clause of the Constitution as well as for restraining competitive free trade and commerce.

The claim for attorney's fees is denied for lack of merit.

No costs.

SO ORDERED.[2]

NPC also assails the RTC resolution dated November 20, 2006 denying its motion for reconsideration for lack of merit.[3]

In this petition, NPC poses the sole issue for our review:

WHETHER OR NOT THE RTC GRAVELY ERRED WHEN IT DECLARED ITEMS 3 AND 3.1 OF NAPOCOR CIRCULAR NO. 99-75 AS UNCONSTITUTIONAL FOR BEING VIOLATIVE OF SUBSTANTIAL DUE PROCESS AND THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION AS WELL AS FOR RESTRAINING COMPETITIVE FREE TRADE AND COMMERCE.[4]

NPC Circular No. 99-75[5] dated October 8, 1999 set the guidelines in the "disposal of scrap aluminum conductor steel-reinforced or ACSRs in order to decongest and maintain good housekeeping in NPC installations and to generate additional income for NPC." Items 3 and 3.1 of the circular provide:

3. QUALIFIED BIDDERS

3.1 Qualified bidders envisioned in this circular are partnerships or corporations that directly use aluminum as the raw material in producing finished products either purely or partly out

---

[2] *Rollo*, p. 40.

[3] *Id.*, p. 42.

[4] *Id.*, p. 21.

[5] Subject: Implementing Guidelines Governing the Disposal Through Sale of SCRAP ACSRs.

> of aluminum, or their duly appointed representatives. These bidders may be based locally or overseas.[6]

In April 2003, NPC published an invitation for the pre-qualification of bidders for the public sale of its scrap ACSR[7] cables. Respondent Pinatubo Commercial, a trader of scrap materials such as copper, aluminum, steel and other ferrous and non-ferrous materials, submitted a pre-qualification form to NPC. Pinatubo, however, was informed in a letter dated April 29, 2003 that its application for pre-qualification had been denied.[8] Petitioner asked for reconsideration but NPC denied it.[9]

Pinatubo then filed a petition in the RTC for the annulment of NPC Circular No. 99-75, with a prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction.[10] Pinatubo argued that the circular was unconstitutional as it violated the due process and equal protection clauses of the Constitution, and ran counter to the government policy of competitive public bidding.[11]

The RTC upheld Pinatubo's position and declared items 3 and 3.1 of the circular unconstitutional. The RTC ruled that it was violative of substantive due process because, while it created rights in favor of third parties, the circular had not been published. It also pronounced that the circular violated the equal protection clause since it favored manufacturers and processors of aluminum scrap *vis-à-vis* dealers/traders in the purchase of aluminum ACSR cables from NPC. Lastly, the RTC found that the circular denied traders the right to exercise their business and restrained free competition inasmuch as it allowed only a certain sector to participate in the bidding.[12]

---

[6] *Rollo*, p. 43.

[7] Aluminum conductor steel-reinforced.

[8] *Rollo*, p. 74.

[9] *Id.*, p. 56.

[10] Docketed as Civil Case No. MC-03-2179.

[11] *Rollo*, pp. 56-59.

[12] *Id.*, pp. 37-40.

In this petition, NPC insists that there was no need to publish the circular since it was not of general application. It was addressed only to particular persons or class of persons, namely the disposal committees, heads of offices, regional and all other officials involved in the disposition of ACSRs. NPC also contends that there was a substantial distinction between manufacturers and traders of aluminum scrap materials specially viewed in the light of RA 7832.[13] According to NPC, by limiting the prospective bidders to manufacturers, it could easily monitor the market of its scrap ACSRs. There was rampant fencing of stolen NPC wires. NPC likewise maintains that traders were not prohibited from participating in the pre-qualification as long as they had a tie-up with a manufacturer.[14]

The questions that need to be resolved in this case are:

(1) whether NPC Circular No. 99-75 must be published; and
(2) whether items 3 and 3.1 of NPC Circular No. 99-75 -
   (a) violated the equal protection clause of the Constitution and
   (b) restrained free trade and competition.

Tañada v. Tuvera[15] stressed the need for publication in order for statutes and administrative rules and regulations to have binding force and effect, *viz.*:

> x x x all statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity is fixed by the legislature.
>
> Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative power or, at present, directly conferred by the Constitution. Administrative Rules and Regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.[16]

---

[13] Republic Act No. 7832 or the Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994.

[14] *Id.*, pp. 22-30.

[15] G.R. No. 63915, 24 April 1985, 146 SCRA 446.

[16] *Id.*, p. 453-454.

Tañada, however, qualified that:

> Interpretative regulations and those **merely internal in nature**, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties.[17] (emphasis ours)

In this case, NPC Circular No. 99-75 did not have to be published since it was merely an internal rule or regulation. It did not purport to enforce or implement an existing law but was merely a directive issued by the NPC President to his subordinates to regulate the proper and efficient disposal of scrap ACSRs to qualified bidders. Thus, NPC Circular No. 99-75 defined the responsibilities of the different NPC personnel in the disposal, pre-qualification, bidding and award of scrap ACSRS.[18] It also provided for the deposit of a proposal bond to be submitted by bidders, the approval of the award, mode of payment and release of awarded scrap ACSRs.[19] All these guidelines were addressed to the NPC personnel involved in the bidding and award of scrap ACSRs. It did not, in any way, affect the rights of the public in general or of any other person not involved in the bidding process. Assuming it affected individual rights, it did so only remotely, indirectly and incidentally.

Pinatubo's argument that items 3 and 3.1 of NPC Circular No. 99-75 deprived it of its "right to bid" or that these conferred

---

[17] *Id.*, p. 454.

[18] Items 4.1 to 4.1.2 require Cost Center Heads to report either to the Chairman of the Central or Regional Asset Management Sub-Committee (CAMSUC/RAMSUC) all available scrap ACSRs in their respective area of responsibility; Items 4.2 to 4.2.5 tasked the Head Office Bidding and Services Section and the Regional Materials Planning Services with the pre-qualification of prospective bidders; Items 4.3 to 4.3.4 set the procedure in the public bidding to be conducted by the CAMSUC or RAMSUC; and Items 4.4 to 4.4.4 direct the appraisal and coordination by the Asset Disposal Section and its Regional Counterpart of the awarded scrap ACSRs.

[19] Items 5 to 8 and subsections.

such right in favor of a third person is erroneous. *Bidding*, in its comprehensive sense, means making an offer or an invitation to prospective contractors whereby the government manifests its intention to invite proposals for the purchase of supplies, materials and equipment for official business or public use, or for public works or repair.[20] Bidding rules may specify other conditions or require that the bidding process be subjected to certain reservations or qualifications.[21] Since a *bid* partakes of the nature of an offer to contract with the government,[22] the government agency involved may or may not accept it. Moreover, being the owner of the property subject of the bid, the government has the power to determine who shall be its recipient, as well as under what terms it may be awarded. In this sense, participation in the bidding process is a privilege inasmuch as it can only be exercised under existing criteria imposed by the government itself. As such, prospective bidders, including Pinatubo, cannot claim any demandable right to take part in it if they fail to meet these criteria. Thus, it has been stated that under the traditional form of property ownership, recipients of privileges or largesse from the government cannot be said to have property rights because they possess no traditionally recognized proprietary interest therein.[23]

Also, as the discretion to accept or reject bids and award contracts is of such wide latitude, courts will not interfere, unless it is apparent that such discretion is exercised arbitrarily, or used as a shield to a fraudulent award. The exercise of that discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation. This task can best be discharged by the concerned government agencies, not by the courts. Courts will not interfere with executive or

---

[20] *J.G. Summit Holdings, Inc. v. Court of Appeals*, G.R. No. 124293, 24 September 2003, 412 SCRA 10, 31-32.

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

[22] *Desierto v. Ocampo*, G.R. No. 155419, 4 March 2005, 452 SCRA 789, 804.

[23] *Terminal Facilities and Services Corporation v. Philippine Ports Authority*, G.R. No. 135639, 27 February 2002, 378 SCRA 82, 106.

legislative discretion exercised within those boundaries. Otherwise, they stray into the realm of policy decision-making.[24]

Limiting qualified bidders in this case to partnerships or corporations that directly use aluminum as the raw material in producing finished products made purely or partly of aluminum was an exercise of discretion by the NPC. Unless the discretion was exercised arbitrarily or used as a subterfuge for fraud, the Court will not interfere with the exercise of such discretion.

This brings to the fore the next question: whether items 3 and 3.1 of NPC Circular No. 99-75 violated the equal protection clause of the Constitution.

The equal protection clause means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances."[25] The guaranty of the equal protection of the laws is not violated by a legislation based on a reasonable classification.[26] The equal protection clause, therefore, does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is reasonable and not arbitrary.[27]

Items 3 and 3.1 met the standards of a valid classification. Indeed, as juxtaposed by the RTC, the purpose of NPC Circular No. 99-75 was to dispose of the ACSR wires.[28] As stated by Pinatubo, it was also meant to earn income for the government.[29] Nevertheless, the disposal and revenue-generating objective of

---

[24] *Albay Accredited Constructors Association, Inc. v. Desierto*, G.R. No. 133517, 30 January 2006, 480 SCRA 520, 533.

[25] *Abakada Guro Party List v. Ermita*, G.R. No. 168056, 1 September 2005, 469 SCRA 1, 139.

[26] *Coconut Oil Refiners Association, Inc. v. Torres*, G.R. No. 132527, 29 July 2005, 465 SCRA 47, 75.

[27] *Ambros v. Commission on Audit*, G.R. No. 159700, 30 June 2005, 462 SCRA 572, 597.

[28] *Rollo*, p. 39.

[29] *Id.*, p. 206.

the circular was not an end in itself and could not bar NPC from imposing conditions for the proper disposition and ultimately, the legitimate use of the scrap ACSR wires. In giving preference to direct manufacturers and producers, it was the intent of NPC to support RA 7832, which penalizes the theft of ACSR in excess of 100 MCM.[30] The difference in treatment between direct manufacturers and producers, on one hand, and traders, on the other, was rationalized by NPC as follows:

> x x x NAPOCOR can now easily monitor the market of its scrap ACSR wires and verify whether or not a person's possession of such materials is legal or not; and consequently, prosecute under R.A. 7832, those whose possession, control or custody of such material is unexplained. This is based upon the reasonable presumption that if the buyer were a manufacturer or processor, the scrap ACSRs end with him as the latter uses it to make finished products; but if the buyer were a trader, there is greater probability that the purchased materials may pass from one trader to another. Should traders without tie-up to manufacturers or processors of aluminum be allowed to participate in the bidding, the ACSRs bidded out to them will likely co-mingle with those already proliferating in the illegal market. Thus, great difficulty shall be encountered by NAPOCOR and/or those authorities tasked to implement R.A. 7832 in determining whether or not the ACSRs found in the possession, control and custody of a person suspected of theft [of] electric power transmission lines and materials are the fruit of the offense defined in Section 3 of R.A. 7832.[31]

Items 3 and 3.1 clearly did not infringe on the equal protection clause as these were based on a reasonable classification intended to protect, not the right of any business or trade but the integrity of government property, as well as promote the objectives of RA 7832. Traders like Pinatubo could not claim similar treatment as direct manufacturers/processors especially in the light of their failure to negate the rationale behind the distinction.

Finally, items 3 and 3.1 of NPC Circular No. 99-75 did not restrain free trade or competition.

---

[30] Section 3 (a)(1) to (4), in relation to Section 3 (b)(2).

[31] *Rollo*, pp. 288-289.

Pinatubo contends that the condition imposed by NPC under items 3 and 3.1 violated the principle of competitiveness advanced by RA 9184 (Government Procurement Reform Act) which states:

> *SEC. 3. Governing Principles on Government Procurement.* – All procurement of the national government, its departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or controlled corporations, government financial institutions and local government units, shall, in all cases, be governed by these principles:
>
> x x x x x x x x x
>
> (b) Competitiveness by extending equal opportunity to enable private contracting parties who are **eligible** and **qualified** to participate in public bidding. (emphasis ours)

The foregoing provision imposed the precondition that the contracting parties should be *eligible* and *qualified*. It should be emphasized that the bidding process was not a "free-for-all" where any and all interested parties, qualified or not, could take part. Section 5(e) of RA 9184 defines competitive bidding as a "method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, **eligibility screening of prospective bidders**, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract x x x." The law categorically mandates that prospective bidders are subject to eligibility screening, and as earlier stated, bidding rules may specify other conditions or order that the bidding process be subjected to certain reservations or qualifications.[32] Thus, in its pre-qualification guidelines issued for the sale of scrap ACSRs, the NPC reserved the right to pre-disqualify any applicant who did not meet the requirements for pre-qualification.[33] Clearly, the competitiveness policy of a bidding process presupposes the eligibility and qualification of a contestant; otherwise, it defeats the principle that only "responsible" and "qualified"

---

[32] *Supra, J.G. Summit Holdings, Inc.*, note 20.

[33] *Rollo*, p. 69.

bidders can bid and be awarded government contracts.[34] Our free enterprise system is not based on a market of pure and unadulterated competition where the State pursues a strict hands-off policy and follows the let-the-devil-devour-the-hindmost rule.[35]

Moreover, the mere fact that incentives and privileges are granted to certain enterprises to the exclusion of others does not render the issuance unconstitutional for espousing unfair competition.[36] While the Constitution enshrines free enterprise as a policy, it nonetheless reserves to the government the power to intervene whenever necessary to promote the general welfare.[37] In the present case, the unregulated disposal and sale of scrap ACSR wires will hamper the government's effort of curtailing the pernicious practice of trafficking stolen government property. This is an evil sought to be prevented by RA 7832 and certainly, it was well within the authority of the NPC to prescribe conditions in order to prevent it.

WHEREFORE, the petition is hereby *GRANTED*. The decision of the Regional Trial Court of Mandaluyong City, Branch 213 dated June 30, 2006 and resolution dated November 20, 2006 are *REVERSED* and *SET ASIDE*. Civil Case No. MC-03-2179 for the annulment of NPC Circular No. 99-75 is hereby *DISMISSED*.

SO ORDERED.

Velasco, Jr., Peralta, Bersamin,[*] and *Mendoza, JJ.*, concur.

---

[34] *Supra*, *Desierto*, note 22, citing *National Power Corporation v. Philipp Brothers Oceanic, Inc.,* 369 SCRA 629 (2001).

[35] *Tatad v. Secretary of the Department of Energy*, G.R. No. 124360, 5 November 1997, 281 SCRA 330, 357.

[36] *Pest Management Association of the Philippines (PMAP) v. Fertilizer and Pesticide Authority (FPA)*, G.R. No. 156041, 21 February 2007, 516 SCRA 360, 369.

[37] *Ibid.*

[*] Additional member per raffle dated March 24, 2010 in lieu of Justice Antonio Eduardo B. Nachura.

SECOND DIVISION

[G.R. No. 180384. March 26, 2010]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **CORAZON M. VILLEGAS,** *respondent.*

[G.R. No. 180891. March 26, 2010]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF CATALINO V. NOEL and PROCULA P. SY,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); SPECIAL AGRARIAN COURTS; JURISDICTION.— "Jurisdiction" is the court's authority to hear and determine a case. The court's jurisdiction over the nature and subject matter of an action is conferred by law. In this case, the law that confers jurisdiction on Special Agrarian Courts designated by the Supreme Court in every province is Republic Act (R.A.) 6657 or the *Comprehensive Agrarian Reform Law of 1988*. Sections 56 and 57 are the relevant provisions x x x. The law is clear. A branch of an RTC designated as a Special Agrarian Court for a province has the original and exclusive jurisdiction over **all petitions** for the determination of just compensation in that province. In *Republic v. Court of Appeals*, the Supreme Court ruled that Special Agrarian Courts have original and exclusive jurisdiction over two categories of cases: (1) **all petitions** for the determination of just compensation to landowners, and (2) the prosecution of all criminal offenses under R.A. 6657.

2. ID.; ID.; ID.; ID.; EXERCISE POWER IN ADDITION TO OR OVER AND ABOVE THE ORDINARY JURISDICTION OF THE REGIONAL TRIAL COURT.— By "special" jurisdiction, Special Agrarian Courts exercise power in addition to or over and above the ordinary jurisdiction of the RTC, such as taking

cognizance of suits involving agricultural lands located outside their regular territorial jurisdiction, so long as they are within the province where they sit as Special Agrarian Courts.

3. ID.; ID.; ID.; REQUIRES THE DESIGNATION BY THE SUPREME COURT BEFORE A REGIONAL TRIAL COURT BRANCH CAN FUNCTION AS A SPECIAL AGRARIAN COURT; CASE AT BAR.— R.A. 6657 requires the designation by the Supreme Court before an RTC Branch can function as a Special Agrarian Court. The Supreme Court has not designated the single *sala* courts of RTC, Branch 64 of Guihulngan City and RTC, Branch 63 of Bayawan City as Special Agrarian Courts. Consequently, they cannot hear just compensation cases just because the lands subject of such cases happen to be within their territorial jurisdiction. Since RTC, Branch 32 of Dumaguete City is the designated Special Agrarian Court for the province of Negros Oriental, it has jurisdiction over **all** cases for determination of just compensation involving agricultural lands within that province, regardless of whether or not those properties are outside its regular territorial jurisdiction.

APPEARANCES OF COUNSEL

LBP Legal Services Group CARP Legal Services Department for Land Bank of the Philippines.

Nilo L. Ruperto for respondents in G.R. No. 180891.

Persephone D.C. Evangelista for respondent in G.R. No. 180384.

D E C I S I O N

ABAD, *J.*:

These consolidated cases[1] are about the jurisdiction of a Regional Trial Court (RTC), acting as a Special Agrarian Court, over just compensation cases involving agricultural lands located outside its regular territorial jurisdiction but within the province where it is designated as agrarian court under the Comprehensive Agrarian Reform Law of 1988.

---

[1] Resolution dated April 9, 2008 consolidating G.R. 180384 with G.R. 180891.

The Facts and the Case

Petitioner Land Bank of the Philippines (Land Bank) filed cases for determination of just compensation against respondent Corazon M. Villegas in Civil Case 2007-14174 and respondent heirs of Catalino V. Noel and Procula P. Sy in Civil Case 2007-14193 before the RTC of Dumaguete City, Branch 32, sitting as a Special Agrarian Court for the province of Negros Oriental. Respondent Villegas' property was in Hibaiyo, Guihulngan City, Negros Oriental, while respondent heirs' land was in Nangca, Bayawan City, Negros Oriental. These lands happened to be outside the regular territorial jurisdiction of RTC Branch 32 of Dumaguete City.

On September 13, 2007 RTC, Branch 32 dismissed Civil Case 2007-14174 for lack of jurisdiction.[2] It ruled that, although it had been designated Special Agrarian Court for Negros Oriental, the designation did not expand its territorial jurisdiction to hear agrarian cases under the territorial jurisdiction of the RTC, Branch 64 of Guihulngan City where respondent Villegas' property can be found.

On November 16, 2007 RTC, Branch 32 also dismissed Civil Case 2007-14193 for lack of jurisdiction. It pointed out that RTC, Branch 63 of Bayawan City had jurisdiction over the case since respondent heirs' property was within the latter court's territorial jurisdiction.

Petitioner Land Bank moved for the reconsideration of the dismissal of the two cases but RTC, Branch 32 denied both motions.[3] Aggrieved, Land Bank directly filed this petitions for *certiorari*[4] before this Court, raising a purely question of law.

Sole Question Presented

The sole question presented in these cases is whether or not an RTC, acting as Special Agrarian Court, has jurisdiction over

---

[2] *Rollo* (G.R. 180384), pp. 33-34.

[3] *Id.* at 35; *rollo* (G.R. 180891), p. 34.

[4] Civil Case 2007-14174 docketed as G.R. 180384; Civil Case 2007-14193 docketed as G.R. 180891.

just compensation cases involving agricultural lands located outside its regular jurisdiction but within the province where it is designated as an agrarian court under the Comprehensive Agrarian Reform Law of 1998.

The Court's Ruling

The RTC, Branch 32 based its order on Deputy Court Administrator (DCA) Zenaida Elepaño's opinion that single *sala* courts have jurisdiction over agrarian cases involving lands located within its territorial jurisdiction. An RTC branch acting as a special agrarian court, she claimed, did not have expanded territorial jurisdiction. DCA Elepaño said:

> **x x x [B]eing a single sala court, the Regional Trial Court, Branch 64, Guihulngan, Negros Oriental, has jurisdiction over all cases, including agrarian cases, cognizable by the Regional Trial Court emanating from the geographical areas within its territorial jurisdiction.**
>
> **Further, the jurisdiction of the Special Agrarian Courts over agrarian cases is co-extensive with its territorial jurisdiction. Administrative Order No. 80 dated July 18, 1989, as amended by Administrative Order No. 80A-90 dated February 23, 1990, did not expand the territorial jurisdiction of the courts designated as Special Agrarian Courts.**[5]

Respondent Villegas[6] adopts DCA Elepaño's view. Villegas points out that the designation of RTC, Branch 32 as a Special Agrarian Court did not expand its territorial jurisdiction. Although it has been designated Special Agrarian Court for the Province of Negros Oriental, its jurisdiction as an RTC did not cover the whole province.

Respondent Villegas adds that, in hearing just compensation cases, RTC, Branch 64 in Guihulngan City should be no different from the situation of other single *sala* courts that concurrently hear drugs and family-related cases even as the Supreme Court has designated family and drugs courts in Dumaguete City within

---

[5] *Rollo* (G.R. 180384), p. 77.

[6] *Id.* at 124-130; 463-472.

the same province. Further, Guihulngan City is more than 100 kilometers from Dumaguete City where RTC, Branch 32 sits. For practical considerations, RTC, Branch 64 of Guihulngan City should hear and decide the case.

For their part, on June 19, 2009 respondent heirs of Noel informed[7] the Court that petitioner Land Bank had already paid them for their land. Consequently, they have no further interest in the outcome of the case. It is not clear, however, if the trial court had already approved a settlement.

"Jurisdiction" is the court's authority to hear and determine a case. The court's jurisdiction over the nature and subject matter of an action is conferred by law.[8] In this case, the law that confers jurisdiction on Special Agrarian Courts designated by the Supreme Court in every province is Republic Act (R.A.) 6657 or the *Comprehensive Agrarian Reform Law of 1988*. Sections 56 and 57 are the relevant provisions:

SEC. 56. *Special Agrarian Court.* - The Supreme Court shall designate at least one (1) branch of the Regional Trial Court (RTC) within each province to act as a Special Agrarian Court.

The Supreme Court may designate more branches to constitute such additional Special Agrarian Courts as may be necessary to cope with the number of agrarian cases in each province. In the designation, the Supreme Court shall give preference to the Regional Trial Courts which have been assigned to handle agrarian cases or whose presiding judges were former judges of the defunct Court of Agrarian Relations.

The Regional Trial Court (RTC) judges assigned to said courts shall exercise said special jurisdiction in addition to the regular jurisdiction of their respective courts.

SEC. 57. *Special Jurisdiction.* - The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The

---

[7] Manifestation, *rollo* (G.R. 180891), pp. 128-129.

[8] *Spouses Atuel v. Spouses Valdez*, 451 Phil. 631, 641 (2003).

Rules of Court shall apply to all proceedings before the Special Agrarian Courts unless modified by this Act.

The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

The law is clear. A branch of an RTC designated as a Special Agrarian Court for a province has the original and exclusive jurisdiction over **all petitions** for the determination of just compensation in that province. In *Republic v. Court of Appeals*,[9] the Supreme Court ruled that Special Agrarian Courts have original and exclusive jurisdiction over two categories of cases: (1) **all petitions** for the determination of just compensation to landowners, and (2) the prosecution of all criminal offenses under R.A. 6657.

By "special" jurisdiction, Special Agrarian Courts exercise power in addition to or over and above the ordinary jurisdiction of the RTC, such as taking cognizance of suits involving agricultural lands located outside their regular territorial jurisdiction, so long as they are within the province where they sit as Special Agrarian Courts.

R.A. 6657 requires the designation by the Supreme Court before an RTC Branch can function as a Special Agrarian Court. The Supreme Court has not designated the single *sala* courts of RTC, Branch 64 of Guihulngan City and RTC, Branch 63 of Bayawan City as Special Agrarian Courts. Consequently, they cannot hear just compensation cases just because the lands subject of such cases happen to be within their territorial jurisdiction.

Since RTC, Branch 32 of Dumaguete City is the designated Special Agrarian Court for the province of Negros Oriental, it has jurisdiction over **all** cases for determination of just compensation involving agricultural lands within that province, regardless of whether or not those properties are outside its regular territorial jurisdiction.

---

[9] 331 Phil. 1070, 1075 (1996).

WHEREFORE, the Court *GRANTS* the petitions, *SETS ASIDE* the orders of the Regional Trial Court, Branch 32 of Dumaguete City dated September 13, 2007 and October 30, 2007 in Civil Case 2007-14174, entitled *Land Bank of the Philippines v. Corazon Villegas*, and its orders dated November 16, 2007 and December 14, 2007 in Civil Case 2007-14193, entitled *Land Bank of the Philippines v. Heirs of Catalino V. Noel and Procula P. Sy*, which orders dismissed the cases before it for lack of jurisdiction. Further, the Court *DIRECTS* the Regional Trial Court, Branch 32 of Dumaguete City to immediately hear and decide the two cases unless a compromise agreement has in the meantime been approved in the latter case.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Perez, JJ.*, concur.

THIRD DIVISION

[G.R. No. 180471. March 26, 2010]

ALANGILAN REALTY & DEVELOPMENT CORPORATION, *petitioner, vs.* **OFFICE OF THE PRESIDENT, represented by ALBERTO ROMULO, as Executive Secretary, and ARTHUR P. AUTEA, as Deputy Secretary; and DEPARTMENT OF AGRARIAN REFORM,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); COVERS LANDS NOT CONVERTED INTO NON-AGRICULTURAL USES BEFORE JUNE 15, 1988; CASE AT BAR.— [L]ands devoted

to non-agricultural activity are outside the coverage of CARL. These include lands previously converted into non-agricultural uses prior to the effectivity of the CARL on June 15, 1988. Unfortunately, petitioner failed to convince us that the Alangilan landholding ceased to be agricultural at the time of the effectivity of the CARL. It is beyond cavil that the Alangilan landholding was classified as *agricultural, reserved for residential* in 1982, and was reclassified as *residential-1* in 1994. However, contrary to petitioner's assertion, the term *reserved for residential* does not change the nature of the land from agricultural to non-agricultural. As aptly explained by the DAR Secretary, the term *reserved for residential* simply reflects the intended land use. It does not denote that the property has already been reclassified as *residential,* because the phrase *reserved for residential* is not a land classification category. Indubitably, at the time of the effectivity of the CARL in 1988, the subject landholding was still *agricultural*. Not having been converted into, or classified as, *residential* before June 15, 1988, the Alangilan landholding is, therefore, covered by the CARP. The subsequent reclassification of the landholding as *residential-1* in 1994 cannot place the property outside the ambit of the CARP, because there is no showing that the DAR Secretary approved the reclassification.

2. ID.; ID.; ID.; DEPARTMENT OF AGRARIAN REFORM SECRETARY; HAS EXCLUSIVE JURISDICTION TO CLASSIFY AND IDENTIFY LAND HOLDINGS FOR COVERAGE UNDER THE COMPREHENSIVE AGRARIAN REFORM PROGRAM.— The exclusive jurisdiction to classify and identify landholdings for coverage under the CARP is reposed in the DAR Secretary. The matter of CARP coverage, like the instant case for application for exemption, is strictly part of the administrative implementation of the CARP, a matter well within the competence of the DAR Secretary. As we explained in *Leonardo Tarona, et al. v. Court of Appeals (Ninth Division), et al.*: "The power to determine whether a property is subject to CARP coverage lies with the DAR Secretary pursuant to Section 50 of R.A. No. 6657. Verily, it is explicitly provided under Section 1, Rule II of the DARAB Revised Rules that matters involving strictly the administrative implementation of the CARP and other agrarian laws and regulations, shall be the exclusive prerogative of and cognizable by the Secretary of the DAR."

3. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES, GENERALLY ACCORDED RESPECT AND EVEN FINALITY ON APPEAL.— [I]t is well settled that factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial evidence. The factual findings of the DAR Secretary, who, by reason of his official position, has acquired expertise in specific matters within his jurisdiction, deserve full respect and, without justifiable reason, ought not to be altered, modified, or reversed. In this case, petitioner utterly failed to show justifiable reason to warrant the reversal of the decision of the DAR Secretary, as affirmed by the OP and the CA.

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for petitioner.

The Solicitor General for respondents.

D E C I S I O N

NACHURA, *J.*:

At bar is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Alangilan Realty & Development Corporation (petitioner), challenging the August 28, 2007 Decision[1] and the November 12, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 76525.

Petitioner is the owner/developer of a 17.4892-hectare land in *Barangays* Alangilan and Patay in Batangas City (Alangilan landholding). On August 7, 1996, petitioner filed an *Application and/or Petition for Exclusion/Exemption from Comprehensive*

---

[1] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Bienvenido L. Reyes and Aurora Santiago-Lagman, concurring; *rollo*, pp. 55-66.

[2] *Id.* at 68.

Agrarian Reform Program (CARP) Coverage[3] of the Alangilan landholding with the Municipal Agrarian Reform Office (MARO) of the Department of Agrarian Reform (DAR). It averred that, in 1982, the *Sangguniang Bayan* of Batangas City classified the subject landholding as *reserved for residential* under a zoning ordinance (1982 Ordinance), which was approved by the Human Settlement Regulatory Commission. It further alleged that, on May 17, 1994, the *Sangguniang Panglungsod* of Batangas City approved the City Zoning Map and Batangas Comprehensive Zoning and Land Use Ordinance (1994 Ordinance), reclassifying the landholding as *residential-1*. Petitioner thus claimed exemption of its landholding from the coverage of the CARP. In support of its application, petitioner submitted a certification[4] dated October 31, 1995 of Zoning Administrator Delia O. Malaluan.

On May 6, 1997, then DAR Secretary Ernesto Garilao issued an Order[5] denying petitioner's application for exemption. The DAR Secretary noted that, as of February 15, 1993, the Alangilan landholding remained *agricultural, reserved for residential*. It was classified as *residential-1* only on December 12, 1994 under *Sangguniang Panlalawigan* Resolution No. 709, series of 1994. Clearly, the subject landholding was still *agricultural* at the time of the effectivity of Republic Act No. 6657, or the Comprehensive Agrarian Reform Law (CARL), on June 15, 1988. The qualifying phrase *reserved for residential* means that the property is still classified as *agricultural,* and is covered by the CARP.

The DAR Secretary disposed thus:

> WHEREFORE, premises considered, the herein application for exemption involving seventeen (17) parcels of land with an aggregate area of 23.9258 hectares located [in] Calicanto, Alangilan and Patay, Batangas City is hereby GRANTED insofar as the 4.9123 hectares [of] Calicanto landholdings are concerned and DENIED with respect

---

[3] CA *rollo*, pp. 104-121.

[4] *Id.* at 74.

[5] *Id.* at 61-65.

to the 17.4892 Alangilan properties, subject to the payment of disturbance compensation to qualified tenants, if any there be.

SO ORDERED.[6]

Petitioner moved for reconsideration of the Order, arguing that the Alangilan landholding was already *reserved* for residential use as early as October 6, 1982. Invoking this Court's ruling in *Natalia Realty, Inc. v. Department of Agrarian Reform*,[7] petitioner insisted that the subject landholding was outside the coverage of the CARP. Petitioner also submitted a *Supplemental to Motion for Reconsideration*,[8] arguing that the landholding had already been reclassified as *reserved for residential* and had been earmarked for residential use even before the effectivity of the CARL. Accordingly, its non-development into a subdivision did not remove the landholding's zoning classification as *reserved for residential*.

On July 8, 1997, petitioner submitted an *Addendum to Supplemental to Motion for Reconsideration*,[9] attaching another certification stating that the Alangilan landholding was zoned as *reserved for residential* in 1982, and became *residential-1* in 1994. In a *2nd Addendum to Supplemental to Motion for Reconsideration*,[10] petitioner submitted another certification whereby the zoning administrator withdrew her first certification and clarified that the phrase *agricultural, reserved for residential* spoke of two classifications, namely, *agricultural* (coded brown in the map) and *reserved for residential* (coded brown with diagonal lines), stating further that the Alangilan landholding was *reserved for residential*.

However, the DAR Secretary was not at all persuaded, and denied petitioner's motion for reconsideration on December 21, 1998, *viz.*:

---

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

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

[8] CA *rollo*, pp. 118-121.

[9] *Id.* at 122-125.

[10] *Id.* at 126-129.

After a careful review and evaluation of the case, this Office finds no cogent reason to reverse its Order, dated 6 May 1997.

Administrative Order No. 6, series of 1994 provides that "lands that are classified as commercial, industrial or residential before 15 June 1988 no longer need any conversion clearance"; as such, they are exempt from the coverage of R.A. [No.] 6657.

The phrase "Reserved for Residential" is not a zoning classification contemplated in the aforestated A.O. as to exempt a particular land from the coverage of R.A. 6657. Moreso in this case, because the phrase was attached to the word "Agricultural"; in fact, we can say that it merely qualified the term "Agricultural." We believe that the correct interpretation of the zoning should be that the land is agricultural, but it may be classified and used for residential purposes in some future time, precisely, because it has been reserved for residential use. This interpretation is supported by the fact that the zoning of the land became Residential only in 1994, per Ordinance No. 3, series of 1994, which established a Comprehensive Zoning Regulation and Land Use for Batangas City. To reiterate, the Sanggunian Members of Batangas City would have expressly, unequivocably, and unqualifiedly zoned the area as "residential" if they had intended it to be zoned as such in 1982. They never did until the issuance of Ordinance No. 3 in 1994.

It is also important to note, that the legend used in the Zoning Map of Batangas City approved by HSRC (now HLURB) per Resolution No. 92, dated 6 October 1982, indicated a certain kind of arrangement which put in sequential order those that were similarly zoned, but with different qualifications and/or characteristics. Thus, "residential-1," "residential-2," and "residential-3" were placed on top of the list one after the other, while "Agricultural, reserved for residential" and mining agricultural were put at the bottom, but also enumerated one after the other. If the subject properties were classified more of residential than agricultural, it should have been placed in the legend right after "residential-3," and the color that should have been used was not brown but a shade of white with diagonal lines to reflect its dominant residential character.

Even the Applicant was aware that the classification of the area was agricultural. In his letter to the MARO of Batangas City, dated 24 October 1995, the Applicant categorically admitted that the Alangilan Landholding was classified as agricultural. The said letter stated as follows:

> At present, the subject properties are classified as agricultural. However, Barangay Alangilan where these properties are located have been declared by an ordinance of the Municipal Council of Batangas City as commercial, industrial and/or residential.

As to what ordinance the Applicant was referring to was not specified. However, it seems obvious that he was referring to the 1994 Comprehensive Zoning Regulations and Land Use for Batangas City (Ordinance No. 3, series of 1994). The previous zoning ordinance, i.e. the Batangas City Zoning Ordinance approved under HSRC Resolution No. R-92, series of 1982, dated 6 October 1982, classified the said landholding as "Agricultural, Reserved for Residential." It was Ordinance No. 3, series of 1994 that explicitly classified the area as "Residential-1."

This Office, therefore, is convinced that the zoning classification of the Alangilan Landholding prior to 15 June 1988 was Agricultural, although with the qualification that it had been reserved for residential use. The ocular inspection conducted in 1996 by the representatives of the MARO, PARO and RARO confirmed that the Alangilan Landholding was still used for agricultural purposes. The area was planted with mangoes and coconuts.

We could not give credence to the 3rd Certification, dated 9 December 1997, of Zoning Administrator Delia Malaluan-Licarte, because it does not conform to the Batangas City Zoning Ordinance and Map approved under HSRC Resolution No. R-92, series of 1982, dated 6 October 1982. In the first place, what is asked from Zoning Administrators is merely to state the kind of classification/zoning where a certain area falls as provided in the approved Zoning Ordinance. In the case at bar, the Zoning Administrator went beyond her authority. In effect, she reclassified the area from "Agricultural, Reserved for Residential" to "Reserved for Residential" by claiming that there were actually two zones provided by the Sanggunian Members. It was actually a modification of the zoning ordinance which, to us, is clearly unwarranted.

Moreover, even assuming the Zoning Administrator is correct, the classification "Reserved for Residential" is not within the contemplation of A.O. No. 6, series of 1994. The said A.O. talks about lands that were classified as residential before 15 June 1988. Alangilan Landholding was merely reserved for Residential. It connotes

something in the future, which is, that the land may be classified as residential in some future time. It was identified as an expansion area, nothing else. The fact remains that in 1982, the landholding was still Agricultural, and this fact is not changed by the re-interpretation made by Zoning Administrator Delia Malaluan-Licarte.[11]

On appeal, the Office of the President (OP) affirmed the decision of the DAR Secretary:

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED and the appealed Order dated 21 December 1998 of the Department of Agrarian Reform [is] AFFIRMED in *toto*.

Parties are required to INFORM this Office, within five (5) days from notice, of the dates of their receipt of this Decision.

SO ORDERED.[12]

A motion for reconsideration was filed, but the motion also suffered the same fate, as the OP denied it on March 20, 2003.[13]

Petitioner went up to the CA *via* a petition for review on *certiorari*, assailing the OP decision. On August 28, 2007, the CA dismissed the petition. The CA noted the report of MARO, Provincial Agrarian Reform Office (PARO), and Regional Agrarian Reform Office (RARO) that the Alangilan landholding was devoted to agricultural activities prior to the effectivity of the CARP on June 15, 1988 and even thereafter. Likewise, there was no showing that it was classified as commercial, industrial, or residential in town plans and zoning ordinances of the Housing and Land Use Regulatory Board. Accordingly, the Alangilan property did not cease to be agricultural. The 1994 Ordinance classifying the property as *residential-1* did not convert or reclassify the Alangilan landholding as residential because there was no proof that a conversion clearance from the DAR was obtained. Thus, despite its reclassification in 1994 by the City Government of Batangas, the Alangilan landholding

---

[11] *Id.* at 69-71.

[12] *Id.* at 58.

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

remained under CARP coverage. Petitioner filed a motion for reconsideration, but the CA denied it on November 12, 2007.

Hence, this appeal by petitioner, arguing that:

THE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT PETITIONER'S ALANGILAN LANDHOLDING IS SUBJECT TO THE COVERAGE OF THE COMPREHENSIVE AGRARIAN REFORM LAW, NOTWITHSTANDING THAT THE PROPERTY HAS BEEN CONVERTED TO NON-AGRICULTURAL USES BY THE ZONING ORDINANCE OF THE CITY OF BATANGAS PRIOR TO THE LAW.[14]

Petitioner insists on exemption of the Alangilan landholding from CARP coverage. It argues that the subject landholding had already been converted into non-agricultural use long before the advent of the CARP. The passage of the 1982 Ordinance, classifying the property as *reserved for residential*, it asserts, effectively transformed the land into non-agricultural use, and thus, outside the ambit of the CARL. It cites *Natalia,* wherein it was ruled that lands intended for residential use are outside the coverage of the CARL.

Indeed, lands devoted to non-agricultural activity are outside the coverage of CARL. These include lands previously converted into non-agricultural uses prior to the effectivity of the CARL on June 15, 1988. Unfortunately, petitioner failed to convince us that the Alangilan landholding ceased to be agricultural at the time of the effectivity of the CARL.

It is beyond cavil that the Alangilan landholding was classified as *agricultural, reserved for residential* in 1982, and was reclassified as *residential-1* in 1994. However, contrary to petitioner's assertion, the term *reserved for residential* does not change the nature of the land from agricultural to non-agricultural. As aptly explained by the DAR Secretary, the term *reserved for residential* simply reflects the intended land use. It does not denote that the property has already been reclassified as *residential,* because the phrase *reserved for residential* is not a land classification category.

---

[14] *Rollo,* p. 21.

Indubitably, at the time of the effectivity of the CARL in 1988, the subject landholding was still *agricultural*. This was bolstered by the fact that the *Sangguniang Panlalawigan* had to pass an Ordinance in 1994, reclassifying the landholding as *residential-1*. If, indeed, the landholding had already been earmarked for residential use in 1982, as petitioner claims, then there would have been no necessity for the passage of the 1994 Ordinance.

Petitioner cannot take refuge in our ruling in *Natalia*. The case is not on all fours with the instant case. In *Natalia*, the entire property was converted into residential use in 1979 and was developed into a low-cost housing subdivision in 1982. Thus, the property was no longer devoted to agricultural use at the time of the effectivity of the CARL.

In this case, however, petitioner failed to establish that the subject landholding had already been converted into residential use prior to June 15, 1988. We also note that the subject landholding was still being utilized for agricultural activities at the time of the filing of the application for exemption. The ocular inspection, jointly conducted by the MARO, PARO and RARO, disclosed that the landholding was planted with mangoes and coconuts.[15]

In *Department of Agrarian Reform v. Oroville Development Corporation*,[16] we held:

> [i]n order to be exempt from CARP coverage, the subject property must have been classified as industrial/residential before June 15, 1988. In this case, the DAR's examination of the zoning ordinances and certifications pertaining to the subject property, as well as its field investigation, disclosed that the same remains to be agricultural. The Zoning Certifications to the effect that the land is within the city's potential growth area for urban expansion are inconsequential as they do not reflect the present classification of the land but merely its intended land use.

Not having been converted into, or classified as, *residential* before June 15, 1988, the Alangilan landholding is, therefore,

---

[15] *See* Order dated December 21, 1998; CA *rollo*, p. 67.

[16] G.R. No. 170823, March 27, 2007, 519 SCRA 112.

covered by the CARP. The subsequent reclassification of the landholding as *residential-1* in 1994 cannot place the property outside the ambit of the CARP, because there is no showing that the DAR Secretary approved the reclassification.

In a last-ditch effort to secure a favorable decision, petitioner assails the authority of the DAR Secretary to determine the classification of lands. It asserts that the power to classify lands is essentially a legislative function that exclusively lies with the legislative authorities, and thus, when the *Sangguniang Bayan* of Batangas City declared the Alangilan landholding as residential in its 1994 Ordinance, its determination was conclusive and cannot be overruled by the DAR Secretary.

The argument is specious.

The exclusive jurisdiction to classify and identify landholdings for coverage under the CARP is reposed in the DAR Secretary. The matter of CARP coverage, like the instant case for application for exemption, is strictly part of the administrative implementation of the CARP, a matter well within the competence of the DAR Secretary.[17] As we explained in *Leonardo Tarona, et al. v. Court of Appeals (Ninth Division), et al.*:[18]

> The power to determine whether a property is subject to CARP coverage lies with the DAR Secretary pursuant to Section 50 of R.A. No. 6657. Verily, it is explicitly provided under Section 1, Rule II of the DARAB Revised Rules that matters involving strictly the administrative implementation of the CARP and other agrarian laws and regulations, shall be the exclusive prerogative of and cognizable by the Secretary of the DAR.

Finally, it is well settled that factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial evidence. The factual findings of the DAR Secretary, who, by reason of his official position, has acquired expertise in specific matters

---

[17] See *Lakeview Golf and Country Club, Inc. v. Luzvimin Samahang Nayon, et al.*, G.R. No. 171253, April 16, 2009.

[18] G.R. No. 170182, June 18, 2009.

within his jurisdiction, deserve full respect and, without justifiable reason, ought not to be altered, modified, or reversed.[19] In this case, petitioner utterly failed to show justifiable reason to warrant the reversal of the decision of the DAR Secretary, as affirmed by the OP and the CA.

WHEREFORE, the petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 76525 are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 180523. March 26, 2010]

DOÑA ROSANA REALTY AND DEVELOPMENT CORPORATION and SY KA KIENG, *petitioners, vs.* **MOLAVE DEVELOPMENT CORPORATION represented by TEOFISTA TINITIGAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; DISMISSAL OF COMPLAINT ON THE GROUND THAT THE CLAIM OR DEMAND HAS BEEN ABANDONED; PROPER IN CASE AT BAR.— Section 1, Rule 16 of the Rules of Civil Procedure provides that the trial court may dismiss a complaint on the ground that the claim or

---

[19] *Department of Agrarian Reform v. Samson*, G.R. Nos. 161910 and 161930, June 17, 2008, 554 SCRA 500, 511.

demand set forth in the plaintiff's complaint has been paid, waived, abandoned, or otherwise extinguished. This ground essentially admits the obligation set out in the complaint but points out that such obligation has been extinguished, in this case apparently by abandonment after respondent Molave Development received partial reimbursement from Medina as a consequence of the cancellation of contract to sell between them. On March 13, 1997, 10 days after it filed its complaint with the RTC, Molave Development acknowledged having received ₱1.3 million as a consideration for the cancellation of its contract to sell with Medina.

2. ID.; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF GOOD FAITH; NOT DEFEATED IN CASE AT BAR.— [A]s the RTC correctly held, respondent Molave Development failed to overcome the presumption of good faith in favor of petitioner Doña Rosana Realty. The title to the property was unencumbered when it bought the same. And the evidence shows that Doña Rosana Realty learned of the existence of the unregistered contract to sell only after it had bought the land. Indeed, it even filed a third party complaint against Willie Miranda and Atty. Supapo, Jr., for allegedly conniving with Medina in concealing that contract to sell. The letter of petitioner Doña Rosana Realty's lawyer to the DAR dated September 17, 1996, stating that Medina had retained him to represent her in the tenancy case involving the land cannot serve as notice to Doña Rosana Realty that Medina executed a contract to sell in favor of respondent Molave Development. The letter did not mention such contract. At best, the letter served as notice to Doña Rosana Realty that the land could have a tenancy problem.

APPEARANCES OF COUNSEL

Arturo S. Santos for petitioners.
Ricardo L. Albano for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the propriety of the trial court's dismissal of the plaintiff's complaint after receiving evidence at a

preliminary hearing of the affirmative defenses raised by the defendant.

The Facts and the Case

Carmelita Austria Medina (Medina) owned an 86.4959-hectare land in Anupil, Bamban, Tarlac, covered by Transfer Certificate of Title (TCT) T-31590. On December 16, 1994 she executed a contract to sell the land to respondent Molave Development Corporation (Molave Development), represented by its president, Teofista P. Tinitigan (Tinitigan), for ₱14 million. Molave Development paid ₱1 million to Medina upon the signing of the contract and ₱1.3 million more as first installment. But it refused to pay the rest of the installments on being informed by the Department of Agrarian Reform (DAR) of the existence of alleged tenants on the land.

Two years later or in January 1997, Medina wrote respondent Molave Development a letter, rescinding the contract to sell between them. Molave Development later learned that a month earlier or on December 18, 1996, Medina sold the land to petitioner Doña Rosana Realty and Development Corporation (Doña Rosana Realty) to whom the Register of Deeds issued TCT 288633.

After learning of the sale or on March 3, 1997 respondent Molave Development filed with the Regional Trial Court (RTC) of Capas, Tarlac, an action for specific performance, delivery of possession, and annulment of title in Civil Case 389 against Medina, petitioner Doña Rosana Realty, and its chairman of the board of directors, Sy Ka Kieng. Molave Development claimed that Medina and Doña Rosana Realty conspired to deprive it of the lot and prayed for an award of moral and exemplary damages plus attorney's fees for a total of ₱1.1 million.

By way of third party complaint, petitioner Doña Rosana Realty sued Medina's nephew, Wilfredo Miranda, and the latter's lawyer, Atty. Delfin Supapo, Jr., for allegedly conniving with Medina in concealing from it the contract to sell that Medina entered into with respondent Molave Development.

The RTC declared Medina in default. Petitioner Doña Rosana Realty, on the other hand, filed an answer and a motion to set the case for preliminary hearing on its special and affirmative defenses. Doña Rosana Realty claimed that it acted in good faith in purchasing the property and that respondent Molave Development was estopped from questioning the sale because it agreed to cancel the contract to sell and, after the complaint was filed, its president, Tinitigan, received from Medina's counsel a ₱1.3 million partial reimbursement as shown by a receipt dated March 13, 1997.[1]

For its part, Molave Development presented Tinitigan's letter to Medina dated March 15, 1997, informing the latter that she (Tinitigan) was treating the ₱1.3 million as partial payment for the damages she sought in the pending case before the trial court.

On February 5, 1998 the RTC denied petitioner Doña Rosana Realty's motion to dismiss[2] but, on petition with the Court of Appeals (CA), the latter court directed the RTC to conduct a preliminary hearing on Doña Rosana Realty's special affirmative defense of good faith.[3] The RTC did so and on November 19, 2003 it dismissed the complaint insofar as Doña Rosana Realty and Sy Ka Kieng were concerned.[4] It held that the latter were buyers in good faith and, therefore, respondent Molave Development had no cause of action against them. On July 16, 2004 the trial court denied Molave Development's motion for reconsideration.[5]

On appeal, the CA held that contrary to the ruling of the trial court, respondent Molave Development's complaint in fact stated a cause of action against Medina and petitioner Doña Rosana

---

[1] Records, p. 57.

[2] *Id.* at 108.

[3] CA-G.R. SP 49079. Molave filed a motion for reconsideration but was denied on October 14, 1999 (Records, Vol. I, p. 406).

[4] The Resolution was penned by Judge Alipio C. Yumul (*Rollo*, p. 128).

[5] Records, Vol. II, p. 896.

Realty. The CA thus remanded the case to the RTC for further proceedings.[6] Not satisfied with this ruling, Doña Rosana Realty took recourse to this Court through the present petition.

The Issue Presented

The issue presented in this case is whether or not the CA erred in holding that no ground existed for dismissing respondent Molave Development's complaint against petitioner Doña Rosana Realty given that such complaint stated a cause of action.

The Court's Ruling

The CA held, after closely examining respondent Molave Development's complaint below, that the same in fact stated a cause of action. The complaint alleged that the "circumstances show conspiracy and/or collusion to defraud plaintiffs by defendants."

But the CA seems to have missed the point in the RTC decision. It will be recalled that petitioner Doña Rosana Realty filed a motion with the RTC to hear and resolve its affirmative defenses. The RTC did so and resolved to deny the motion. On a petition filed with the CA, however, the latter court directed the RTC to hear and resolve Doña Rosana Realty's affirmative defense of good faith in buying Medina's property. The RTC complied and, after hearing the evidence of the parties, dismissed the case, holding that Doña Rosana Realty and its president were buyers of the property in good faith and Molave Development **did not have a cause of action** against them. Clearly, the RTC did not dismiss the case on the ground that **the complaint did not state a cause of action**, which is an entirely different matter.

Section 1, Rule 16 of the Rules of Civil Procedure provides that the trial court may dismiss a complaint on the ground that the claim or demand set forth in the plaintiff's complaint has been paid, waived, abandoned, or otherwise extinguished. This

---

[6] Penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr.

ground essentially admits the obligation set out in the complaint but points out that such obligation has been extinguished, in this case apparently by abandonment after respondent Molave Development received partial reimbursement from Medina as a consequence of the cancellation of contract to sell between them.

On March 13, 1997, 10 days after it filed its complaint with the RTC, Molave Development acknowledged having received ₱1.3 million as a consideration for the cancellation of its contract to sell with Medina. The acknowledgment receipt its president signed reads:

ACKNOWLEDGMENT RECEIPT

This is to acknowledge the receipt of one (1) Allied Bank Check No. 25111954 dated March 4, 1997 in the amount of ONE MILLION THREE HUNDRED THOUSAND (₱1,300,000.00) from Ms. Carmelita Austria Medina as partial reimbursement pursuant to the cancelled Contract to Sell (Doc. No. 447; page 190; Book 114; Series of 1994 Notarial Register of Atty. Delfin R. Supapo, Jr.) entered into between Ms. Medina and Molave Dev. Corporation over that parcel of land located at Bamban, Tarlac covered by TCT No. T-31590.[7]

Makati City. March 13, 1997.

MOLAVE DEV. CORPORATION

by:

TEOFISTA P. TINITIGAN
President[8]

Tinitigan of respondent Molave Development of course later asserted that she signed the above receipt because Medina's lawyer would not have released the check to her. But this is not a valid ground for claiming vitiation of consent. If she did not want to agree to the cancellation, she had no business signing the receipt and accepting the check. She could very well have stood her ground and pressed for complete performance of the

---

[7] Underscoring supplied.

[8] Records, Vol. I, p. 57.

contract to sell. Having received the ₱1.3 million, Molave Development's remaining remedy was to pursue a claim for the balance of ₱1 million that it paid Medina upon the execution of the contract to sell.

Further, as the RTC correctly held, respondent Molave Development failed to overcome the presumption of good faith in favor of petitioner Doña Rosana Realty.[9] The title to the property was unencumbered when it bought the same. And the evidence shows that Doña Rosana Realty learned of the existence of the unregistered contract to sell only after it had bought the land. Indeed, it even filed a third party complaint against Willie Miranda and Atty. Supapo, Jr., for allegedly conniving with Medina in concealing that contract to sell.

The letter of petitioner Doña Rosana Realty's lawyer to the DAR dated September 17, 1996, stating that Medina had retained him to represent her in the tenancy case involving the land cannot serve as notice to Doña Rosana Realty that Medina executed a contract to sell in favor of respondent Molave Development. The letter did not mention such contract. At best, the letter served as notice to Doña Rosana Realty that the land could have a tenancy problem.

In light of the foregoing, the Court holds that respondent Molave Development has no valid claim against petitioner Doña Rosana Realty and its president.

WHEREFORE, the Court *REVERSES* and *SETS ASIDE* the September 11, 2007 Decision and November 9, 2007 Resolution of the Court of Appeals in CA-G.R. CV 83599 and *REINSTATES* the November 19, 2003 Resolution of the Regional Trial Court of Capas, Tarlac, Branch 66, dismissing the complaint against Doña Rosana Realty Development Corporation and Sy Ka Kieng in Civil Case 389.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Perez, JJ.*, concur.

---

[9] Records, Vol. II, p. 900.

THIRD DIVISION

[G.R. No. 186498. March 26, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RONALDO DE GUZMAN** *y* **DANZIL,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, GENERALLY ACCORDED GREAT RESPECT ON APPEAL.— The findings of fact of the trial court are accorded great respect, even finality when affirmed by the CA, in the absence of any clear showing that some facts and circumstances of weight or substance that could have affected the result of the case have been overlooked, misunderstood, or misapplied.

2. ID.; CRIMINAL PROCEDURE; APPEALS; AN APPEAL THROWS THE WHOLE CASE OPEN FOR REVIEW.— Although the question of whether the degree of proof has been met is largely left for the trial courts to determine, an appeal throws the whole case open for review. Thus, the factual findings of the trial court may be reversed if, by the evidence or the lack of it, it appears that the trial court erred.

3. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE; ELUCIDATED.— The Constitution mandates that an accused in a criminal case shall be presumed innocent until the contrary is proven beyond reasonable doubt. The prosecution is laden with the burden to overcome such presumption of innocence by presenting the quantum of evidence required. Consequently, courts are required to put the prosecution evidence through the crucible of a severe testing, and the constitutional right to presumption of innocence requires them to take a more than casual consideration of every circumstance or doubt favoring the innocence of the accused. When the circumstances are capable of two or more inferences, as in this case, one of which is consistent with innocence and the other is compatible with guilt, the presumption of innocence must prevail, and the court must acquit.

4. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; DUTY TO PROVE THE GUILT OF AN ACCUSED IS REPOSED IN THE STATE.— The duty to prove the guilt of an accused is reposed in the State. Law enforcers and public officers have the duty to preserve the chain of custody over the seized drugs. This guarantee of the integrity of the evidence to be used against an accused goes to the very heart of his fundamental rights.

5. CRIMINAL LAW; PROSECUTION FOR ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In a prosecution for illegal sale of dangerous drugs, the following elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused. The presentation in court of the *corpus delicti* — the body or the substance of the crime – establishes the fact that a crime has actually been committed.

6. ID.; REPUBLIC ACT 9165 (THE DANGEROUS DRUGS ACT) AND ITS IMPLEMENTING RULES; PRESERVATION OF THE IDENTITY OF THE EVIDENCE, REQUIRED.— In a prosecution for violation of the Dangerous Drugs Act, the existence of the dangerous drug is a condition *sine qua non* for conviction. The dangerous drug is the very *corpus delicti* of the crime. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict. The *corpus delicti* should be identified with unwavering exactitude. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

7. ID.; ID.; PROCEDURE ON INVENTORY OF SIEZED ITEMS; NON-COMPLIANCE THEREWITH SHALL NOT RENDER

VOID AND INVALID THE SEIZURE AND CUSTODY OF THE DRUGS; CONDITIONS.— It is true that the IRR of R.A. No. 9165 provides that the physical inventory of the seized items may be done at the nearest police station, if the same cannot be done at the place where the items were seized. However, it must be emphasized that the IRR also provides that "non-compliance with these requirements **under justifiable grounds**, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." The failure to follow the procedure mandated under R.A. No. 9165 and its IRR **must be adequately explained**. The justifiable ground for non-compliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist. Accordingly, non-compliance with the procedure shall not render void and invalid the seizure and custody of the drugs only when: (1) such non-compliance is attended by justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. There must be proof that these two (2) requirements were met before such non-compliance may be said to fall within the scope of the proviso.

8. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION OF EVIDENCE; CHAIN OF CUSTODY RULE; EXPLAINED.— As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. Indeed, it is from the testimony of every witness who handled the evidence

that a reliable assurance can be derived that the evidence presented in court and that seized from the accused are one and the same.

9. ID.; ID.; ID.; ID.; ID.; PERFECT CHAIN, NOT ALWAYS THE STANDARD; UNBROKEN CHAIN OF CUSTODY, WHEN INDISPENSABLE AND ESSENTIAL.— While testimony about a perfect chain is not always the standard, because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination, and even substitution and exchange.

10. ID.; ID.; ID.; ID.; ID.; ID.; ID.; NARCOTIC SUBSTANCES, NATURE.— A unique characteristic of narcotic substances is that they are not readily identifiable as, in fact, they are subject to scientific analysis to determine their composition and nature. The Court cannot simply close its eyes to the likelihood, or at least to the possibility, that, at any point in the chain of custody, there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects that are readily identifiable must be applied, a more exacting standard that entails establishing a chain of custody of the item with sufficient completeness, if only to make it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

11. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; REASONABLE DOUBT; EXISTS WHEN THERE IS FAILURE TO ESTABLISH THE INTEGRITY OF SEIZED DRUGS THROUGH AN UNBROKEN CHAIN OF CUSTODY.— [T]he failure to establish, through convincing proof, that the integrity of the seized items has been adequately preserved through an unbroken chain of custody is enough to engender reasonable

doubt on the guilt of an accused. Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a person charged with a crime, but moral certainty is required as to every proposition of proof requisite to constitute the offense. A conviction cannot be sustained if there is a persistent doubt on the identity of the drug.

12. ID.; ID.; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; CANNOT BY ITSELF OVERCOME THE PRESUMPTION OF INNOCENCE.— The presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt. Moreover, the failure to observe the proper procedure negates the operation of the presumption of regularity accorded to police officers. As a general rule, the testimonies of the police officers who apprehended the accused are accorded full faith and credit because of the presumption that they have performed their duties regularly. But when the performance of their duties is tainted with failure to comply with the procedure and guidelines prescribed, the presumption is effectively destroyed. Thus, even if the defense evidence is weak, the prosecution's whole case still falls. The evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

NACHURA, *J.*:

Before this Court is an appeal by Ronaldo de Guzman *y* Danzil, accused in Criminal Case No. V-1118, filed before the Regional Trial Court (RTC) of Villasis, Pangasinan. He was charged with Illegal Sale of Dangerous Drugs, punishable

under Republic Act (R.A.) No. 9165.[1] In a decision[2] dated December 5, 2006, the trial court found De Guzman guilty beyond reasonable doubt of the crime charged. His conviction was affirmed by the Court of Appeals (CA) in a Decision[3] dated June 26, 2008.

On June 10, 2003, a confidential informant reported De Guzman's drug pushing activities to Alcala, Pangasinan's Chief of Police, Sotero Soriano, Jr. Soriano immediately formed a team to conduct a buy-bust operation.[4] After a short briefing, the team proceeded to De Guzman's house. Once there, the confidential informant introduced appellant to Senior Police Officer (SPO)1 Daniel Llanillo, who was designated as poseur-buyer. Llanillo tried to buy ₱200 worth of *shabu*. He handed two marked ₱100 bills to De Guzman, and the latter, in turn, gave him two heat-sealed transparent plastic sachets containing what was suspected as *shabu*. Thereafter, Llanillo gave the prearranged signal to the rest of the team. Appellant was arrested and frisked. The team recovered from De Guzman two packs of empty transparent sachets, three disposable lighters, and ₱3,380.00 in cash, which included the marked money paid by SPO1 Llanillo. The team then brought De Guzman to the police station in Alcala, Pangasinan.[5]

At the police station, De Guzman and the items seized during the buy-bust operation were turned over to the police investigator, SPO3 Eduardo Yadao. SPO3 Yadao entered the incident in the police blotter. He then placed his initials on the packets of suspected *shabu*, which were later submitted to the Philippine National Police (PNP) Crime Laboratory in Urdaneta City.[6]

---

[1] *Rollo*, pp. 2-3.

[2] Penned by Judge Manuel F. Pastor, Jr.; CA *rollo*, pp. 63-75.

[3] Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Vicente S.E. Veloso and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 2-17.

[4] CA *rollo*, p. 63.

[5] *Id.* at 64.

[6] *Id.*

Confirmatory tests revealed that the substance in the packets that appellant handed to SPO1 Llanillo was indeed *shabu*.[7]

At the trial, appellant denied the charges against him. He claimed that, on the morning of June 10, 2003, he was on the second floor of his house watching television when he was informed by his wife that police officers were looking for him. He claimed that SPO1 Llanillo informed him about a report that he (De Guzman) was repacking *shabu*, which he denied. Thereafter, the police officers frisked him and took the ₱3,000.00 from his pocket. The police officers also searched the cabinet, where his television was, and found a lighter. Then, he was handcuffed and brought to the police station.[8]

After trial, the RTC rendered a decision, finding De Guzman guilty beyond reasonable doubt of violating R.A. No. 9165. He was sentenced to life imprisonment and to pay a fine of ₱500,000.00.[9]

De Guzman appealed his conviction to the CA, which affirmed the RTC decision *in toto*.[10]

De Guzman now comes to this Court on a Petition for Review. He argues that the prosecution failed to show that the police officers complied with the mandatory procedures under R.A. No. 9165.[11] In particular, he points to the fact that the seized items were not marked immediately after his arrest; that the police officers failed to make an inventory of the seized items in his presence or in the presence of his counsel and of a representative from the media and from the Department of Justice (DOJ); and that no photographs were taken of the seized items and of appellant.[12] Appellant also claims that the

---

[7] *Id.*

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

[9] *Id.* at 75.

[10] *Rollo*, p. 16.

[11] Supplemental Brief; *rollo*, p. 30.

[12] *Id.*

unbroken chain of custody of the evidence was not established.[13] Further, appellant contends that the failure of the police officers to enter the buy-bust operation in the police blotter before the said operation, the lack of coordination with the Philippine Drug Enforcement Agency (PDEA), and the failure to observe the requirements of R.A. No. 9165 have effectively overturned the presumption of regularity in the performance of the police officers' duties.[14]

The findings of fact of the trial court are accorded great respect, even finality when affirmed by the CA, in the absence of any clear showing that some facts and circumstances of weight or substance that could have affected the result of the case have been overlooked, misunderstood, or misapplied.[15]

Although the question of whether the degree of proof has been met is largely left for the trial courts to determine, an appeal throws the whole case open for review.[16] Thus, the factual findings of the trial court may be reversed if, by the evidence or the lack of it, it appears that the trial court erred.[17]

A review of the records of this case reveals that circumstances warrant a reversal of the trial court's decision.

The Constitution mandates that an accused in a criminal case shall be presumed innocent until the contrary is proven beyond reasonable doubt. The prosecution is laden with the burden to overcome such presumption of innocence by presenting the quantum of evidence required.

Consequently, courts are required to put the prosecution evidence through the crucible of a severe testing, and the

---

[13] *Id.* at 32.

[14] *Id.* at 34.

[15] *Valdez v. People*, G.R. No. 170180, November 23, 2007, 538 SCRA 611, 621-622.

[16] *Zarraga v. People*, G.R. No. 162064, March 14, 2006, 484 SCRA 639, 646, citing *Eusebio-Calderon v. People*, 441 SCRA 137 (2004).

[17] *People v. Santos, Jr.*, G.R. No. 175593, October 17, 2007, 536 SCRA 489, 500, citing *People v. Tan*, 432 Phil. 171, 182 (2002).

constitutional right to presumption of innocence requires them to take a more than casual consideration of every circumstance or doubt favoring the innocence of the accused.[18]

When the circumstances are capable of two or more inferences, as in this case, one of which is consistent with innocence and the other is compatible with guilt, the presumption of innocence must prevail, and the court must acquit.[19]

The duty to prove the guilt of an accused is reposed in the State. Law enforcers and public officers have the duty to preserve the chain of custody over the seized drugs. This guarantee of the integrity of the evidence to be used against an accused goes to the very heart of his fundamental rights.[20]

In a prosecution for illegal sale of dangerous drugs, the following elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[21] What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused.[22] The presentation in court of the *corpus delicti* — the body or the substance of the crime — establishes the fact that a crime has actually been committed.[23]

---

[18] *Id.* at 504, citing *People v. Tan*, *supra* at 198.

[19] *Id.* at 505-506, citing *People v. Batoctoy*, 449 Phil. 500, 521 (2003).

[20] *Valdez v. People*, *supra* note 15, at 631.

[21] *People v. Orteza*, G.R. No. 173051, July 31, 2007, 528 SCRA 750, 757, citing *People v. Bandang*, 430 SCRA 570, 579 (2004).

[22] *People v. Nazareno*, G.R. No. 174771, September 11, 2007, 532 SCRA 630, 636-637; *id.* at 758.

[23] *People of the Philippines v. Nicolas Gutierrez Licuanan*, G.R. No. 179213, September 3, 2009, citing *People v. Del Mundo*, 510 SCRA 554, 562 (2006).

Contrary to De Guzman's contention, the trial court correctly found that the buy-bust transaction took place. The buyer (SPO1 Llanillo) and seller (De Guzman) were both identified and the circumstances of how the purported sale of the illegal drugs took place were clearly demonstrated. Thus, the prosecution successfully established the first and third elements of the crime. However, there is a problem in the prosecution's effort to establish the integrity of the *corpus delicti*.

In a prosecution for violation of the Dangerous Drugs Act, the existence of the dangerous drug is a condition *sine qua non* for conviction. The dangerous drug is the very *corpus delicti* of the crime.[24]

The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.[25] The *corpus delicti* should be identified with unwavering exactitude.[26]

The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[27] Section 21 of R.A. No. 9165 states:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals,*

---

[24] *People v. Kimura*, 471 Phil. 895, 909 (2004).

[25] *People of the Philippines v. Elsie Barba y Biazon*, G.R. No. 182420, July 23, 2009.

[26] *People v. Dela Cruz*, G.R. No. 181545, October 8, 2008, 568 SCRA 273, 282.

[27] *People of the Philippines v. Rosemarie R. Salonga*, G.R. No. 186390**,** October 2, 2009; *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

On the other hand, the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides:

> **SECTION 21.** ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*** – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these

> requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

The Court finds that the apprehending officers failed to comply with the guidelines set under R.A. No. 9165 and its IRR.

SPO1 Llanillo himself admitted that the marking of the seized items was done in the police station and not immediately after the buy-bust operation. He testified:

Q: What did you do after you said you bought ₱200.00 worth of *shabu*?
A: In return, he handed to me two (2) heat sealed transparent plastic sachet containing a suspected methamphetamine hydrochloride (*shabu*), sir.

Q: After that what did you do next?
A: The team made a frisking on [Ronaldo] de Guzman to see if there are other things he is keeping in his body, sir.

Q: And what was the result of your frisking [Ronaldo] de Guzman?
A: We recovered from him 2 packs of empty transparent plastic sachets, 3 disposable lighters, sir.

Q: Aside from those items, what else did you recover from [Ronaldo] de Guzman?
A: Money, sir, amounting to ₱3,380.00 including the marked money.

Q: What did you do with those things that you were able to confiscate from [Ronaldo] de Guzman?
A: We brought it to the police station for investigation and the specimen were (sic) brought to the crime laboratory for examination, sir.[28]

It is true that the IRR of R.A. No. 9165 provides that the physical inventory of the seized items may be done at the nearest police station, if the same cannot be done at the place where the items were seized. However, it must be emphasized that the IRR also provides that "non-compliance with these

[28] TSN, May 4, 2004, p. 7; records, p. 68.

requirements **under justifiable grounds**, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items."[29]

The failure to follow the procedure mandated under R.A. No. 9165 and its IRR **must be adequately explained**. The justifiable ground for non-compliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist.

Accordingly, non-compliance with the procedure shall not render void and invalid the seizure and custody of the drugs only when: (1) such non-compliance is attended by justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. There must be proof that these two (2) requirements were met before such non-compliance may be said to fall within the scope of the proviso.[30]

In this case, it was admitted that it was SPO3 Yadao, the assigned investigator, who marked the seized items, and only upon seeing the items for the first time at the police station. Moreover, there was no physical inventory made or photographs of the seized items taken under the circumstances required by R.A. No. 9165 and its IRR. There was also no mention that representatives from the media and from the DOJ, and any elected official, were present during this inventory. The prosecution never explained the reasons for these lapses. On cross-examination, SPO1 Llanillo admitted:

Q: Do you know if your team or any member of your team issued an Inventory receipt of those confiscated items?
A: I could not remember, sir.

Q: And you have not seen any, right?
A: Yes, sir.

---

[29] Section 21(a), Implementing Rules and Regulations of R.A. No. 9165. (Emphasis supplied.)

[30] *People v. Dela Cruz*, G.R. No. 177222, October 29, 2008, 570 SCRA 273.

Q: Do you know if there were pictures taken on (sic) the confiscated items?
A: I don't know, sir.

Q: And you have not seen pictures taken?
A: Yes, sir.[31]

Thus, we find no justifiable ground for such non-compliance.

Readily apparent in the prosecution's evidence, likewise, is a gaping hole in the chain of custody of the seized illegal drugs. SPO3 Yadao, in his testimony, narrated how the evidence was handled, thus:

Q: You did not place or put your initials on the buy-bust money, the 2 pieces of ₱100.00 bil (sic) that was used in the buy-bust operation, you did not (sic)?
A: I did not maam (sic).

Q: Is it not that this is the standard operating procedure (SOP) as police investigator that after your receipt of the specimens or items allegedly confiscated in the buy-bust operation that you should place your initials after you signed the same?
A: Unless there is a directive from our Chief of Police, maam (sic).

Q: So you are telling this Court that it is not your SOP, you should wait for your Chief of Police to direct you to place your initials on the specimens you received in the buy-bust operation, is that what you mean?
A: Yes, maam (sic).

Q: So you are telling us now that there was no instruction from your Chief of Police in this particular case that you will place your initials on the 2 pieces of ₱100.00 bill, that's why you did not put your initials thereof (sic), is that what you mean?
A: Yes, maam (sic).

Q: Likewise, you did not place your initials on the transparent plastic sachets, disposable lighters and the ₱3,380.00 that were allegedly confiscated from the accused?
A: I was directed to place my initials before submitting it to the PNP Crime Laboratory, Urdaneta City.

---

[31] TSN, May 4, 2004, p. 18; records, p. 79.

Q: So the directive in this particular case is only limited or focused on the suspected plastic sachets containing *shabu*, is that what you mean?
A: Yes, maam (sic).

Q: But you submitted likewise to the PNP Crime Laboratory, Urdaneta City, the empty transparent plastic sachets and disposable lighters, is it not, Mr. Witness?
A: Yes maam (sic).

Q: For laboratory examination?
A: Yes, maam (sic).

Q: But there was no instruction from your Chief of Police to place your initials on the specimens?
A: There was instruction maam (sic).

Q: But you did not place your initials on the disposable lighters and transparent plastic sachets?
A: I don't know if I put my initials on the disposables lighters maam (sic).

Q: You are now certain that you placed your initials on the suspected *shabu* but you are not sure if you placed your initials on the transparent plastic sachets and the disposable lighters?
A: Yes, maam (sic).

Q: What time on June 10, 2003 did you receive the specimens allegedly confiscated from the accused?
A: On the same date maam.

Q: You earlier said that at around 10:35 a.m. you conducted a buy bust operation and the specimens were turned over to you by your Chief of Police. My question is, what time did your Chief of Police turn over to you the specimens that were allegedly confiscated from the accused?
A: 2:00 p.m. when I recorded the incident in the police blotter.

Q: My question is, what time did the Chief of Police turn over to you the alleged specimens or items?
A: 2:00 p.m. on June 10, 2003 and that was the time I immediately recorded the incident in the police blotter.

Q: And you immediately prepared a request for laboratory examination?
A: Yes, maam (sic).

Q: What time did you finish preparing the request?
A: I can't remember, maam (sic).

Q: You said that you immediately prepared it, how long did you prepare that request for laboratory examination?
A: Until the following day because it was on the following day that the specimens were submitted.

Q: What was submitted the following morning?
A: If I remember it right, it was on June 11, 2003 when we submitted and received by (sic) the PNP Crime Laboratory and that was on June 11, 2003.[32]

The length of time that lapsed from the seizure of the items from De Guzman until they were given to the investigating officer for marking is too long to be inconsequential. The buy-bust operation took place at about 10:30 a.m. From the accounts of SPO1 Llanillo and another member of the buy-bust team, SPO1 Romeo Manzano, De Guzman's house was very near the police station and the team could easily walk to it. Likewise, the transaction took place rather quickly and appellant was brought to the police station immediately thereafter. All told, it should not have taken 3 ½ hours, or until 2:00 p.m., for the seized items to be turned over to the investigating officer. There was no explanation why it took the Chief of Police that long to turn over the seized items.

From the time SPO3 Yadao took custody of the seized items, it took yet more time before the same were submitted to the PNP Crime Laboratory, and without any clear explanation on who had custody in the meantime. This vacuum in the chain of custody of the seized items cannot simply be brushed aside.

These circumstances cast a strong shadow of doubt on the identity and integrity of the evidence presented before the court.

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in

---

[32] TSN, November 8, 2005, pp. 16-19; records, pp. 196-199.

question is what the proponent claims it to be.[33] It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[34] Indeed, it is from the testimony of every witness who handled the evidence that a reliable assurance can be derived that the evidence presented in court and that seized from the accused are one and the same.[35]

While testimony about a perfect chain is not always the standard, because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination, and even substitution and exchange.[36]

A unique characteristic of narcotic substances is that they are not readily identifiable as, in fact, they are subject to scientific analysis to determine their composition and nature. The Court cannot simply close its eyes to the likelihood, or at least to the possibility, that, at any point in the chain of custody, there

---

[33] *Malillin v. People, supra* note 27, at 632.

[34] *Guido Catuiran y Nicudemus v. People of the Philippines*, G.R. No. 175647, May 8, 2009; *id.* at 632-633.

[35] *Guido Catuiran y Nicudemus v. People of the Philippines*, *supra*, citing *People v. Obmiranis*, 574 SCRA 140 (2008).

[36] *Malillin v. People*, *supra* note 27, at 633 (citations omitted); see also *People v. Dela Cruz*, *supra* note 26.

could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects that are readily identifiable must be applied, a more exacting standard that entails establishing a chain of custody of the item with sufficient completeness, if only to make it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[37]

Accordingly, the failure to establish, through convincing proof, that the integrity of the seized items has been adequately preserved through an unbroken chain of custody is enough to engender reasonable doubt on the guilt of an accused. Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a person charged with a crime, but moral certainty is required as to every proposition of proof requisite to constitute the offense.[38] A conviction cannot be sustained if there is a persistent doubt on the identity of the drug.[39]

Indeed, the prosecution's failure to prove that the specimen submitted for laboratory examination was the same one allegedly seized from appellant is fatal to the prosecution's case.[40]

Finally, the prosecution cannot find solace in its invocation of the presumption of regularity in the apprehending officers' performance of official duty.

---

[37] *Malillin v. People*, *supra* note 27, at 633, 634; *Guido Catuiran y Nicudemus v. People of the Philippines*, *supra* note 34.

[38] *People v. Santos, Jr.*, *supra* note 17, at 499, citing *People v. Uy*, 392 Phil. 773, 782-783 (2000).

[39] *People of the Philippines v. Elsie Barba y Biazon*, *supra* note 25.

[40] See *Valdez v. People*, *supra* note 15.

The presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt.[41] Moreover, the failure to observe the proper procedure negates the operation of the presumption of regularity accorded to police officers. As a general rule, the testimonies of the police officers who apprehended the accused are accorded full faith and credit because of the presumption that they have performed their duties regularly. But when the performance of their duties is tainted with failure to comply with the procedure and guidelines prescribed, the presumption is effectively destroyed.[42]

Thus, even if the defense evidence is weak, the prosecution's whole case still falls. The evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.[43]

WHEREFORE, the foregoing premises considered, appellant **RONALDO DE GUZMAN *y* DANZIL** is hereby *ACQUITTED* of the crime charged. The Director of the Bureau of Prisons is ordered to cause the *IMMEDIATE RELEASE* of appellant from confinement, unless he is being held for some other lawful cause, and to *REPORT* to this Court compliance herewith within five (5) days from receipt of this Decision.

SO ORDERED.

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

---

[41] *People v. Santos, Jr., supra* note 38, at 503.

[42] *People v. Dela Cruz, supra* note 30, citing *People v. Santos, Jr., supra* note 38.

[43] *People v. Sanchez,* G.R. No. 175832, October 15, 2008, 569 SCRA 194, 222.

EN BANC

[G.R. No. 190734. March 26, 2010]

BAI SANDRA S.A. SEMA, *petitioner, vs.* **HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL and DIDAGEN P. DILANGALEN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTION; JUDICIARY; SUPREME COURT; ELECTORAL TRIBUNALS; THE COURT'S JURISDICTION TO REVIEW DECISIONS AND ORDERS OF ELECTORAL TRIBUNALS IS EXERCISED ONLY UPON A SHOWING OF GRAVE ABUSE OF DISCRETION COMMITTED BY THE TRIBUNAL.— At the outset, it must be emphasized that **this Court is not a trier of facts** and its jurisdiction to review decisions and orders of electoral tribunals is exercised only upon a showing of grave abuse of discretion committed by the tribunal. Absent such grave abuse of discretion, this Court shall not interfere with the electoral tribunal's exercise of its discretion or jurisdiction.

2. ID.; ID.; ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION MEANS SUCH CAPRICIOUS AND WHIMSICAL EXERCISE OF JUDGMENT AS WOULD AMOUNT TO LACK OF JURISDICTION.— Grave abuse of discretion has been described in *Juan v. Commission on Elections*, as follows: Grave abuse of discretion arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence. **It means such capricious and whimsical exercise of judgment as would amount to lack of jurisdiction;** it contemplates a situation where **the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by law**. The office of a petition for *certiorari* is not to correct simple errors of judgment; any resort to the said petition under x x x Rule 65 of the 1997 Rules of Civil Procedure is limited to the resolution of jurisdictional issues. Thus, **it is imperative for the petitioner to show caprice and arbitrariness on**

the part of the COMELEC [or, in this case, the tribunal] whose exercise of discretion is being assailed

3. POLITICAL LAW; ELECTION LAW; CORRECTNESS OF THE NUMBER OF VOTES FOR EACH CANDIDATE BEING QUESTIONED; AS A GENERAL RULE, MOST CONCLUSIVE EVIDENCE IS THE BALLOTS THEMSELVES.— There is no cavil of doubt as to the factual findings regarding the fake ballots in the 195 precincts in Datu Odin Sinsuat, or the lost ballots for the 247 ballots boxes from the counter-protested precincts. What petitioner questions is the Tribunal's reliance on election returns and/or tally sheets and other election documents to arrive at the number of votes for each of the parties. However, jurisprudence has established that such action of the HRET was well within its discretion and jurisdiction. Indeed, the **general rule** is, if what is being questioned is the correctness of the number of votes for each candidate, the best and most conclusive evidence is the ballots themselves. However, this rule applies **only if** the ballots are available and their integrity has been preserved from the day of elections until revision.

4. ID.; ID.; ID.; ID.; EXCEPTION IS WHEN THE BALLOTS ARE UNAVAILABLE; RELIANCE CAN BE MADE ON UNTAMPERED AND UNALTERED ELECTION RETURNS.— When the ballots are unavailable or cannot be produced, then recourse can be made to untampered and unaltered election returns or other election documents as evidence. x x x In *Rosal v. Commission on Elections*, the Court ruled, thus: "x x x where a ballot box is found in such a condition as would raise a reasonable suspicion that unauthorized persons could have gained unlawful access to its contents, **no evidentiary value can be given to the ballots in it and the official count reflected in the election return must be upheld as the better and more reliable account of how and for whom the electorate voted**."

5. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— Petitioner admits in her petition that elections were actually held in Datu Odin Sinsuat. Both parties agreed with the HRET's findings of fact that majority of the ballots in the 195 protested precincts of Datu Odin Sinsuat were fake or spurious ballots, and all the ballot boxes in the 195 protested precincts of Datu Odin Sinsuat

> had no self-locking metal seals. Neither do they dispute that only one (1) out of the 248 ballot boxes of the counter-protested precincts contained ballots. The parties have not presented any evidence that there were any incidents of ballot snatching or switching on May 14, 2007 — the day of the election itself. On the contrary, the only evidence on record, *i.e.*, the affidavits of the Chief of Police of Sultan Kudarat, Philip M. Liwan (Exhibit "1"); the Station Commander at Sultan Mastura, John R. Calinga (Exhibit "3"), and the Election Officer of Datu Odin Sinsuat, Raufden A. Mangelen (Exhibit "4"), all attest to the fact that there were no such incidents of switching nor were there reports of violence or irregularities during the casting, counting and canvassing of votes. Thus, as concluded by the HRET, when said ballot boxes were opened for revision purposes, they could not be said to be in the same condition as they were when closed by the Chairman and Members of the BEI after the completion of the canvassing proceedings. x x x Significantly, nothing on record shows that the election returns, tally sheets and other election documents that the HRET had on hand had been tampered or altered. Since it is undisputed that there are hardly any valid or authentic ballots upon which the HRET could base its determination of the number of votes cast for each of the parties, the HRET merely acted in accordance with settled jurisprudence when it resorted to untampered and/or unaltered election returns and other election documents as evidence of such votes.

APPEARANCES OF COUNSEL

Edgardo Carlo L. Vistan, II & George Erwin M. Garcia for petitioner.

The Solicitor General for public respondent.

Rigoroso and Galindez Law Offices for private respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for *Certiorari* under Rule 65 of the Rules of Court, praying that the Decision of the House of Representatives Electoral Tribunal (HRET), dated September 10,

2009, and its Resolution dated November 12, 2009, be declared null and void *ab initio*.

The narration of facts in the HRET Decision is not disputed by the parties. Pertinent portions thereof are reproduced hereunder:

> On 12 June 2007, protestant Bai Sandra S.A. Sema, a congressional candidate of the Lakas-CMD who obtained 87,237 votes or 18,345-vote difference from protestee Dilangalen, who obtained 105,582 votes, filed an election protest against the latter. Allegedly, it was on 1 June 2007, when the Provincial Board of Canvassers of Shariff Kabunsuan proclaimed protestee Didagen P. Dilangalen as Representative of the Lone District of Shariff Kabunsuan with Cotabato City (as no certified true copy of the Certificate of Canvass of Votes and Proclamation of the Winning Candidate for Member of the House of Representatives was attached to the protest).
>
> Protestant Sema is protesting a total of 195 precincts of the Municipality of Datu Odin Sinsuat of the Lone District of Shariff Kabunsuan with Cotabato City, based on the following grounds:
>
> 1. The various Boards of Election Inspectors (BEI), in connivance with the protestee, deliberately and wrongfully read, appreciated, and/or tabulated the votes appearing in the ballots that were lawfully and validly cast in favor of the protestant as votes cast for the protestee;
>
> 2. Ballots containing valid votes cast for the protestant were misappreciated and considered as marked ballots and declared null and void;
>
> 3. Ballots prepared by persons other than the voters themselves, and fake or unofficial ballots wherein the name of the protestee was written, were illegally read and counted in favor of the protestee;
>
> 4. Ballots wherein no name of any candidate for Member of the House of Representatives was written in the blank space for the said position were illegally read and counted in favor of the protestee;
>
> 5. Valid votes entered in the ballots in favor of the protestant were considered stray;

6. Groups of ballots wherein the protestee was voted as Representative but which were evidently prepared by one (1) person were purposely considered as valid ballots and counted in favor of the protestee;

7. Individual ballots wherein the protestee was voted as Representative but which were evidently prepared by two (2) or more persons were purposely considered as valid ballots and counted in favor of the protestee;

8. Ballots wherein the protestee was voted as Representative but were void because stickers were posted unto them, and/or because of other patent or pattern markings appearing on them, were unlawfully read and counted in favor of the protestee;

9. The protestee and his supporters illegally switched the ballots and election returns to manipulate the results;

10. The election returns purportedly coming from these precincts that were used in the canvassing by the Provincial Board of Canvassers bear badges of fraud or irregularity, such as the uniform appearance and pattern of writing of taras, showing that they are manufactured and prepared in an environment that allowed the people who prepared them the luxury of time, convenience and comfort;

11. The election returns purportedly coming from these precincts that were used in the canvassing are spurious as they did not contain the thumbmarks and/or the signatures of the members of the BEI;

12. The election returns purportedly coming from these precincts that were used in the canvassing by the Provincial Board of Canvassers were spurious as they were thumbmarked and/or signed by persons who were not members of the BEI on record;

13. The election returns purportedly coming from these precincts that were used in the canvassing by the Provincial Board of Canvassers appear to have been tampered with to increase the votes for the protestee recorded therein, as shown by the additional taras in the row for the protestee that are in handwriting different from the other taras;

14. The total number of votes for the position of Member of the House of Representatives in the election returns purportedly

coming from these precincts that were used in the canvassing by the Provincial Board of Canvassers exceeded the total number of registered voters in these precincts;

15. The total number of votes for the position of Member of the House of Representatives in the election returns purportedly coming from these precincts that were used in the canvassing by the Provincial Board of Canvassers exceeded the total number of voters who actually voted;

16. The protestee engaged in pervasive vote-buying in order to induce the people voting in these precincts to vote for him;

17. The protestee engaged in the so-called negative vote-buying to induce people who would have voted for protestant not to cast their votes anymore;

18. The protestee employed and deployed "flying voters" to unlawfully increase the votes cast in his favor;

19. The protestee employed armed men to terrorize and intimidate voters and compel them to vote for him;

20. The protestee, employing armed men to terrorize and intimidate the protestant's supporters, prevented them from casting their votes in these precincts; and

21. The protestee, employing armed men to terrorize and intimidate the members of the BEI in these precincts, coerced the said election inspectors to manipulate the counting and tallying of the votes for the position of the Member of the House of Representatives by padding the tallied votes cast for the protestee and/or reducing the tallied votes for the protestant.

On July 19, 2007, protestee filed an Answer with Counter-Protest, counter-protesting 198 clustered/merged precincts in Sultan Kudarat and 50 precincts in Sultan Mastura on the following grounds:

(i) The duly appointed watchers of herein protestant [Dilangalen] were not allowed by the protestee [Sema] and her supporters to enter the hereunder enumerated protested precincts and to [obersve] (sic) the casting of votes as well as the counting of votes by the Board of Election Inspectors (BEI's);

(ii) The ballots in most of the protested precincts were written by only one or two persons indicating that no actual voting took place.

(iii) Flying voters were employed by the protestee and her supporters.

(iv) Protestee engaged in massive vote-buying during the campaign period and even during the election day.

(v) Registered voters in the protested municipalities, who are active supporters of herein protestant, were prevented by the protestee and her supporters, through violence and intimidation, from casting their votes.

(vi) In connivance with herein protestee, the members of the BEI's in most of the protested precincts merely filled up the Election Returns giving protestee a wide margin over herein protestant.

(vii) During the canvassing before the Municipal Board of Canvassers, the votes allegedly obtained by the protestee were padded by the members of the board of canvassers in favor of the protestee.

(viii) Obviously manufactured election returns, prepared by the protestee and her supporters were used during the canvassing by the Municipal Board of Canvassers in the protested Municipalities.

From September 16-29, 2008, the Tribunal conducted revision of ballots in all the contested precincts. During the revision of ballots, it was discovered that only one (1) out of the 248 ballot boxes of the counter-protested precincts contained ballots. The other 247 counter-protested ballots were totally empty or did not contain ballots and election documents. The results of revision of ballots in the 195 protested precincts and one (1) counter-protested precinct are shown in the Table below.

	Protestant Sema	**Protestee Dilangalen**
Votes per election returns	2,238	33,707
Votes per physical count	2,794	32,603

On November 27, 2008, protestant filed her Formal Offer of Exhibits x x x.

x x x x x x x x x

On January 22, 2009, protestee filed his Comment (on the Formal Offer of Exhibits of the Protestant) x x x.

x x x x x x x x x

On May 13, 2009, protestee filed his Formal Offer of Evidence x x x.

x x x x x x x x x

On May 20, 2009, protestant filed her Comment/Objections (Re: Protestee's Formal Offer of Evidence), x x x.

x x x x x x x x x

The Tribunal received the memoranda of the parties on June 25, 2009.

Protestant seeks a resolution of her protest by way of appreciation of ballots, asserting that the spurious ballots containing votes for protestee be rejected and be themselves considered as proof that the will of the people was thwarted by election fraud in the protested 195 precincts of Datu Odin Sinsuat.

On the other hand, protestee belied protestant's allegation of fraud invoking the presumptions stipulated by the parties and his reliance in the stipulated testimony of then Acting Municipal Treasurer of Datu Odin Sinsuat, Aladin D. Abdullah, Vice Municipal Treasurer Datu Eden Ala, who inhibited himself being a relative of a local candidate, that in such capacity she distributed to the different Boards of Election Inspectors (BEIs) in the municipality of Datu Odin Sinsuat the same official ballots, election returns and other election documents which she received from the COMELEC. To protestee, the votes for him were cast by the voters themselves in official ballots validly read for him, and the entries in the objected ballots were not written by the voters themselves.

In contrast to her position in respect to the votes in Datu Odin Sinsuat, as regards the counter-protested precincts in Sultan Kudarat and Sultan Mastura, where protestant was shown to have attained higher number of votes than protestee based on available official results, but when the ballot boxes of 247 out of 248 precincts were opened during revision, they yielded no ballots and other election documents, protestant asserts that determination of votes of the parties should be based on sources other than the missing ballots.[1]

---

[1] *Rollo*, pp. 26-30.

The tribunal summarized the issues as follows:

I. Whether or not there were election irregularities, anomalies or errors committed during the May 14, 2007 elections which will nullify the votes counted and canvassed for each party, or stated differently, whether the irregularities uncovered during revision and appreciation, among others, were committed during or after the elections.

II. Who is the real winner in the May 14, 2007 congressional elections for the Lone District of Shariff Kabunsuan with Cotabato City after a revision and appreciation of the ballots?[2]

On September 10, 2009, the HRET issued the assailed Decision. The HRET found that majority of the ballots in the 195 protested precincts of Datu Odin Sinsuat were rejected as fake or spurious ballots since they did not contain security features described by Commissioner Resurreccion Borra of the Commission on Elections (COMELEC). It was also pointed out that "Reports on Revision Results, duly signed by both parties' revisors, showed that during the revision, all the ballot boxes in the 195 protested precincts of Datu Odin Sinsuat had no self-locking metal seals x x x, [t]hus, it cannot be conclusively stated, that the ballot boxes at the time that they were opened for revision purposes were in the same condition as they were when closed by the Chairman and Members of the Board of Election Inspectors (BEI) after the completion of the canvassing proceedings." On the other hand, only one (1) out of the 248 ballot boxes of the counter-protested precincts contained ballots. Nevertheless, the HRET ruled that petitioner failed to prove by convincing evidence that the election itself, conducted on May 14, 2007, was tainted by fraud and irregularities that frustrated the will of the electorate. The HRET concluded that the ballots and/or ballot boxes must have been tampered with **after the elections and the counting and canvassing of votes**. Thus, the HRET relied on the election returns and other election documents to arrive at the number of votes validly cast for petitioner and respondent Dilangalen.

---

[2] *Id.* at 39.

The dispositive portion of the assailed Decision reads as follows:

> WHEREFORE, the Tribunal DISMISSES the instant election protest; AFFIRMS the proclamation of protestee Didagen P. Dilangalen; and DECLARES him to be the duly elected Representative of the Lone District of Shariff Kabunsuan with Cotabato City.
>
> Pursuant to Rule 96 of the 2004 Rules of the House of Representatives Electoral Tribunal, as soon as this Decision becomes final and executory, let notice hereof be sent to the President of the Philippines, the House of Representatives through the Speaker and the Commission on Audit, through its Chairman.
>
> No pronouncement as to costs.
>
> SO ORDERED.[3]

Petitioner moved for reconsideration, but the same was denied in a Resolution dated November 12, 2009.

Hence, this petition, where it is alleged that:

A.

THE RESPONDENT HRET COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PETITIONER HAD NOT SUCCESSFULLY PROVEN BY CONVINCING EVIDENCE THAT THE CONTESTED ELECTION WAS ATTENDED BY FRAUDS AND IRREGULARITIES WHEN THE PETITIONER PRESENTED OVERWHELMING EVIDENCE OF FRAUD EXEMPLIFIED BY THE DISCOVERY DURING REVISION OF THE NUMEROUS SPURIOUS BALLOTS FOR RESPONDENT DILANGALEN INSIDE THE BALLOT BOXES.

B.

THE RESPONDENT HRET GRAVELY ABUSED ITS DISCRETION IN A MANNER AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT THE SPURIOUS BALLOTS CONTAINING VOTES FOR RESPONDENT DILANGALEN THAT WERE FOUND INSIDE THE BALLOT BOXES DURING REVISION

---

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

PROCEEDINGS WERE INTRODUCED INTO SAID BALLOT BOXES AFTER, AND NOT DURING THE ELECTIONS, WHEN SUCH DEDUCTION WAS NOT SUPPORTED BY ANY OF RESPONDENT DILANGALEN'S EVIDENCE, THEREBY DEVIATING FROM THE BASIC RULE THAT WHEN WHAT IS INVOLVED IS THE CORRECTNESS OF THE NUMBER OF VOTES OF EACH CANDIDATE, THE BEST AND MOST CONCLUSIVE EVIDENCE ARE THE BALLOTS THEMSELVES.

C.

THE RESPONDENT HRET COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT DEDUCTING FROM THE TOTAL NUMBER OF VOTES CREDITED TO RESPONDENT DILANGALEN THE FRAUDULENT BALLOTS IN HIS NAME THAT WERE DISCOVERED DURING THE REVISION PROCEEDINGS.

D.

THE RESPONDENT HRET GRAVELY ABUSED ITS DISCRETION IN A MANNER AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING THE PROCLAMATION OF RESPONDENT DILANGALEN WHEN THE NUMBER OF VALID VOTES WHICH REMAINED AFTER DEDUCTING THE SPURIOUS BALLOTS COUNTED FOR HIM WAS LESS THAN THE NUMBER OF VOTES LEGALLY OBTAINED BY HEREIN PETITIONER.[4]

The above allegations boil down to the issue of whether the HRET committed grave abuse of discretion amounting to lack or excess of jurisdiction by relying on election returns and other election documents, instead of the ballots themselves, in determining who actually won in the May 14, 2007 congressional elections for the Lone District of Shariff Kabunsuan with Cotabato City.

The Court finds the petition unmeritorious.

At the outset, it must be emphasized that **this Court is not a trier of facts** and its jurisdiction to review decisions and orders of electoral tribunals is exercised only upon a showing of grave abuse of discretion committed by the tribunal. Absent

[4] *Id.* at 10-11.

such grave abuse of discretion, this Court shall not interfere with the electoral tribunal's exercise of its discretion or jurisdiction.[5] Grave abuse of discretion has been described in *Juan v. Commission on Elections*,[6] as follows:

> Grave abuse of discretion arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence. **It means such capricious and whimsical exercise of judgment as would amount to lack of jurisdiction;** it contemplates a situation where **the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by law**. The office of a petition for *certiorari* is not to correct simple errors of judgment; any resort to the said petition under x x x Rule 65 of the 1997 Rules of Civil Procedure is limited to the resolution of jurisdictional issues. Thus, **it is imperative for the petitioner to show caprice and arbitrariness on the part of the COMELEC [or, in this case, the tribunal] whose exercise of discretion is being assailed**.[7]

There is no cavil of doubt as to the factual findings regarding the fake ballots in the 195 precincts in Datu Odin Sinsuat, or the lost ballots for the 247 ballots boxes from the counter-protested precincts. What petitioner questions is the Tribunal's reliance on election returns and/or tally sheets and other election documents to arrive at the number of votes for each of the parties. However, jurisprudence has established that such action of the HRET was well within its discretion and jurisdiction.

Indeed, the **general rule** is, if what is being questioned is the correctness of the number of votes for each candidate, the best and most conclusive evidence is the ballots themselves. However, this rule applies **only if** the ballots are available and

---

[5] *Juan v. Commission on Elections*, G.R. No. 166639, April 24, 2007, 522 SCRA 119, 128; *Abubakar v. House of Representatives Electoral Tribunal*, G.R. Nos. 173310 and 173609, March 7, 2007, 517 SCRA 762, 776*; Torres v. House of Representatives Electoral Tribunal*, G.R. No. 144491, February 6, 2001, 351 SCRA 312, 326-327.

[6] *Supra*, at 128-129.

[7] *Id.* at 128-129. (Emphasis supplied.)

their integrity has been preserved from the day of elections until revision. **When the ballots are unavailable or cannot be produced, then recourse can be made to untampered and unaltered election returns or other election documents as evidence**.[8]

Petitioner admits in her petition that elections were actually held in Datu Odin Sinsuat. Both parties agreed with the HRET's findings of fact that majority of the ballots in the 195 protested precincts of Datu Odin Sinsuat were fake or spurious ballots, and all the ballot boxes in the 195 protested precincts of Datu Odin Sinsuat had no self-locking metal seals. Neither do they dispute that only one (1) out of the 248 ballot boxes of the counter-protested precincts contained ballots. The parties have not presented any evidence that there were any incidents of ballot snatching or switching on May 14, 2007- the day of the election itself. On the contrary, the only evidence on record, *i.e.*, the affidavits of the Chief of Police of Sultan Kudarat, Philip M. Liwan (Exhibit "1"); the Station Commander at Sultan Mastura, John R. Calinga (Exhibit "3"), and the Election Officer of Datu Odin Sinsuat, Raufden A. Mangelen (Exhibit "4"), all attest to the fact that there were no such incidents of switching nor were there reports of violence or irregularities during the casting, counting and canvassing of votes. Thus, as concluded by the HRET, when said ballot boxes were opened for revision purposes, they could not be said to be in the same condition as they were when closed by the Chairman and Members of the BEI after the completion of the canvassing proceedings.

In *Rosal v. Commission on Elections*,[9] the Court ruled, thus:

x x x where a ballot box is found in such a condition as would raise a reasonable suspicion that unauthorized persons could have gained

---

[8] *Rosal v. Commission on Elections*, G.R. Nos. 168253 and 172741, March 16, 2007, 518 SCRA 473, 488-489; *Abubakar v. House of Representatives Electoral Tribunal*, *supra* note 5, at 774; *Torres v. House of Representatives Electoral Tribunal*, *supra* note 5, at 326, citing *Lerias v. House of Representatives Electoral Tribunal*, 202 SCRA 808 (1991). (Emphasis supplied.)

[9] *Supra*.

unlawful access to its contents, **no evidentiary value can be given to the ballots in it and the official count reflected in the election return must be upheld as the better and more reliable account of how and for whom the electorate voted**.[10]

Significantly, nothing on record shows that the election returns, tally sheets and other election documents that the HRET had on hand had been tampered or altered. Since it is undisputed that there are hardly any valid or authentic ballots upon which the HRET could base its determination of the number of votes cast for each of the parties, the HRET merely acted in accordance with settled jurisprudence when it resorted to untampered and/or unaltered election returns and other election documents as evidence of such votes.

In sum, there is no showing whatsoever that the HRET committed grave abuse of discretion.

WHEREFORE, the instant petition is *DISMISSED*. The Decision and Resolution of the House of Representatives Electoral Tribunal, dated September 10, 2009 and November 12, 2009, respectively, are *AFFIRMED*.

SO ORDERED.

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

Puno, C.J., on official leave.

Corona, J., no part.

---

[10] *Id.* at 496. (Emphasis supplied.)

EN BANC

[G.R. No. 190779. March 26, 2010]

ATTY. REYNANTE B. ORCEO, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATURE; DELEGATION OF LEGISLATIVE POWER; R.A. No. 7166 AUTHORIZES THE COMELEC TO PROMULGATE RESOLUTION No. 8714, WHICH ISSUES RULES TO IMPLEMENT SAID ACT.— R.A. No. 7166 (*An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes*) provides: SEC. 32. *Who May Bear Firearms*. — During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearms licenses shall be suspended during the election period. Only regular members or officers of the Philippine National Police, the Armed Forces of the Philippines and other law enforcement agencies of the Government who are duly deputized in writing by the Commission for election duty may be authorized to carry and possess firearms during the election period: *Provided*, That, when in the possession of firearms, the deputized law enforcement officer must be: (a) in full uniform showing clearly and legibly his name, rank and serial number, which shall remain visible at all times; and (b) in the actual performance of his election duty in the specific area designated by the Commission. x x x SEC. 35. *Rules and Regulations*. — The Commission shall issue rules and regulations to implement this Act. Said rules shall be published in at least two (2) national newspapers of general circulation.

2. ID.; ID.; ID.; ID.; COMELEC'S AUTHORITY TO PROMULGATE RESOLUTION NO. 8714 IS PURSUANT TO SECTION 35 OF R.A. No. 7166.— Pursuant to Section 35 of R.A. No. 7166,

the COMELEC promulgated Resolution No. 8714, which contains the implementing rules and regulations of Sections 32 and 33 of R.A. No. 7166. x x x Evidently, the COMELEC had the authority to promulgate Resolution No. 8714 pursuant to Section 35 of R.A. No. 7166. It was granted the power to issue the implementing rules and regulations of Sections 32 and 33 of R.A. No. 7166. Under this broad power, the COMELEC was mandated to provide the details of who may bear, carry or transport firearms or other deadly weapons, as well as the definition of "firearms," among others. These details are left to the discretion of the COMELEC, which is a constitutional body that possesses special knowledge and expertise on election matters, with the objective of ensuring the holding of free, orderly, honest, peaceful and credible elections. x x x The inclusion of airsoft guns in the term "firearm" in Resolution No. 8714 for purposes of the gun ban during the election period is a reasonable restriction, the objective of which is to ensure the holding of free, orderly, honest, peaceful and credible elections.

3. ID.; ID.; ID.; ID.; ID.; PNP CIRCULAR NO. 11 DATED DECEMBER 4, 2007 REGULATES POSSESSION AND CARRIAGE OF AIRSOFT RIFLES/PISTOLS; CASE AT BAR.— Contrary to petitioner's allegation, there is a regulation that governs the possession and carriage of airsoft rifles/pistols, namely, Philippine National Police (PNP) Circular No. 11 dated December 4, 2007, entitled *Revised Rules and Regulations Governing the Manufacture, Importation, Exportation, Sale, Possession, Carrying of Airsoft Rifles/Pistols and Operation of Airsoft Game Sites and Airsoft Teams.* The Circular defines an airsoft gun as follows: Airsoft Rifles/Pistol x x x includes "battery operated, spring and gas type powered rifles/pistols which discharge plastic or rubber pellets only as bullets or ammunition." This differs from replica as the latter does not fire plastic or rubber pellet. PNP Circular No. 11 classifies the airsoft rifles/pistol as a special type of air gun, which is restricted in its use only to sporting activities, such as war game simulation. Any person who desires to possess an airsoft rifle/pistol needs a license from PNP, and he shall file his application in accordance with PNP Standard Operating Procedure No. 13, which prescribes the procedure to be followed in the licensing of firearms. The minimum age limit

of the applicant is 18 years old. The circular also requires a Permit to Transport an airsoft rifle/pistol from the place of residence to any game or exhibition site. A license to possess an airsoft gun, just like ordinary licenses in other regulated fields, does not confer an absolute right, but only a personal privilege to be exercised under existing restrictions, and such as may thereafter be reasonably imposed.

4. ID.; ID.; STATE POLICIES UNDER ART. 22, SEC. 12 ARTICLE XV, SECTION 1 AND ARTICLE 11, SECTION 17, IN THE 1987 CONSTITUTION, NOT ABSOLUTE; LICENSEE OF AN AIRSOFT GUN IS SUBJECT TO RESTRICTIONS IMPOSED UNDER PNP CIRCULAR NO. 11 AND COMELEC RESOLUTION NO. 8714; CASE AT BAR.— As a long-time player of the airsoft sport, it is presumed that petitioner has a license to possess an airsoft gun. As a lawyer, petitioner is aware that a licensee of an airsoft gun is subject to the restrictions imposed upon him by PNP Circular No. 11 and other valid restrictions, such as Resolution No. 8714. These restrictions exist in spite of . . . State policies, (such as) x x x "Art. II, Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. Art. XV, Sec. 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development. Art. II, Sec. 17. The State shall give priority to x x x sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development." x x x which do not directly uphold a licensee's absolute right to possess or carry an airsoft gun under any circumstance.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; COMELEC DID NOT GRAVELY ABUSE ITS DISCRETION IN INCLUDING AIRSOFT GUNS AND AIRGUNS IN THE TERM "FIREARM" IN RESOLUTION NO. 8714 FOR PURPOSES OF THE GUN BAN DURING THE ELECTION PERIOD.— Petitioner's allegation of grave abuse of discretion by respondent COMELEC implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, the exercise of power in an arbitrary manner

by reason of passion, prejudice or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. The Court holds that the COMELEC did not gravely abuse its discretion in including airsoft guns and airguns in the term "firearm" in Resolution No. 8714 for purposes of the gun ban during the election period, with the apparent objective of ensuring free, honest, peaceful and credible elections this year. However, the replicas and imitations of airsoft guns and airguns are excluded from the term "firearm" in Resolution No. 8714.

BRION, *J.*, *concurring opinion*:

1. POLITICAL LAW; STATUTES; INTERPRETATION OF; LEGISLATIVE DEFINITION CONTROLS MEANING OF THE STATUTORY WORD.— When a statute defines the particular words and phrases it uses, the legislative definition controls the meaning of the statutory word, irrespective of any other meaning the word or phrase may have in its ordinary or usual sense; otherwise put, where a statute defines a word or phrase employed therein, the word or phrase should not, by construction, be given a different meaning; the legislature, in adopting a specific definition, is deemed to have restricted the meaning of the word within the terms of the definition.

2. ID.; ID.; ID.; ID.; THE ELECTION FIREARMS BAN (RA 7166) DID NOT PROVIDE A STATUTORY DEFINITION OF THE TERM "FIREARMS"; EFFECT; CASE AT BAR.— Significantly, RA 7166 did not provide a statutory definition of the term "firearms." The absence of this statutory definition leads to the question of what the term "firearms" under RA 7166 exactly contemplates? Various rules of statutory construction may be used to consider this query. ***First***, the general rule in construing words and phrases used in a statute is that, in the absence of legislative intent to the contrary, they should be given their plain, ordinary and common usage meaning; the words should be read and considered in their natural, ordinary, commonly accepted usage, and without resorting to forced or subtle construction. Words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation. ***Second***, a word of general significance in a statute is to be taken in its ordinary

and comprehensive sense, unless it is shown that the word is intended to be given a different or restricted meaning; what is generally spoken shall be generally understood and general words shall be understood in a general sense. ***Third***, a word of general signification employed in a statute should be construed, in the absence of legislative intent to the contrary, to comprehend not only peculiar conditions obtaining at the time of its enactment but those that may normally arise after its approval as well. This rule of construction, known as *progressive interpretation*, extends by construction the application of a statute to all subjects or conditions within its general purpose or scope that come into existence subsequent to its passage, and thus keeps legislation from becoming ephemeral and transitory. ***Fourth***, as a general rule, words that have or have been used in a technical sense or those that have been judicially construed to have a certain meaning, should be interpreted according to the sense in which they have been previously used, although the sense may vary from the strict or literal meaning of the words; the presumption is that the language used in a statute, which has a technical or well-known legal meaning, is used in that sense by the legislature.

3. ID.; ID.; ID.; ID.; ID.: APPLICATION OF VARIOUS RULES OF STATUTORY CONSTRUCTION TO DETERMINE THE LEGISLATURE'S UNDERSTANDING OF THE TERM "FIREARM"; CASE AT BAR.— We cannot apply the first cited rule, under which a firearm could mean a weapon from which a shot is discharged by gunpowder – this is the common usage or acceptation of the term. Specifically, we cannot apply the rule as there previously existed a *more comprehensive* definition of the term under our legal tradition, *i.e.*, the definition originally provided under Act 1780 which Act 2711 substantially adopted. Under this cited statutory definition, the term "firearms" may include any other weapon from which a bullet, ball or shot, shell or other missile may be discharged by means of gunpowder or **other explosive**. Thus, a weapon not using the medium of gunpowder may also be considered a firearm. Under the fourth rule above, the term "firearms" appears to have acquired a technical or well-known legal meaning. The statutory definition (under Act 2711) included air rifles, except those with small caliber and limited range and used as toys, and that the *barrel of any firearm shall be*

considered a complete firearm for purposes of the law regulating the manufacture, use, possession and transport of firearms. As our legal history or tradition on firearms shows, this old definition has not changed. Thus, we can reasonably assume, in the absence of proof to the contrary, that when the legislature conceived of the election firearms ban, its understanding of the term "firearm" was in accordance with the definition provided under the then existing laws. However, this old definition should not bar an understanding of "firearm" suggested by the third rule above – that RA 7166, as an act of Congress, is not intended to be short-lived or transitory; it applies not only to existing conditions, but also to future situations within its reasonable coverage. Thus, the election firearms ban (RA 7166) applies as well to technological advances and developments in modern weaponry.

4. ID.; ID.; ID.; ID.; ID.; ID.; AN AIRSOFT GUN, OPERATING ON THE SAME PRINCIPLE AS AIR RIFLES, FALLS UNDER ADMINISTRATIVE DETERMINATION OF WHETHER IT COULD BE CONSIDERED A TOY OR A FIREARM.— As defined, "Airsoft guns are firearm replicas, often highly detailed, manufactured for recreational purposes. Airsoft guns propel plastic 6mm and 8mm pellets at muzzle velocities ranging from 30 meters per second (m/s) to 180 m/s (100 feet per second [f/s] to 637ft/s) by way of compressed gas or a spring-driven piston. Depending on the mechanism driving the pellet, an airsoft gun can be operated manually or cycled by either compressed gas such as Green Gas (propane), or CO2, a spring, or an electric motor. All pellets are ultimately fired from a piston compressing a pocket of air from behind the pellets." Other than firearms discharged with the use of gunpowder, the law on firearms includes air rifles but subject to *appropriate regulations that the proper authority may promulgate as regards their categorization, whether it is used as a toy*. An **air gun** (*e.g.* **air rifle** or **air pistol**) is a rifle, pistol, or shotgun which fires projectiles by means of compressed air or other gas, in contrast to a firearm which burns a propellant. Most air guns use metallic projectiles as ammunition. Air guns that only use *plastic* projectiles are classified as airsoft guns. An airsoft gun appears to operate on the same principle as air rifles – *i.e.*, it uses compressed air – and could properly be considered to be within the coverage

of an administrative determination of whether it could be considered a toy or a firearm. From this perspective, airsoft guns can be considered a firearm subject to regulation by the proper authorities.

5. ID.; ID.; ID.; ID.; ID.; ID.; PURSUANT TO EO 712, THE PNP CHIEF DETERMINED THAT AIRSOFT GUNS ARE CONSIDERED AS WEAPONS SUBJECT TO REGULATION.— Pursuant to the cited EO 712, the President, *then exercising legislative powers and authority*, delegated to the Chief of the Constabulary [now the Chief of the Philippine National Police (*PNP*)], the authority to determine whether certain air rifles/guns can be treated as toys or firearms. Under this same authority, then PNP Chief Avelino Razon issued PNP Circular No. 11 on December 4, 2007. PNP Circular No. 11 requires that airsoft guns and rifles be given the same treatment as firearms and air rifles with respect to licensing, manufacture, possession and transport limitations. In effect, this is the PNP Chief's determination, by regulation, that airsoft guns and rifles are not simply considered toys beyond administrative regulation but, on the contrary, are considered as weapons subject to regulation. Based on this Circular, they are included under the term "firearms" within the contemplation of RA 7166, and are therefore appropriate subjects of COMELEC Resolution No. 8714 issued pursuant to this law.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for *certiorari*[1] questioning the validity of Resolution No. 8714 insofar as it provides that the term "firearm" includes airsoft guns and their replicas/imitations, which results in their coverage by the gun ban during the election period this year.

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

Resolution No. 8714 is entitled *Rules and Regulations on the: (1) Bearing, Carrying or Transporting of Firearms or other Deadly Weapons; and (2) Employment, Availment or Engagement of the Services of Security Personnel or Bodyguards, During the Election Period for the May 10, 2010 National and Local Elections*. The Resolution was promulgated by the Commission on Elections (COMELEC) on December 16, 2009, and took effect on December 25, 2009.

Resolution No. 8714 contains the implementing rules and regulations of Sec. 32 (Who May Bear Firearms) and Section 33 (Security Personnel and Bodyguards) of Republic Act (R.A.) No. 7166, entitled *An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes*.

Section 1 of Resolution No. 8714 prohibits an unauthorized person from bearing, carrying or transporting firearms or other deadly weapons in public places, including all public buildings, streets, parks, and private vehicles or public conveyances, even if licensed to possess or carry the same, during the election period.

Under Section 2 (b) of Resolution No. 8714, the term "firearm" includes "airgun, airsoft guns, and their replica/imitation in whatever form that can cause an ordinary person to believe that they are real." Hence, airsoft guns and their replicas/imitations are included in the gun ban during the election period from January 10, 2010 to June 9, 2010.

Petitioner claims that he is a real party-in-interest, because he has been playing airsoft since the year 2000. The continuing implementation of Resolution No. 8714 will put him in danger of sustaining direct injury or make him liable for an election offense[2] if caught in possession of an airsoft gun and its replica/

---

[2] The election offense of carrying firearms outside residence or place of business is punished with imprisonment of not less than one year, but not more than six years; and the guilty party shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. [Batas Pambansa Bilang 881, Sections 261 (q) and 264.]

imitation in going to and from the game site and playing the sport during the election period.

Petitioner contends that the COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction in including "airsoft guns and their replicas/imitations" in the definition of "firearm" in Resolution No. 8714, since there is nothing in R.A. No. 7166 that mentions "airsoft guns and their replicas/imitations." He asserts that the intendment of R.A. No. 7166 is that the term "firearm" refers to real firearm in its common and ordinary usage. In support of this assertion, he cites the Senate deliberation on the bill,[3] which later became R.A. No. 7166, where it was clarified that an unauthorized person caught carrying a firearm during the election period is guilty of an election offense under Section 261 (q) of the Omnibus Election Code.

Further, petitioner alleges that there is no law that covers airsoft guns. By including airsoft guns in the definition of "firearm," Resolution No. 8714, in effect, criminalizes the sport, since the possession of an airsoft gun or its replica/imitation is now an election offense, although there is still no law that governs the use thereof.

Petitioner prays that the Court render a decision as follows: (1) Annulling Resolution No. 8714 insofar as it includes airsoft guns and their replicas/imitations within the meaning of "firearm," and declaring the Resolution as invalid; (2) ordering the COMELEC to desist from further implementing Resolution No. 8714 insofar as airsoft guns and their replicas/imitations are concerned; (3) ordering the COMELEC to amend Resolution No. 8714 by removing airsoft guns and their replicas/imitations within the meaning of "firearm"; and (4) ordering the COMELEC to issue a Resolution directing the Armed Forces of the Philippines, Philippine National Police and other law enforcement agencies deputized by the COMELEC to desist from further enforcing Resolution No. 8714 insofar as airsoft guns and their replicas/imitations are concerned.

---

[3] Petition, *rollo*, pp. 10-11.

The main issue is whether or not the COMELEC gravely abused its discretion in including airsoft guns and their replicas/ imitations in the term "firearm" in Section 2 (b) of R.A. No. 8714.

The Court finds that the COMELEC did not commit grave abuse of discretion in this case.

R.A. No. 7166 (*An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes*)[4] provides:

> SEC. 32. *Who May Bear Firearms*.— During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearms licenses shall be suspended during the election period.
>
> Only regular members or officers of the Philippine National Police, the Armed Forces of the Philippines and other law enforcement agencies of the Government who are duly deputized in writing by the Commission for election duty may be authorized to carry and possess firearms during the election period: *Provided*, That, when in the possession of firearms, the deputized law enforcement officer must be: (a) in full uniform showing clearly and legibly his name, rank and serial number, which shall remain visible at all times; and (b) in the actual performance of his election duty in the specific area designated by the Commission.
>
> x x x x x x x x x
>
> SEC. 35. *Rules and Regulations*. — The Commission shall issue rules and regulations to implement this Act. Said rules shall be published in at least two (2) national newspapers of general circulation.

Pursuant to Section 35 of R.A. No. 7166, the COMELEC promulgated Resolution No. 8714, which contains the implementing rules and regulations of Sections 32 and 33 of R.A. No. 7166. The pertinent portion of the Resolution states:

---

[4] Approved on November 26, 1991.

NOW, THEREFORE, pursuant to the powers vested in it by the Constitution of the Republic of the Philippines, the Omnibus Election Code (B.P. Blg. 881), Republic Acts Nos. 6646, 7166, 8189, 8436, 9189, 9369 and other elections laws, the Commission RESOLVED, as it hereby RESOLVES, to promulgate the following rules and regulations to implement Sections 32 and 33 of Republic Act No. 7166 in connection with the conduct of the May 10, 2010 national and local elections:

SECTION 1. *General Guiding Principles.* – **During the election period: (a) no person shall bear, carry or transport firearms or other deadly weapons in public places, including all public buildings, streets, parks, and private vehicles or public conveyances, even if licensed to possess or carry the same**; and (b) no candidate for public office, including incumbent public officers seeking election to any public office, shall employ, avail himself of or engage the services of security personnel or bodyguards, whether or not such bodyguards are regular members or officers of the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP) or other law enforcement agency of the Government.

The transport of firearms of those who are engaged in the manufacture, importation, exportation, purchase, sale of firearms, explosives and their spare parts or those involving the transportation of firearms, explosives and their spare parts, may, with prior notice to the Commission, be authorized by the Director General of the PNP provided that the firearms, explosives and their spare parts are immediately transported to the Firearms and Explosives Division, CSG, PNP.

SEC. 2. *Definition of Terms.* – As used in this Resolution:

(a) *Election Period* refers to the election period prescribed in Comelec Resolution No. 8646 dated 14 July 2009 which is from 10 January 2010 to 09 June 2010;

(b) ***Firearm*** **shall refer to the "firearm" as defined in existing laws, rules and regulations. The term also includes airgun, airsoft guns, and their replica/imitation in whatever form that can cause an ordinary person to believe that they are real**;

(c) *Deadly weapon* includes bladed instrument, handgrenades or other explosives, except pyrotechnics.

x x x x x x x x x

SEC. 4. *Who May Bear Firearms*. — Only the following persons who are in the regular plantilla of the PNP or AFP or other law enforcement agencies are authorized to bear, carry or transport firearms or other deadly weapons during the election period:

(a) Regular member or officer of the PNP, the AFP and other law enforcement agencies of the Government, provided that when in the possession of firearm, he is: (1) in the regular plantilla of the said agencies and is receiving regular compensation for the services rendered in said agencies; and (2) in the agency-prescribed uniform showing clearly and legibly his name, rank and serial number or, in case rank and serial number are inapplicable, his agency-issued identification card showing clearly his name and position, which identification card shall remain visible at all times; (3) duly licensed to possess firearm and to carry the same outside of residence by means of a valid mission order or letter order; and (4) in the actual performance of official law enforcement duty, or in going to or returning from his residence/barracks or official station.

x x x x x x x x x

(b) Member of privately owned or operated security, investigative, protective or intelligence agencies duly authorized by the PNP, provided that when in the possession of firearm, he is: (1) in the agency-prescribed uniform with his agency-issued identification card prominently displayed and visible at all times, showing clearly his name and position; and (2) in the actual performance of duty at his specified place/area of duty.

x x x x x x x x x

SEC. 8. *Enforcement*. – Any person who, not wearing the authorized uniform mentioned herein, bears, carries or transports firearm or other deadly weapon, shall be presumed unauthorized to carry firearms and subject to arrest.[5]

Petitioner contends that under R.A. No. 7166, the term "firearm" connotes real firearm. Moreover, R.A. No. 7166 does

[5] Emphasis supplied.

not mention airsoft guns and their replicas/imitations. Hence, its implementing rules and regulations contained in Resolution No. 8714 should not include airsoft guns and their replicas/ imitations in the definition of the term "firearm."

The Court is not persuaded.

Holy Spirit Homeowners Association, Inc. v. Defensor[6] held:

> Where a rule or regulation has a provision not expressly stated or contained in the statute being implemented, that provision does not necessarily contradict the statute. A legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. **All that is required is that the regulation should be germane to the objects and purposes of the law; that the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law**.[7]

Evidently, the COMELEC had the authority to promulgate Resolution No. 8714 pursuant to Section 35 of R.A. No. 7166. It was granted the power to issue the implementing rules and regulations of Sections 32 and 33 of R.A. No. 7166. Under this broad power, the COMELEC was mandated to provide the details of who may bear, carry or transport firearms or other deadly weapons, as well as the definition of "firearms," among others. These details are left to the discretion of the COMELEC, which is a constitutional body that possesses special knowledge and expertise on election matters, with the objective of ensuring the holding of free, orderly, honest, peaceful and credible elections.

In its Comment,[8] the COMELEC, represented by the Office of the Solicitor General, states that the COMELEC's intent in the inclusion of airsoft guns in the term "firearm" and their resultant coverage by the election gun ban is to avoid the possible use of recreational guns in sowing fear, intimidation or terror during the election period. An ordinary citizen may not be able to distinguish between a real gun and an airsoft gun. It is fear

---

[6] G.R. No. 163980, August 3, 2006, 497 SCRA 581.

[7] *Id*. at 599-600. (Emphasis supplied.)

[8] *Rollo*, pp. 35-53.

subverting the will of a voter, whether brought about by the use of a real gun or a recreational gun, which is sought to be averted. Ultimately, the objective is to ensure the holding of free, orderly, honest, peaceful and credible elections this year.

Contrary to petitioner's allegation, there is a regulation that governs the possession and carriage of airsoft rifles/pistols, namely, Philippine National Police (PNP) Circular No. 11 dated December 4, 2007, entitled *Revised Rules and Regulations Governing the Manufacture, Importation, Exportation, Sale, Possession, Carrying of Airsoft Rifles/Pistols and Operation of Airsoft Game Sites and Airsoft Teams.* The Circular defines an airsoft gun as follows:

> Airsoft Rifle/Pistol x x x includes "battery operated, spring and gas type powered rifles/pistols which discharge plastic or rubber pellets only as bullets or ammunition. This differs from replica as the latter does not fire plastic or rubber pellet.

PNP Circular No. 11 classifies the airsoft rifle/pistol as a special type of air gun, which is restricted in its use only to sporting activities, such as war game simulation.[9] Any person who desires to possess an airsoft rifle/pistol needs a license from the PNP, and he shall file his application in accordance with PNP Standard Operating Procedure No. 13, which prescribes the procedure to be followed in the licensing of firearms.[10] The minimum age limit of the applicant is 18 years old.[11] The Circular also requires a Permit to Transport an airsoft rifle/pistol from the place of residence to any game or exhibition site.[12]

A license to possess an airsoft gun, just like ordinary licenses in other regulated fields, does not confer an absolute right, but

---

[9] Paragraph V (Restriction), PNP Circular No. 11 dated December 4, 2007.

[10] Paragraph VIII (Registration), PNP Circular No. 11 dated December 4, 2007.

[11] *Id*.

[12] Paragraph IX (Transport of Airsoft Rifle/Pistol), PNP Circular No. 11 dated December 4, 2007.

only a personal privilege to be exercised under existing restrictions, and such as may thereafter be reasonably imposed.[13]

The inclusion of airsoft guns and airguns in the term "firearm" in Resolution No. 8714 for purposes of the gun ban during the election period is a reasonable restriction, the objective of which is to ensure the holding of free, orderly, honest, peaceful and credible elections.

However, the Court excludes the replicas and imitations of airsoft guns and airguns from the term "firearm" under Resolution No. 8714, because they are not subject to any regulation, unlike airsoft guns.

Petitioner further contends that Resolution No. 8714 is not in accordance with the State policies in these constitutional provisions:

> Art. II, Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. x x x
>
> Art. XV, Sec. 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.
>
> Art. II, Sec. 17. The State shall give priority to x x x sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.

Petitioner asserts that playing airsoft provides bonding moments among family members. Families are entitled to protection by the society and the State under the Universal Declaration of Human Rights. They are free to choose and enjoy their recreational activities. These liberties, petitioner contends, cannot be abridged by the COMELEC.

In its Comment, the COMELEC, through the Solicitor General, states that it adheres to the aforementioned state policies, but even constitutional freedoms are not absolute, and they may be abridged to some extent to serve appropriate and important interests.

---

[13] See *Chavez v. Romulo*, G.R. No. 157036, June 9, 2004, 431 SCRA 534.

As a long-time player of the airsoft sport, it is presumed that petitioner has a license to possess an airsoft gun. As a lawyer, petitioner is aware that a licensee of an airsoft gun is subject to the restrictions imposed upon him by PNP Circular No. 11 and other valid restrictions, such as Resolution No. 8714. These restrictions exist in spite of the aforementioned State policies, which do not directly uphold a licensee's absolute right to possess or carry an airsoft gun under any circumstance.

Petitioner's allegation of grave abuse of discretion by respondent COMELEC implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, the exercise of power in an arbitrary manner by reason of passion, prejudice or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[14]

The Court holds that the COMELEC did not gravely abuse its discretion in including airsoft guns and airguns in the term "firearm" in Resolution No. 8714 for purposes of the gun ban during the election period, with the apparent objective of ensuring free, honest, peaceful and credible elections this year. However, the replicas and imitations of airsoft guns and airguns are excluded from the term "firearm" in Resolution No. 8714.

WHEREFORE, the petition is *PARTLY GRANTED* insofar as the exclusion of replicas and imitations of airsoft guns from the term "firearm" is concerned. Replicas and imitations of airsoft guns and airguns are hereby declared excluded from the term "firearm" in Resolution No. 8714. The petition is *DISMISSED* in regard to the exclusion of airsoft guns from the term "firearm" in Resolution No. 8714. Airsoft guns and airguns are covered by the gun ban during the election period.

No costs.

SO ORDERED.

---

[14] *Sangcopan v. Commission on Elections*, G.R. No. 170216, March 12, 2008, 548 SCRA 148, 158-159.

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

Brion, J., see concurring opinion.

Puno, C.J., on official leave.

CONCURRING OPINION

BRION, *J.*:

I concur with the majority's decision and add the following discussions in its support.

The Law on Firearms

The definition of "firearm" has evolved through various statutes and issuances.

Under Act No. 1780,[1] a firearm was defined as any rifle, musket, carbine, shotgun, revolver, pistol or air rifle, **except air rifles of small caliber and limited range used as toys,** or any other deadly weapon from which a bullet, ball, shot, shell or other missile or missiles may be discharged by means of gunpowder or other explosive; the barrel of any of the same shall be considered a firearm.

Under Act No. 2711[2] (which repealed Act No. 1780), firearms include rifles, muskets, carbines, shotguns, revolvers, pistols and all other deadly weapons from which a bullet, ball, shot, shell or other missile may be discharged by means of gunpowder or other explosives; ***the term also includes air rifles except such as being a small caliber and limited range used as toys***; the barrel of any firearm shall be considered a complete firearm for all the purposes hereof.

---

[1] An Act to Regulate the Importation, Acquisition, Possession and Transfer of Firearms and to Prohibit the Possession of Same Except in Compliance with the Provisions of this Act. Enacted October 12, 1907.

[2] The Revised Administrative Code of 1917. Enacted March 10, 1917 and Effective October 1, 1917.

Commonwealth Act No. 466, as amended,[3] follows the definition under Act No. 2711, with the modification that the ***term firearms include air rifles coming under regulations of the Provost Marshal General***.

Presidential Decree (*PD*) No. 1866[4] codifies the laws on illegal/unlawful possession, manufacture, dealing in, acquisition or disposition of firearms, ammunition or explosives or instruments used in the manufacture of firearms, ammunition or explosives, and imposed stiffer penalties for its violation. It does not, however, define the term firearm. The definition is provided in the Implementing Rules and Regulations of PD 1866 as follows:

> Firearm – as herein used, includes rifles, muskets, carbines, shotguns, revolvers, pistols and all other deadly weapons from which a bullet, ball, shot, shell or other missile may be discharged by means of gunpowder or other explosives. **The term also includes air rifles and air pistols not classified as toys under the provisions of Executive Order No. 712 dated 28 July 1981**. The barrel of any firearm shall be considered a complete firearm. [Emphasis supplied.]

Executive Order (*EO*) No. 712, to which the Implementing Rules and Regulations of PD 1866 refers, ***regulates the manufacture, sale and possession of air rifles/pistols which are considered as firearms***. Under its Section 1, the Chief of the Philippine Constabulary is given the authority to prescribe the criteria in determining whether an air rifle/pistol is to be considered a firearm or a toy within the contemplation of Sec. 877 of the Revised Administrative Code. Under Section 3, the Chief of the Philippine Constabulary is also delegated the authority to act dispositively on all applications to manufacture, sell or possess and/or otherwise deal in air rifles/pistols whether considered as firearms or toys under the criteria to be prescribed pursuant to Section 1. The Chief of the Philippine Constabulary

---

[3] NATIONAL INTERNAL REVENUE CODE. Enacted July 1, 1939.

[4] Promulgated June 29, 1983 and took effect 15 days following its publication in the Official Gazette.

shall also prescribe, under Section 4, the rules and regulations to implement EO 712.

Republic Act (*RA*) No. 8294[5], which amended PD 1866, also does not define the term firearm but categorizes it into two: (1) **low powered firearm** such as rimfire handgun, .380 or .32 and other firearm of similar firepower; and (2) **high powered firearm** which includes those with bores bigger in diameter than .38 caliber and 9 millimeter, such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three.

The Election Firearms Ban under RA 7166

When a statute defines the particular words and phrases it uses, the legislative definition controls the meaning of the statutory word, irrespective of any other meaning the word or phrase may have in its ordinary or usual sense; otherwise put, where a statute defines a word or phrase employed therein, the word or phrase should not, by construction, be given a different meaning; the legislature, in adopting a specific definition, is deemed to have restricted the meaning of the word within the terms of the definition.[6]

Significantly, RA 7166 did not provide a statutory definition of the term "firearms." The absence of this statutory definition leads to the question of what the term "firearms" under RA 7166 exactly contemplates? Various rules of statutory construction may be used to consider this query.

---

[5] AN ACT AMENDING THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, ENTITLED *"CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF, AND FOR RELEVANT PURPOSES."* Enacted on June 6, 1997.

[6] Ruben E. Agpalo, *STATUTORY CONSTRUCTION*, 177-178 (2003).

First, the general rule in construing words and phrases used in a statute is that, in the absence of legislative intent to the contrary, they should be given their plain, ordinary and common usage meaning; the words should be read and considered in their natural, ordinary, commonly accepted usage, and without resorting to forced or subtle construction. Words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation.[7]

Second, a word of general significance in a statute is to be taken in its ordinary and comprehensive sense, unless it is shown that the word is intended to be given a different or restricted meaning; what is generally spoken shall be generally understood and general words shall be understood in a general sense.[8]

Third, a word of general signification employed in a statute should be construed, in the absence of legislative intent to the contrary, to comprehend not only peculiar conditions obtaining at the time of its enactment but those that may normally arise after its approval as well. This rule of construction, known as *progressive interpretation*, extends by construction the application of a statute to all subjects or conditions within its general purpose or scope that come into existence subsequent to its passage, and thus keeps legislation from becoming ephemeral and transitory.[9]

Fourth, as a general rule, words that have or have been used in a technical sense or those that have been judicially construed to have a certain meaning, should be interpreted according to the sense in which they have been previously used, although the sense may vary from the strict or literal meaning of the words; the presumption is that the language used in a statute, which has a technical or well-known legal meaning, is used in that sense by the legislature.[10]

---

[7] *Id*. at 180.

[8] *Id*. at 183.

[9] *Id*. at 185.

[10] *Id*. at 187.

We cannot apply the first cited rule, under which a firearm could mean a weapon from which a shot is discharged by gunpowder[11] — this is the common usage or acceptation of the term. Specifically, we cannot apply the rule as there previously existed a *more comprehensive* definition of the term under our legal tradition, *i.e.*, the definition originally provided under Act 1780 which Act 2711 substantially adopted. Under this cited statutory definition, the term "firearms" may include any other weapon from which a bullet, ball or shot, shell or other missile may be discharged by means of gunpowder or **other explosive**. Thus, a weapon not using the medium of gunpowder may also be considered a firearm.

Under the fourth rule above, the term "firearms" appears to have acquired a technical or well-known legal meaning. The statutory definition (under Act 2711) included air rifles, except those with small caliber and limited range and used as toys, and that the *barrel of any firearm shall be considered a complete firearm* for purposes of the law regulating the manufacture, use, possession and transport of firearms.

As our legal history or tradition on firearms shows, this old definition has not changed. Thus, we can reasonably assume, in the absence of proof to the contrary, that when the legislature conceived of the election firearms ban, its understanding of the term "firearm" was in accordance with the definition provided under the then existing laws.

However, this old definition should not bar an understanding of "firearm" suggested by the third rule above – that RA 7166, as an act of Congress, is not intended to be short-lived or transitory; it applies not only to existing conditions, but also to future situations within its reasonable coverage. Thus, the election firearms ban (RA 7166) applies as well to technological advances and developments in modern weaponry.

It is under this context that we can examine whether an airsoft gun can be considered a firearm. As defined,

---

[11] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 84 (1993 ed.).

Airsoft guns are firearm replicas, often highly detailed, manufactured for recreational purposes. Airsoft guns propel plastic 6mm and 8mm pellets at muzzle velocities ranging from 30 meters per second (m/s) to 180 m/s (100 feet per second [f/s] to 637ft/s) by way of compressed gas or a spring-driven piston. Depending on the mechanism driving the pellet, an airsoft gun can be operated manually or cycled by either compressed gas such as Green Gas (propane), or CO2, a spring, or an electric motor. All pellets are ultimately fired from a piston compressing a pocket of air from behind the pellets.[12]

Other than firearms discharged with the use of gunpowder, the law on firearms includes air rifles but subject to *appropriate regulations that the proper authority may promulgate as regards their categorization, whether it is used as a toy*.[13] An **air gun** (e.g. **air rifle** or **air pistol**) is a rifle, pistol, or shotgun which fires projectiles by means of compressed air or other gas, in contrast to a firearm which burns a propellant. Most air guns use metallic projectiles as ammunition. Air guns that only use *plastic* projectiles are classified as airsoft guns.[14]

An airsoft gun appears to operate on the same principle as air rifles – *i.e.*, it uses compressed air – and could properly be considered to be within the coverage of an administrative determination of whether it could be considered a toy or a firearm. From this perspective, airsoft guns can be considered a firearm subject to regulation by the proper authorities.

The Authority to Categorize Air Rifles and Airsoft Guns

Pursuant to the cited EO 712, the President, *then exercising legislative powers and authority*, delegated to the Chief of the Constabulary [now the Chief of the Philippine National Police (*PNP*)], the authority to determine whether certain air rifles/guns can be treated as toys or firearms.[15] Under this

---

[12] http://en.wikipedia.org/wiki/Airsoft_gun; last visited March 16, 2010.

[13] See Executive Order No. 712.

[14] http://en.wikipedia.org/wiki/Air_gun; last visited March 16, 2010.

[15] See *Chavez v. Romulo*, G.R. No. 157036, June 9, 2004.

same authority, then PNP Chief Avelino Razon issued PNP Circular No. 11 on December 4, 2007.

PNP Circular No. 11 requires that airsoft guns and rifles be given the same treatment as firearms and air rifles with respect to licensing, manufacture, possession and transport limitations. In effect, this is the PNP Chief's determination, by regulation, that airsoft guns and rifles are not simply considered toys beyond administrative regulation but, on the contrary, are considered as weapons subject to regulation. Based on this Circular, they are included under the term "firearms" within the contemplation of RA 7166, and are therefore appropriate subjects of COMELEC Resolution No. 8714 issued pursuant to this law.

INDEX

INDEX

AFFIDAVITS

Affidavit of recantation — Must be tested in a public trial. (People *vs*. Bustamante, G.R. No. 172357, Mar. 19, 2010) p. 194

AGRARIAN REFORM

Agrarian dispute — Defined. (Magno *vs*. Francisco, G.R. No. 168959, Mar. 25, 2010) p. 391

ALLOWANCES

Compensation and Position Classification Act of 1989 (R.A. No. 6758) — Did not prohibit the Department of Budget and Management (DBM) from identifying what allowances are deemed integrated into the standardized salary rates. (Gutierrez *vs*. Dept. of Budget and Management, G.R. No. 153266, Mar. 18, 2010) p. 1

— Requisite for entitlement to Inflation Connected Allowance (ICA). *(Id.)*

— The continued grant of Cost of Living Allowance (COLA) to the uniformed personnel to the exclusion of other government officials does not violate the equal protection clause of the Constitution; reasons. *(Id.)*

— The disallowance of allowances and fringe benefits of COA personnel assigned to the GSIS is valid. *(Id.)*

— The enumerated exclusions in Section 12 of R.A. No. 6758 remain exclusive until the DBM issues the corresponding rules and regulations. *(Id.)*

— The ICA received by officials and employees of the Insurance Commission is deemed integrated into the standardized salary rates. *(Id.)*

— The inclusion of COLA in the standardized salary rates is proper; reason. *(Id.)*

— The integration of COLA into the standardized salary rates is still valid despite non-publication of Corporate Compensation Circular 10 and National Compensation Circular 59. *(Id.)*

APPEALS

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — Explained. (People *vs*. De Guzman, G.R. No. 186498, Mar. 26, 2010) p. 637

— Non-compliance with the requirement shall not render void or invalid the seizures and custody as long as the integrity and evidentiary value of the seized items are properly preserved. *(Id.)*

— Perfect chain is not always the standard. *(Id.)*

— Reasonable doubt exists when there is failure to establish the integrity of seized drugs through an unbroken chain of custody. *(Id.)*

— Unbroken chain of custody, when indispensable and essential. *(Id.)*

COMPROMISES

Compromise judgment — Judgment rendered in accordance with a compromise agreement; nature. (Reyes-Mesugas *vs*. Reyes, G.R. No. 174835, Mar. 22, 2010) p. 334

CONSPIRACY

Existence of — When present. (People *vs*. Bustamante, G.R. No. 172357, Mar. 19, 2010) p. 194

CONTRACTS

Interpretation of — It is only when the contract is vague and ambiguous that courts are permitted to resort to the interpretation of its terms to determine the parties' intent. (Pan Pacific Service Contractors, Inc. *vs*. Equitable PCI Bank, G.R. No. 169975, Mar. 18, 2010) p. 94

Statute of Frauds — Elucidated; effect of non-compliance therewith. (Municipality of Hagonoy, Bulacan *vs*. Hon. Dumdum, Jr., G.R. No. 168289, Mar. 22, 2010) p. 305

Unenforceable contracts — Rule on dismissal based on unenforceability is not applicable when there has been

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

Page

B. STATUTES

Page

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS
(Local)

II. FOREIGN AUTHORITIES

A. STATUTES

B. BOOKS